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November 12, 1999

VIA ELECTRONIC COMMENT FILING SYSTEM

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

Re: *Access Charge Reform, CC Docket No. 96-262, Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, Low-Volume Long Distance Users, CC Docket No. 99-249, Federal-State Joint Board on Universal Service, CC Docket No. 96-45*

Dear Ms. Salas:

Pursuant to the Notice of Proposed Rulemaking in the above-captioned matter, enclosed please find an electronic 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 me at (202) 857-2550.

Sincerely,



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James S. Blaszak

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

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Low-Volume Long Distance Users	)	CC Docket No. 99-249
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

**COMMENTS OF THE  
AD HOC TELECOMMUNICATIONS USERS COMMITTEE**

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November 12, 1999

## Summary

The Ad Hoc Telecommunications Users Committee generally supports the CALLS proposal. The CALLS proposal would move interstate access service rates closer to economic cost, stimulate use of the network and facilitate the growth of competition. But CALLS' proposal is far from perfect.

The Commission should not adopt the CALLS proposal without change. CALLS persuasively argues that the Commission can adopt its proposal as a transitional mechanism pending the development of an effectively competitive exchange access market. If the Commission can do so, it certainly has the authority to adopt as policy or rules the CALLS proposal with the changes suggested below.

Rather than committing to no Commission intervention until the end of 2004, the Commission expressly should retain the right to intervene if it becomes clear that the exchange access service market will not become effectively competitive. If such becomes the case, the public interest may not be well-served by the Commission adhering to the CALLS proposal to the end of the CALLS plan term.

Next, the Commission should reject that aspect of the CALLS proposal that would allow ILECs to recover cost changes as exogenous adjustments to the price cap indices when they have espoused and supported the government action that has produced such cost changes. An example of such *pseudo*-exogenous cost changes is proposed legislation that would have freed the ILECs

from the Uniform System of Accounts, and would have allowed them to recover about \$1.5 billion in *pseudo*-exogenous costs.

If the Commission, nevertheless, allows the CALLS ILECs to recover some exogenous costs, it should not permit them to recover such costs pursuant to the CALLS proposal. CALLS would allow the ILECs to recover such costs only from special access and other non-traffic sensitive rate element, *e.g.*, SLCs and PICCs. Even though some exogenous costs should be associated with the traffic sensitive rate elements to which the CALLS long distance carriers subscribe, they would be relieved from any recovery burden associated with such costs. At least with respect to exogenous costs, the carriers have struck a deal that serves their interests, but disserves the public interest.

Ad Hoc objects to two additional features of the CALLS proposal. Although CALLS would eliminate the residential PICC, it would retain the multi-line business PICC. There is no public interest justification for retaining the multi-line business PICC. The Commission should require that the multi-line business PICC and SLC be combined into a multi-line business SLC which would be the sum of the multi-line business PICC and SLC under the CALLS proposal, and which would be adjusted as they would be under CALLS' proposal. Finally, the Commission should mandate that the ILECs recover their universal service contribution obligations through per line charges, rather than giving the ILECs freedom to recover these contributions as they wish. Because the costs being subsidized are non-traffic sensitive, the subsidy should be collected through non-traffic sensitive charges.

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**Comments of the Ad Hoc Telecommunications Users Committee**

The Ad Hoc Telecommunications Users Committee (“the Committee” or “Ad Hoc”) hereby comments on a proposal submitted by the Coalition for Affordable Local and Long Distance Services (“CALLS”) to the Commission on July 29, 1999. The Commission seeks comment on the CALLS proposal through a Notice of Proposed Rulemaking (“*Notice*”) in the above-referenced dockets, FCC 99-235 (rel. Sept. 15, 1999).<sup>1</sup> The CALLS proposal would settle for the next five years inter-related access charge, universal service and price caps issues. As stated in the *Notice*, the members of CALLS are AT&T, Bell Atlantic, BellSouth, GTE, Sprint and SBC.<sup>2</sup>

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<sup>1</sup> *Access Charge Reform*, CC Docket No. 96-262, *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, *Low-Volume Long Distance Users*, CC Docket No. 99-249, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 99-235 (rel. Sept. 15, 1999) (“*Notice*”).

<sup>2</sup> *Access Charge Reform*, CC Docket No. 96-262, *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, *Low-Volume Long Distance Users*, CC Docket No. 99-249, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum in Support of the Coalition for Affordable Local and Long Distance Service Plan (rel. Aug. 20, 1999) (“*CALLS Memorandum*”) at 1.

