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

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| In the Matter of | ) | |
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| 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 CABLE & WIRELESS USA, INC.

### I. Introduction

Cable & Wireless USA, Inc. ("C&W USA"), by its attorneys, hereby replies to the comments filed on November 12, 1999 in response to the Commission's Notice of Proposed Rulemaking ("Notice") in the proceeding captioned above.[1] C&W USA continues to support the adoption of the CALLS proposal, although we urge the Commission to reject the take-it-or-leave-it posturing by the plan's proponents and adopt certain procompetitive modifications. In addition, assuming the Commission adopts the CALLS plan or some variation of the plan, the Commission should allow the market to distribute the benefits associated with the plan's access charge reductions and resist calls to adopt flow-through rules that are complex, difficult to administer, and overly burdensome.

[1] *Notice of Proposed Rulemaking*, FCC 99-235, rel. Sept. 15, 1999 ("Notice").

## II. The Comments Submitted Provide General Support for Adoption of the CALLS Proposal With the Modifications Proposed by C&W USA In the Absence of Better Alternatives That the Commission Is Willing to Implement.

As C&W USA stated in its initial comments, C&W USA supports the interstate universal service and access reform plan submitted by the Coalition for Affordable Local and Long Distance Services ("CALLS") as a significant improvement over the status quo. While an immediate reduction in access charges to cost-based rates would be preferable, in the absence of other alternatives, the CALLS plan is generally acceptable. C&W USA's position on the CALLS proposal is echoed through many of the other comments filed in this proceeding. Most commentors neither endorse the CALLS plan without qualification, nor reject it outright. Rather, many parties acknowledge the CALLS plan for what it is: a compromise negotiated between private parties that has significant merit, because the changes in rate levels and rate structure proposed by CALLS would bring access charges closer to cost than any other current regime.[2] At the same time, many commentors urge the Commission to view the CALLS plan as a step in the right direction, but not as a completed journey. These commentors appropriately recognize that the CALLS plan suffers from notable deficiencies that should be addressed before any or all of the proposal is adopted by the Commission.[3]

To correct these deficiencies, C&W USA proposed various modifications to the CALLS plan in its initial comments. There is support for C&W USA's proposals in the pleadings filed

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[2] Comments of CompTel at 3; Comments of Time Warner at 2; Comments of TRA at 2; Comments of ALTS at 2; Comments of Qwest at 2; Comments of MDTE at 2; Comments of MCI at 2; Comments of GSA at 3-4; Comments of Ad Hoc at 2.

[3] Comments of CompTel at 4; Comments of Time Warner at 2, 6; Comments of TRA at 2; Comments of ALTS at 2; Comments of MCI WorldCom at 2; Comments of GSA at 3-4; Comments of Ad Hoc at 2.

by other participants in this proceeding. TRA agrees that the Commission must continue to reduce access charges to cost, stating that "the Commission should continue to adjust its access charge regime until such time as it has achieved its stated goal of driving interstate access charges to levels that competition would be expected to produce."[4] Level 3 and CompTel agree that reductions should be targeted to the rates determined by each state commission for equivalent UNEs, and propose time-limited transition periods.[5]

C&W USA also proposed in its comments that *all* price cap ILECs be required to participate in the CALLS plan, since there is no valid basis for drawing distinctions among price cap ILECs, and operation of a third access charge regime would impose undue burdens on both the Commission and the IXCs. Both GSA and CompTel raised similar concerns in their comments.[6] GSA noted that operation under different regulatory regimes would "lead to litigation and confusion, while impairing the development of competition from new carriers on comparable terms."[7] USTA's argument that the plan must be voluntary for all price cap ILECs[8] ignores the costs imposed on the FCC, the IXCs, and ultimately on consumers by operation under multiple access charge plans. Because the CALLS plan would increase overall consumer welfare and thus serve the public interest, the Commission should resist this call to artificially

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4 Comments of TRA at 8-9; *see also* Comments of ICA at 3-4; Comments of API at 3; Comments of CompTel at 3-4, 13-14.

5 Comments of Level 3 at 3-4 (three-year transition period); Comments of CompTel at 3-4, 13-14 (six-month transition period).

