

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

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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 SERVICES)	CC Docket No. 96-45
_____)	

**COMMENTS OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"),¹ through undersigned counsel, hereby submits the following comments in response to the Commission's *Public Notice*, DA 00-533, issued in the captioned proceedings on March 8, 2000 ("*Notice*"). In the *Notice*, the Commission sought comment on revisions to the Coalition for Affordable Local and Long Distance Services ("CALLS") proposal for reforming interstate universal service high cost support and interstate access charge rates and rate structures for price cap local exchange carriers (the "Modified

¹ A national trade association, TRA represents more than 850 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry, and to protect and further the interests of entities engaged in the resale of telecommunications services. TRA is the largest association of competitive carriers in the United States, numbering among its members not only the large majority of providers of domestic interexchange and international services, but the majority of competitive local exchange carriers, as well.

Proposal”). TRA urges the Commission to modify a key element of the CALLS Modified Proposal to avoid competitively disadvantaging small non-facilities-based providers of interexchange service. Specifically, TRA asks the Commission, at a minimum, to, consistent with the treatment of the residential and single line business presubscribed interexchange carrier charge (“PICC”), to fold the multiline business PICC into the business subscriber line charge (“SLC”). TRA also urges the Commission to require facilities-based IXCs to pass through to their wholesale customers, on a dollar-for-dollar basis, the access cost reductions resulting from implementation of the CALLS Modified Proposal.

The “rank and file” of TRA are small carriers serving those predominantly small business and residential consumers whose telecommunications needs have historically not been adequately addressed by larger carriers.² Forty percent of TRA’s carrier members generate annual revenues of less than \$10 million, with seventy percent generating revenues of less than \$50 million.³ Because of their size, profit margins are narrow, with nearly eighty percent of TRA’s carrier members reporting returns of less than ten percent.⁴ More critically for purposes of this proceeding, roughly half of TRA’s carrier members are non-facilities-based, with a significant percentage of the other half being switch-based in only a portion of their operations.⁵ In short, TRA’s carrier members

² As the Commission has recognized, small telecommunications providers are “able to serve narrower niche markets that may not be easily or profitably served by large corporations, especially as large telecommunications expand globally.” Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses (Notice of Inquiry), 11 FCC Rcd 6280, ¶ 6 (1996).

³ Telecommunications Resellers Association, 1999 Reseller Membership Survey and Statistics, p.4 (August, 1999).

⁴ Id. at p. 10.

⁵ Id. at p. 1.

represent the very “entrepreneurs and other small businesses” as to which Congress directed the Commission to identify and eliminate barriers to the “provision and ownership of telecommunications services and information services.”⁶ Recognizing that “small businesses represent only a small portion of the businesses in telecommunications,” the Commission has committed both to Congress and to the small business community “to comply fully with the congressional directive of Section 257 and to advance the clear pro-competitive and deregulatory goals of the 1996 Act,” by acting to “identify and eliminate market entry barriers for small businesses, to remove or reduce impediments, and to increase opportunities for small business participation in the telecommunications market.”⁷

TRA submits that the CALLS Modified Proposal, if implemented as presently constituted, would place small non-facilities-based interexchange carriers (“IXCs”) at a significant competitive disadvantage *vis-a-vis* facilities-based providers, creating a substantial barrier to the continued participation by “entrepreneurs and other small businesses” in the interexchange telecommunications market. Because they are “switchless,” non-facilities based IXCs obtain end-to-end service from facilities-based IXCs; they thus do not purchase originating or terminating access directly from local exchange carriers (“LECs”). Rather, the single per-minute charges that non-facilities-based IXCs pay to facilities-based IXCs for switched services contain both an originating and a terminating access component. Because they do not pay access charges directly to LECs, non-facilities-based IXCs do not benefit directly from reductions in access charges. And because of the disparity in bargaining power between small non-facilities-based IXCs and the generally far larger facilities-based providers from which they purchase network services, it is a rare wholesale interexchange service agreement that provides for the “pass-through” of access charge reductions to

⁶ 47 U.S.C. § 257(a); S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 136 (1996).

⁷ Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses (Report), 12 FCC Rcd 16802, ¶¶ 2, 5 (1997).

the non-facilities-based carrier customer. Thus, small non-facilities-based IXCs secure the benefit of reduced access costs only upon expiration and renegotiation of service agreements, creating “time lags” of months, and often years. Of course, this problem is exacerbated if at the same time that facilities-based carriers receive access charge reductions, access-related costs universally passed through to non-facilities-based carriers, such as PICCs, are increased.

