BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Reform of Access Charges Imposed by Competitive Local Exchange Carriers	)	
	)	
	)	

COMMENTS OF TIME WARNER TELECOM

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June 20, 2001

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Time Warner Telecom ("TWTC"), by its attorneys, hereby submits these comments in response to the Further Notice of Proposed Rulemaking[1] in the above-referenced proceeding. In the *Notice*, the Commission sought comment on the appropriate treatment of CLEC originating 8YY, toll-free traffic under the benchmark rate transition plan adopted in the *Order*. As explained herein, the Commission should apply the benchmark rate transition to 8YY traffic in the same manner it applies to all other switched interstate access.

I. INTRODUCTION AND SUMMARY

The Commission should not subject CLEC 8YY traffic to a different benchmark rate transition than that applicable to other types of access traffic. 8YY access traffic uses the same functions and facilities and causes CLECs to incur the same costs as all other interstate access

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[1] *See Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order ("*Order*") and Further Notice of Proposed Rulemaking ("*Notice*"), FCC 01-146 (rel. Apr. 27, 2001).

services. Furthermore, the fact that CLECs enter into revenue-sharing agreements with large originators of 8YY-bound traffic does not justify special treatment for this traffic. Revenue-sharing arrangements have been expressly permitted by the Commission in analogous situations, such as with operator service providers. More importantly, although revenue-sharing agreements undoubtedly influence high-volume originating customers' choice of carrier, they do not artificially inflate the use of switched access services. Thus, the only basis for distinguishing 8YY traffic from other interstate switched access is that certain originators of 8YY traffic, such as hotels, generate an unusually large volume of switched access traffic. But high volume alone is no basis for adopting an alternative pricing regime for this type of traffic. Singling out some of the largest generators of access traffic (and thus large customers that are among the most important to CLEC business plans) for flash-cut rate reductions is flatly inconsistent with the Commission's decision in the *Order* that a gradual reduction in CLEC access rates is necessary to allow CLECs to adjust their business to the new regulations. Therefore, the Commission should reject the long distance carriers' request for such disparate treatment of 8YY traffic.

II. THE COMMISSION SHOULD NOT IMPOSE A DIFFERENT BENCHMARK RATE TRANSITION FOR CLEC ORIGINATING 8YY ACCESS TRAFFIC THAN FOR OTHER CLEC ACCESS TRAFFIC.

For purposes of setting CLEC access rates, there is no basis for distinguishing between 8YY traffic and other interstate switched CLEC access traffic. To begin with, as the Commission observed in the *Notice*, CLECs use the same facilities for originating 8YY services as they do to provide other access services.[2] It is also the case that CLECs generally incur the same costs when carrying this traffic as they incur when carrying other switched access traffic.

Not surprisingly, the Commission has long treated 8YY-bound traffic carried by ILECs as identical for ratemaking purposes to other forms of "terminating" switched access.[3]

Furthermore, this type of traffic presents no more opportunity than other types of traffic for CLECs to exploit bottleneck control of access facilities. Some parties in this proceeding have suggested that 8YY revenue-sharing artificially increases switched access traffic and therefore, they argue, this traffic should be subject to the ILEC-rate benchmark immediately. But there is no basis for this conclusion.

As an initial matter, it is important to note that the Commission has expressly approved of revenue-sharing agreements by telecommunications carriers in situations that are analogous to 8YY access traffic. For example, the Commission's interstate operator services rules direct operator services providers to file informational tariffs, which must contain any aggregator surcharges collected by the carrier billed on behalf of aggregators.[4] Aggregator surcharges or premises-imposed fees ("PIFs") are revenue-sharing agreements between the operator services provider ("OSP") and the aggregator, such as a hotel.[5] Because PIFs are generally charged on a per-call basis, the agreement between the OSP and the aggregator allows the aggregator to share revenues from operator services traffic generated at the aggregator's premises. The context in which these revenue-sharing arrangements are used is therefore very similar to the instant context. In both cases the owner of the premises (*e.g.*, the hotel) agrees to make a carrier's

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[2] *See Notice* ¶ 104.

