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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

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COMMENTS OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

The National Association of State Utility Consumer Advocates (NASUCA) appreciates the opportunity to comment on the Federal Communications Commission's (FCC) Notice of Proposed Rulemaking (NPRM), in the above styled matters released September 15, 1999. This NPRM seeks comment on a proposal submitted by the Coalition for Affordable Local and Long Distance Services (CALLS).

NASUCA is an association of 42 consumer advocates in 39 states and the District of Columbia. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts.

I. Executive Summary

NASUCA opposes the CALLS Proposal because it will be harmful to consumers, is inconsistent with the universal service goals of the Telecommunications Act of 1996,[1] and is anticompetitive.

The CALLS Proposal will be harmful to consumers because it will increase the rates paid by basic local exchange customers. Consumers' local bills will reflect a greatly increased

[1] 47 U.S.C. §§ 151 et seq. ("The 96 Act" or "the Telecom Act").

Subscriber Line Charge (SLC). In addition, universal service charges will increase. This will create additional customer confusion and outrage. Currently consumers are confused and angry about the various surcharges that continue to be added to their bills. Adding another mandatory charge will be unacceptable.

The CALLS Proposal will jeopardize universal service goals. Section 254 of the 96 Act requires that universal service be available at affordable rates. The CALLS Proposal to increase the SLC up to twice its current amount threatens affordability. In addition, the proposal will complicate current universal service measures by adding another $650 million fund to current programs that are being funded.

The CALLS Proposal improperly assigns 100% of joint and common interstate loop costs to the most inelastic service, basic service. The allocation of a disproportionate share of joint and common costs to a small subset of services is unreasonable and inconsistent with economic principles. In addition, this approach is inconsistent with the law. It violates Section 254(k) of the 96 Act and is inconsistent with findings of the U.S. Supreme Court as well as most regulatory authorities.

The CALLS Proposal will result in inefficiency because IXCs will be provided free use of the loop as well as other facilities that constitute necessary inputs to the provision of interexchange services. IXCs should pay for their own cost of business and price services as appropriate in the competitive market.

The CALLS Proposal to shift interstate costs from the Presubscribed Interexchange Carrier Charge (PICC) to the SLC eliminates competitive choice. Consumers will no longer be able to choose a carrier that does not charge a PICC.

Locking in virtually all interstate access costs into a SLC with no productivity adjustment eliminates incentives for ILEC efficiency and guarantees ILEC revenue recovery. This is inconsistent with the FCC's pro competitive policies.

The FCC should continue to embrace pro-competitive policies by commencing a program to eliminate the SLC. The recovery of the interstate common line costs should be recovered from the interexchange carriers (IXCs) in the PICC so that those charges will be subject to productivity adjustments and other competitive forces. In addition, the FCC should empower consumers to benefit from competitive initiatives by ensuring they have adequate information to participate in the competitive market.

II. Introduction

The National Association of State Utility Consumer Advocates (NASUCA) urges the Federal Communications Commission ("FCC" or "Commission") to reject the proposal made in the Coalition for Affordable Local and Long Distance Services ("CALLS") Petition (CALLS Petition or CALLS Proposal). The CALLS Petition is inconsistent with the express intent of Congress to ensure the provision of quality universal telephone service at just, reasonable and affordable rates.

The true beneficiaries of the CALLS Proposal are not consumers but instead are the petitioning ILECs and IXCs. Under the CALLS Proposal, the reduction in the common line requirements due to the X-factor productivity offset would end immediately. The CALLS Proposal would initially redirect the productivity offset towards reducing the traffic sensitive switched access charges, instead of reducing any of the common line-related charges. Once the productivity factor drives the IXCs' switched access charges down to a certain level, then the productivity factor would be set equal to the inflation factor, thereby yielding no further

reductions in the price caps.[2] At that point, the LECs would simply retain the benefit of industry-wide productivity gains, with none of those benefits being passed through to the customers. The phase out of the productivity factor combined with the Super-SLC and potential increases in Federal Universal Service surcharges would insure the ILECs' revenues against competitive forces while simultaneously allowing the IXCs free use of common line facilities and below cost use of traffic sensitive facilities.

Under the CALLS Proposal, many services, including interstate switched access services, would continue to share the interstate common line facilities, but one hundred percent of the interstate cost of those shared facility would be recovered from charges that customers must pay in order to receive basic exchange services. The other interstate services that use those shared facilities would pay nothing whatsoever towards the costs. The CALLS Petition is simply another attempt at recovering costs incurred to provide a wide array of services from a very limited subset of services that are uniquely characterized by highly inelastic demand. This pricing scheme violates the clear provisions of the 96 Act and the decisions of judicial and regulatory authorities. Congress, the Supreme Court, the Commission, the Joint Board on Universal Service and numerous state commissions have rejected attempts to extract the full cost of shared facilities from captive ratepayers. Instead, these authorities have appropriately recognized that if a variety of services share the use of facilities, then they should also share in the recovery of the costs. NASUCA views the CALLS Petition as a method for carriers to circumvent what should be properly considered normal costs of doing business and urges the Commission to insist that the Petitioning carriers generate revenues like firms in more competitive markets... by working for them.

[2] CALLS Proposal at Appendix A, paragraph 3.3.

NASUCA is extremely concerned about the CALLS Petitioner's recommendation that the Commission not formally refer the Petition to the Joint Board on Universal Service prior to adopting the proposal.[3] The CALLS Petition directly and significantly impacts universal service. Supported services, affordability and low-income and high cost funding are just some of the issues impacted by CALLS. Some aspects of the CALLS Petition, such as increasing the SLC, directly conflict with recommendations of The Joint Board that the Commission has already adopted. The Joint Board should continue to play an essential role in counseling the Commission on issues related to universal service.

Finally, the CALLS Petition is offered as an all or nothing proposal resulting from negotiations between an exclusive subset of industry stakeholders. State regulators and state consumer advocates are necessary parties to the discussion. State regulators are charged with protecting the public interest and state consumer advocates represent the interest of consumers. Their concerns must be addressed.

III. The CALLS Petition is inconsistent with the 96 Act

When the 96 Act was signed into law by President Clinton on February 8, 1996, it was generally viewed as a significant development intended to help promote competition in the provision of basic and advanced telecommunication services across the United States. The 96 Act was believed to be "[a]n Act to promote competition and reduce regulation in order to secure ***lower prices*** and higher quality services for American telecommunications consumers and

[3] CALLS Proposal at Appendix C at 42.

encourage the rapid deployment of new technologies."[4] The idea that the 96 Act was intended to bring about lower prices and better service for consumers of telecommunication services was reinforced by the emphasis placed by Congress on universal service. Section 254 of the 96 Act is dedicated to the establishment of principles and procedures to ensure that telecommunication services are available to the largest number of customers possible, regardless of location or income. More specifically, subsection 254(b)(i) of the Act clearly states that, "[q]uality services should be available at just, reasonable, and affordable rates" and subsection 254(i)of the Act clearly provides that, "[t]he Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable." These statutory provisions are a clear indication that Congress intended for the Telecom Act to produce widespread benefits to consumers at affordable prices.

