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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 ILLINOIS COMMERCE COMMISSION

The Illinois Commerce Commission (hereafter "ICC") respectfully submits these Reply Comments to Comments filed by various entities in response to the Commission's Notice of Proposed Rulemaking , FCC No. 99-235 (hereafter "NPRM") issued September 15, 1999, and reported in the Federal Register at Vol. 64 FR 51,258 on September 22, 1999.

I.

INTRODUCTION

The ICC urges the Commission to reject the CALLS proposal. While portions of the CALLS proposal may have merit, the proposal itself and Comments filed pursuant to the NPRM reveal that the proposal suffers from several problems. Generally, the proposal should be rejected because it does not offer a comprehensive solution, it is only binding upon signatories, and insufficient information exists to support its adoption.

Specific to its terms, the proposal appears likely to inhibit competition and to result in unjustified end user charges, the improper recovery of some traffic sensitive costs on a non-traffic sensitive basis, customer confusion and an improper extension of Universal Service. In the remainder of the ICC's Reply Comments, the ICC discusses each of these problems.

II.

GENERAL OBJECTIONS TO THE CALLS PROPOSAL

A. The CALLS Proposal Is Only Binding Upon Signatories

As several parties filing Comments have noted, including CALLS itself, the CALLS proposal would, if adopted, be applicable to, and binding upon *only* the members of the CALLS coalition. *See* CALLS Comment at 1 ("[t]he CALLS plan is an opportunity for the Commission ... to settle [Universal Service and access charge reform issues] *for participating price cap carriers[.]*") (emphasis added); SBC Comment at 4 ("[t]he CALLS proposal is ... a voluntary option, and should not be mandated for non-signatories."); Public Utilities Commission of Ohio (hereafter "PUCO") Comment at 8. Thus, those entities which are not signatories, including US West and MCI WorldCom, *see* CALLS Comment at 21 (signature page), would not be subject to the CALLS plan, and would be free, apparently, to ignore it, notwithstanding any Commission action adopting the proposal. Thus, the CALLS proposal emphatically is not the "comprehensive" reform of access charges its proponents claim. CALLS Comment at 1; SBC Comment at 4. *See also* Washington Utilities and Transportation Commission (hereafter "WUTC") Comment at 3, n. 3 (observing that the CALLS

proposal does not address certain crucial issues, including jurisdictional separation and consumer choice).

The proposal's incomprehensive nature poses two problems. First, it could result in more competitively developed markets in some areas than in others, depending upon whether providing carriers voluntarily adopt the CALLS rate structure or choose to remain subject to the rate structure otherwise ordered by the Commission. Also, customer confusion is a second likely result because customers of CALLS participants will be subject to different rates and different rate structures than customers of non-CALLS participants.

A related problem is the insular manner in which the CALLS proposal was negotiated. Neither regulators nor consumer advocates appear to have been invited to take part in the negotiations, *see* PUCO Comment at 6-7, nor was the participation of smaller interexchange carriers solicited. Telecommunications Resellers Association (hereafter "TRA") Comment at 2. Thus, the proposal, which its proponents insist that the Commission must either approve unchanged or reject, NPRM, ¶5; SBC Comment at 4, is not the product of arms-length negotiations between all of the stakeholders. Rather, it is "an ambiguous, relatively undefined agreement," which is the result of closed-door meetings between industry insiders, PUCO Comment at 7, and its specifics have not been subjected to meaningful public scrutiny.

B. The Proposal Lacks Supporting Information Necessary to Evaluate It

The ICC is concerned that the adoption of the CALLS proposal by the Commission, based upon the record before it, would constitute a violation of the Administrative Procedure Act's prohibition of rulemaking for which the agency can

provide no reasonable explanation. 5 U.S.C. §706(2)(A). Further, when reviewing rules made by the Commission, a court must determine whether the Commission's decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. ITT World Communications, Inc. v. F.C.C., 725 F.2d 732, 741 (D.C. Cir. 1984). For a reviewing court to sustain an agency decision under this standard, it must find that the grounds upon which the agency acted are disclosed in, and sustained by, the record in the proceeding. Olenhouse v. Commodity Credit Corp., 42 F.3d 1560, 1575 (10th Cir. 1994).

As PUCO correctly observes, the CALLS proposal does not provide necessary information regarding, or support for, several of its key provisions. PUCO Comment at 6-7. Significantly, the lack of financial data supporting the proposal is the likely result of the fact that the CALLS participants *negotiated* the plan, rather than determining the plan's provisions through an unbiased review of the appropriate information. Several significant components of the proposal which are unsupported by necessary information are discussed in the remainder of this section.

