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Before the
Federal Communications Commission
Washington, D.C. 20005

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
UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTA) respectfully submits its comments in the above referenced proceeding.[1] USTA is the nation's oldest trade organization for the local exchange carrier (LEC) industry. USTA represents more than 1,200 telecommunications companies worldwide that provide a full spectrum of voice, data and video services over wireline and wireless networks. USTA members support the concept of universal service.

On July 29, 1999, the Coalition for Affordable Local and Long Distance Services (CALLS), submitted a proposal addressing access charge, price cap regulation and universal service issues.[2] As will be explained in detail below, USTA supports the CALLS proposal as a voluntary option for LECs.[3] Many of its provisions are similar to proposals that USTA has urged the Commission to adopt to resolve concerns regarding these same issues for price cap

[1] Formerly the United States Telephone Association.
[2] The members of CALLS are AT&T, Bell Atlantic, BellSouth, GTE, Sprint and SBC.
[3] USTA also provides comment on the proposal submitted by the state members of the Federal-State Joint Board on Universal Service submitted on July 23, 1999.

LECs.[4] There is no question but that the current access charge, price cap and universal service mechanisms are incompatible with the competitive marketplace. The Commission has taken the much-needed initial steps to implement its market-based approach to access pricing by permitting price cap LECs greater flexibility in areas where competition has reached specified triggers. However, Commission action to address incumbent LEC regulations that are contrary to economic efficiency, infrastructure investment and fair competition has not kept pace with the growth of competition or technological changes. Because the Commission has not addressed these issues in a comprehensive manner, individual carriers must be permitted to develop specific proposals, such as the CALLS plan, so that they can meet their business needs and compete in the marketplace to provide communications services to customers. While the CALLS plan may not be appropriate for all LECs, particularly small, rural carriers, it reflects a resolution of these important issues which is acceptable to and which will benefit the customers of the signatory carriers. These carriers should be permitted to implement the CALLS plan without further delay.

As noted above, many of the provisions of the CALLS plan are similar to proposals advocated by USTA in its universal service plan for nonrural carriers as well as in its access charge reform proposals for price cap carriers.[5] For example, USTA has strongly recommended that the Commission permit price cap LECs to deaverage switched access services as well as the

[4] Nothing in these comments should serve as precedent for rate of return carriers as USTA has recommended that the Commission address access reform and universal service in a comprehensive manner separately for these carriers.

[5] *See,* USTA Ex Parte Letter, September 18, 1998 and USTA Comments, In the Matter of Federal-State Joint Board on Universal Service, Access Charge Reform, CC Docket Nos. 96-45 and 96-262, July 23, 1999.

Subscriber Line Charge (SLC) by geographic area and has urged the Commission to permit price cap LECs to implement deaveraging without making any competitive showing.[6]

USTA has provided the Commission with a specific proposal to implement deaveraging of the SLC. USTA's plan recommends the use of consistent geographic areas to be used for UNE, universal service and SLC deaveraging. While USTA's deaveraging plan does not require increases in the current SLC caps, USTA recognizes that increasing the caps will facilitate deaveraging. Consistent with the CALLS plan, USTA's universal service proposal for nonrural carriers was developed based on the fact that access charges paid by the IXCs for use of common line facilities represent a form of implicit universal service support which should be made explicit and recovered through end users and universal service on a revenue neutral basis. USTA notes that the CALLS proposal would eliminate the Commission's rationale for mandating a new capacity-based local switching rate structure, which USTA opposes, since the CALLS proposal includes a reduction in the per minute of use rate levels. It would also eliminate the need for any prescriptive backstop to the Commission's market-based approach to access pricing for price cap carriers.[7]

USTA recognizes that the CALLS proposal is a comprehensive, negotiated settlement of contentious issues by several large purchasers and sellers of access services. The CALLS proposal is a package, which requires signatories to accept certain provisions, which, as noted above, USTA believes would be beneficial for price cap LECs as well as other provisions which, by themselves, would not be acceptable as Commission policy. USTA listed examples of the former above. The 6.5 percent X-Factor used in the CALLS plan is an example of the latter.