In stark contrast to the explicit intent of Congress to maintain rates for telephone service at affordable levels, the Commission is now faced with a petition that threatens to increase the non-discretionary monthly fees that consumers must pay in order to have phone service. One of the proposals set forth in the CALLS Petition seeks to combine and increase the SLC and the PICC to a higher, flat rate, deaveraged "Super-SLC" of up to $7.00 per month for residential and single line business customers. Alone, this proposal by the CALLS Petitioners would have the effect of increasing the total bill of most consumers, making the mandatory charges for obtaining basic telephone service more costly and less affordable. The CALLS Petition would also create an increase in the Federal Universal Service Fund of up to $650 million (potentially more with additional Lifeline funding) placing upward pressure on the end-user surcharges that ILECs and IXCs are currently permitted to pass through to recover their carrier universal service

[4] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified in sections of Title 47 of the U.S. Code) (emphasis added).

contributions. While the 1996 Act is dedicated to fostering competition and lower rates, the CALLS Petition would raise rates on the least competitive of services.

In exchange for additional mandatory charges on consumer bills, the CALLS Petitioners offer a promise that switched access rates will fall to approximately half of current levels. The Petitioners claim that the lower access rates will lead to lower long distance bills. However, noticeably absent from the proposal is any concrete description or guarantee of how and to what extent the proposed reductions in access rates will flow through to consumers. Even though CALLS speculates that some of its rate changes may lead to some rate decreases that consumers may enjoy, any benefit will likely flow to the high volume users through targeted discriminatory pricing techniques, never benefiting the typical subscriber.

The only certainty is that the charges on the local bill that most consumers must pay will necessarily increase. Under these circumstances, it is difficult to understand how a proposal resulting in an increase in the charges that customers pay can be said to be consistent with the clear legislative goal of ensuring affordable telephone service for all. The CALLS Petition is contrary to the express will of Congress to maintain the affordability of telecommunications services for consumers.

IV. CALLS will be harmful to Consumers

a) The CALLS Proposal will increase the rates paid by basic local exchange service customers.

NASUCA believes that the CALLS Proposal's impact on consumers is the paramount issue in determining its merit. If implemented, the proposal would increase the consumers' mandatory monthly charges and reduce their discretionary expenditures on telecommunications

service and other related or unrelated goods and services. This result would be both unreasonable and undesirable.

The CALLS' proposed deaveraged "Super-SLC" of up to $7.00 per month for residential and single line business customers would have the effect of increasing the total bill of most consumers, making the mandatory charges for obtaining basic telephone service more costly and less affordable.[5] The CALLS Petition would also create an increase in the Federal Universal Service Fund of up to $650 million placing upward pressure on the end-user surcharges that ILECs and IXCs are currently permitted to directly pass through to recover their carrier universal service contributions.

The CALLS Petitioners claim that the caps on their proposed combined charge "are set at levels that will be affordable."[6] However, under the CALLS Proposal, all of the interstate common line costs and a portion of traffic sensitive costs would be billed to end users. Most would be billed to end users through the Super-SLC, with any remainder billed to end users as an "Interstate Access-related USF" (universal service fund).[7] In order to obtain basic exchange services, customers would have to pay these SLC and USF charges.[8] This result would be a step backward in the Commissions efforts to ensure the affordability of basic services.

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[5] The increase in the total bill results from the premature termination of the X factor in the interstate access price cap calculations and the failure to guarantee pass through of access charges to all customers through IXC toll rates. Low volume toll users will also experience additional rate increases simply because any access reduction flow through that takes place will benefit high volume toll users more than low volume toll users. Finally, the access revenue rebalancing falls disproportionately on residential rather than business users. These revenue affects will be discussed below in greater detail.

[6] CALLS Proposal, Appendix C, p. 15.

[7] The CALLS Proposal proposes that all of the interstate common line costs be recovered from a Subscriber line charge (SLC) billed to the end user, unless those SLC rates would exceed certain limitations. To the extent the interstate common line costs exceeded certain limitations, those additional amounts would be placed in the Interstate Access-related USF. However, the contributions to that "USF" would also be billed as charges to the end users. (Footnote 19, Appendix A, CALLS Proposal).

[8] Except Lifeline customers, who are exempt from the SLC.

The Act clearly provides that, "[t]he Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable."[9] The Joint Board recommended that "there be no increase in the current SLC cap for primary residential and single-line business lines."[10] The Joint Board further observed that, "the SLC, as a charge assessed a directly on local telephone subscribers, has an impact on universal service concerns such as affordability. Consistent with these premises, the Joint Board concluded that the current $3.50 SLC cap for primary residential and single-line business lines should not be increased."[11] The Commission agreed and did not raise the SLC cap for primary residential and single-line business lines.[12] The FCC specifically stated:

> We wish to avoid action that indirectly raises the price of basic residential telephone service that guarantees access to the local telephone network. We also believe, as did the Joint Board, that raising the existing flat-rate charge on every consumer's line for access to interstate telephone service–the subscriber line charge (SLC) on primary residential lines–is not desirable, because it could adversely affect the affordability of local service. Therefore, we decide in today's Order and its companion *Access Charge Reform Order* that <u>we will not permit any increase in the primary residential line SLC and will not order the creation of any additional end-user charges for local service over these lines</u>. Our primary reason for not mandating the recovery of universal service contributions through basic rates, directly raising charges for basic access through an increase in the primary residential SLC, or adopting any new end-user charge from the local telephone company to the residential consumer for basic access is that we have high subscribership rates today, and therefore believe that current rate levels are "affordable." We see no reason to jeopardize affordability by raising rate levels.[13] (Emphasis added)

The CALLS Petition is seeking a 100% hike in the primary residential and single line business SLC by July 2003. This is inconsistent with the universal service goal of affordability.

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[9] 47 U.S.C. § 254(i).

[10] In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision (November 8, 1996) at ¶ 74.

[11] Id. at ¶ 769.

[12] Universal Service Order at ¶ 752.

[13] Report and Order, CC Docket No. 96-45, FCC 97-157, adopted May 7, 1997, released May 8, 1997, (hereinafter referred to as *Universal Service Order*) ¶ 3.