[3] *See* 47 C.F.R. § 69.105(b)(1)(iii); *WATS-Related and Other Amendments of Part 69 of the Commission's Rules*, Report and Order, FCC 86-115, ¶ 53 (rel. Mar. 21, 1986).

[4] *See* 47 C.F.R. § 64.709 (a), (b); *Billed Party Preference for InterLATA 0+ Calls*, Second Report & Order and Order on Reconsideration, 13 FCC Rcd 6122, ¶ 3 (1998).

service available to the premises owner's customers (the hotel guests) in return for a portion of the revenue the carrier earns when serving the premises owner's customers. It is clear, therefore, that there is nothing *per se* illegal or unwholesome about revenue sharing.

Moreover, the long distance carriers that seek lower rates for 8YY traffic neither explain how these services as provided by CLECs somehow inflate switched access traffic as a whole or how they inefficiently shift traffic from dedicated facilities to switched access in order to increase the CLEC's switched access revenues. In fact, an examination of the specific commercial arrangements reveals that revenue-sharing agreements do not generally offer large originators of 8YY traffic any significant ability to generate increased volumes of switched access traffic.

Revenue-sharing agreements affect the subscriber's (usually a hotel's) choice of carrier, but do not generally affect the caller's incentives. This is because, while the hotel receives the benefits of the revenue-sharing agreement, the actual callers are the hotel's guests. Those guests do not participate in the revenue-sharing arrangement. The guests make 8YY calls that are free at the hotel just as they would be anywhere else. Given that the actual users of 8YY service are not parties to and do not benefit from revenue-sharing arrangements, there is little risk that 8YY revenue-sharing arrangements would result in artificial increases in traffic volumes.

Nor do revenue-sharing agreements for 8YY traffic appear to introduce an artificial incentive to inefficiently shift access traffic from dedicated facilities to switched facilities. Regardless of whether a hotel shares access charge revenues, the cost of switching on the

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[5] *See* 47 C.F.R. § 64.708(b) ("*Aggregator* means any person that in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services").

originating end of an 8YY call is paid by the called party. Under no circumstances, therefore, would a large originator of 8YY traffic have the incentive to deploy more efficient dedicated facilities to carry originating 8YY traffic.

Thus, the apparent concerns that CLECs are able to exploit a regulatory anomaly to artificially inflate switched access minutes on 8YY traffic are unfounded. Large originators of 8YY traffic appear only to differ from other originators or recipients of switched access traffic in terms of the volume of traffic they generate. This is hardly a basis for establishing a lower price for this traffic, however. The very point of the transitional benchmark for CLEC access rates is to give CLECs the time to adjust their businesses to the new regulatory regime.[6] It would fly in the face of this rationale to establish special lower charges for a class of traffic solely based on the fact that it is more voluminous (and therefore more important to CLEC businesses) than other kinds of switched traffic.

Finally, to the extent that concerns remain, the Commission should consider the other significant factors that limit the possible scope of any perceived problem with 8YY traffic. First, as CLEC rates fall precipitously, revenue-sharing agreements (to the extent that they remain at all) will likely disappear as the margin on access services decreases. Second, the volume of this traffic is not likely to increase significantly during the three-year transition. Most callers using these services at hotels and similar facilities are using 8YY to dial around to their preferred interexchange carrier. Although the 8YY portion of the call is toll-free, the customer incurs the incremental per-minute charge once the long distance call is set up. Because these callers are in

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[6] *See Order* ¶ 45.

fact paying for services, often at rates higher than they would pay if calling from home, they are receiving proper pricing signals that constrain unfettered usage.[7]

III. CONCLUSION

TWTC respectfully requests that the Commission affirm that CLEC 8YY access charges are subject to same transition to the ILEC benchmark rate as other CLEC access traffic, in accordance with the recommendations made herein.

Respectfully submitted,

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[7] As a last resort, it is also the case that the Section 208 complaint process remains available during the CLEC access rate transition for IXCs to pursue claims related to the extraordinary cases in which carriers fraudulently inflate switched traffic in scams to increase access revenues. *See Notice* ¶ 99; *Total Telecommunications Services v. AT&T*, Memorandum Opinion and Order, FCC 01-84 (rel. Mar. 13, 2001).