First, the CALLS proponents do not provide support for the continued recovery of the revenue streams which they propose transferring to the subscriber line charge (hereafter "SLC"). Other parties to this proceeding have pointed out that it is unclear what costs the revenue streams actually recover. For instance, the California PUC noted, "it is fair to conclude that interstate access revenues *may* ... include 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." California

Comment at 10 (emphasis added). By referring to California's Comments upon this point, the ICC notes that it is not taking a position on the composition of interstate access revenues at this time. Rather, the ICC's point is that no evidence exists within the record of this proceeding from which to evaluate the composition of these revenues.

Second, PUCO notes that the CALLS proposal omits supporting calculations related to the proposed, new $650 million portable Universal Service Fund[1]. PUCO Comment at 6-7. In part, the inability to justify the new Universal Service Fund is a result of the proponents' failure to justify the continued recovery of the interstate access revenue streams which they want to transfer to the interstate SLC. If recovery of those revenue streams is not shown to be just and reasonable in the first instance, then the recovery of those revenue streams should not be supported by a *second,* and *larger* Universal Service fund.

Moreover, the recovery of costs through Universal Service funds must be subjected to additional scrutiny. From the information in the record, it is not clear what services the new fund is intended to support or at what levels. Until the composition of the costs to be recovered is known, one cannot assess whether it is necessary to compensate carriers' costs for the "preservation and advancement of Universal Service." 47 U.S.C. §254(b). Accordingly, the proposal fails to demonstrate a need for the $650 million in additional Universal Service funding contained in the CALLS proposal. In fact, the need for this additional funding is very much open to question

[1] The CALLS proponents assert that this $650 million reflects the amount of implicit support currently embedded in interstate access charge rates and rate structures of price cap LECs which will not be recovered through an increased interstate SLC. Memorandum in Support of the CALLS Proposal, NPRM, App. C at 22.

because it exceeds by over $200 million the Universal Service fund for high cost areas recently authorized by the Commission. California Comment at 7.

The ICC urges the Commission to subject requests to increases in Universal Service funding to careful scrutiny. Increasing the sums paid into Universal Service funds, as the CALLS proposal would require, imposes substantial burdens upon ratepayers in states, such as Illinois, which are net contributors to such funds. California Comment at 7. Thus, the Commission should make certain that any increase is needed to support those services contained within the definition of Universal Service, rather than merely to maintain current revenue streams to ILECs. PUCO Comment at 20. The CALLS proponents, who are likely to benefit from this fund, have failed to provide anything but vague and ephemeral support for this increase.

In addition, the CALLS Proposal would apparently result in end-users being billed for both the *existing and proposed* Universal Service funding. California Comment at 9, 15-16. In other words, under the CALLS plan, ratepayers would assume the burden of the $650 million portable Universal Service fund proposed by CALLS, in addition to the FCC mandated fund of over $400 million, resulting in a Universal Service fund in excess of $1 billion. The CALLS proponents have made no attempt to explain or legally justify this outcome other than to indicate that it falls within a wide range of estimates of implicit support embedded in ILEC rates. *See, generally*, CALLS Comment; Memorandum in Support of CALLS Proposal; NPRM, App. C at 22, et seq. In sum, there is no reason why the FCC ought to re-examine Universal Service funding so shortly after releasing its Universal Service decision and reforms. PUCO Comment at 3.

Third, on a similar note, the CALLS proponents do not give details regarding the source of the funding for their Lifeline proposal. California Comment at 7, 16; *See, also, generally*, CALLS Comment; Memorandum in Support of CALLS Proposal. Currently, the Lifeline program assists low-income consumers in paying costs associated with establishing and maintaining telephone service. *See* 47 CFR §36.711. While the ICC supports the Lifeline program, the ICC notes that funding for the program currently comes from a levy upon IXCs. 47 CFR §69.117. The CALLS proponents have not advanced any reasons why funding for the Lifeline program should be increased to support revenue streams which the proponents want to transfer to the interstate SLC.

Fourth, the CALLS proposal omits costing methodology and calculations in support of the proposal that interstate local switched access charges be reduced. PUCO Comment at 7. Nor have the proponents provided any support for fixing the interstate local switched access charges at the $.0055 and $.0065 levels for 5 years, other than the fact that the CALLS parties agreed upon those sums. Memorandum in Support of CALLS Proposal, NPRM, App. C at 37.