Although, the CALLS Petitioners contend that their proposed residential primary line SLC is no higher than the sum of the current residential primary line SLC and PICC,[14] this claim is false. The CALLS Proposal proposes significantly reduced access charges to the IXCs. Those switched access rate reductions are supported by higher charges to the end user. For example, presently and at the requested start of the CALLS plan, January 1, 2000, under the existing structure, the residential primary and business single line SLC ceiling will be $3.50, and the PICC ceiling for those services will be $1.04. Therefore, the maximum charge for these two rates together will be $4.54. Alternatively, the CALLS Petition proposes a $5.50 Super-SLC ceiling as of January 1, 2000 covering these services.[15] Obviously, the maximum charges would be greater under the CALLS Proposal than under present orders. In fact, under the CALLS Petition, the primary residential line and business single line Super-SLC ceiling would grow to $6.25 by January 1, 2001. Under the existing structure, the sum of the PICC and SLC ceilings for these services would not reach that level until July 1, 2003. The CALLS Petition proposes to accelerate this ceiling rate by two and one-half years.

Part of the problem with the calculations in the CALLS Petition is that $1.50 is used as the residential primary line and business single line PICC, instead of the actual PICC for these customers which is $1.04. Some companies such as AT&T and Sprint, who are signers to the CALLS Proposal, have been passing more than the PICC through to the customers as a so-called PICC, and are effectively asking the FCC to authorize this overcharge by adopting the CALLS Petition in this proceeding.

More importantly, the combined SLC and PICC actually charged to customers could be permanently higher under the CALLS Proposal than would be charged under the current FCC

[14] CALLS Proposal, Appendix C, p. 18.
[15] CALLS Proposal, Appendix C, p. 15.

orders. This potential exists because the CALLS Proposal locks in rates ignoring that future productivity gains should benefit consumers. Under the current structure, opportunities exist for customers to actually pay less than the maximum rates for the SLC and PICC. In fact, the FCC orders clearly indicate that in the future the FCC expected that the actual billing for these charges will be below the ceilings.

Under the current structure, the actual SLC and PICC rates are constrained using the "price cap" from the current Common line basket. The sum of the SLC and PICC cannot exceed the "price cap" requirement. This "price cap" requirement in the common line basket is expected to decrease over time as a result of the application of the productivity X-factor. So even though the pre-established SLC and PICC ceilings may be targeted to increase over time, the total amount that consumers could actually pay should decrease. This effect has already occurred for the non-primary residential and business multi-line customers producing actual charges well below the established ceilings. As of January 1, 1999, the ceiling on the Pacific Telesis residential non-primary SLC was $6.07, but its actual SLC for these customers was $5.41. At the same time its multi-line PICC ceiling was $2.75, Pacific Telesis was charging only $0.58.

The Petitioners might point to the fact that present FCC orders would raise the maximum residential primary line and business single line PICC ceilings to a few pennies over $3.00 by July 1, 2003. This would create a combined SLC and PICC ceiling of approximately $6.50. It is not reasonable to expect that the customers would actually be billed that $6.50 amount under the current structure. Even if future net productivity gains were ignored, the current per line SLC and PICC combined maximum "price cap" limitation of approximately $5.40 in the common line basket that could be recovered from consumers is <u>significantly less</u> than the proposed $7.00 Super-SLC. In addition, the current common line basket requirement per line will decrease each

year that the productivity offset is greater than the inflation adjustment. This has happened in recent years. The gross domestic product price index adjustment was 2.1% in 1997 and 1998.[16] Accordingly, a productivity offset of 6.5% will reduce the maximum recovery in the common line basket every year by approximately 4 1/2%.[17] It is reasonable to expect similar decreases in the future.

In order to justify why none of the productivity gains would be going to benefit the common line basket, AT&T and Sprint claim switching has experienced greater productivity gains than the common line.[18] However, the other signers of the CALLS Proposal, Bell Atlantic, BellSouth, GTE, and SBC "do not support this analysis."[19] In spite of the fact that the majority of the signers of the CALLS Proposal do not support the alleged reason for transferring the productivity benefit from the common line basket to the switching basket, the CALLS Proposal proposes that transfer anyway.

The truth is, the productivity of the facilities in the common line basket have experienced breathtaking gains in productivity. For example, DSL services transmit signals on copper cable at frequency rates that previously had been unused. Sprint has announced it can provide other DSL services as well that produce transmission speeds on existing copper loops that are in the magnitude of 100 times the prior information transmission speeds.[20] Under the current structure of cost allocation, consumers will share in productivity advances directly and meaningfully through productivity gains flowing to the common line basket. Under the CALLS Proposal these gains would be diverted first to benefit IXCs and then to benefit ILECs. The changes that

[16] Further Notice of Proposed Rulemaking, Released May 28, 1999 FCC 99-120 at ¶ 226.
[17] A reduction of approximately 3% per year would be true under the previous 5.3% X factor offset that is not the subject of the current X factor appeal.
[18] CALLS Proposal, Appendix C, page 41.
[19] CALLS Proposal, Footnote 116, Appendix C.
[20] See Sprint's June 2, 1998, New York press release entitled "Sprint Unveils Revolutionary Network", which can be found on their website, www.sprint.com and "Faster, Faster, Faster", Business Week, October 1999, p.191.

CALLS proposes for the FCC regulatory structure would have the effect of unjustifiably forcing the basic exchange service charges to support switched access services and ILEC revenues.

Under the current structure there is an opportunity for all consumers to receive the benefits of productivity gains. The CALLS Petition offers no such guarantee. Under the CALLS Proposal the X-factor productivity offset to the common line basket would end immediately. Instead, the productivity offset would be redirected toward reducing the traffic sensitive switched access charges paid by IXCs. Once these reductions have been achieved, productivity gains would flow directly to the bottom line of the ILEC.

b) The CALLS Proposal would not reduce customer confusion--it would increase customer confusion and create justifiable customer outrage.

The CALLS Proposal claims the so-called simplified rate structure it proposes would reduce customer confusion.[21] This plan would not reduce customer confusion. The current SLC and separately billed PICC would be replaced by a higher SLC plus a charge for the so-called new Interstate Access-related USF. Therefore, there would still be two charges. However, since these two charges would be higher in total than the two charges they replace, that would increase the customers' justifiable concerns. The dollar amount of these charges would become a major portion of the customers' bills. Therefore, customers will demand to know why these significant additional charges have appeared on the bill.

c) The potential impact of CALLS on low income and low volume users of long distance and other non-supported services is especially undesirable.

In response to an increase in the mandatory charges for service, certain classes of consumers may have to curb their demand for wanted goods because they will not be able to

[21] CALLS Proposal, Appendix C, p. 14.

afford them. A study by consumer advocates Mark Cooper and Gene Kimmelman, identified characteristics concerning telephone usage and expenditures. Forty-five percent of the population typically pay $20 per month for local service, pay $20 per month on long distance service, and do not have access to the Internet, do not have cellular phone services, spend $20 per month on cable, and subscribe to one added phone service such as Caller ID or Call Waiting. In comparison, the rest of the population spends nearly twice as much on local and long-distance service, are connected to the Internet, have a cellular phone, purchase cable with premium channels, and purchase three or more added phone services. Within the first group, the median annual income is $22,500. The median annual income of the rest of the population is about $45,000.[22]

This analysis is strong evidence that income is a major factor in determining the services that a household will demand. Imposing a larger SLC on all local consumers will unfairly impose a burden on the lower end of the income spectrum. These customers may have to forgo additional desired service, due to the higher mandatory charges imposed under the CALLS Proposal. It is even possible that they may have to cancel existing services in order to afford this added burden.

