

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

DEC 3 1999

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

Reply Comments of Level 3 Communications, LLC

Level 3 Communications, LLC ("Level 3"), pursuant to the Notice of Proposed Rulemaking issued by the Commission, submits these reply comments on the access charge and universal service reform proposal submitted by the Coalition for Affordable Local and Long Distance Services ("CALLS"). The record demonstrates that the CALLS proposal is not in the public interest and the Commission should reject CALLS' all-or-nothing ultimatum. Rather, the Commission should use the opportunity presented by the CALLS' record to issue a Further Notice of Proposed Rulemaking. That Notice should include a plan to remove implicit subsidizes from access charges, identify and remove excess profit from access charges, and drive access charges to cost-based rates over a period no longer than three years.

I. CALLS Is Not in the Public Interest

Almost all parties rejected CALLS' take-it-or-leave-it approach as contrary to the public interest. Although CALLS includes representatives of two interests with high stakes in the outcome of the proposed reform, the coalition does not include representatives of other interested parties, including consumers, state public utilities commissions ("PUCs"), and competitive local exchange

carriers ("CLECs").¹ If CALLS affected only its members, a market-based solution may have been in the public interest. However, as the comments show, the proposal may harm the groups that were not represented in the coalition.

Consumers of telecommunications services and their representatives found many faults with CALLS. By moving all common line charges and some other charges traditionally paid by interexchange carriers ("IXCs") to end user charges, CALLS creates a "super-SLC," increasing the interstate access burden placed on end users.² CALLS would not have the Commission or state PUCs do an earnings review of costs included in the super-SLC, nor apply X-factor reductions to the super-SLC. Before eliminating the X-factor when the target rates are achieved, CALLS allocates reductions from all productivity gains to the usage-sensitive charges only IXCs pay. This is one of the proposal's main inconsistencies. Although it claims to bring usage-sensitive charges down to cost, it does nothing to address the cost basis of the super-SLC.

State PUCs express concern about CALLS' impact on rural consumers and their jurisdiction. These parties urge the Commission to establish additional safeguards to ensure that geographic deaveraging of the super-SLC would not lead to statutorily prohibited disparities in rates charged in rural and urban areas.³ The additional safeguards are (1) including the PICC in the multiline

¹ See, e.g., General Services Administration ("GSA") at 6, Association for Local Telecommunications Services ("ALTS") at 4-5, Joint Consumers at 7, National Association of State Utility Consumer Advocates ("NASUCA") at 5, Competition Policy Institute ("CPI") at 2.

² See, e.g. California Comments at 19-21.

³ State of Hawaii at 5, New Jersey Division of the Ratepayer Advocate at 19-21.

business SLC to prevent manipulation of SLC deaveraging to the detriment of residential end users; and (2) requiring advance Commission approval of SLC deaveraging plans or at least submission of a customer impact analysis. Although CALLS addresses the interstate-allocated portion of incumbent LECs' costs, it also has an impact on local rates by creating the deaveraged super-SLC.⁴ The Washington Utilities and Transportation Commission ("WUTC") therefore urges the Commission not to let incumbent LECs rebalance local rates without an earnings review and jurisdictional separations reform,⁵ and recommends that the Commission work cooperatively with state PUCs to explore blending of interstate and intrastate terminating access charges to avoid arbitrage.⁶ Level 3 supports adoption of these safeguards.

Level 3 appreciates CALLS' attempt to address universal service reform by beginning discussion of removing implicit subsidies from access charges. However, Level 3 cautions the Commission to consider the concerns expressed by other parties who fault CALLS for the deleterious impact it would have on competition and competitors in the local exchange market. Many parties characterized the interstate access related universal service fund ("IAUSF") as a means to guarantee continued price cap earnings regardless of competitive erosion of market share.⁷ As

⁴ The Public Utilities Commission of Ohio ("PUCO") is so concerned about the impact CALLS has on local rates that it threatens to require separate phone bills for local service and interstate access end user charges if CALLS is adopted. PUCO at 12.

⁵ WUTC at 13.

⁶ WUTC at 7-8.

⁷ *See, e.g.*, Intermedia at 6.

