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TIME WARNER TELECOM

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

May 8, 2000

EX PARTE

VIA COURIER

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Proposal for Access Charge and Universal Service Reform Proposed by Coalition for Affordable Local and Long Distance Services ("CALLS"), CC Docket Nos. 96-262, 94-1, 99-249, 96-45

Dear Ms. Salas:

During recent meetings with FCC Commissioners, legal advisors and the Common Carrier Bureau, Time Warner Telecom has argued that, if the Commission decides to adopt the CALLS proposal, it should implement a more gradual reduction in certain price cap ILEC access charges than has been proposed by CALLS. Such a modification to the CALLS proposal would be sound policy because it would help to sustain the preconditions for facilities-based entry into the local market. Moreover, in the past, the Commission has consistently and conscientiously avoided implemented rate changes that would result in significant marketplace dislocation. Virtually every time the Commission has encountered a situation in which access charge reform would harm competition if instituted in a flash-cut manner, it has instead adopted a phased-in approach. The following are some of the numerous examples of this long-standing policy.

- In the UNE Remand Order, the Commission established an interim prohibition on the conversion of dedicated entrance facilities to unbundled network elements because permitting such conversion "could cause a significant reduction of the incumbent LECs' special access revenues prior to full implementation of access charge and universal service reform." Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd. 3696, ¶ 489 (1999). In a Supplemental Order, the Commission extended this restriction to cover unbundled loop/transport combinations used as substitutes for special access services, a decision the Commission concluded was consistent with its policy of preventing major marketplace dislocations when implementing the provisions of the 1996 Act. See Implementation of the Local Competition Provisions of the Telecommunications Act of 1999, Supplemental Order, 15 FCC Rcd. 1760, ¶ 7 (1999).

- In establishing its policy for the elimination of implicit subsidies in interstate access charges, the Commission decided to adopt a gradual, market-based approach, rather than a flash-cut prescriptive approach, in part because eliminating all implicit subsidies at one time would have had an inequitable impact on the ILEC revenues. See Access Charge Reform, First Report and Order, 12 FCC Rcd. 15982, ¶ 9 (1997).

- In adopting a cost-based transport rate structure, the Commission expressly avoided a flash-cut to cost-based tandem-switched transport rates paid by smaller IXCs. Rather, the Commission gradually phased out the system of subsidized tandem-switched transport over several years, an approach it justified as necessary to "facilitate the development of a competitive marketplace by moving incumbent LEC rates toward cost-based rates." Access Charge Reform, First Report and Order, 12 FCC Rcd. 15982, ¶ 234 (1997).

- In instituting PICC charges, the Commission allowed carriers to phase-in the charges over several years "in order to provide price cap LECs, interexchange carriers, and end users with adequate time to adjust to the new rate structure." Access Charge Reform, Third Order on Reconsideration, 13 FCC Rcd. 21525, ¶ 3 (1998).

- In approving special access rates to be set in U S West's territory across the BOC's entire region rather than on an operating company basis (thus apparently increasing rates significantly in certain areas), the Common Carrier Bureau allowed U S West to phase-in its revised rates in four phases over a two year period, finding that "the phase in sought by U S West appears beneficial to its [primarily carrier] customers in that rates will not increase sharply." Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company - Petition for Waiver of Section 65.702(c), Order, 3 FCC Rcd. 4805 (1988).

- In eliminating the pricing differential between the line side and trunk side connection sub-elements of the local switching element, the Commission instituted a phased-in approach in response to arguments from AT&T's competitors ("other common carriers" or "OCCs") that the resulting increase in OCC costs would harm competition. The Commission found that the phased-in approach more accurately reflected cost causational factors than a flash cut approach, and it concluded that "[a] flash cut change in either separations or access charges would also produce hardship for some rate payers and carriers that can be mitigated by the phased introduction of the new rules. We are mindful of the competitive impact of such a change and will accordingly exercise caution in introducing rule changes that will inevitably produce some adverse effects for carriers that compete with AT&T." Amendment of Part 69 of the Commission's Rules and Regulations, Access Charges, to

Conform it with Part 36, Jurisdictional Separations, Report and Order, 2 FCC Rcd. 6447, ¶ 91 (1987).

- In implementing reforms designed to ensure that discounted special access rates paid by OCCs would increase to cover the cost of the service, the Commission found that the sudden change to fully cost-based special access rates would threaten the viability of these carriers, and allowed the rates to be phased-in. The Commission concluded that the phased-in approach "reasonably balanced the potential harm to the public interest that would result from abrupt rate changes against the need to move swiftly toward cost-based rates which more fairly and efficiently allocate costs among customers." Investigation of Access and Divestiture Related Tariffs, Memorandum Opinion and Order, CC Dkt. No. 83-1145, at ¶ 61, 1986 WL 292562 (FCC) (1986).

- In instituting a flat End User Common Line charge, the Commission found that a predetermined transition period was appropriate because it would avoid disruption to end users and would provide some certainty to those making investments in communications technologies. See MTS and WATS Market Structure, Third Report and Order, 93 FCC 2d. 241, ¶¶ 4, 172-173 (1983).

As these examples demonstrate, the Commission has consistently instituted transitional mechanisms to allow carriers and end users to adjust to major changes in regulated rates. The modified CALLS proposal falls squarely within the scope of these precedents. TWTC calculates that if CALLS were implemented in July 2000, switched access rates would drop immediately by 35% on a national averaged basis. CALLS allows price cap companies to recover most of these reductions through increases in residential subscriber line charges and reimbursement from a $650 million universal service fund. However, the full impact of the switched access rate reductions will be directly felt by facilities-based CLECs in a way that is certain to harm competition.

Time Warner Telecom is not seeking a price umbrella, but is rather asking the Commission, in keeping with the many historical precedents cited above, to modify the CALLS proposal to provide for a more moderate transition to lower access charges. In fact, the ALTS/TWTC proposal would immediately provide for greater switched access rate reductiions than the current price cap rules, and it would also embrace the same target rates as the CALLS proposal. The difference is that the ALTS/TWTC proposal will provide for a more gradual transition to the target rates in a way that will preserve competition.

Pursuant to Section 1.1206(b) of the Commission's rules, I am filing an original and two copies of this letter for inclusion in the docket for the above-referenced proceeding. Please do not hesitate to contact the undersigned with any questions regarding this matter.

Sincerely,

Don Shepheard /TF

Don Shepheard

cc: Lawrence Strickling
Carol Mattey
Yog Varma
Jane Jackson
Rich Lerner
Katherine Schroder
Jack Zinman
Aaron Goldschmidt
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