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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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 TIME WARNER TELECOM

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COMMENTS OF TIME WARNER TELECOM

Time Warner Telecom ("TWTC"), by its attorneys, hereby files these comments on the proposal submitted by the Coalition for Affordable Local and Long Distance Services ("CALLS Proposal").

DISCUSSION

The CALLS Proposal is the result of difficult and time-consuming negotiations among certain long distance carriers (AT&T and Sprint) and incumbent LECs (Bell Atlantic, BellSouth, SBC, GTE, and, to the extent that it also owns incumbent LECs, Sprint). TWTC applauds these carriers' work in attempting to rationalize the current federal interstate access charge and universal service regimes.

There are several aspects of the CALLS Proposal that make good sense. For example, it is sound policy to rationalize the manner in which ILECs recover interstate loop costs. The CALLS Proposal rightly would increase the proportion of interstate loop

costs recovered directly from end users (rather than from long distance carriers). The Proposal would also correctly reduce somewhat the cross-subsidy inherent in the PICC regime by phasing those charges out and again replacing them with increased subscriber line charges. Furthermore, the Proposal would allow for deaveraging of the interstate common line charges, subject to the limit of four zones, and only after appropriate conditions such as cost-based showings and UNE deaveraging have been met. These conditions would reduce the likelihood that ILECs can exploit deaveraging freedoms to engage in predatory activity.

While these aspects of the Proposal make sense, there are two critical components of the Proposal that are not based in sound policy and seem to have been adopted solely to benefit the members of CALLS. It seems likely that, had competitive LECs been represented in the CALLS negotiations, these proposals would not have been adopted. As such, they reveal the problems inherent in solutions negotiated by self-selected interests.

First, the CALLS Proposal includes the arbitrary reallocation of fully 25% of the costs currently recovered in interstate switching charges to flat rate common line charges paid by end users. This proposal is merely a crude means of lowering carrier access charges without reducing aggregate ILEC revenues. The fact is that switching costs are shared and are best recovered on the basis of relative use. Recovering these costs through non-usage sensitive charges would result in just the kinds of inefficiencies that the CALLS members purportedly set out to eliminate.

The proponents offer several justifications for the reallocation of switching costs, none of which is convincing. The proponents argue that it is better for the end user to pay access charges than for IXCs to pay, since the end user is at least in part responsible for the decision to access the long distance network via switched access. See CALLS Memorandum in Support at 39. While it is true that end users are in a sense the cost causers in this case, it is also important that the cost causers be required to pay for costs in the manner in which they are incurred. As the Commission reaffirmed in the Access Charge Reform proceeding, switching is a shared facility the costs of which should be recovered on a usage-sensitive basis.[1] To ensure that the switching rate element includes only costs that are reasonably considered shared, the Commission has already eliminated from the access switching element those costs that it has deemed to be non-usage sensitive. See id. at ¶¶ 125-127. There is no basis therefore for arbitrarily carving out an additional 25% of the remaining shared costs and recovering them via non-usage sensitive charges.[2]

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1 See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, and End User Common Line Charges, First Report and Order, 12 FCC Rcd 15982, ¶¶ 136-149 (1997).

2 In the pending Access Charge NPRM, the Commission has sought comment on whether it should implement a capacity-based charge for switching. See Access Charge Reform, Price Cap Performance Review of Local Exchange Carriers, Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, CC Docket Nos. 96-262, 94-1, CCB/CPD File No. 98-63, Notice of Proposed Rulemaking, ¶¶ 211-216 (rel. Aug. 27, 1999). Such a charge is merely another form of usage-based rate structure and therefore

A further rationale proffered in support of the reallocation of switching costs to the loop is that the ILEC members of CALLS believe that they should have the right to recover switched access costs through flat rate charges. See CALLS Memorandum in Support at 39-40. Yet there is no justification for such pricing flexibility at this time. The Commission's Part 69 rate structure rules are designed, among other purposes, to limit the extent to which ILECs can design their rate structures that include implicit cross-subsidies. This concern diminishes only where competition limits such opportunities. It is for this reason that the Commission has required ILECs to meet triggers of defined levels of competitive entry prior to eliminating the Part 69 rate structure requirements. As the Commission explained,

> We agree that elimination of our Part 69 rate structure rules for existing dedicated transport services is warranted, but not until the incumbent LEC meets our Phase II requirements [i.e., has demonstrated a defined level of entry in an MSA]. As explained in more detail in Section VIII.C. below, a rate structure can create implicit subsidies if it does not reflect accurately the manner in which incumbent LECs incur the costs of providing a service. Therefore, rate structure rules are necessary in the absence of a significant market presence by competitors.[3]

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implies the Commission's continued recognition that switching costs should not be recovered via non-usage sensitive rates.

3 Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, CC Docket Nos. 96-262, 94-1, CCB/CPD File No. 98-63, Fifth Report and Order, ¶ 154 (Aug. 27, 1999) ("Access Charge Fifth R&O"). As TWTC has explained elsewhere, unfortunately, the Commission's triggers are not adequate to achieve their purpose. See Comments of Time Warner Telecom in CC Docket Nos. 96-262, 94-1, CCB/CPD File

In fact, the Commission is currently considering whether and under what conditions it would be appropriate to eliminate Part 69 rate structure requirements for the switching element.[4] Given the serious risk in premature grant of such relief, the CALLS Proposal should not be allowed to short-circuit this review process.