ALTS argued, the IAUSF would allow incumbent LECs "to slash their access prices wherever they are threatened with competition, without being forced to pursue corresponding gains in efficiency," while increasing the contributions CLECs are required to make to support such anti-competitive behavior.⁸

A purported benefit of the proposal is competition instead of continued litigation. The record shows, however, that excluded stakeholders have significant problems with CALLS. Given the serious concerns expressed by consumers, state PUCs, and competitors, the Commission cannot adopt CALLS and "resolve" access charge and universal service reform without further litigation. As the WUTC argues, "the Commission should not sacrifice its duty to protect the public interest by yielding to the industry's large-player settlement that does not adequately meet either the goals of competition or the preservation and enhancement of universal service."⁹ The CALLS package is not in the public interest and should be rejected.

II. The Commission Has the Tools to Remove Implicit Subsidies from Access Charges and Should Use Those Tools to Reduce Rates to Forward-Looking Cost

Although the Commission should reject CALLS' proposal as a whole, it should move forward to complete access charge and universal service reform. The record generated in response to CALLS, and even portions of CALLS itself, contains substantive proposals that deserve serious

⁸ ALTS at 4.

⁹ WUTC at 3.

consideration. Level 3 urges the Commission to incorporate the best features of CALLS and the comments submitted in response to CALLS into a Further Notice of Proposed Rulemaking.

Many parties advocate bringing access charges down to forward-looking cost and propose various means of achieving that goal. The PUCO made an important observation about CALLS' inconsistency in attempting to reduce usage-sensitive charges assessed on IXCs, but not flat-rated charges assessed on end users, to forward-looking cost.¹⁰ CALLS' super-SLC cap exceeds 100% of Ameritech's Total Element Long Run Incremental Cost ("TELRIC") loop rate, let alone the 25% that is allocated to the interstate jurisdiction.¹¹ The example the PUCO used demonstrates the importance of harmonizing pricing policies not only for all interstate access rate elements, but also for interstate access and local interconnection.¹² Harmonizing pricing policies for interstate access and interconnection would eliminate opportunities for arbitrage and permit carriers to build networks and interconnect according to market forces, rather than regulatory constructs. Although the WUTC recognized the importance of such harmonization, its proposal addresses only part of the problem by focusing on terminating interstate access.¹³ Competition has not forced originating access rates to cost and the deadline for the Commission's original backstop cost-study requirement is fast approaching. TELRIC pricing should apply to both originating and terminating access. The

¹⁰ PUCO at 16.

¹¹ PUCO at 17.

¹² See Level 3 at 4-10.

¹³ WUTC at 11.

Commission should apply its forward-looking costing principles to usage-sensitive originating and terminating access, interstate access charges assessed on end users, and local transport and termination.

Recognizing that interstate access rates may contain implicit subsidies to support universal service, many parties question the revenue-neutrality of the CALLS' proposal. While SBC is correct that access charges must be reduced dollar-for-dollar as universal service support is removed,¹⁴ the reverse is not true -- universal service subsidies should **not be increased** dollar-for-dollar as access charges are reduced. The California Commenters describe this key problem with CALLS:

It is fair to conclude that interstate access revenues may have several components in addition to the forward-looking economic cost of providing access services, including the following: embedded access costs in excess of forward-looking costs, subsidization of below-cost services, misallocated non-access costs (e.g., marketing costs), excess contribution to an ILEC's shared and common costs, and/or excess profits. Without a detailed examination of the rates and costs of an ILEC's services, it is not possible to identify and isolate all of the causes of above-cost access charges. As a result, assuming, as CALLS does, that all [common line, marketing and TIC] revenues are recovered solely for the purpose of supporting universal service cannot be justified at this time.¹⁵

MCI WorldCom recommends that the Commission examine the validity of incumbent LECs' revenue requirements by initiating enforcement proceedings based on the property records audit, completing the "plug-ins" and outside plant audit phases, and modifying the X-Factor to reflect

¹⁴ SBC at 3.

