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December 3, 1999

VIA ELECTRONIC COMMENT FILING SYSTEM

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

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

Dear Ms. Salas:

Pursuant to the Notice of Proposed Rulemaking in the above-captioned matter, enclosed please find an electronic original of the Reply Comments of the Ad Hoc Telecommunications Users Committee. These Reply Comments are being filed via the Federal Communications Commission's Electronic Comment Filing System ("ECFS").

If you have any questions regarding this filing, please do not hesitate to call me at (202) 857-2550.

Sincerely,



James S. Blaszak

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

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

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

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Telecommunications Users Committee

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

The Ad Hoc Telecommunications Users Committee, ("Ad Hoc" or "the Committee") hereby replies to certain comments filed on November 12, 1999 in response to the Commission's Notice of Proposed Rulemaking ("*NPRM*") regarding the July 29, 1999 proposal of the Coalition for Affordable Local and Long Distance Services ("*CALLS*") in the above-captioned proceedings, FCC 99-235 (rel. Sept. 15, 1999).¹

A. With Relatively Minor Changes, The *CALLS* Proposal Would Better Serve The Public Interest Than The Status Quo.

Ad Hoc generally supported the *CALLS* proposal because the proposal would move interstate access service rates closer to economic cost, stimulate use of the public switched network and facilitate growth of competition.² The Committee, however,

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

² Ad Hoc Comments at i, 2. (All citations to comments below refer to comments filed in response to the *NPRM*.)

identified certain deficiencies in the CALLS proposal. First, the Commission should not wait until 2005 to actively regulate interstate access service rates if it is clear that competition in the local service/access service market has not developed, and is unlikely to develop by that time.³ At bottom, the CALLS proposal is justifiable only as a transition mechanism that will produce public benefits faster than contentious, slow moving Commission proceedings, pending the development of effective competition in the local service/access service market. Second, Ad Hoc urged the Commission to reject that aspect of the CALLS proposal that would allow ILECs to recover cost changes as *pseudo*-exogenous adjustments to the price cap indices when they have espoused and supported government action that produces such cost changes.⁴ Third, Ad Hoc pointed out that the multi-line business PICC should be folded into a multi-line business SLC that would be the sum of the multi-line business SLC and the multi-line business PICC, as they would be adjusted under the CALLS proposal.⁵ Long distance carriers have used PICCs to pad their earnings while blaming the Commission for the charge. Their PICCs far exceed the PICCs they are charged. If residential customers are to pay only a super SLC, so should multi-line business customers. Finally, the Committee explained that the Commission should require ILECs to recover their universal service contribution obligations through per line charges, rather than giving them the flexibility to recover these contributions as they wish. The subsidy should be

³ *Id.* at 2-3.

⁴ *Id.* at 3-7.

⁵ *Id.* at 7-9.

collected through non-traffic sensitive charges because the costs being subsidized are non-traffic sensitive.

Would the public interest be better served if the Commission were to (1) require that interstate access service rates be set at TELRIC levels, and (2) provide universal service funding that actually considered affordability of local service and the economic cost of providing local service? Of course it would. The Commission, however, shows no inclination of taking those steps. Indeed, if the Commission had adhered to its access reform and universal service decisions of May 1997, there might not be a CALLS' proposal. The Committee could speculate on the reasons for the Commission's reluctance, but sees no value in such speculation. If Ad Hoc believed that the Commission would take such action, it too would have argued that the CALLS plan is fundamentally defective because the target switched access rates are too high and the additional, explicit so-called universal service support is without apparent economic justification. Unfortunately, for the public interest, such is not the case. Thus, Ad Hoc is compelled to accept, with the relatively minor modifications it has suggested, the CALLS proposal as the most feasible plan for moving interstate access service charges closer to economic costs.

B. There Is A Difference Between A Reasonable Basis For Concern Over The Affordability Of Residential Telephone Service And Objections To Any Increase In Residential Line Rates.