The instant proposal illustrates precisely the risk in prematurely freeing ILECs from rate structure requirements. By recovering switching costs through increased SLCs, customers that use large volumes of switched access will pay less than the costs they impose on the network and the shortfall will be recovered from overcharging end users that do not purchase large volumes of switched access. This cross-subsidy will distort pricing signals for consumers, potentially causing end users to make more switched access calls than they would under an efficient rate structure and artificially discouraging end users and IXCs from transitioning to more efficient technology. The cross-subsidy will also harm competition by artificially lowering the ILECs' access charges for large volume customers for whom CLECs can efficiently compete and recovering the difference from customers that CLECs have a difficult time serving efficiently.[5] As the

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No. 98-63 at 23-25 (Oct. 29, 1999) Nonetheless, they reflect the fundamental point that competition must be proven to have developed before an ILEC may be relieved of rate structure requirements.

4 See Access Charge Fifth R&O at ¶¶ 200-206.

5 The increase in prices for low volume long distance users is unlikely to be large enough to induce CLEC entry.

Commission recognized, where entry is not widespread, competitors cannot discipline such behavior. Thus, the ILECs' desire for freedom from rate structure constraints is not a valid basis for adopting non-usage sensitive rates for switching costs.

Furthermore, the obvious inefficiencies and opportunities for cross-subsidy created by this aspect of the proposal refute the proponents' claim that moving switching costs to non-usage sensitive end user charges would enhance competition. See CALLS Memorandum in Support at 40. On the contrary, the proposal would likely harm competition.

Finally, AT&T's and Sprint's claim that the 25% reduction in switching costs is somehow required by the effects of the past uniform application of the productivity adjustments is dubious and unsupported. See id. AT&T and Sprint are apparently concerned that the X Factor is applied to all access elements uniformly but that switching costs have dropped more quickly than other parts of the ILEC network. But as has been pointed out in the Access Charge proceeding, it is not at all clear that this concern is warranted.[6] In any event, the CALLS Proposal offers no basis for concluding otherwise.

Second, the Commission must be seriously concerned that the CALLS Proposal would result in an unreasonably large federal subsidy fund. The Proposal includes an extra $650 million in subsidies to supposedly replace subsidies that are implicit in

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[6] See Comments of William E. Taylor on behalf of USTA at 4-5, filed in support of USTA's Comments in CC Docket Nos. 96-262, 94-1, CCB/CPD File no. 98-63 (Oct. 29, 1999).

ILEC interstate access rates. This increase, combined with the Commission's recent decision to increase subsidies for non-rural LECs by $230 million[7] would increase the federal subsidy fund by close to $1 billion.

TWTC is concerned that this kind of increase in the subsidy pool will result in ever-more burdensome contribution obligations that inevitably raise entry barriers, diminish consumption and harm competition. In fact, it seems entirely possible that the maximum $7.00 residential SLC included in the proposal will not be politically possible. If so, the size of the universal service increase would be even larger than the CALLS Proposal estimates.

In addition, the Proposal's approach to identifying and eliminating purported implicit subsidies in the interstate access charges repudiates the Commission's decision to rely on competition to achieve this goal.[8] Such an abrupt change in policy is unwarranted. There is of course a controversy currently as to whether competition in the access market is functioning. But the Commission should focus its energies on ensuring that competition can function in the access market,

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7 See Communications Daily, Oct. 22, 1999 (describing Ninth Report and Order and Eighteenth Order on Reconsideration in Universal Service as resulting in an increase of $230 million in subsidies).

8 See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, First Report and Order, 12 FCC Rcd 15982, ¶ 263 (1997).

rather than resorting to a more regulatory means of identifying purported implicit subsidies in interstate access rates.

Of course, the CALLS Proposal estimate of $650 million as the size of implicit subsidies in interstate access is, by necessity, largely arbitrary. That estimate was reached by using the Proposal's common line rates and the FCC's Synthesis Model for calculating costs for universal service purposes. See CALLS Memorandum in Support at 26, n.63. But as the proponents recognize, "substantial variations" are inevitable in any such calculations depending on a wide range of factors. Id. at 26. The only reliable mechanism of eliminating any purported implicit subsidies is competition.

Finally, even assuming there are significant implicit subsidies in the interstate access rates, it is not at all clear that they are necessary to ensure affordability of either intrastate or interstate rates. In other words, to the extent that the increased SLC caps do not allow for full recovery of common line costs, those extra costs could probably also be recovered from end users without any risk to affordability through even higher SLCs, except in rare cases. As mentioned above, TWTC recognizes the political problems associated with increasing the SLC cap. But if a $7.00 SLC cap for residential and single line businesses is indeed possible (thus doubling the current cap), it seems likely that full recovery from end users of interstate common line costs is probably also possible. A narrowly targeted approach to low income subsidies could then

result in a significantly lower subsidy fund increase than $650 million.

CONCLUSION

TWTC supports the CALLS Proposal subject to the concerns expressed herein regarding switching rates and the level of the federal universal service fund.

Respectfully submitted,

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