

**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

**PETITION FOR RECONSIDERATION BY THE
TEXAS OFFICE OF PUBLIC UTILITY COUNSEL**

COMES NOW, the Texas Office of Public Utility Counsel (Texas OPC) and files this its Petition for Reconsideration in the above-styled proceeding. Pursuant to 47 C.F.R. § 1.429, Texas OPC respectfully seeks reconsideration as to one issue, concerning monitoring, in Access Charge Reform & Price Cap Performance Review for Local Exchange Carriers, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1; Low-Volume Long Distance Users, Report and Order in CC Docket No. 99-249; and Federal-State Joint Board on Universal Service, Eleventh Report and Order in CC Docket No. 96-45, FCC 00-193 (published on June 21, 2000 at 65 Fed. Reg. 38683-38704) [“CALLS Order”].

The FCC should reconsider its CALLS Order decision to the extent that the FCC did not require in that Order any actual monitoring or oversight of the IXC implementation of the flow through of the mandated access charge reductions. CALLS Order ¶¶ 246-47. Texas OPC submits that the FCC did not implement monitoring because of its belief that the written commitments of AT&T and Sprint that “the IXCs will pass through these access charge reductions in a manner that benefits both residential and business customers,” CALLS Order ¶

246, would be sufficient to ensure compliance with the flow through provisions, which were touted as one of the centerpieces of the CALLS proposal.

Moreover, the participants to the CALLS proposal touted it as in the public interest, among other reasons, because consumers would definitely benefit from the access charge reductions by a flow-through throughout the term of the CALLS plan. As a result, the Commission was led to believe that no one class of subscribers would pay for the CALLS reductions of another class through subsequent long distance rate re-structuring. Consequently, pursuant to the Order issued in this proceeding on May 31, 2000, adopting the CALLS proposal, as modified, the FCC *ordered* AT&T and Sprint “to comply with all the voluntary commitments they made in their respective February 25, 2000, and March 30, 2000, letters. If they fail to do so, the carriers may be subject to any of the remedies available under the Act, including fines, forfeitures, or the rejection of any non-conforming rates.” CALLS Order ¶ 247.

However, on that very same day that the Commission was releasing its Order, AT&T was filing notice of its intent to raise long distance rates for millions of its customers by increasing its per minute charges for Monday through Saturday. While that proposal was later withdrawn, even the new proposal has raised questions about the sincerity of AT&T’s commitment to flow through. The new rates proposed to increase per minute charges for the same customers for whom AT&T committed to eliminate minimum usage charges. The creation of an informal compliance team is a step in the right direction, but does not go far enough because no explicit provision was made for a public proceeding or formal input. Moreover, it is not clear what actions the compliance team is authorized to take in the event of non-compliance. These facts draw attention to the need for including monitoring of the rate plan in the CALLS Order.

To be sure, the FCC always has at its disposal the enforcement provisions of the Communications Act of 1934 to insure compliance. 47 U.S.C. §§ 312(a), 502, and 503(b). Those statutory provisions, however, only provide a remedy in the event of demonstrated non-compliance. Forfeiture, fines, and revocation remain available as an option regardless of the approach the FCC adopts, although as a practical matter these options are of value only as a means of controlling more severe or egregious acts of non-compliance involving “deliberate misrepresentation.” While the Commission stated it has the authority to reject non-conforming rates on the grounds of unreasonableness, CALLS Order ¶ 247, the legal authority to reject rates as a means of insuring compliance with the flow through commitments has been called into question. Therefore, the need exists for a regulatory oversight process to fill in the gap for conduct that does not reach the level of deliberate misrepresentation but does appear to violate the commitments agreed to by the IXCs as part of the CALLS process.

In addition, Texas OPC notes that many of the commitments made in the AT&T and Sprint letters are not so plain as to be self-executing, such that some monitoring or oversight will be needed to insure proper implementation. For example, AT&T committed to eliminate the minimum usage charge for five years, but reserved the right to “work with the Commission to revise or eliminate this commitment after 3 years if market circumstances warrant.” AT&T Ex Parte Letter of March 30, 2000. Because the FCC found that the no MUC provision played an important part in the calculation of the consumer benefits of the CALLS Order, any reversal of this commitment after three years should not take place without public input in a formal commission proceeding.

More importantly, consistent with the stakeholder approach the Commission has adopted during the course of the CALLS proceeding, any material changes to the CALLS provisions

should not be allowed to take place without prior stakeholder input as well. Texas OPC also notes that Sprint makes a similar backslide reservation in its commitment letter to the FCC. Sprint Ex Parte Letter of February 25, 2000. Again, the need for monitoring in a public proceeding is critical to insure that stakeholders continue to play a part and provide input in any future proposed changes to the CALLS Order.

Texas OPC submits that the FCC needs to be able to identify a potential compliance problem or track the extent to which the July 1 access charge reductions actually do flow-through into long distance rates if it wishes to ensure that consumers realize benefits throughout the five years of the CALLS Plan. These activities cannot be accomplished given the approach taken by the FCC in the CALLS Order or by the informal compliance team. Only active monitoring with full stakeholder input of the flow through implementation will accomplish this goal.

Given that the \$2.1 Billion in access charge reductions are scheduled to go into effect on an expedited basis on July 1, it is important that the Commission promptly implement a public project to collect information, closely track compliance, and verify that the IXC's actually flow-through the July 1 CALLS access charge reductions so that residential and small commercial consumers realize the promised benefits. Unless such monitoring takes place, a significant possibility exists that CALLS IXC's will backslide on their commitments to flow-through access charge reductions in a way those benefits consumers by further restructuring of long distance rates. Accordingly, it is imperative that the Commission modify the CALLS Order by initiating a public proceeding, solicit input on compliance, monitor flow through, and verify compliance.

WHEREFORE, PREMISES CONSIDERED, Texas OPC respectfully requests that its Petition for Reconsideration be granted and that it be granted such other and further relief to which it is justly entitled.

Dated: July 21, 2000

Respectfully submitted,

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