The CALLS Modified Proposal, like the original CALLS proposal before it, addresses this problem in part by folding the residential PICC into the residential SLC and the single-line business PICC into the business SLC. Thus, while small non-facilities-based carriers serving residential and small business consumers still will not receive any immediate benefit from the substantial access charge reductions the proponents of the CALLS Modified Proposal contend will occur on July 1, 2000, they will at least not be burdened with increased PICC charges. Unfortunately, the CALLS Modified Proposal, also like the original CALLS proposal before it, retains the multiline business PICC, which is currently scheduled to increase to \$5.75 on July 1, 2000. Therefore, as to multiline business consumers -- which constitute the large majority of the customers of TRA’s non-facilities-based carrier members – non-facilities-based IXCs will not only not receive any immediate benefit from the July 1 access charge reductions, but will experience an immediate increase in access costs commensurate with the scheduled increase in the multiline business PICC.

Accordingly, for the remaining terms of their current service arrangements -- which can extend for months and often years -- small non-facilities-based IXCs will be placed at yet a further substantial competitive disadvantage under an access charge reform plan concocted with the concurrence of their largest facilities-based competitors. As TRA long ago emphasized in its still-pending petition seeking reconsideration of the Commission's *First Report and Order* in this proceeding,⁸ the multiline business PICC has had, and continues to have, a disproportionate adverse competitive impact on smaller IXCs. As TRA explained, the small to mid-size business customers which small non-facilities-based carriers generally serve tend to be highly resistant to increases in telecommunications costs, particularly increases in monthly recurring charges which are magnified in overall impact given the lower usage volumes characteristic of small business users. Because smaller carriers have neither the traffic volumes over which to spread the multiline business PICCs levied upon them by LECs nor the operating margins within which to absorb these charges, they are the least well positioned among IXCs to ameliorate the cost impact of the multiline business PICC on small business users.

⁸ Petition for Reconsideration filed by the Telecommunications Resellers Association in CC Docket No. 96-262 on July 11, 1997.

Moreover, as TRA has repeatedly pointed out, the multiline business PICC, as originally adopted, was discriminatory, squarely at odds with the principles of cost-causation articulated by the Commission in the *First Report and Order* in this proceeding,⁹ and constitutes the very type of implicit subsidy the Congress directed the Commission to eliminate. The original multi-line business PICC was discriminatory because it assessed a charge more than five times that levied on primary residential and single-line business lines, even though the facilities utilized in each instance were identical. The multiline business PICC was at odds with the Commission's asserted objective of recovering costs from cost-causers because the costs being recovered by the multi-line business PICC were not necessarily associated with multi-line business lines at all; indeed, the Commission has acknowledged that this charge would also recover "common line costs that incumbent LECs incur to serve single-line customers."¹⁰ And such a contribution, of course, constitutes an implicit subsidy. In fact, the Commission frankly stated that multi-line business users would be funding the recovery of cost for which they were not responsible in order to "avoid an adverse impact on residential customers."¹¹

Exclusive retention of the multiline business PICC would only exacerbate these existent flaws, increasing the level of discrimination, the disconnect between cost causation and cost recovery, and the preservation of implicit subsidies. More critically from the perspective of TRA's non-facilities-based IXC members, it would inflict disproportionate competitive harm on the small

⁹ Access Charge Reform (First Report and Order), 12 FCC Rcd. 15982 (1997), *recon.* 12 FCC Rcd. 10119 (1997), *second recon.* 12 FCC Rcd. 16606 (1997), *third recon.* 12 FCC Rcd. 22430, *fourth recon.* 13 FCC Rcd. 5318, *recon. pending pet for stay denied* FCC 97-216 (June 18, 1997), *aff'd sub nom. Southwestern Bell Telephone Company v. FCC*, 153 F.3d 523 (8th Cir. 1998).

¹⁰ Id. at ¶ 101.

¹¹ Id.

carrier community by burdening it with additional access costs while non-facilities-based IXCs were being denied the benefit of reduced access charges.