¹⁵ Comments of the People of the State of California and the California Public Utilities Commission at 10 ("California Comments").

interstate productivity.¹⁶ As Level 3 argued in its Comments, a third-party audit of incumbent LECs should be conducted in tandem with the cost studies and, if the auditors find that incumbent LECs have stranded investment that cannot be recovered by forward-looking, cost-based access charges, the Commission could establish a flat-rated cost recovery mechanism.¹⁷ As the state PUCs recognize, an earnings review should be completed at the state level as well, and conducted in tandem with jurisdictional separations reform to correct any misallocation of costs. While all of these proposals have merit, Level 3 urges the Commission to consider establishing short timeframes for any audit or earnings review. As recommended in Level 3's initial comments, access charges should be reduced to cost over a period of no more than three years. Even three years may be too long, for then it will have taken seven years to implement Congress' directive to make universal service support explicit.

The disadvantage of audits and earnings reviews is the time they take to complete. The Commission has a tool at its disposal that it could put to work immediately to reduce access charges to cost-based rates, the Synthesis Proxy Cost Model ("SPCM"). Other parties supported Level 3's call to apply the SCPM to all costs in the federal jurisdiction, including price cap LEC access charges.¹⁸ Using the SCPM would ensure that access charges are priced at forward-looking costs, make all available universal service support explicit and sufficient, and send the correct signals to

¹⁶ MCI WorldCom at 17.

¹⁷ Level 3 at 10.

¹⁸ Joint Consumers at 24.

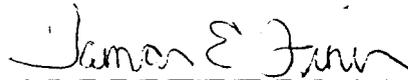
new entrants.¹⁹ Bringing access charges down to cost-based rates will also lay the groundwork for including providers of packet communications in the intercarrier compensation system without inhibiting technological innovation and the growth of the Internet. As long as access charges are significantly above-cost, there will be a strong incentive for providers of innovative services to structure their services in a way to legally avoid paying access charges. Level 3 therefore urges the Commission to take advantage of its SCPM to complete access charge reform in tandem with universal service reform.

¹⁹ MCI WorldCom at 12.

III. Conclusion

Level 3 urges the Commission to reject CALLS and issue a Further Notice of Proposed Rulemaking soliciting comments on the best features of the proposals submitted in this docket. As the Joint Consumers advocated, "[w]ith the development of the Synthesis Proxy Cost Model ("SPCM") and a Supreme Court ruling upholding the concept of forward-looking economic costs, the end is in sight."²⁰ It is time to remove implicit subsidies from interstate access charges and reduce those charges to forward-looking, cost-based rates.

Respectfully submitted,



Andrew D. Lipman
Tamar E. Finn
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
(202) 424-7500

Patricia Paoletta
William P. Hunt, III
Level 3 Communications, LLC
1025 Eldorado Blvd.
Broomfield, CO 80021

December 3, 1999

²⁰ Joint Consumers at 23.

--
Certificate of Service

The foregoing Reply Comments of Level 3 Communications, LLC were served on the following via hand delivery (*) or first class U.S. mail this 3rd day of December, 1999.

Magalie Roman Salas, Secretary*
Federal Communications Commissions
The Portals - TW-A325
445 Twelfth Street, S.W.
Washington, DC 20554

William Bailey*
Federal Communications Commission
445 12th Street, S.W. - 8TH Floor
The Portals
Washington, DC 20554

Chairman William E. Kennard*
Federal Communications Commission
445 12th Street, S.W. - Suite B201
The Portals
Washington, DC 20554

Michael K. Powell, Commissioner*
Federal Communications Commission
445 12th Street, S.W. - 8TH Floor
The Portals
Washington, DC 20554

Dorothy Atwood*
Chief, Enforcement Division
Federal Communications Commission
Common Carrier Bureau
445 12th Street, S.W. - Suite 5A848
The Portals
Washington, DC 20554

Kyle D. Dixon*
Federal Communications Commission
445 12th Street, S.W. - 8TH Floor
The Portals
Washington, DC 20554

Susan Ness, Commissioner*
Federal Communications Commission
445 12th Street, S.W.
The Portals
Washington, DC 20554

Gloria Tristani, Commissioner*
Federal Communications Commission
445 12th Street, S.W. - 8TH Floor
The Portals
Washington, DC 20554

Linda Kinney*
Federal Communications Commission
445 12th Street, S.W. Suite 8-B115
The Portals
Washington, DC 20554

Sarah Whitesell*
Federal Communications Commission
445 12th Street, S.W. - 8TH Floor
The Portals
Washington, DC 20554

