

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
)	

**BELL ATLANTIC¹ REPLY COMMENTS ON THE COALITION FOR
AFFORDABLE LOCAL AND LONG DISTANCE SERVICE PROPOSAL**

The original access charge reform proposal of the Coalition for Affordable Local and Long Distance Service (“CALLS”) would benefit consumers by lowering the cost of interstate phone services, especially for low income consumers. It also would substantially restructure access charges to spur investment in rural areas and simplify charges for all consumers. The changes to the plan that have been proposed by CALLS build on these consumer benefits, will provide even greater rate reductions, and offer additional benefits to those consumers who make few or no long distance calls. The result is a proposal that will cut the phone bill of all types of consumers. And low volume long distance callers will receive the most dramatic benefit – with AT&T basic

¹ The Bell Atlantic telephone companies (“Bell Atlantic”) are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

rate payers that make no long distance calls getting their interstate phone charges cut in half.

Not surprisingly, this modified plan has attracted praise from a variety of sources. Rainbow Push and the Citizenship Education Fund explain (at 1) that they want to now add their voices “to those consumers, disability and minority groups supporting the modified CALLS proposal.” In particular, they note that they were especially pleased “that the Coalition moved forward on a commitment to consumer education” and that CALLS “would drop the local Universal Service Fund charge for lifeline consumers.” *Id.* Similarly the Iowa Utilities Board (at 2) commended the CALLS members “for listening and responding to many of the concerns raised by the IUB and other parties.”

It isn't just stakeholders representing consumers that recognize the improvements in the modified plan. The American Petroleum Institute concurs that the modified plan “provides a significant and principled resolution to a series of contentious disagreements and debate that have persisted since the adoption of price cap regulation.” And the Enterprise Networking Technologies Users Association, representing 250 of the largest business users of telecommunications services concludes (at 1) that the “modifications build upon the original [plan] by securing the long-term survivability of an explicit competitively neutral universal service mechanism, promoting consumer understanding of billing, maintaining a sound national telecommunications policy, and benefiting competition.”

While some parties still object even to the modified CALLS proposal, that should not be surprising because the CALLS proposal is unprecedented on two counts. First, because of the scope of the plan, which proposes a comprehensive solution to access

reform, price cap and universal service issues. Second, because of the genesis of the plan, which is offered as a compromise solution by a coalition of local and long distance carriers that otherwise have sharply conflicting interests. Such an unprecedented proposal will always attract naysayers claiming that the proposal must be altered to accommodate their special interest. It was only by compromising their own interests that the parties were able to reach a consensus proposal. Moreover, this proposal, even more than the original plan, also addresses the interests of a variety of stakeholders that are not members of CALLS – and most particularly residential phone service customers.

I. The Review Of The CALLS Proposal Has Been An Open Process

One particular criticism that reflects the unusual nature of the CALLS proposal is a complaint that the process is unreasonable because other parties were not part of CALLS. In fact, the Commission review of the CALLS proposal has resulted in broader participation than a traditional rulemaking.

It would be impossible to attempt to achieve full consensus among every potential stakeholder prior to submitting a proposed access reform plan. Indeed some stakeholders, such as residential consumers, have multiple parties that purport to represent them, often with conflicting views.

Nonetheless, the Commission has provided an open process that has allowed all parties to participate. The Commission has noticed two full comment cycles on iterations of the CALLS proposal, with approximately 40 parties outside the CALLS signatories filing in just the last round alone. Moreover, the plan itself reflects the input of parties outside the coalition. For example, just the changes in the modified proposal reflect hundreds of millions of dollars in cuts in access revenues in the first year of the plan

alone. They reflect caps on the subscriber line charge that are lower than were authorized under the original plan, an interim cost review to verify changes in those caps, reductions in the price cap for special access services, and a commitment to develop a consumer education plan. All of these changes were motivated, not by the particular interests of the CALLS signatories, but rather as a response to input from other groups participating in the process. The end result is a plan that is a true compromise – addressing concerns of almost every constituency that is affected by the plan.

II. The CALLS Price Cuts Go Far Beyond The “Status Quo”

In exchange for a five year period of relative regulatory stability, the local exchange carriers supporting the CALLS proposal have agreed to price cuts that far exceed what could otherwise be compelled. While some parties argue that the “status quo” offers greater reductions than the CALLS proposal, they are making their comparisons based on unrealistic and unsustainable views of what the Commission might do under the “status quo.”