The CALLS parties might have addressed these concerns, which were easily anticipated, in their Comments in support of the proposal, but elected not to do so. *See, e.g.*, CALLS Comments; SBC Comments. Thus, parties attempting to assess the merits of the CALLS proposal are compelled to accept on faith the bare, unsupported assertions of those parties most likely to benefit from the proposal. Accordingly, the CALLS proposal lacks the detail and supporting calculations and methodologies which would enable any of the numerous interested parties *not* involved in formulating it

(including the Commission, the ICC, and all other regulatory entities and consumer groups) to independently and responsibly assess what, if any, merit it might have.

III.

SPECIFIC OBJECTIONS TO THE CALLS PROPOSAL

A. The Proposal Is Likely to Inhibit Competition and Result in Unjustified End User Charges

The CALLS proponents claim that their proposal to shift recovery of the interstate primary interexchange carrier charge (hereafter "PICC") and carrier common line charge (hereafter "CCLC") to the interstate SLC has two benefits. First, they argue that this change would simplify the manner in which common line charges are recovered. CALLS Comment at 13-14. Second, they assert that consolidated line charges paid by the end user are more likely to be subject to price competition than charges passed indirectly to end users through averaged toll rates. CALLS Comment at 14.

As a general principle, the ICC agrees that end user bills should be simplified and that costs caused by end users should be billed directly to end users. However, this aspect of the proposal shelters unsubstantiated revenue streams from competitive pressure. First, as the California PUC correctly observes, the CALLS proposal eliminates downward pressure on the revenue streams due to the federal price cap mechanism. California Comment at 6-7. By transferring the revenues which are targeted for reduction by the price cap mechanism to the interstate SLC and new Universal Service fund, the proposal effectively shields those revenues from downward competitive pressure on prices.

Second, the CALLS proposal allows an ILEC to shift recovery of these costs (which are currently recovered through the CCLC and TIC) to the interstate SLC, and then to recover varying amounts of those costs from different geographic areas through deaveraged SLCs. *See* Memorandum in Support of CALLS Proposal, NPRM, App. C at 18-20 (geographic deaveraging of SLCs permitted; "prices will begin to reflect geographic variations"). While the ICC endorses deaveraging rates to remove implicit subsidies, such deaveraging should be based on costs or the result of competitive pressure. To the contrary, the CALLS proposal allows an ILEC to allocate and recover non-cost justified revenue streams through the interstate SLC without regard to the costs of serving customers in different areas and regardless of whether areas are subject to competitive conditions. As a result, an LEC may shift recovery of these revenue streams in a manner intended to shield them from competition, i.e., by charging lower rates in competitive areas and higher rates in non-competitive areas without regard to actual costs in either case. PUCO Comment at 17-18.

Finally, shifting revenue recovered from the PICC to the SLC might reduce competitive pressures on rates paid by end users. The ICC does not take a position on the appropriateness of recovering the revenues currently recovered through the PICC. However, more competition exists in the long distance than in the local exchange market. Therefore, if a PICC is assessed, it is more likely to be "competed away" in the market for long-distance services than in the market for local service, especially for residential and small business customers. *See*, National Association of State Utility Consumer Advocates (hereafter "NASUCA") Comment at 2, 30.

B. The Proposal May Improperly Recover Traffic Sensitive Costs on a Non-Traffic Sensitive Basis.

The ICC has concerns about the composition of the revenue stream which the CALLS Proposal transfers to the SLC, which is a flat rate charge. As the California PUC observes, the CALLS proposal may shift a portion of costs incurred on a traffic sensitive basis to recovery from end users on a flat rate basis. California Comment at 11. As a general matter, only non-traffic sensitive costs should be recovered through flat rates. Once again, the lack of adequate documentation and support make it impossible to evaluate whether only non-traffic sensitive costs would be shifted to a flat-rate charge.

C. The Proposal Is Not Likely to Increase Telephone Subscribership

The CALLS proponents assert that their proposal will result in increased telephone subscribership, due to the decrease in interstate toll charges which they predict will result from implementing their proposal.[2] CALLS Comment at 4-5. It is true that reductions in toll rates might increase subscribership, provided that local rates did not increase. However, the CALLS Proposal will only produce reduced toll rates if IXCs pass on to end users the savings in access charges which they would realize as a result of the Proposal. PUCO Comment at 27-28. Significantly, the CALLS Proposal is devoid of any concrete description or guarantee of how or to what extent the proposed reductions in access rates would flow through to consumers. NASUCA Comment at 7. In fact, IXCs commit to no rate reductions or, indeed, to nothing more than meeting with

[2] The proponents also claim that telephone subscribership will increase because of increased Lifeline funding. As stated above, the information provided by the CALLS proponents is insufficient to evaluate

the Commission to review the effects of access charge reductions upon long distance consumers. PUCO Comment at 27.