Ad Hoc generally supports the CALLS proposal, but its support is qualified. As a general proposition, the CALLS proposal moves interstate access charges closer to economic levels and would recover a greater portion of the interstate share of subscriber line costs from the subscribers of those lines, the ultimate cost causers. Ad Hoc generally agrees with CALLS that these access charge changes are economically rational; will lead to lower long distance charges and will spur further innovation; and the development of new telecommunications pricing packages.<sup>3</sup> There are, however, elements of the CALLS proposal that should be changed. It is on these elements, the exceptions to its general support, that Ad Hoc will comment.

**A. The Commission Should Make Clear That It Will Re-evaluate The CALLS Proposal If Exchange Access Competition Does Not Become Widespread and Effective.**

CALLS urges the Commission to adopt its proposal as a, "useful and reasonable mechanism," that serves the public interest, "pending more permanent resolution of the underlying issues."<sup>4</sup> CALLS then states the permanent solution to the issues that its proposal addresses is the development of further competition in local telecommunications.<sup>5</sup> In its view, if such competition, "has not developed sufficiently in some access markets, the Commission can craft an appropriately tailored solution at that time."<sup>6</sup>

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<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.* at 42-43.

<sup>5</sup> *Id.* at 43.

<sup>6</sup> *Id.*

Certainly, if four years from now exchange access competition has not developed to a point where the Commission can safely rely on market forces to assure the availability of state-of-the-art, reasonably priced telecommunications services, the Commission must interject itself to protect the public interest. In the absence of effective competition, the Commission is obligated to protect users from abusive pricing and practices. But the Commission should leave open the possibility that it will be virtually certain before 2004 that exchange access competition is not developing adequately in significant portions of the country. Ad Hoc hopes that such will not be the case. But if it is, the Commission should be free to step in to protect consumers, both small and large.

**B. Participating ILECS Should Not Be Allowed To Recover Exogenous Cost Changes Brought About By Regulatory Or Legislative Changes That They Have Supported, Nor Should They Be Allowed to Limit Recovery of Exogenous Increases To Non-Traffic Sensitive Rates.**

The Commission should not accept that feature of the CALLS proposal which would allow participating ILECs to recover exogenous cost adjustments flowing from regulatory or legislative changes that they have supported, particularly when the ILECs have initiated such changes. Instead, the Commission should require that signatory ILECs forego any such adjustment. The ILECs should be required to bear this risk as part of the cost of a plan that clearly serves their interest. The ILECs should not be rewarded for initiating collateral actions whose purpose or effect would be to create *pseudo*-exogenous cost increases that nullify the consumer benefits of the CALLS proposal. Absent such a prohibition, consumers and regulatory authorities could be very unpleasantly surprised.

For example, Senate Bill 1217 (“S1217”) and House Bill 2670 (“HR2670”), would have effectively freed ILECs from the Uniform System of Accounts (“USOA”)<sup>7</sup> and thus would have allowed them to set depreciation rates without Commission oversight. In commenting on S1217 and HR2670, Chairman Kennard stated that those measures could have a "serious negative impact on ratepayers."<sup>8</sup> Citing an analysis done by the Common Carrier Bureau, Chairman Kennard observed that the reduction in paper earnings that would come from the local exchange carriers selecting their own depreciation rates "would make nearly every price cap carrier eligible for a substantial access charge increase totaling as much as \$1.5 billion per year."<sup>9</sup> Under the CALLS proposal, carriers would be allowed to increase Subscriber Line Charges (“SLCs”), Multi-Line Business Primary Interexchange Carrier Charges (“PICCs”) and Special Access Charges to recover the additional \$1.5 billion per year.

Exacerbating the disastrous potential of the *pseudo*-exogenous cost recovery aspect of the CALLS proposal, is a feature that would permit ILECs inappropriately to shift "exogenous cost" increases applicable to traffic sensitive network elements to non-usage sensitive cost recovery. This feature of the CALLS proposal would shield the long distance carriers from any exogenous cost changes that are economically attributable to the usage sensitive rate elements,

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<sup>7</sup> Uniform System of Accounts for Telecommunications Companies, 47 C.F.R. Part 32 (1998).

