

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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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
)	

Comments of Level 3 Communications, LLC

Level 3 Communications, LLC ("Level 3") submits these Comments on the revised access charge and universal service reform proposal submitted by the Coalition for Affordable Local and Long Distance Services ("CALLS"). As revised, the CALLS proposal is still not in the public interest. The Commission should reject CALLS' all-or-nothing ultimatum and accelerate the backstop it adopted in 1997 by requiring incumbent local exchange carriers ("ILECs") to provide cost studies that justify the rates they assess for providing access to the local network.

I. SUMMARY

Absent from CALLS' revised proposal is any attempt to address the concerns of Level 3, the California Commenters, Joint Consumers, WUTC, MCI WorldCom or others that questioned CALLS' target switched access rates, the size of the proposed interstate access related universal service fund ("IAUSF"), and/or the length of the plan. To the contrary, CALLS' revised plan now precludes the Commission from implementing both planned and proposed pro-competitive reforms to reduce access charges to cost-based rates. It also precludes the Commission from quantifying the

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amount of universal service support embedded in access charges. CALLS would repeal the Commission's finding that ILECs must submit cost studies in 2001 to justify their rates. CALLS also prohibits any adjustments to access rates based on the Commission's property record audits, other audits, or revisions to the prescribed rate of return. These absolute prohibitions on "tinkering" with access charges, together with the revenue-shifting accomplished via the IAUSF, almost guarantee ILEC revenues from access will remain static for five years.

By failing to engage competitive LECs and packet-based providers in efforts to revise their proposal, the members of CALLS have doomed their plan to fail. Even the consumer groups that supported the revised plan are reported to be withdrawing their support.¹ Adopting CALLS would postpone, for five years, realization of the economic benefits promised by the pro-competitive, deregulatory 1996 Act. The Commission must reject the plan.

II. COST STUDIES REQUIRED BY CALLS SHOULD NOT BE LIMITED TO A REVIEW OF COMMON LINE COSTS RECOVERED IN THE SLC

Under current Commission rules, ILECs will be required to submit cost studies by Feb. 8, 2001, to justify their access rates if the Commission finds market forces have not reduced such rates to cost. As Level 3 and others argued when CALLS first submitted its plan, a comparison of access rates with the cost-based rates set by state commissions for the identical function of transport and

¹ See *Consumer Groups Hit Industry Access Reform Proposal*, Communications Daily, 3-4 (March 21, 2000); *Changes in CALLS Plan Proposed by Coalition Members*, Communications Daily, 7-8 (March 31, 2000).

termination of local traffic shows that the market has failed to drive access rates to cost.² While CALLS now incorporates a Commission review of ILEC costs in 2001, that review is limited to common line costs recovered in the Subscriber Line Charge ("SLC"). CALLS prohibits the Commission from conducting a cost review of any other access rate elements, whether for switched or special access. Furthermore, CALLS prohibits the Commission from making any changes to the rates in the proposal. For instance, if the Commission's property audit finds that ILECs overstated costs and the overstatement resulted in inflated rates, CALLS would prohibit the Commission from making corrective adjustments based on that finding for five years. It also prohibits the Commission from requiring ILECs to submit cost studies to justify access rates as required by the prescriptive backdrop adopted by the Commission in 1997.³ In the dynamically changing communications industry, locking in rates for five years ensures that regulators, not market forces, will dictate which companies win or lose.

The Commission should not postpone the deadline it set for itself in 1997. It should make a determination that market forces have failed to reduce ILEC access rates. The Commission should request comment on whether that failure should be addressed by setting cost-based access rates using

² See Level 3 Comments at 7 (Nov. 12, 1999).

³ See *Memorandum in Support of the Revised Plan of the Coalition for Affordable Local and Long Distance Service, Modified Universal Service and Access Reform Proposal*, 21, (March 8, 2000).

its hybrid cost proxy model, using ILEC cost studies, or requiring ILEC access rates to mirror the cost-based rates for transport and termination of local traffic set by state commissions.⁴

III. THE REVISED PROPOSAL DOES NOTHING TO ADDRESS PARTIES' CONCERNS ABOUT THE IAUSF

A. CALLS Does not Recognize the Adverse Impacts Its Revised Proposal Could Have on Consumers Through the IAUSF

In its initial proposal, CALLS increased the SLC caps for residential and single-line business lines from \$3.50 to \$5.50 in 2000, \$6.25 in 2001, \$6.75 in 2002, and \$7.00 in 2003. The revised proposal reduces the increase by \$1.15 in 2000, \$1.25 in 2001, \$0.75 in 2002, and \$0.50 in 2003. While CALLS acknowledges that the smaller increases in SLCs will result in lost revenue *vis-a-vis* the initial proposal, CALLS makes no attempt to quantify such lost revenue or the impact it may have on the size of the IAUSF. CALLS implies that the IAUSF will be set at \$650 million annually through 2005, regardless of whether \$650 million provides too much funding or additional funding is needed. Because CALLS permits telecommunications carriers to pass on the costs of IAUSF contributions to end users,⁵ end users will bear the brunt of any increase in IAUSF funding. CALLS' failure to quantify the IAUSF increase necessary to fund a lower SLC thus also permits CALLS to ignore the detrimental impact such increases would have on consumers.