Despite the claims of the Petitioners that consumers will benefit from CALLS, the fact remains that charges will go up, and most customers will end up paying more for their phone service. CALLS would protect ILEC revenue streams from competitive forces and allow IXCs a free-ride on shared facilities at the expense of consumers who face an increasing barrage of add-on charges, minimum fees and mandatory charges that must be paid in order to receive even the most basic exchange services. These results are inconsistent with the pro-competitive, consumer

[22] (Cooper and Kimmelman, The Digital Divide Confronts the Telecommunications Act of 1996: Economic Reality Versus Public Policy, Feb. 1999).

welfare enhancing goals of the 1996 Act and specifically its promise to ensure the provision of universal telephone service at just, reasonable, and **affordable** rates.

V. CALLS will inappropriately expand supported services

Section 254 of the Act was intended to ensure that a limited core set of services would be available at just, reasonable, and affordable rates. Specific criteria have guided the Commission in determining the services to be supported. NASUCA believes that these criteria strike a reasonable balance between the necessity of the service to a particular subscriber and the cost to all for ensuring its availability.

The core set of services currently defined by the Commission as universal service includes a very limited subset of services. These services are those that have traditionally been recognized as basic local voice telephone service. The definition specifically excludes toll service as a supported service.[23] Limiting the scope of supported services to only essential services promotes the desired public policy goals while also minimizing the cost burden on subscribers overall. In contrast, the CALLS Proposal would expand currently supported services by shifting recovery of costs properly attributable to toll and other non-supported services away from those services and into the SLC and Universal Service Fund. This aspect of the CALLS Petition has the potential to make it impossible to accomplish the dual goals of ensuring that universal service is available and ensuring that universal service is available at rates that are just, reasonable, and affordable. NASUCA wishes to caution the Commission against supporting too broad an array of services, because in doing so as proposed by CALLS the Commission will jeopardize the rates for obtaining universal service.

[23] Universal Service Order at ¶ 77.

VI. The CALLS Proposal attempts to bypass the proper assignment of the costs of facilities (inputs) used to provide multiple services.

a) The CALLS Proposal is inconsistent with the reality that the loop is used to provide multiple services.

CALLS proposes that "loop" costs be directly recovered as an additional charge that must be paid to purchase basic exchange services in spite of the fact that these facilities are used to provide multiple services. The loop is the LEC facility that extends outward from the Central Office to the end-user premises located throughout the serving area. It is an integral part of the LECs' distribution system. The costs associated with the loop include the cost of the physical facilities, related operation and maintenance expenses and the associated overheads.

Telecommunications carriers are currently using the LECs' loops to provide an ever-increasing variety of services, including local, interstate and intrastate toll, vertical or CLASS services, and information services. Since the loop is used to provide a number of services, the cost of the loop is not directly attributable to any one service and should be considered a joint and common cost of providing many services. The Commission has emphasized this point on numerous occasions. For example, the Commission found that: "[I]nterstate access is typically provided using the same loops and line cards that are used to provide local service. The costs of these elements are, therefore, common to the provision of both local and long-distance services."[24]

Joint and common costs comprise the lion's share of the cost of providing telecommunications services. It is estimated that the investment in loop facilities for an ILEC can easily exceed 50% of the cost needed to provide telecommunications services. For the large

[24] Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, CC Docket No. 96-262 et al., adopted December 23, 1996, and released December 24, 1996, at ¶ 237.

local exchange companies supporting the CALLS Proposal, joint and common costs are likely more than hundreds of millions of dollars per year.

In establishing mechanisms for the reasonable recovery of these costs, it is critical to adopt methods that require that all services provisioned over shared facilities recover a reasonable share of the costs. To allocate a disproportionate share of joint and common costs to only a subset of services, such as basic exchange service, is unreasonable and inconsistent with economic principles. Similarly, attempts to recover switched access traffic sensitive costs through an unavoidable flat monthly charge, is not a reasonable cost based recovery method. The cost shifting proposed in the CALLS Petition is simply an attempt to extract cost appropriately recovered from toll carriers through interstate access charges from charges applied to basic exchange services.

The CALLS Petitioner's have long argued that common line costs are supposedly "caused" entirely by the end users, because they claim the common line costs are incurred as a result of the end user calling the telephone company to order telephone service. This is untrue. First of all, at the time a customer orders service, all that happens to the common line is that a spare pair is made active. When the end user calls to order service, the existing idle common line facility is activated. Since most of the common line cost is investment-related (i.e. return on investment, depreciation, etc.), there is very little cost difference between an idle common line and an active common line. The common line facility is installed long before a specific customer orders service at a location. The common line facilities are installed while the subdivision is under development, normally before streets are laid, before driveways and sidewalks are in place, and before any homes are built. It is months, or even years later, before an end user actually calls to order service. It is not uncommon for a "new customer" who moves

into a home to be provided telephone service using a cable pair that is 10, 15, 20, or even more years old. Secondly, a telephone company decision to install a common line facility is not based upon just the anticipation of receiving basic exchange revenues. The decision to install the common line facility is based on the expectation of receiving all revenues that will be derived over that common line facility.

Additional proof that the common line costs are not related to just basic exchange service can be seen from a SBC recent announcement.

> SBC has announced that it will invest additional billions of dollars in its common line facilities in order to provide digital subscriber line (DSL) service. This is a high-speed Internet access service. SBC said it would spend $6 billion to refashion its local networks into next-generation, packet-based datanets using digital subscriber line (DSL) technology as the preferred method of providing broadband service to homes and small businesses. A key piece of the new network will be so-called "neighborhood gateways" that will bridge the gap between central offices (COs) and end-users. Current network architecture prevents end-users from receiving DSL service unless they are within about three miles of a CO. SBC said it plans to install 25,000 neighborhood gateways.
>
> Extending DSL service deeper into suburban and rural areas will cut back on marketing costs, said James Gallemore, SBC's executive vice president-strategic marketing and planning. Savings will result from the company's ability to market the service to an entire metro area and the outlying suburbs, and deploying DSL to new customers without first determining whether they are able to receive the service, Mr. Gallemore said.[25]

As the above quotation makes very clear, the common line facilities are not designed or used only for basic exchange service. Services other than basic exchange service are driving major investments in common line facilities. The SBC 25,000 "neighborhood gateways" are DLCs that are a portion of the common line investments.[26] There is nothing novel about upgrades to networks to support new services. When ISDN service was initiated, common line facilities had to be upgraded and maintained at a higher standard. Decades earlier when toll

[25] TR Daily, October 18, 1999, "SBC To Invest $6 Billion in DSL Upgrade."