<sup>8</sup> Telecommunications Reports International, Inc., Telecommunications Reports with TR Daily, *Kennard Joins States, Consumer Groups In Pressing Congress to Drop GAAP Provisos*, September 20, 1999, at 1.

<sup>9</sup> *Id.*, at 2

and that should be recovered from such rate elements. The signatory ILECs would not be barred from attempting to recover the full measure of such changes from rate elements such as SLCs, PICCs, and Special Access Charges. While a great deal for carriers, this leaves users exposed to possibly significant rate increases. If the Commission opts to allow ILECs to recover some exogenous costs, it should require that allowed exogenous cost adjustments to the price cap indices be made pursuant to the existing price cap rules.<sup>10</sup> The burden of bearing such adjustments should not be placed only on the shoulders of end users.<sup>11</sup>

The CALLS signatories argue, in effect, that their proposal is a reasonable compromise of their interests that also serves the public interest. The public interest, however, is not served by allowing signatory ILECs to recover exogenous costs in ways that are economically irrational, and that unfairly shield their largest access service customers from any liability for recovery of exogenous cost changes.

Some may argue that business users should not be concerned about this aspect of the CALLS proposal because the signatory ILECs will not seek to recover an uneconomic portion of exogenous costs through charges levied on special access or non-traffic sensitive common carrier line charges, (*i.e.*, SLCs and PICCs), imposed on business users. But special access competition does not yet exist in many markets, and the ILECs have not yet persuaded the

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<sup>10</sup> 47 C.F.R. §§ 69.2, 61.3, 61.45, 69.111.

<sup>11</sup> *CALLS Memorandum* at n.74; *Notice*, Appendix A at 18.

Commission that such competition exists. Competition for business users' switched access traffic is even more limited than that extant in the special access services market. There is no factual basis for a general assertion that the market will protect business users from uneconomic exogenous cost rate increases.

Residential consumers in many cases have even fewer competitive choices than business customers. Granted, in at least some cases regulatory authorities may seek to protect residential consumers from exogenous cost adjustments to their non-traffic sensitive charges. However, it may not be feasible for ILECs to recover the full measure of allowed exogenous cost changes from business users. For example, if the ILECS were allowed to recover the \$1.5 billion of cost adjustments that the GAAP legislation could produce, and they sought to recover those costs only from non-traffic sensitive common line rate elements, the additional monthly charge per line would be approximately \$0.75 if the cost were recovered equally from all subscriber lines.<sup>12</sup> If the cost were recovered only from multi-line business installations, the additional monthly charge would be about \$2.60 per line per month through the end of the five-year period.<sup>13</sup>

If exogenous costs were also recovered from usage sensitive switched access charges, the competition in the long distance market would at least provide consumers with some level of protection from such exogenous cost adjustments to their rates. Moreover, as noted above, some of the exogenous

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<sup>12</sup> Line counts used to compute this amount are found in the Common Carrier Bureau, *1997 Statistics of Communications Common Carriers* (rel. 1998) at Table 2-10, Column 1.

<sup>13</sup> *Id.*

cost adjustments perhaps should be allocated properly to switched access charges. The members of CALLS, at least with respect to the exogenous cost recovery feature of their proposal, have protected their interests, but not the public's interest.

**C. The Commission Should Require That The Multi-Line Business PICC Be Folded Into The Multi-Line Business SLC, Or That Local Exchange Carriers Bill The PICC Directly.**

The CALLS proposal would eliminate the residential and single line business PICC and recover through increased residential and single line business SLCs the amounts previously billed to long distance carriers as PICCs.<sup>14</sup> The multi-line business PICC would drop, but would continue to be billed by long distance carriers.

The Ad Hoc Committee does not object to elimination of the residential and single-line business PICC and institution of capped, higher SLCs. The Committee, however, urges the Commission to eliminate the multi-line business PICC. The Committee would not object to changes in multi-line business SLCs to match the proposed changes in multi-line business PICCs. In other words, the Multi-line business SLCs would be the sum of the proposed SLCs and the proposed PICCs over the term of the CALLS proposal.