It is no answer to declare that the multiline business PICC is expected to disappear over a period of years because the competitive damage would have long been done by the time the multiline business PICC ceases to exist. Nor is it an answer to suggest that non-facilities-based carriers will eventually receive the benefits of the July 1 access charge reductions following contract expiration and renegotiation because here too the competitive damage will already have been inflicted. And it certainly is not an answer that non-facilities-based IXCs should have negotiated access charge reduction “pass-throughs” in their existent contracts because these small providers lack the leverage to demand such provisions and irregardless should not have to protect themselves against competitive damage inflicted by an agency charged with removing barriers to their participation in the telecommunications industry.

If Section 257 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, means anything, it precludes the Commission from erecting new barriers to participation by “entrepreneurs and other small businesses” in the telecommunications industry. Adoption of the CALLS Modified Proposal, as currently constituted, would produce just such a result. Knowing that small non-facilities-based interexchange carriers will be denied the direct and immediate benefit of the access charge reductions the plan would produce, the Commission, by adopting the CALLS Modified Proposal as currently constituted, would nonetheless be imposing upon these entrepreneurial providers an increased monthly recurring charge made all the worse because it is limited to the customers they disproportionately serve. It is difficult to image a more targeted and effective barrier to erect.

The CALLS Modified Proposal could be readily modified to eliminate this looming impediment. The most effective “fix” would be to require facilities-based IXC’s to pass through to their non-facilities-based wholesale customers, on a dollar-for-dollar basis, the access charge cost savings the CALLS Modified Proposal would produce. Such an approach would be consistent with various state laws and regulations which currently require IXC’s to pass through access charge savings to their customers.¹² A less effective, albeit still helpful, “fix” would be to treat the multiline business PICC in a manner consistent with the treatment of the residential and single line business PICC under the CALLS Modified Proposal and fold it into the business SLC. The optimum approach from the perspective of the small non-facilities-based IXC would be a combination of the two “fixes,” which would fully level the uneven playing field created by adoption of the multiline business PICC.

¹² See, e.g., Nebraska Revised Statutes, § 75-609(3); Kansas Telecommunications Act, K.S.A. 66-2005(v).

While it continues to pay lip service to the under-representation of small business in the telecommunications industry,¹³ the Commission's track record of late with respect to this essential issue has not been impressive. Whether it be its effective denial of xDSL resale opportunities¹⁴ or the limitations it imposed on the availability of the UNE-platform in densely populated markets¹⁵ or its proposal to require non-facilities-based IXC's to obtain and load carrier identification codes ("CIC") nationwide,¹⁶ the Commission has repeatedly undercut "entrepreneurs and other small businesses" in their efforts to compete in the telecommunications market through ill-advised regulatory actions. It is time for the Commission to heed the Congressional mandate embodied in Section 257 and at least cease taking actions which directly hinder the competitive activities of small carriers. The CALLS Modified Proposal provides the Commission with an excellent vehicle to initiate such an undertaking.

By reason of the foregoing, the Telecommunications Resellers Association strongly

¹³ Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses (Report), 12 FCC Rcd 16802 at ¶ 5 ("small businesses represent only a small portion of the businesses in telecommunications.").

¹⁴ Deployment of Wireline Services Offering Advanced Telecommunications Capability (Second Report and Order), 14 FCC Rcd. 14712 (1999); Ameritech Corporation, Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24 25, 63, 90, 95, and 101 of the Commission's Rules, 14 FCC Rcd. 14712, ¶¶ 444 - 76 (1999), *appeal pending* Telecommunications Resellers Association v. FCC, Case No. 99-1441 (D.C.Cir. November 8, 1999).

¹⁵ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (Third Report and Order), CC Docket No. 96-98, FCC 99-238, ¶¶ 276 - 99 (released November 5, 1999), *recon. pending, petition for review filed* United States Telecom Association v. FCC, Case No. 00-1015 (D.C.Cir. January 15, 2000).

¹⁶ Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 (Further Notice of Proposed Rulemaking), 14 FCC Rcd. 1508, ¶¶ 145 - 165 (1998)

urges the Commission to further modify the CALLS Modified Proposal (i) to treat the multiline PICC in a manner consistent with the treatment of the residential and single line business PICC

under the plan and (ii) to require facilities-based IXCs to pass through to their wholesale customers, on a dollar-for-dollar basis, the access cost reductions resulting from implementation of the plan.

Respectfully submitted,

**TELECOMMUNICATIONS
RESELLERS ASSOCIATION**

By: _____ /s/Charles C. Hunter

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, N.W.
Suite 701
Washington, D.C. 20006
(202) 293-2500

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Its Attorneys