[26] If a remote unit also contains switching functions, all or a portion of these costs may be classified as switching equipment.

service was introduced, the common line facilities had to be upgraded and have been maintained at a higher standard than are necessary for just local service.

The common network is there to provide many services and is shared by many services. It is the entire family of services which is responsible for those costs, not just basic exchange services. Therefore, it is reasonable to recover a portion of the common line facilities costs used to provide toll and other non-supported services from the IXCs and other carriers that provide those services.

b) The CALLS Proposal is inconsistent with the laws governing appropriate cost allocation and recovery of joint and common costs.

The basic exchange service customers are already directly charged for the majority of the interstate common line facilities costs, through the mandatory fixed monthly SLC. The SLC already generates more than 2.5 times the recovery of the interstate common line costs directly billed to interexchange carriers (including CCLC and PICC charges).[27] The CALLS Proposal would improperly increase the already lopsided burden of recovering the common line costs. Under the CALLS Proposal, over a three and one-half year period all recovery of the interstate common line costs and a significant portion of interstate traffic sensitive costs would shift to subscribers regardless of any usage of interstate services. This would effectively increase the local bill by increasing the mandatory "add-ons" that a customer must pay to receive basic exchange services. NASUCA believes that this aspect of the proposal violates the principles expressed by the U.S. Supreme Court in Smith v. Illinois Bell Telephone Co., 282 U.S. 133 (1930), as well as Section 254(k) of the Telecommunications Act of 1996.

[27] $9,968,341,800 Total SLC payments divided by ($1,032,460,100 CCLC + $2,887,502,040 PICC) = 2.54. Source Trends in Telephone Service, FCC, September 1999, Tables 1.1, 1.2, 1.3, 1.4.

In Smith v. Illinois Bell Telephone Co., supra, the Supreme Court held that it was inappropriate to recover the shared exchange facilities cost entirely from intrastate services. The Court stated that unless an apportionment is made, an "undue burden" would be placed upon the intrastate exchange services as follows:

> In the method used by the Illinois Company in separating its interstate and intrastate business, for the purpose of computations which were submitted to the court, what is called exchange property, that is, the property used at the subscriber's station and from that station to the toll switchboard, or to the toll trunk lines, was attributed entirely to the intrastate service. ... The appellants insist that this method is erroneous, and they point to the indisputable fact that the subscriber's station, and the other facilities of the Illinois Company which are used in connecting with the long distance toll board, are employed in the interstate transmission and reception of messages. While the difficulty in making an exact apportionment of the property is apparent, and extreme nicety is not required, only reasonable measures being essential (citations omitted) it is quite another matter to ignore altogether the actual uses to which the property is put. It is obvious that, unless an apportionment is made, the intrastate service to which the exchange property is allocated will bear an undue burden--to what extent is a matter of controversy.[28]

This is still the Supreme Court ruling in effect on this subject and is regularly referred to in current orders.[29] The principle that the cost of the joint and common facilities must be reasonably apportioned among the services that share those facilities was reinforced and strengthened by Section 254(k) of the Telecommunications Act of 1996. The Supreme Court has specifically looked at the cost of the common line facilities, and found that it is unacceptable to allocate all of those costs to just one of the services that shares that facility, and to "ignore altogether the actual uses to which the property is put." It is an indisputable fact that the common line facilities are used for switched access services. Therefore, to recover no portion of

[28] Smith v. Ill. Bell Tel. Co., 282 U.S. 131, 150-151 (1930).
[29] Access Order, footnote 23.

the cost of those facilities from switched access services would be to "ignore altogether the actual use to which the property is put."

As justification for shifting access cost recovery away from IXCs and onto the basic services subscriber, the Petitioners imply that the Fifth Circuit Court found that recovering a portion of the common line costs from access services was an "implicit subsidy."[30] The Court made no such finding. That Court ruling did not even address the recovery of the common line costs.[31] The portion of the ruling that the CALLS Proposal references only addresses how certain contributions to the USF should be billed. The Court did not address the common line cost recovery and did not find that recovering a part of the common line cost from access service was a subsidy or an implicit subsidy.

NASUCA also believes that the proposal violates Section 254(k) of the Federal Telecommunications Act of 1996 which requires that universal service bear no more than a reasonable share of joint and common costs. Section 254(k) states:

> --SUBSIDY OF COMPETITIVE SERVICES PROHIBITED.--A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services. (Emphasis added)

This consumer safeguard established by Congress was intended to ensure that universal service would not be a target for loading all common costs. The prohibited over-recovery of the cost of shared facilities from universal service, in order to subsidize competitive services, is exactly what will result from the CALLS Petition's proposal to shift recovery of traffic sensitive

[30] CALLS Proposal, Appendix C, p. 21.

[31] Texas Office of Public Utility Counsel, 1999, U.S. Appellate Texas 17941 at 56.

costs to basic exchange services.[32] Furthermore, Section 254(k) clearly establishes an upper limit of no more than a reasonable allocation of the joint and common facilities can be recovered from universal services. Contrary to this Congressional mandate, the CALLS Petition proposes to recover 100% of the interstate common line costs from the universal services, providing a free ride on the common line facilities for switched access service.

The CALLS Proposal would shift recovery from carriers that provide and profit from toll and other non-supported services to consumers who may not use or want those services. For example, it is estimated that, on a monthly basis for 1998, approximately 30% of residential customers did not make any interstate calls.[33] Under the CALLS Proposal, about 30% of residential consumers each month would be required to pay additional costs properly related to interstate toll services that they do not even use.

State commissions have also determined that common line costs cannot properly be recovered from just basic exchange services. The National Association of Regulatory Utility Commissioners (NARUC) has found that: "Interexchange carriers should pay a portion of the NTS loop cost because they use the LEC's loop to provide their services."[34]

Individual state commissions are regularly faced with the issue of how to recover the cost of the common line and other joint and common costs. Although there are a few exceptions, the majority of states have properly found that the recovery of common line costs should be spread over the family of services that share those facilities. For example, in its Order dated October 28, 1998, the Indiana Utility and Regulatory Commission (IURC) specifically found that assigning

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[32] A subsidy would exist in this circumstance as the switching rate would be priced below the incremental cost of the cost of switching the call.

[33] *TRENDS IN TELEPHONE SERVICE*, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, September, 1999.

[34] Initial Comments of the National Association of Regulatory Utility Commissioners, CC Docket No.96-262 et al., January 29, 1997, page 13.