6 Comments of CompTel at 7-9; Comments of GSA at 5-6.

7 Comments of GSA at 5-6. Smithville argues that the CALLS plan should apply to *all* ILECs, including those subject to rate of return regulation, because operation under multiple access charge plans will make it difficult for IXCs to offer all of their toll programs to subscribers served by non-price cap ILECs. Comments of Smithville at 2-3. C&W USA agrees that the CALLS plan should apply to all ILECs as Smithville suggests.

8 Comments of USTA at 2.

deny certain groups of customers the benefits inherent in this plan.

Finally, many parties shared C&W USA's objections to the proposed $650 million "access universal service fund." As the Ohio Commission observed, there is simply no basis or support provided for this part of the CALLS proposal:

> (1) There is no supporting financial documentation to support the negotiated $650 million fund, (2) there is no demonstrated need for the additional funding, (3) the impact on consumers' bill is not explained, (4) the funding associated with the Lifeline aspect of the proposal is not well explained, (5) the intention to bill end-users for the existing and proposed USF funding is not explained or legally justified, (6) it is not clear what services the fund is intended to support or at what levels, and (7) there is no reason given to support the FCC re-examining high cost USF funding on the heels of its universal service decision and reforms just released a few days ago.[9]

Under these circumstances, the "access universal service fund" is nothing more than a "slush fund"[10] that will make access reform revenue neutral for the price cap ILECs and impose unnecessary costs on consumers. As both ALTS and Intermedia recognize, subsidizing the ILECs in this fashion would distort competition, as this guaranteed revenue stream would enable the ILECs to set "fire sale prices"[11] for their services whenever they are exposed to competition during the five-year period of the CALLS plan.[12] At a minimum, as MCI WorldCom aptly notes, the fund must be modified to reflect forward-looking cost principles, rather than embedded costs, to compute each carrier's support.[13]

CompTel argues that if the Commission elects to establish an "access universal service fund" as CALLS proposes, the Commission should ensure that these funds are recovered solely

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9 Comments of the Public Utilities of Ohio at 3.

10 Comments of CompTel at 15.

11 Comments of ALTS at 3.

12 Comments of ALTS at 3-4; Comments of Intermedia at 6-7.

13 Comments of MCI WorldCom at 11-12.

from the ILECs' end-user subscribers.[14] C&W USA supports CompTel's proposal. As CompTel observes, requiring CLEC subscribers to pay into a fund that is designed merely to ensure revenue neutrality for the ILECs is inequitable and would significantly impede the development of local competition.[15]

## II. The Commission Should Not Require IXCs to Flow Through Access Charge Rate Reductions to End User Customers As Such Action Is Unnecssary and Will Not Serve the Public Interest.

Several commentors argue that the Commission should require IXCs to flow through to consumers any access charge rate reductions that result from adoption of the CALLS proposal.[16] These parties contend that such a requirement is necessary for consumers to reap the benefits of the CALLS plan, as the IXCs will not pass on any rate reductions without such a requirement. In support of this argument, these commentors allege that IXCs have raised basic toll rates in recent years, and have added new charges and surcharges to customer bills.[17]

C&W USA strenuously objects to the adoption of any rule requiring IXCs to pass on rate reductions that result from the CALLS plan. There is absolutely no need for such a requirement,

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14 Comments of CompTel at 16-17.

15 Comments of CompTel at 17.

16 *See* Comments of APT at 9; Comments of AARP at 4-5; Comments of WSTA-SCC at 9-10; Comments of Ohio at 31-32; Comments of Texas at 4-5. In addition, TRA argues that facilities-based IXCs should be required to pass access charge reductions to their reseller customers on a dollar-for-dollar basis to avoid placing resellers at a competitive disadvantage. Comments of TRA at 6. This requirement is wholly unnecssary. Like the retail long distance market, the wholesale market for interexchange services is highly competitive. Any flow-through requirement in this context would be unduly burdensome. Furthermore, TRA's argument assumes that resellers pay access charges on a pass-through basis, which may not be true in all cases. To the extent that resellers pay their facilities-based suppliers for access charges on an averaged basis, a dollar-for-dollar flow-through could result in a windfall for resellers.