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[6] USTA Comments, In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers and Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, CC Docket Nos. 96-262, 94-1 and 98-63, October 29, 1999.

[7] *Access Reform First Report and Order,* 12 FCC Rcd 16125 (1997) at ¶ 267.

USTA unequivocally opposes the use of a 6.5 percent X-Factor in the price cap formula. USTA has provided significant data showing that, even under the Commission's own model, a 6.5 X-Factor is unsupportable. USTA has already submitted its most recent update of the Commission model based on 1998 data.[8] Pursuant to the Commission's model, the X-Factor for 1998 is 3.03 percent. The X-Factor average for the most recent five-year period is 4.06 percent and the X-Factor average for the entire price cap era for which data is available, 1991 through 1998, is 4.12 percent. The U.S. Court of Appeals for the District of Columbia Circuit reversed the Commission's use of a 6.0 percent X-Factor and the addition of the 0.5 percent consumer productivity dividend, stating quite succinctly that "none of the reasons given for choosing 6.0% holds water."[9] The use of a 6.5 percent X-Factor in the CALLS proposal is part of the negotiated agreement by specific parties in exchange for the removal of the X factor at a later date. It in no way means that a 6.5 percent X-Factor is justified on a regulatory or legal basis.

The Commission has also requested comment on the comments submitted by the state members of the Federal-State Joint Board on Universal Service on July 23, 1999. The state members proposed that the primary residence and single line business SLC be eliminated and that common line costs be recovered solely from IXCs through an increased PICC. They claim that Section 254(k), which prohibits subsidization of services subject to competition by services not subject to competition, requires such a recovery mechanism. This proposal is contradicted by the facts, by statute and by economic theory and must, therefore, be rejected.

The primary residence and single line business SLC recovers loop costs caused by the end user customer. The costs of the loop are incurred regardless of the services to which the end user subscribes. Cost causation, not usage or benefits, serves as the basis for cost allocation and

[8] USTA Ex Parte Letter, CC Docket No. 94-1, September 13, 1999.

cost recovery. The costs for residential and single line business have been kept below cost by social policies implemented at both the state and federal levels.[10] There is no possibility that the SLCs for these services are subsidizing other services.[11]

The state proposal perpetuates the implicit subsidies, which, pursuant to the Telecommunications Act of 1996, must be made explicit. The Fifth Circuit Court of Appeals found that "the plain language of §254(e) does not permit the FCC to maintain *any* implicit subsidies for universal service support."[12] The CALLS proposal is far superior to the state plan as it is consistent with the statute and adheres to the economic principle of cost causation.

The Commission should permit carriers, at their option, to develop and implement plans such as the CALLS proposal so that they can respond to market forces without the impediment of federal regulations which have not kept pace with market developments. The CALLS

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[9] *United States Telephone Association v. Federal Communications Commission*, No. 97-1469 (D.C.Cir. May 21, 1999).

[10] *See,* James M. Fischer, Albert P. Halprin, Henry M. Rivera and Marvin R. Weatherly, "Implications of the Separations Legacy for Implementation of the Telecommunications Act of 1996," USTA Comments, CC Docket No. 96-262, January 29, 1997 at Attachment 2.

[11] Of course even if the SLCs were priced above cost, which they are not, there would only be subsidization if the competitive services were priced below cost.

[12] *Texas Office of Public Utility Counsel, et.al. v. Federal Communications Commission, et.a.l.*, No. 97-60421 (5th Cir. July 30, 1999).

proposal represents a unique solution to universal service and access reform issues for the carriers involved in its development. The Commission should act expeditiously to permit these carriers to adopt the CALLS plan.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on November 17, 1999 Comments of the United States Telecom Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

Robyn L.J. Davis