⁴ See Level 3 Comments at 9-10 (Nov. 12, 1999).

⁵ See *Memorandum in Support of the Revised Plan of the Coalition for Affordable Local and Long Distance Service, Modified Universal Service and Access Reform Proposal*, 1, (March 8, 2000) (As of July 1, 2000, price cap LECs may establish a separate rate element to recover universal service fund contributions); proposed rule 69.158.

B. The IAUSF Fails the Sufficiency Test

CALLS' latest attempt to justify the \$650 million annual IAUSF proves that their figure is no more than a compromise between CALLS' members. CALLS argues that establishing an annual fund of \$650 billion meets the statutory criteria that subsidies be explicit and predictable. But this argument fails because establishing an annual fund of \$1 billion would also meet the explicit and predictable principles of Section 254. It is not enough for the IAUSF to meet two statutory principles for universal service support.

Under the Act, the Commission must establish sufficient, explicit, and predictable support for universal service. Because the term "sufficient" appears in Section 254(e), sufficiency of universal service support is a direct statutory command, not a mere statement of principle.⁶ The Act does not permit the Commission to either over-fund or under-fund universal service support. As the Fifth Circuit stated:

excessive funding may itself violate the sufficiency requirements of the Act. Because universal service is funded by a general pool subsidized by all telecommunications providers – and thus indirectly by the customers – excess subsidization in some cases may detract from universal service by causing rates unnecessarily to rise, thereby pricing some consumers out of the market.⁷

CALLS cannot show that its proposed IAUSF is "sufficient," as opposed to excessive, because it makes no attempt to quantify the amount of universal service support implicit in access charges. CALLS justifies this failure by quoting an estimated range of implicit support and picking an

⁶ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 412 (5th Cir. 1999).

⁷ *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000).

estimate near the middle of that range. However, as Level 3 and others argued, the Commission has many tools, including its audit power and Synthesis Cost Proxy Model, that could be used to quantify, rather than estimate, the amount of support embedded in access charges.

Level 3 acknowledges that the regulatory superstructure upon which access charges are based makes it difficult to determine the amount of cost versus subsidy versus profit that is recovered in access rates. However, the Commission has determined that the best means to ensure sufficient support for universal service is to base such support on forward-looking costs. This support methodology is being implemented for the non-rural high cost fund, and should also be implemented for the IAUSF. CALLS presents no reason why the Commission should base universal service support on forward-looking costs in the high cost fund but not the IAUSF. Whether implicit support for universal service is embedded in artificial local rates for rural, urban, business and residential consumers, or in artificial rates for carrier's carrier charges, it is the same implicit support prohibited by Section 254. The Commission cannot rationally treat similar subsidies differently. The Commission must apply its forward-looking cost principles to all subsidies.

While the Commission was developing its cost proxy model, it had the authority and discretion to adopt an interim method of providing universal service support. However, now that the Commission has completed its cost proxy model and four years have passed since the 1996 Act became law, there is no reason to adopt an additional "interim" five-year mechanism that estimates support implicit in access charges. The Commission should use its available tools to quantify, remove and make explicit subsidies embedded in access charges.

IV. CALLS' FIVE-YEAR GLIDE PATH IS TOO LONG

A plan that reduces access charges to target rates that are still above cost nine years after passage of the 1996 Act is counter to the statutory criteria that universal service support be made explicit. The Commission has found that implicit subsidies in access rates are inconsistent with competitive markets and opening local markets to competition.⁸ While Congress may not have required the Commission to make support explicit within 15 months of Feb. 8, 1996, a nine-year transition to explicit support is not reasonable and would undermine the Commission's, and Congress', goal of promoting competition in local markets. As the Fifth Circuit has stated, the Commission "must see to it that both universal service and local competition are realized; one cannot be sacrificed in favor of the other."⁹

As Level 3 argued in its initial comments,¹⁰ because CALLS does not go far enough to bring access charges to costs, it makes only a half-hearted attempt to address the circuit-switched versus packet-switched dilemma facing regulators. Saddling emerging Internet- and packet-based technologies with current access charges, or access charges as revised by the CALLS proposal, would slow the deployment of Internet- and packet-based services to the detriment of consumers and the economy. Yet perpetuation of separate access and interconnection rights for telecommunications

⁸ *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982, ¶¶ 32-35 (1997) ("*Access Charge Reform Order*"), *aff'd sub nom. Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998).

⁹ *Alenco Communications, Inc.*, 201 F.3d at 615.

¹⁰ *See* Level 3 Comments at 14-18 (Nov. 12, 1999).

and information service providers may also stifle growth and innovation in communications services. The only solution to this dilemma is to bring carrier's carrier compensation rates down to cost and include all providers of communications services, regardless of the protocol used, in the system. CALLS' five-year glide path unnecessarily prolongs the reduction of access rates to cost (if in fact CALLS reaches cost at all), thereby postponing the integration of information and telecommunications services into a seamless communications network accessible to all Americans.

VI. CONCLUSION

Level 3 urges the Commission to reject CALLS' revised proposal. Rather than adopting CALLS' all-or-nothing ultimatum, the Commission should take decisive action to bring access charges down to forward-looking cost based rates, remove universal service subsidies implicit in access charges, and lay the foundation for an integrated communications network.

Respectfully submitted,



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Certificate of Service

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