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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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

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[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

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[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

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[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

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[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

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16 MCI WorldCom at 17.

17 Level 3 at 10.

18 Joint Consumers at 24.

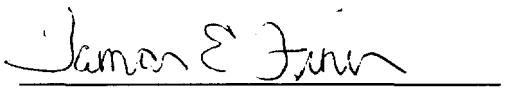
new entrants.[19] Bringing access charges down to cost-based rates will also lay the groundwork for including providers of packet communications in the intercarrier compensation system without inhibiting technological innovation and the growth of the Internet. As long as access charges are significantly 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,



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[20] Joint Consumers at 23.

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