Several commenters oppose the CALLS proposal because it would increase residential consumers' per line monthly charges.⁶ These commenters, however, fail to

⁶ See, e.g., Comments of AARP at 2; Comments of The New Jersey Division of The Ratepayer Advocate at 15-16; Comments of The Texas Office of Public Utility Counsel, Consumer Federation of America and Consumers Union ("Joint Consumer Comments") at 3-5.

offer any data showing that such increases generally would threaten the "affordability" of residential telephone service. They offer no demand elasticity studies or other economic data to support their contentions regarding affordability. It is as if they believe that their assertions about the affordability of residential telephone service should be considered credible because of their identity as public agencies or their general affiliation with consumer interests.

Those residential consumers for whom telephone service reasonably would be unaffordable should receive help. "Life line" service and the Commission's "Link-Up" program should be expanded if necessary.⁷ But perpetuation of the existing subsidized residential service rates is indefensible. There is no solid economic analysis showing that the current line rates must be frozen or reduced to preserve general affordability of residential telephone service. In fact, the Commission's latest report on telephone service penetration levels shows telephone subscribership at an all time high, even though consumer per line charges have risen.⁸

The Massachusetts Department of Telecommunications and Energy ("MDTE") does not share the views of consumer parties and some public consumer advocacy groups. Between 1986 and 1994, while in process of rebalancing rates, the MDTE, among other things, allowed residential rates for dial tone service to increase from about \$3 per line, per month to \$9.91 per line, per month.⁹ According to the MDTE,

⁷ *MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules*, CC Docket No. 78-72 and 80-643, Decision and Order, FCC 85-643(rel. Dec. 27, 1985); *MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules*, CC Docket No. 78-72 and 80-643, Report and Order, 2 FCC Rcd 2953 (1987).

⁸ Industry Analysis Division, Common Carrier Bureau, *Telephone Subscribership in the United States* (October 1999).

⁹ Comments of The Massachusetts Department of Telecommunications and Energy at 6.

these changes, which are significantly greater than the residential line charges recommended by CALLS, "did not adversely affect universal service in Massachusetts."¹⁰ The MDTE goes on to state that,

[t]he significant rate rebalancing that took place in Massachusetts, in concert with the Commission's own rebalancing of the interstate access rate structure, had no detrimental impact on universal service. Instead, customers have seen significant benefits in the form of a simplified, standardized rate structure, much lower toll and access rates, and indirect economic development benefits derived from having lower business rates.¹¹

The MDTE comments reflect actual experience. This experience strongly suggests that consumers will actually be better off under the CALLS proposal than they would be if the Commission rejected the CALLS proposal because it would increase consumer line charges. Ad Hoc hopes that the Commission is willing to be as courageous as the MDTE.

The Communications Act requires that telephone service rates be just and reasonable,¹² affordable¹³ and reasonably comparable across the country¹⁴. None of these statutory mandates argue against raising residential line rates if such increases are economically justified and otherwise consistent with the requirement of the statute and the public interest. If raising residential line charges is economically sound and consistent with the goals and requirements of Communications Act, the Commission

¹⁰ *Id.*

¹¹ *Id.* at 7.

¹² 47 U.S.C. § 201(b) (1998).

¹³ 47 U.S.C. § 254(b)(1) (1998).

¹⁴ 47 U.S.C. § 254(b)(3) (1998).

should not bar such increases because consumer interests figuratively pound the table with their collective shoe, particularly if the Lifeline and Link-Up programs are adequately funded and properly targeted. Nor can the Commission merely assert that such increases would threaten the affordability of residential telephone service. Although the Commission has substantial discretion to make public interest judgments, its discretion is limited by the requirement that its decisions be reasonable and adequately explained.¹⁵ The record in this proceeding, as it stands at this time, does not justify rejection of the CALLS proposal merely because it would increase consumer line charges.

C. Long Distance Carriers Should Not Pay For Loop Costs

Joint Consumers argue that long distance carriers should pay to use local loops to provide their service, contending that to do otherwise is to give long distance carriers a "free ride."¹⁶ They further assert that business customers and long distance carriers do not pay too much for access service because historically "most telecommunications technologies were deployed for and used by business customers first,"¹⁷ and "the integration of the long distance network into the local network ... raised the cost of the integrated network."¹⁸

The Joint Consumer Commentors do not offer one citation, shred of data or other evidence to support their position. Moreover, their argument is a *non sequitor*, even if

¹⁵ 5 U.S.C. § 706 (1999); See, e.g., *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto.*, 463 U.S. 29, 43-44 (1983).