Accordingly, rather than increase subscribership through reduced toll rates, the CALLS Proposal is likely to have the opposite effect. Absent a mandated pass-through of access charge reductions, the CALLS proposal would likely result in double recovery of costs from end users - once by LECs through the inclusion of these costs in the interstate SLC, and a second time by IXCs through the inclusion of the same costs in their long-distance rates. In summary, therefore, it does not appear to the ICC that the CALLS Proposal will increase telephone subscribership.

D. The Proposal Appears Likely To Result In Customer Confusion

CALLS proponents claim the so-called simplified rate structure contained in the CALLS proposal would reduce customer confusion. CALLS Comment at 8-9; CALLS Proposal, Appendix C at 14. While the ICC supports explicit charges on the customers' bill, the inclusion of the PICC and CCLC into the interstate SLC may actually increase confusion. As NASUCA observes, under the plan, the "current SLC and separately-billed PICC [will] be replaced by a higher SLC plus a charge for the so-called new Interstate Access-related SLC." NASUCA Comment at 13. Therefore, customers will still receive two new charges on their bills, which will be *higher* in total than the two end user charges they replace.[3] Thus, the CALLS proposal is likely to increase, rather than reduce customer confusion.

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the appropriateness of increasing Lifeline funding within the context of this proceeding. Also, as stated, Lifeline funding should not be increased merely to support non-costs justified ILEC revenue streams.

[3] The CCLC, which is currently billed only to the IXCs, is not included as one of the two charges on the end user bill which will be replaced.

E. The Proposal Improperly Extends Universal Service Funding

Under the Commission's Universal Service Order, only the forward-looking economic cost of providing network access, along with a small amount of local calling, should be eligible for Universal Service funding. *See* Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd. 8776, ¶¶224-226, 232-249, 252, 291(1997) (hereafter "Universal Service Order"). In particular, Universal Service funds are intended to support those services which the Commission has made a part of its definition of Universal Service, including the ability to place and receive calls; the use of the loop and that portion of the switch necessary to access an IXC's network, and the ability to use voice-grade access to the public switched network to call an Internet service provider. Universal Service Order, ¶¶61, 63, 76, 83.

The CALLS proposal's new $650 million Universal Service fund is inconsistent with the Universal Service Order in two respects. First, it provides for the new fund to attach not only to primary residential lines, but also to additional residential lines and multi-line businesses. California Comment at 7,*see also* CALLS Proposal, App. A, §2; App. B, Proposed Rule §54.810(c). The recovery of costs to support additional residential and multi-line business lines is neither necessary nor appropriate to support Universal Service and should be rejected by the Commission.

Second, it allows for the recovery of revenue streams which have not been shown to support those services which the Commission has made part of its definition of Universal Service. As the California PUC points out, the CALLS proposal implicitly assumes that all charges assessed through PICCs, Carrier Common Line Charges, and Transport Interconnection Charges (referred to generically in the California Comments

as "CMT" charges) are recovered for the purpose of supporting Universal Service. California Comment at 10. Since the Commission recognizes this assumption to be incorrect, *see* California Comment at 10, n. 22, it is clear that a "detailed examination" of ILEC rates and charges must be conducted before a determination can be made whether the costs are incurred in providing those services included in the definition of Universal Service. California Comment at 10.

This significant expansion of Universal Service funding, which well exceeds what the Commission recently ordered in the Universal Service docket, will place significant additional burdens on ratepayers in net contributor states, such as Illinois. *See, e.g.*, California Comment at 7, PUCO Comment at 23. The ICC is even more concerned because the extraction of money from contributing states to support the proposed expansion to Universal Service does not comport with Section 254 or the Commission's rules and regulations implementing Universal Service. As the new fund is not necessary to "ensure that Universal Service is available at rates that are just, reasonable, and affordable," 47 U.S.C. §254(i), it should be rejected by the FCC.

IV.

CONCLUSION

For the reasons stated above, the ICC urges the Commission to reject the CALLS proposal in its current form. However, the proposal should be carefully scrutinized, and, to the extent that specific portions of it are found to preserve and advance Universal Service, and benefit ratepayers and the public, those portions should be considered as part of the Commission's ongoing proceedings.

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Respectfully submitted,

ILLINOIS COMMERCE COMMISSION

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