In fact, there is no “status quo.” A federal court has already rejected the Commission’s justification for last year’s annual price cap reduction. Absent a CALLS agreement, the Commission is compelled to justify anew any annual reduction. Indeed, absent a CALLS agreement, the Commission must determine what the annual reduction for the past year should have been, and allow for rate adjustments to compensate local exchange carriers for any price reductions in excess of that level.

Through CALLS, the local exchange carriers have agreed to continued annual reductions (called the X factor in price cap regulation) of 6.5 percent until they reach an interstate local switching price of \$.0055. The local exchange carriers have agreed to this

glide-path toward a negotiated price despite the fact that productivity data would not support such dramatic price cuts under the more traditional productivity analysis. Indeed, an update of the Commission’s own model dictates a productivity-based X factor of around four percent. *See* F. Gollop, “Economic Assessment of the 1999 X-Factor Study Proposed By the FCC Staff” at Table 6, Attachment 2 to USTA Comments in CC Dkt. No. 94-1 (filed Jan. 7, 2000); *see also* F. Gollop, “Technical Report: Replication and Update of the X-Factor Constructed Under FCC Rules” (Attachment 6 to USTA Comments).

Parties arguing that, absent the CALLS agreement, the Commission could require continued annual reductions of 6.5 percent or even higher are ignoring the record. The D.C. Circuit Court of Appeals has already rejected the Commission’s previous effort to justify a 6.5 percent offset. Since that time, the results of the Commission’s productivity model – which was upheld by the Court – are significantly lower. As a result, the only way parties have been able to argue for annual reductions of greater than four percent is to manipulate data in ways that have been previously rejected by the Commission, the Court or both. There simply is no basis on which the Commission could successfully respond to the Court’s remand order by performing the same thoroughly discredited and previously rejected manipulations.

Regardless, under CALLS, the local exchange carriers have gone beyond even the 6.5 percent annual reductions. In the first year of the plan, they have agreed to eliminate all residential and single line business Presubscribed Interexchange Carrier Charges (“PICCs”), only partially offset by a more modest increase in the subscriber line charge.² Moreover,

² The average PICC for all residence and single line business end users is approximately \$1.14, while the allowed increase in the first year subscriber line charge cap is \$0.85.

even after a targeted rate level for switched access has been achieved, local exchange carriers have agreed to continued reductions in their already competitive special access services.

As a result, the reductions proposed here are front-loaded and are far greater than anything that could otherwise be compelled absent an agreement by the carriers themselves. Nonetheless, Bell Atlantic is supporting this voluntary plan because the trade-off of lower price caps is offset by a period of relative regulatory stability. The CALLS plan is more comprehensive than prior regulatory changes, and the price caps are reasonably predictable.

Indeed, Bell Atlantic's support is conditioned on its understanding of the current regulatory landscape, including its expectation that if the CALLS plan were to be adopted, the price changes outlined in CALLS would be the only substantial changes to interstate access rates. In particular, Bell Atlantic supports the Commission's parallel procedure to deregulate depreciation and terminate the audits of Bell Atlantic's continuing property records. Leaving those audits pending after the adoption of CALLS makes no policy sense and would leave an unreasonable cloud of uncertainty over local exchange carriers' rate structure. *See 1998 Biennial Regulatory Review – Review of Depreciation Requirements*, CC Dkt. No. 98-137, Comments of Bell Atlantic on Notice of Proposed Rulemaking (filed Apr. 17, 2000).

Several parties argue that, when adopted, the CALLS plan should be mandatory for all price cap-regulated local exchange carriers. But this ignores the nature of the compromises inherent in CALLS. The CALLS plan was proposed as a voluntary plan, and Bell Atlantic's support has been based on its understanding of the plan as a whole – including the right to make a final election at the time of adoption. *See proposed Rule*

54.802(c) (allowing local exchange carriers the option to elect into the CALLS plan once it is approved by the Commission). Indeed, if this were not a voluntary agreement, Bell Atlantic would offer evidence opposing the magnitude of individual rate cuts included in CALLS. If the Commission were to compel participation, it may only do so based on a further rulemaking that would give carriers the opportunity to present additional evidence.