Harold Furchtgott-Roth, Commissioner*
Federal Communications Commission
445 12th Street, S.W. - 8TH Floor
The Portals
Washington, DC 20554

Tamara Preiss*
Federal Communications Commission
445 12th Street, S.W. - 5th Floor
The Portals
Washington DC 20554

Jane Jackson*
Federal Communications Commission
445 12th Street, S.W. - 5th Floor
The Portals
Washington DC 20554

International Transcription Service*
1231 20th Street, N.W.
Washington, DC 20036

Yog Varma*
Federal Communications Commission
445 12th Street, S.W. - 5th Floor
The Portals
Washington DC 20554

Rich Lerner*
Federal Communications Commission
445 12th Street, S.W. - 5th Floor
The Portals
Washington DC 20554

Larry Strickling*
Federal Communications Commission
445 12th Street, S.W. - 5th Floor
The Portals
Washington DC 20554

Kathryn Brown*
Federal Communications Commission
445 12th Street, S.W. - 8th Floor
The Portals
Washington DC 20554

Wanda Harris*
Competitive Pricing Division
Federal Communications Commission
445 Twelfth St., SW
Fifth Floor, DS
Washington, DC 20554

Lawrence E. Sarjeant
Linda L. Kent
Keith Townsend
John W. Winter
Julie E. Roncs
United States Telecom Association
1401 H Street, N.W., Suite 600
Washington, DC 20005

John T. Nakahata
Evan R. Grayer
Harris, Wiltshire & Grannis, LLP
1200 Eighteenth Street, N.W.
Washington, DC 20036

Betty D. Montgomery, Attorney General
Duane W. Luckey, Chief, Public Utilities Section
Steven T. Nourse
Stephen M. Hoersting
Ohio Office of Attorney General
Public Utilities Section
180 E. Broad Street, 7th Floor
Columbus, OH 43215

Peter Arth, Jr.
Lionel B. Wilson
Ellen S. Levine
Atty's for the People of the State of California
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Laurie Pappas
Deputy Public Counsel
Texas Office of Public Utility Counsel
1701 N. Congress Ave., Suite 9-180
Austin, TX 78701

Mark Cooper
Director of Research
Consumer Federation of America
504 Highgate Terrace
Silver Spring, MD 20904

Gene Kimmelman
Co-Director
Consumers Union (Wash., DC)
1666 Connecticut Avenue, NW
Washington, DC 20009

Blossom A. Peretz
Christopher J. White
NJ Division of the Ratepayer Advocate
31 Clinton Street - 11th Floor
Newark, NJ 07101

Cynthia B. Miller
Intergovernmental Counsel
Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Alan Buzacott
Counsel, MCI WorldCom, Inc.
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Thomas A. Pajda
Alfred G. Richter, Jr.
Roger K. Toppins
Michael J. Zpevak
SBC Communications, Inc.
One Bell Plaza, Room 3003
Dallas, TX 75202

Herbert E. Marks
Brian J. McHugh
Squire, Sanders & Dempsey, L.L.P.
1201 Pennsylvania Avenue, N.W.
Washington, DC 20044

Mr. Michael Wilson
Mr. John Mapes
Dept. of Commerce & Consumer Affairs
State of Hawaii
250 South King Street
Honolulu, HI 96813

Carol Ann Bischoff
Executive Vice President & General Counsel
Competitive Telecommunications Association
1900 M Street, N.W., Suite 800
Washington, DC 20036

Robert J. Aamoth
Joan M. Griffin
Kelly Drye & Warren LLP
Counsel for Competitive Telecommunications
Association
1200 19th Street, NW., Suite 500
Washington, DC 20036

George N. Barclay
Michael J. Ettner
General Services Administration
1800 F Street, NW, Room 4002
Washington, DC 20405

Cheryl A. Tritt
Frank W. Krogh
Morrison & Foerster LLP
Counsel for One Call Communications, Inc.
2000 Pennsylvania Avenue, NW, Suite 5500
Washington, DC 20006-1888

Charles D. Gray
James Bradford Ramsey
National Association of Regulatory Utility
Cmsrs.
1101 Vermont Avenue, NW, Suite 200
Washington, DC 20006