100% of the common line cost to basic exchange service would violate Section 254(k) of TA96. It also found the common line was "included in the definition of common and joint costs":

> For purposes of resolving 'takings' claims and 'a reasonable share of the joint and common costs of facilities used to provide those services,' the loop must, therefore, be included in the definition of common and joint costs in order to determine confiscation claims and to be in compliance with the second sentence of Section 254(k). We find that the direct assignment of 100 percent of the loop costs to any one service would be a violation of the second sentence of Section 254(k).[35]

The Missouri Commission has also recognized that there is a shared responsibility for recovering loop costs:

> To announce that economic efficiency requires that interLATA toll carriers be provided with absolutely free access to the local loops of local exchange telephone customers is patently absurd. Thus, the interexchange carriers should pay for their use of the local network in providing toll services, just as local exchange service should pay for its use of the local loop. [36]

Requiring that toll and access together with local service recover the cost of shared facilities is an appropriate method of cost recovery required by Congress, the Supreme Court, the Commission, and numerous state commissions. The CALLS Petition would impose an unlawful and unreasonable burden on subscribers of basic exchange services.

c) The CALLS Proposal inappropriately shifts recovery of traffic sensitive costs.

The CALLS Proposal claims that because the end users choose an IXC, the end users are the cost causers for traffic sensitive access costs. The Petitioners propose that 25% of the interstate traffic sensitive IXC costs and 80% of the interstate access tandem switching costs[37] should be billed to the end user as a flat monthly charge.[38] However, it is the IXC that chooses

[35]Indiana Utility Regulatory Commission Order, Cause No. 40785, Section V.(C) Common and Joint Costs, Issued October 28, 1998.
[36] 26 Mo. P.S.C., (N.S.), 381, 1983).
[37] FCC Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry CC Docket No. 96-262 et, al., Released December 24, 1996, ¶82.
[38] CALLS Proposal, Appendix C at page 39.

whether to utilize the LECs' switching equipment (and therefore pay switching related switched access charges to the LEC), or provide their own switching equipment. That is a choice that is entirely controlled by the IXC, not the end user.

The proposed misallocation of traffic sensitive costs would result in the new consolidated Super-SLC and Access Related Universal Service Charge supporting interstate switched access traffic sensitive costs and interstate tandem switching cost. In earmarking appropriate amounts to be recovered from various types of services, the FCC intentionally established different "baskets" to avoid one type of service being required to subsidize other service classes.[39] The CALLS Proposal would destroy this protection. CALLS would intentionally use the productivity offset that should have been applied in the common line basket to reduce traffic sensitive switched access rates, which are services that are in a different basket. In addition, CALLS would move 25% of the revenue requirement from the local switching basket into the "CMT" basket to be recovered from the Super-SLC.[40] Similarly, 80% of the tandem switching costs that are currently recovered in the TIC would also be placed into the "CMT" basket for recovery from the Super-SLC rates.

The CALLS Proposal would improperly shift the recovery of TIC away from interexchange carriers and onto end-users. The TIC was originally implemented to recover the portion of the tandem switching revenue requirement that remained after the FCC restructured and reduced the tandem switching rates. The restructure implemented by the FCC set tandem switching rates to recover only 20% of the tandem switching revenue requirement, leaving the remaining 80% of the tandem switching revenue requirement to be recovered by the TIC. The FCC stated:

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[39] Section 31 of FCC 96-488, Released December 24, 1996.
[40] CALLS Proposal, Appendix A, ¶ 3.1.3.

> The charge for the tandem switch was initially set to recover 20 percent of the Part 69 tandem revenue requirement. Finally, to make the restructure revenue neutral initially, we required incumbent LECs to establish a non-cost based transport interconnection charge (TIC), to recover the revenue difference between what the LECs would have realized under the equal charge rate structure and what they would realize from the interim facility-based transport rates, including the remaining 80 percent of the tandem revenue requirement.[41] (Citations omitted)

The CALLS Proposal would eliminate the TIC by shifting its recovery to the SLC that would be charged directly to end-users.[42] The authors of the CALLS Proposal claim that its proposal "continues the Commission's policy of eliminating the TICs".[43] However, the FCC has tentatively concluded, and quite properly, that the elimination of the TIC should be accomplished by reallocating "all of the tandem-switching revenues currently allocated to the TIC to the tandem-switching rate elements."[44]

The CALLS Proposal seeks to improperly shift the recovery of costs that should properly be borne by the carriers onto end-users. It simply destroys all consumer protections, and changes the FCC's regulatory structure from a structure that balances the interests of the various parties to a structure that only serves the purpose of forcing end users to pay costs incurred by toll carriers.

VII. The CALLS Plan is replete with competitive disadvantages.

a) The CALLS Proposal undermines the incentive structure present in a competitive market system that drives market participants to achieve efficient resource utilization and pricing outcomes.

The CALLS Proposal to recover loop costs directly from end-users is inconsistent with the fundamental economic incentives underlying the interaction of supply and demand in

[41] FCC Notice of Proposed Rulemaking, Third Report and Order and Notice of Inquiry, CC Docket No. 96-262 et. al., released December 24, 1996, ¶82.
[42] CALLS Proposal, Appendix A, paragraph 2.1.1.1 and paragraph 2.1.2.2.1.
[43] CALLS Proposal, Appendix C, p. 38.
[44] FCC Access Charge Reform Order, FCC 97-158, Release May 16, 1997, paragraph 218.

competitive markets. The foundation of microeconomics, as first observed and codified by classical economic theorists such as Adam Smith, recognized that market forces act as an "invisible hand" to achieve efficient outcomes. Underlying the efficient competitive market price is a balance between a consumer's wants and a firm's willingness to produce. In its continuing effort to maximize profit, the firm is driven to employ technology and production methods that concurrently increase efficiency and minimize cost. The consumer's role is to signal the firm as to the type, quantity and attributes of products it desires. The benefit subscribers receive is reflected in their demand for the whole range of telecommunications services provided over the loop facilities by the LEC or other carriers.

A loop or access line does not serve only one customer. Residential customers, businesses, social organizations and community-based and governmental agencies are all part of the integrated telephone network. Everyone on the network benefits from the ability to place and receive communications transmitted over the LEC's loop facilities. The customers' benefit derived from the LEC's loop facilities does not justify mandatory flat rate recovery of the entire cost of those facilities.

In today's society, basic local telephone service is universally needed and desired; long-distance service is needed and demanded by many, but not all; additional "vertical" services, such as Caller ID, Call Waiting, et al, are not universally demanded. Consumers wants have been and should continue to be a fundamental component in determining how scarce resources are best allocated. The CALLS Proposal would create artificially low costs of providing new or existing services. Because of this affect, the role of consumers in determining what goods and services should be produced would be significantly diminished. The CALLS Proposal bypasses consumers' ability to properly signal to the market as to precisely which goods and services they

are willing to pay for. Instead, it promotes a "supply creates its own demand" environment that does not promote efficient use of resources.