17 *See, e.g.*, Comments of WSTA-SCC at 9-10; Comments of AARP at 4-5; Comments of Ohio at 31-32.

as the marketplace will ensure that consumers receive the benefit of all access charge rate reductions. In a market such as the long distance market that is fully competitive, practical realities require carriers to take advantage of every opportunity to make their services more attractive to end users than those of a competitor. Without question, the long distance market is fully competitive. There are reportedly 1,000 carriers that provide long distance service today.[18] A wide variety of services and calling plans are available to meet all possible customer requirements. Furthermore, consumers are highly price sensitive and will readily switch long distance carriers to obtain price reductions. It has been estimated that more than 30 percent of mass market customers switch long distance carriers within a twelve month period.[19]

Thus, if a carrier receives a savings from a reduction in access charges, that carrier will lower its long distance prices in order to stay competitive. The Commission has previously recognized that in a fully competitive environment, carriers must charge market prices for services or risk losing their customers to other competitors.[20] As such, it is simply not reasonable to assume that IXCs will retain any access charge rate reductions that result from implementation of the CALLS plan.

Evidence for the fact that the long distance market is fully competitive and that the market itself will force IXCs to flow access charge rate reductions through to consumers can be

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18 *See* Applications of Sprint Corp. and MCI WorldCom, Inc. for Consent to Transfer Control, filed Nov. 17, 1999, at Appendix B, 28 (Decl. of Stanley M. Besen and Steven R. Brenner) ("*Sprint/MCI WorldCom Application*").

19 *See Sprint/MCI WorldCom Application* at 49.

20 *See Policy and Rules Concerning the Interstate, Interexchange Marketplace, Second Report and Order*, 11 FCC Rcd 20730, 20742 (1996) (recognizing that the "high churn rate among consumers of interstate, domestic, interexchange services indicates that consumers find the services provided by interexchange carriers to be close substitutes, and that consumers are likely to switch carriers in order to obtain lower prices or more favorable terms and conditions"); *Motion of AT&T to be Reclassified as a Non-Dominant Carrier, Order*, 11 FCC Rcd 3271, 3305-3307 (1996).

found by examining the trends in long distance rates over the past several years. According to the revenue figures reported by the Commission's Industry Analysis Division, average per-minute long distance rates have decreased from 15 cents to 11 cents between 1992 and 1998.[21] Today, it is clear that long distance rates have continued to drop even more dramatically with many carriers offering plans that charge only 3 to 7 cents per minute. Since the FCC has not ordered IXCs to lower their rates during this period, these rate reductions must be due to the workings of the market.

Under these circumstances, the adoption and implementation of a rule requiring the flow through of access charge rate reductions generated by the CALLS plan would impose undue burdens on both the FCC and the IXCs to the ultimate detriment of U.S. consumers. It would be difficult if not impossible to calculate the actual access charge reduction for each consumer. Such reductions are likely to vary from service to service, consumer to consumer, month by month, and calling plan by calling plan. As such, trying to define and administer a flow-through requirement would be a time-consuming nightmare for both the carriers and the Commission. Furthermore, the need to comply with any such flow-through requirement is likely to restrict the ability of IXCs to develop new and innovative rate structures and calling plans for consumers.

If the Commission is concerned that end users may not realize the benefits of any access charge rate reductions given to IXCs, then C&W USA recommends that the Commission adopt a less intrusive approach to ensuring that rate reductions are in fact being flowed through to U.S. consumers. Specifically, the Commission should monitor IXC prices to ensure that competition in the long distance market is in fact forcing carriers to pass access charge reductions onto end

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21 *See Telecommunications Industry Revenue: 1998, Table 9,* Jim Lande, Industry Analysis Division, Federal Communications Commission, Washington, D.C. (Sept. 1999).

users. If the Commission finds little or no evidence that consumers of long distance services are reaping the benefits of the CALLS plan, then the FCC can at that time revisit its conclusion that marketplace forces are sufficient to ensure flow-through and can take corrective action if appropriate. C&W USA notes that the Commission has previously adopted such an approach to ensuring the flow-through of rate reductions, specifically with respect to reductions in accounting rates for international message toll services.[22]

## IV. Conclusion

As C&W USA argued in its initial comments, the Commission should immediately order all price cap ILECs to reduce access charges to cost. Simply put, the transition to cost-based access charge rates has gone on long enough. However, should the Commission be unwilling to take such action at this time, the FCC should adopt the CALLS proposal with the modifications noted herein and in C&W USA's initial comments in this proceeding. In no event should the

[22] *See International Settlement Rates,* Report and Order, 12 FCC Rcd 19806 at ¶¶ 271-273 (1997).

Commission order IXCs to flow through access charge reductions to end user customers, as such a requirement is unnecessary and would not serve the public interest.

Respectfully Submitted,

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