Brian Conboy
Thomas Jones
Willkie Farr & Gallagher
Counsel for Time Warner Telecom
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 200036

Rachel J. Rothstein
Brent M. Olson
Cable & Wireless USA, Inc.
8219 Leesburg Pike
Vienna, VA 22182

Danny E. Adams
Joan M. Griffin
Kelly Drye & Warren LLP
Counsel for Cable & Wireless USA, Inc.
1200 19th Street, N.W., Suite 500
Washington, DC 20036

Mark C. Rosenblum
Judy Sello
AT&T Corp.
295 North Maple Avenue
Basking Ridge, NJ 07920

Gene C. Schaerr
James P. Young
Sidley & Austin
Counsel for AT&T Corp.
1722 Eye Street, NW
Washington, DC 20006

Linda L. Oliver
Hogan & Hartson, L.L.P.
Counsel for Qwest Communications Corp.
555 13th Street, NW
Washington, DC 20004

Genevieve Morelli
Paul F. Gallant
Qwest Communications Corporation
4250 N. Fairfax Drive
Arlington, VA 22203

Jonathan E. Canis
Charles M. Oliver
Kelly Drye & Warren LLP
1200 19th Street, NW
Washington, DC 20036

Jonathan Askin
Emily Williams
The Association for Local
Telecommunications Services
888 17th Street, NW, Suite 900
Washington, DC 20006

Mitchell F. Brecher
Debra A. McGuire
Greenberg Traurig
Counsel for Operator Communications, Inc.
d/b/a Oncor Communications, Inc.
1300 Connecticut Avenue, NW
Washington, DC 20036

Martin A. Corry
Director, Federal Affairs
AARP
601 E Street, NW
Washington, DC 20049

Michael Travieso
National Association of
State Utility Consumer Advocates
Office of People's Counsel
6 St. Paul Street, Suite 2102
Baltimore, MD 21202

Ronald J. Binz
Debra Berlyn
Competition Policy Institute
1156 15th Street, NW, Suite 520
Washington, DC 20005

Wayne V. Black
Keller and Heckman LLP
Counsel for The American Petroleum Institute
1001 G Street, NW, Suite 500 West
Washington, DC 20001

Rick D. Doyle
Doyle & Wright
Counsel for Smithville Telephone Company, Inc.
384 N. Madison Avenue
Greenwood, TN 46142

Brian R. Moir
Moir & Hardman
Counsel for International Communications
Association
1828 L Street, NW, Suite 901
Washington, DC 20036-5117

Marilyn Showalter
Richard Hemstad
William R. Gillis
Washington Utilities and
Transportation Commission
1300 South Evergreen Park Drive, SW
Olympia, WA 98504

James S. Blaszk
Levin, Blaszak, Block & Boothby LLP
Counsel for Ad Hoc Telecommunications
Users Committee
2001 L Street, NW, Suite 900
Washington, DC 20037

Jonathan E. Canis
Charles M. Oliver
Counsel for Intermedia Communications, Inc.
Kelley Drye & Warren LLP
1200 19th Street, NW
Washington, DC 20036

Margot Smiley Humphrey
Koteen & Naftalin, LLP
Counsel for National Rural Telecom Assoc.
1150 Connecticut Avenue, NW, Suite 1000
Washington, DC 20036

L. Marie Guillory
Daniel Mitchell
Counsel for National Telephone Cooperative
Assoc.
4121 Wilson Boulevard, Tenth Floor
Arlington, VA 22203

Christopher J. Wilson
Delia Reid Saba
Counsel for Cincinnati Bell Telephone Co.
201 East Fourth Street
Cincinnati, OH 45202

Janet Gail Besser
James Connelly
W. Robert Keating
Paul B. Vasington
Eugene J. Sullivan, Jr.
One South Station
Boston, MA 02110

Raj J. Riordan
Executive Vice President & General Counsel
Counsel for Small Company Committee of the
Wisconsin State Telecommunications Assoc.
6602 Normandy Lane
Madison, WI 53719

Gerard J. Duffy
Blooston, Mordkofsky, Jackson & Dickens
Counsel for Small Company Committee of the
Wisconsin State Telecommunications Assoc.
2120 L Street, NW, Suite 300
Washington, DC 20037



Tamar E. Finn