III. Other Modifications to the CALLS Proposal Should Be Rejected

In their joint comments, the Texas Office of Public Utility Counsel, the CFA and the Consumers Union (“Joint Comments”), claim that subscriber line charges should be reduced from the levels authorized in CALLS because a forward looking cost model yields costs that are below local exchange carriers’ actual costs. But this argument is based on a price setting methodology that has not been endorsed by the Commission or a single court for use in setting retail prices. While the Commission has used models to compare relative costs (in setting universal service support) and has supported forward looking costs as a basis for unbundled network element pricing, it has never endorsed the use of models to set maximum allowable retail prices.³ To do so would substitute the price setting judgment of centralized government economic planners in place of private business enterprises – a concept that this country has rejected. Indeed, if the FCC were to require economic model-based prices for these services, it would be compelled to allow price increases in other services in order to give carriers an opportunity to recover their actual investment. *See, e.g., Duquesne Light Co. v. Barasch*, 488 U.S. 299, 317 (J. Scalia concurring, 1989) (determining

³ While local exchange carriers have agreed under the modified CALLS proposal to submit economic data that include (but are not limited to) forward looking costs as part of a safeguard check on the progression (already included in the CALLS plan) of the subscriber line charge caps above \$5.00 – they will not be used to set price levels (or even caps on prices).

whether a company has been provided a fair return on its regulated rates can only be done by comparison to a measure of “relevant investment”).

Moreover, the Joint Comments rely on a model that does not even purport to calculate a specific carrier’s forward looking costs. The model was adopted by the Commission for comparisons of costs in different areas to calculate a universal service fund that is portable and not tied to a specific carrier. It is based on an idealized network that does not exist. In fact, the Commission has warned against the use of this model to calculate unbundled network element prices, much less to calculate limits on retail prices. *See Federal-State Joint Board on Universal Service*, Ninth Report and Order, ¶ 41 (rel. Nov. 2, 1999).

MCI raises the extraneous issue of limitations on conversion of competitive special access service into unbundled network elements. The Commission is already considering those issues in a separate docket where they have been thoroughly refuted by Bell Atlantic and others, and there is no reason to repeat those responses here. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Dkt. No. 96-98: Comments of Bell Atlantic (filed January 19, 2000); Reply Comments of Bell Atlantic on Further Notice (filed Feb. 18, 2000) (both incorporated here by reference).⁴

MCI also complains retaining the lower formula adjustment protection is unreasonable. But the proposal to retain that protection was only offered in conjunction

⁴ MCI also posits here the possibility of the Commission clarifying and extending the current restrictions on conversion of special access circuits beyond June 30, 2000. MCI Comments at 9-10. Such an extension is lawful (*see* comments cited above) and would avoid a harmful market disruption from occurring at the same time the CALLS plan is scheduled to go into effect.

with the significant additional rate cuts included in the modified CALLS proposal. Moreover, in the first year of the plan – when the largest rate cuts take place – no lower formula adjustment is allowed. Regardless, the lower formula adjustment mechanism is a very limited protection; it does not allow any rate adjustment until a carrier's regulated earnings are at least one hundred basis points below the authorized return, and even then any adjustment is postponed for a year and is only temporary. Indeed, in prior years of price cap regulation, the lower formula adjustment has been very rarely invoked. With the predetermined price changes proposed in CALLS, that protection is even less likely to be invoked except in extreme circumstances (which, of course is why it's needed).

Finally, Ad Hoc complains that if local carriers face an exogenous cost increase, any price adjustment will be targeted away from local switching. This change is a necessary result of one premise of the CALLS plan – that local carriers are moving switched access rates toward an agreed upon price level. Consumers will benefit from this move because the participating long distance carriers (which represent most of the consumer market) have committed to pass through those reductions to provide concrete benefits to residential customers. Moreover, any change in exogenous costs does not change the caps on subscriber line charges, so consumers are insulated from rate increases that were not contemplated at the start of CALLS.

Conclusion

The Commission should adopt the CALLS proposal as modified by members of the coalition.

Respectfully submitted,

/S/

Edward Shakin

Michael E. Glover
Of Counsel

1320 North Court House Road
Eighth Floor
Arlington, VA 22201
(703) 974-4864

Attorney for the
Bell Atlantic telephone companies

April 17, 2000