The CALLS Proposal would impede the role of the entrepreneur, the firm's decision-maker, in minimizing costs and achieving efficient allocations of resources. The cost of a local loop as physical plant is incurred when the local phone company executives make a decision to install plant along a particular route to satisfy some anticipated demand for telecommunications services. If the LEC were operating in a competitive market, where recovery was not guaranteed, the LEC executives would constrain decisions about investment based on potential return versus risk. The CALLS Proposal undermines the entrepreneurial constraint by shifting cost recovery to customers that typically have little to do with the level of loop investment or the costs incurred. The greater the degree of competition in the market, the more critical cost minimization becomes in the firm's survival.

This problem is compounded by the fact that the loop is a necessary input for the provision of wholesale services to IXCs and other service providers. The CALLS Proposal would facilitate LECs charging IXCs artificially low prices for access, allowing the IXCs to provide retail services while eliminating their obligation to contribute toward nontraffic sensitive cost recovery. IXCs would in turn have an incentive to under-price retail services for which demand is relatively price elastic. As demand for the under-priced services grow, eventually more plant will be needed. The result: a cycle that has nothing to do with the efficient allocation of telecommunications resources.

Further, the basic concept of CALLS is that toll carriers are entitled to a free ride on the common line facilities. However, there are no free rides in competitive markets, instead a

company must pay to utilize facilities. In a competitive market, the price must cover the total costs, not just the incremental costs.

For example, even in highly competitive markets, stores cannot sell their products at their incremental costs. If a store set its prices to cover only the incremental costs of its products, that store would be unable to pay the rent or cover other fixed costs. Therefore, in the real world, even in highly competitive markets, pricing must cover the total cost, which includes the incremental cost plus the fixed cost. By proposing that switched access be priced equal to the incremental cost, the proponents are actually proposing that switched access be priced below what it would be priced in open, competitive markets.

The CALLS proponents claim that their proposal promotes "economic efficiency."[45] However, the CALLS Petition proposes to inefficiently price switched access even below incremental cost by excluding 80% of the tandem switching costs from the tandem switching rate, and excluding 25% of the local switching costs from the local switching rate. It is widely accepted economic principle that incremental cost is the "floor" and stand alone cost is the "ceiling" of the range in which rational economically efficient prices should fall. The "stand alone" cost of switched access service would include all of the cost of common line facilities, because a connection to the premise is needed to provide switched access service. However, none of the common line facilities costs would be included in the incremental switched access costs.

The Commission has previously considered the importance of pricing within the rational economic range:

[45] CALLS Proposal, Appendix C, page 13.

> Economists would say that in order to give incumbent local exchange carriers the proper incentives to build multi-service facilities, where such facilities are economically rational, cost allocated to each individual service or subset of services should be less than the stand-alone cost but greater than the incremental cost. ... These are the upper and lower bounds within which costs allocated to regulated and nonregulated services should fall.[46]

Other services, including basic exchange service, are priced above their direct costs in order to support a portion of the common line and other joint and common costs. For example, the Washington Utilities and Transportation Commission found:

> If USWC were to exit the local residential exchange market, its revenues would decrease by about $14 per customer, and its costs would decrease by about $4.42 per customer.[47]

However, the Washington Commission did not set residential basic exchange service at the $4.42 incremental cost. Instead the Washington Commission set the rate much higher, so that basic exchange service would cover incremental cost plus a contribution to the cost of the common line facilities and other joint and common facilities that basic exchange service shares. There is no valid reason that other services should be priced to recover their incremental cost, and provide support for the joint and common facilities they share, but switched access should be priced otherwise.

NASUCA believes that efficiency requires that the LEC should allocate and recover a portion of the cost of the loop from each of the services provisioned over it. The FCC's PICC charge to the IXC is an entirely reasonable means to address the joint cost issue. As telecommunications markets move toward competition, NTS costs will have to be recovered according to market forces. The FCC has given market forces the opportunity to recover some

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[46]FCC 's Notice of Proposed Rulemaking, CC Docket No. 96-112, adopted and released May 10, 1996, at ¶ 20.
[47]Fifteenth Supplemental Order, Docket No. UT-950200 before the Washington Utilities and Transportation Commission, Commission Decision and Order Rejecting Tariff Revisions; Requiring Refiling, dated April 11, 1996, at page 90.

NTS costs by creating the PICC and charging this to IXCs. The CALLS Proposal undermines the FCC's attempt to use market forces to recover NTS costs. Instead it moves the costs from a competitive market to a less competitive market where the recovery of these costs is much more likely to be preserved.

b) The compulsory PICC charge built into the proposed Super-SLC for primary residential lines eliminates existing competitive choices.

The CALLS Proposal disregards the fact that some customers currently have a choice whether to pay a PICC and how much they will pay. The proposal states, that the "vast majority of presubscribed residential long distance subscribers" are charged a PICC.[48] NASUCA responds that not all residential local telephone subscribers are "presubscribed" and not all residential long distance subscribers are charged a PICC charge. There is no regulatory requirement that IXCs charge a PICC – whether they do so is a competitive choice. For example, McLeod USA does not charge any PICC to its customers in Springfield, Illinois and in other areas. Other IXCs do not charge residential end-users more than $1.04, which is the most a price cap LEC can assess the IXC on a primary residential line.

Under the CALLS Proposal, however, all residential ILEC customers would be charged the equivalent of the $1.50 PICC charge applied by many IXCs. This would eliminate the existing competitive opportunity for a consumer to avoid the PICC by not presubscribing to a long-distance carrier or to shop for a competitive IXC who charges a smaller PICC than the amount built into the Super-SLC. In the same way, the Proposal would eliminate the competitive opportunity that has allowed small IXCs to enter the long-distance market. A

[48] CALLS Proposal, Appendix A, fn. 21.

proposal that reduces competitive choices will hardly, as the Petitioners suggest, "bring the residential customer the expanded choice the 1996 Act promised."[49]

c) The Super-SLC frustrates competition in the long-distance market by paying what should appropriately be an IXC cost of business.

The FCC, in its May 1997, Access Charge Reform Order, decided that IXCs could fairly be assessed a flat monthly charge of $1.04 as of July 1, 1999, for the interstate portion of the fixed costs of a primary residential line.[50] In response, most IXCs have decided that it is less expensive to pay $1.04 to an ILEC than to build their own local loop. In any competitive market, this would be considered a "cost of doing business." However, the CALLS Petition allows IXCs to use the local loop without paying for any of its fixed costs. Yet the Proposal does not offer any support for this decision.

As technology develops, cost-competitive alternatives to using the ILECs network will become available. NASUCA encourages IXCs to pursue those innovations. Under the current access charge rate structure, the IXC has the direct incentive to do so. However, when you force the cost burden of the PICC on end users, hat incentive structure would be eliminated.

d) The CALLS Super-SLC eliminates incentives for efficiency and protects ILECs' revenues from competition, and destroys access competition.