Ad Hoc urges the Commission to make this change to the CALLS proposal because it has little confidence that the long distance carriers will fully flow through to multi-line business customers the full reductions in the multi-line

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<sup>14</sup> *Id.*, at 9; *Notice*, Appendix A at 1-2

business PICCs. The long distance carriers charge PICCs that are substantially higher than the PICCs that LECs bill them. The nationwide weighted average LEC-billed PICC is approximately \$2.90 per month. AT&T, however, bills its multi-line business customers a PICC of \$3.95 per month.<sup>15</sup> MCI bills its multi-line business customers a PICC of \$3.97.<sup>16</sup> Sprint bills its multi-line business customers a PICC of \$4.31.<sup>17</sup> The long distance carriers offer no persuasive explanation for their higher PICCs. Generally, Ad Hoc members have heard long distance carriers assert that the higher charges match the ILECs' charges or that they had to mark-up the ILEC billed PICC to recover their costs of administering their PICC billing, collection and remittance programs. The assertions are factually wrong and not credible. While the highest LEC-billed PICC may exceed \$4.00, the weighted average LEC-billed PICC is about \$2.90. As for the long distance carriers' assertion that the mark-up is necessary to recover their administrative overhead, it is not credible that AT&T and MCI need markups of over 47% above the weighted average LEC-billed PICC, or that Sprint needs a markup of over 50% above the weighted average LEC billed PICC to cover their administrative costs. The long distance carriers have provided no cost support to bolster their assertions, and, of course, are not required to. Their overhead claims would, however, be more credible if they presented cost justification for their huge overhead PICC markups. The long distance carriers appear to be

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<sup>15</sup> AT&T Tariff F.C.C. No. 1, §2.5.9.C.3(a), 13<sup>th</sup> Revised Page 26.4.1.1.

<sup>16</sup> MCI Tariff F.C.C. No. 1, §C.1.061113, 18<sup>th</sup> Revised Page 16.3.

<sup>17</sup> Sprint Tariff F.C.C. No. 11, §2/10.9, 5<sup>th</sup> Revised Page 34.1.

using PICCs to pad their margins. The Committee expects them to continue to do so after the PICC reductions described in the CALLS proposal. In view of these IXC practices and the added costs they impose upon end users, no rational purpose is served by retaining the PICC as a separate rate element, and it should be combined with the SLC and billed directly – and without markup – by the ILEC.

**D. ILEC Universal Service Charges Should Be Assessed On A Per Line Basis.**

The CALLS proposal would give price cap ILECs the freedom to recover universal service contributions through per line charges, or through charges that are a percentage of revenues.<sup>18</sup> CALLS asserts that it should have the same freedom in fashioning universal service contribution recovery mechanisms as CLECs, CMRS carriers, IXCs and other carriers.<sup>19</sup>

The Commission should not give ILECs freedom to recover, as they will, from their customers their universal service contributions. Unlike the other carriers who do have flexibility with respect to universal service contribution recovery, the ILECs still possess market power. The Commission cannot count on market forces to discipline the ILECs universal service contribution recovery practices. Consumers and competition could be disserved if the Commission allows the ILECs the recovery flexibility they seek.

The overwhelming share, perhaps virtually all, of the costs that would be subsidized under the CALLS proposal and that are subsidized today are loop

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<sup>18</sup> *CALLS Memorandum* at 21-22.

<sup>19</sup> *Id.*

costs. These costs, of course, are non-traffic sensitive. Recovering the subsidy through usage sensitive charges adds a level of uneconomic distortion to rate structures that would be inconsistent with encouraging competition and bringing the benefits of competition to all consumers. The most economically rational means of subsidizing loop costs would be through an explicit per line charge.

Assessing a usage based charge (rather than a per line charge) for these additional subsidies has the perverse effect of penalizing customers for making greater use of the public switched network. Rather than encouraging customers to make greater use of fixed network plant, a usage-based surcharge could have the opposite effect.

## Conclusion

In view of the foregoing, Ad Hoc urges the Commission to prescribe the changes to the CALLS proposal that are suggested herein. There is much to be said for the CALLS proposal, but the modifications suggested herein are better economics; even more than the CALLS proposal, they recover costs more as they would be recovered in an effectively competitive market. If the Commission has the authority to adopt the CALLS proposal as a transitional mechanism pending the development of widespread and effective exchange access competition, as CALLS persuasively argues, the Commission has the authority to promulgate, as Commission rules/policy, a transitional mechanism that modifies the CALLS proposal and thereby better serves the public interest.

Respectfully submitted,

Ad Hoc Telecommunications  
Users Committee



By \_\_\_\_\_

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November 12, 1999

## 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 November 12, 1999 via hand delivery upon the following parties

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November 12, 1999