¹⁶ Joint Consumer Comments, at 3.

¹⁷ *Id.* at 11.

¹⁸ *Id.*

their factual assertions are assumed for purposes of argument to be true. Merely, because business customers may be the first to demand new telecommunications technologies does not mean that business customers "caused" exchange carriers to incur local loop costs. The residential customers who order telephone service cause the carriers to incur those costs. Moreover, even if the integration of the long distance and local networks raised the cost of the integrated network, the incremental cost increase certainly is not associated with residential loop costs. Again, residential customers, not business users or long distance carriers, have caused local exchange carriers to incur residential loop costs.

Perhaps not surprisingly, Joint Consumer Commentors reject cost causation as a valid approach to cost recovery.¹⁹ Instead of recovering residential loop costs from the residential customer who caused the local exchange carriers to incur such costs, they argue that the Commission should require, "services that use facilities should be considered to cause the deployment of those facilities. Assumptions about prime movers are arbitrary."²⁰ The Joint Consumers' position is tantamount to asserting that homeowners should not have to pay for the cost of their driveways, as distinguished from the common streets, because service providers and other merchants use the driveways to provide their services and products.

The Joint Consumers seem to ignore the economic irrationality of recovering non-traffic sensitive loop costs through usage sensitive charges. They also ignore all of the relatively recent Commission decisions that reflect a view of loop costs that is

¹⁹ *Id.* at 11-12.

²⁰ *Id.* at 12.

squarely contrary to their positions. As recently as July of this year, the Commission observed,

5. Unfortunately, the historical access charge rate structure generated inefficient and undesirable economic behavior. Under principles of cost-causation, it is most efficient for incumbent LECs to recover the costs of providing interstate access in the same way that they incur them. Under such principles, incumbent LECs should recover their traffic-sensitive costs of interstate access through per-minute charges, and should recover their non-traffic-sensitive costs through flat charges. The incumbent LECs' costs of providing the local loop do not change with the number, length, or type of telephone calls customers make, and so are non-traffic-sensitive. Because of the cap on SLCs, however, incumbent LECs recover some of these non-traffic-sensitive loop costs through the traffic sensitive CCLC.

6. By requiring the use of per-minute access charges where flat-rated fees would be more appropriate, the historic rate structure increased the per-minute rates paid by IXCs and long-distance consumers, thus artificially suppressing demand for interstate long-distance services. Furthermore, because non-traffic-sensitive costs, by definition, do not vary with usage, recovering these costs on a usage-sensitive basis creates an implicit subsidy from high-volume users of interstate toll services to low-volume users of interstate toll services. These implicit subsidies have a disruptive effect on competition, impeding the efficient development of competition in both the local and long-distance markets. For example, where rates are significantly above cost, consumers may choose to bypass the incumbent LEC's switched access network, even if the LEC is the efficient provider. Conversely, where rates are subsidized (as in the case of consumers in high-cost areas), rates will be set too low and an otherwise efficient provider would no incentive to enter the market.²¹

²¹ *Low-Volume Long Distance Users*, CC Docket No. 99-249, Notice of Inquiry, FCC 99-168 (rel. July 20, 1999) at ¶¶ 5-6, *citing Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982 (1997).

It is hard to imagine arguments farther from the Commission's views than the arguments of the Joint Consumers, as well as impossible to conceive of how the Joint Consumers arguments can be rationally reconciled with the Congressional objective that all domestic telecommunications markets become effectively competitive.

Adoption of the Joint Consumers' views would undo all of the progress that has been made toward a more rational rate structure for interstate access service and toward enhancing the prospects for telecommunications competition in the business and residential markets.

Conclusion

In view of the foregoing, Ad Hoc reiterates its request that the Commission adopt the CALLS proposal with the modifications recommended by Ad Hoc.

Respectfully submitted,

Ad Hoc Telecommunications
Users Committee



By: _____

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Certificate of Service

I, Betsy M. Eisen, hereby certify that a true and correct copy of the preceding Comments of the Ad Hoc Telecommunication Users Committee was served this December 3, 1999 via hand delivery upon the following parties

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December 3, 1999