The CALLS Proposal would destroy the customer protections that are the heart of the FCC's alternative regulation structure. The heart of the FCC's alternative regulation structure is to encourage a company to be more efficient by allowing it to retain earnings if a company's increase in productivity is greater than the historic industry average increase in productivity. To accomplish this goal, the baskets are price capped. The price caps increase each year for

[49] CALLS Proposal, Appendix C, page 14.
[50] Access Charge Reform, First Report and Order, 12 FCC Rcd 15982 (1997) (Access Charge Reform Order), *aff'd sub nom.* Southwestern Bell Tel. Co. v. FCC, 153 F.3d 523 (8th Cir. 1998).

inflation, and that price cap is also reduced by a productivity factor that is based upon historic industry average data. Therefore, a company could increase its earnings as a reward for being more efficient than the industry as a whole had been. However, under the CALLS Proposal, after a few years, the productivity factor would be set equal to the inflation factor, meaning there would be no reduction in the caps. This would mean that even a company that was less efficient than the industry average would be rewarded.

The Super-SLC increases under the Proposal are based on the continued recovery of current price cap revenues. Price cap revenues have no relation to the cost of providing service. Implicitly, the CALLS Proposal asks the FCC to abandon its efforts to implement the most efficient cost-based pricing provisions mandated by the Telecommunications Act of 1996.

The CALLS Petition seems largely geared toward revenue preservation. If the FCC's objective were to preserve the ILECS' revenues, a simple and effective means to do so would be to move the PICC and other charges to the local bill, consolidate it with the SLC, and bill them together as a fixed charge to the end user. Under this scheme, the ILEC would have guaranteed cost recovery of its NTS costs, even if those costs decline. Dial-around access and Internet long distance would no longer enable consumers to avoid the PICC. The Super-SLC would be as non-bypassable as possible – only by getting rid of local service from an ILEC could the customer avoid the PICC. The FCC should not take such action in order to preserve revenues.

e) The CALLS Proposal is anti-competitive. CALLS would eliminate the potential for the development of switched access competition.

The CALLS Proposal is anti-competitive. The CALLS Proposal effectively eliminates the potential for the development of switched access competition. The CALLS Proposal would allow toll carriers to use the LECs' common line facilities for toll access at no charge to the

carrier whatsoever. Therefore, any potential competitor for access services would be forced to compete with a market price of "zero" for the use of their common line facilities. Since companies cannot compete with free access service over the common line facilities provided by the LECs, that market would become extremely unprofitable and unattractive to them.

Under the CALLS Proposal, the LEC would charge the same common line-related charges, regardless of whether the consumer had discovered a lower cost way of receiving and placing interstate communications. The consumers' payments to the LECs would not decrease as a result of finding a less costly way to place interstate communications. This is an impediment to competition.

VIII. There are other, pro-competitive ways to reform interstate access charge rate structure.

a) The elimination of the SLC is the pro-competitive route to access reform.

In lieu of creating a Super-SLC, the Commission should reduce or eliminate the current SLC to facilitate competition. The SLC provides a competitive advantage to incumbent local exchange carriers by creating a guaranteed revenue source unavailable to other competitors. In addition, the SLC represents an interstate cost that is an input to providing interstate services and should properly be recovered from those providers. Recovery of the interstate common line costs should be through the PICC, and made subject to productivity adjustments, and other competitive forces.

Such a mechanism will promote economic efficiency and provide consumers the opportunity to benefit from competition as was envisioned by the act. This approach is consistent with the position taken by the State Members of the Universal Service Joint Board that

the SLC should be eliminated or reduced because it is subject to the least amount of competitive pressure.[51]

b) Empowering consumers to benefit from competitive markets.

The FCC can better try to ensure the proper operation of the competitive market by making it easier for people to read telephone bills, make apples to apples comparisons between companies, and purchase wisely. These and other methods are a much better way to resolve problems of IXC surcharges – rather than forcing an unavoidable surcharge on the local bill as CALLS proposes. The disclosure and bill format requirements in the FCC's Truth-in-Billing Order are good examples of this effort.[52] There are many more pro-competitive alternatives to the dubious "solutions" contained CALLS Proposal.

NASUCA suggests that the FCC abolish the Filed Rate Doctrine so that consumers can seek redress for unfair or deceptive trade practices by IXCs.[53] The threat of legal action for misbehavior will encourage IXCs to provide clear, understandable, and accurate information about rates. Customers, in turn, will be equipped with the information to fully participate in the competitive market.

For the same reason, NASUCA submits that the FCC should enact rate disclosure and bill format regulations for IXCs and ILECs. NASUCA suggested in its Truth-In-Billing comments that service providers should be required to "disclose (and provide to the billing entity) the average cents per minute paid by the customer for any toll service that appears on the customer's

[51] Comments of the State Joint Board Members of the Federal-State Joint Board on Universal Service on the Further Notice of Proposed Rulemaking in CC Docket 96-45 and CC Docket 96-262, filed July 23, 1999.

[52] Truth-In-Billing and Billing Format, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, FCC 99-72 (released May 11, 1999) (Truth-In-Billing Order).

[53] The Filed Rate Doctrine effectively bars all legal actions for redress against IXCs by representatives on behalf of consumers on the theory that the FCC has approved filed rates. See pg. 4 and fn. 4 of the Comments of the Joint Consumer Advocates in the matter of Low-Volume Long-Distance Users, CC Docket No. 99-249, FCC 99-168. The Filed Rate Doctrine resulted from decisions by the U.S. Supreme Court and other federal courts. See Marcus v. AT&T Corp., 138 F.3d 46 (2nd Cir. 1998); AT&T v. Central Office Telephone, 118 S.Ct 1956 (1998).

monthly bill."[54] This average would be calculated from the total dollars billed divided by minutes billed to a customer and include any additional fees and access or universal service charges. Then, the unit price would be disclosed on the bill and in any communication with the provider's customer representatives. Unit pricing would enable customers to compare a cents per minute charge among telephone companies.

NASUCA also suggests that the FCC prohibit the inclusion of non-telecommunication related items on telephone bills.[55] This will reduce the length and complexity of bills, permit more meaningful consumer review of the charges.

NASUCA further recommends a requirement that the service provider issue the customer a "Terms of Service" document within three days of receiving the customer's authorization of that telecommunications service.[56] The document should disclose all fees and charges in addition to itemized charges that will appear on the customer's bill.

IX. Conclusion

NASUCA requests the FCC to reject the CALLS Proposal in its entirety. Instead, we urge the FCC to seriously consider reducing the SLC and continue to subject ILEC costs to productivity adjustments and competitive market forces.

Respectfully submitted,

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November 12, 1999

[54] Comments of NASUCA in the matter of Truth In Billing and Billing Format, CC Docket No. 98-170 (filed November 13, 1998).
[55] Id. at 13.
[56] Id. at 21-22.