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May 13, 2005

**Ex Parte**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: Special Access Rates for Price Cap Local Exchange Carriers, WC  
Docket No. 05-25  
July 1, 2005 Annual Access Charge Tariff Filing, WCB/Pricing  
05-22**

Dear Ms. Dortch:

Comptel/ALTS, by and through undersigned counsel, hereby files in support of the request submitted to the Federal Communications Commission (“FCC” or “Commission”) by the eCommerce & Telecommunications User Group (“eTUG”) and the Telecommunications Committee of the American Petroleum Institute (“API”) to adopt an interim X-Factor of 5.3 percent for interstate special access rates.<sup>1/</sup> Comptel/ALTS was formed in March 2005 by the merger of CompTel/ASCENT and the Association for Local Telecommunications Services (“ALTS”). With more than 300 members, CompTel/ALTS is the leading industry association representing competitive, facilities-based telecommunications service providers, emerging VoIP providers, integrated communications companies, and their supplier

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<sup>1/</sup> Letter from Brian R. Moir, counsel for eTUG and C. Douglass Jarett, counsel for API, to Marlene H. Dortch, Secretary FCC (May 10, 2005) (filed in WC Docket No. 05-25 & WCB/Pricing Docket No. 05-22) (“*eTUG/API Letter*”).

partners. CompTel/ALTS members purchase Bell Operating Company (“BOC”) special access services as a critical input to their own service offerings.

The *eTUG/API Letter* ably explains the basis for the request. The comment cycle for the Commission’s special access rates proceeding will not close prior to July 1, 2005.<sup>2/</sup> The Commission stated in the *Notice*, however, that it anticipated adopting an interim order prior to July 1, 2005, to “ensure special access price cap rates remain just and reasonable.”<sup>3/</sup> The concern correctly identified by the Commission is that, absent further Commission action, special access rates effectively will remain frozen as a result of the *CALLS Order*,<sup>4/</sup> despite “substantial evidence suggesting that productivity has increased and continues to increase in the provision of special access service.”<sup>5/</sup> At the same time, BOCs’ accounting rates of return have been “substantially in excess” of the prescribed 11.25 percent rate of return for rate of return LECs.<sup>6/</sup> The *eTUG/API Letter* adds to this evidence by noting that the latest ARMIS filings show accounting rates of return in excess of 76% for three of the four largest Price Cap LECs.<sup>7/</sup>

This evidence clearly indicates that special access rates are not just and reasonable and that, at a minimum, the Commission promptly should

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<sup>2/</sup> See *Special Access Rates for Price Cap Local Exchange Carriers*, 70 Fed. Reg. 19381 (April 13, 2005) (establishing July 12, 2005 as the deadline for reply comments in the rulemaking proceeding). See also *Special Access Rates for Price Cap Local Exchange Carriers*, Notice of Proposed Rulemaking, WC Docket No. 05-25, 20 FCC Rcd. 1994 (2005) (“*Notice*”).

<sup>3/</sup> *Notice* at 2037, ¶ 131.

<sup>4/</sup> *Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 99-249, 96-45, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) (“*CALLS Order*”), *aff’d in part, rev’d in part, and remanded in part*, *Texas Office of Public Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001), *cert. denied*, *Nat’l Ass’n of State Util. Consumer Advocates v. FCC*, 535 U.S. 986 (2002), *on remand*, *Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 99-249, 96-45, Order on Remand, 18 FCC Rcd 14976 (2003).

<sup>5/</sup> *Notice* at 2037, ¶ 131.

<sup>6/</sup> *Notice* at 2009, ¶ 35.

<sup>7/</sup> *eTUG/API Letter* at 2.

impose an interim productivity or X-Factor of 5.3%, the last productivity factor adopted by the Commission and judicially upheld.<sup>8/</sup> Adoption of a 5.3% productivity factor is purely an interim measure and is in no way intended to prejudice the questions raised in the Notice regarding the appropriate productivity factor or level at which to reinitialize price cap rates.

As the *eTUG/API Letter* noted, the Commission is accorded substantial deference in fashioning interim relief and parties were provided ample notice that the Commission was considering taking such an interim step.<sup>9/</sup> Any residual concerns may be alleviated, however, by issuing a separate notice on the eTUG/API request, with an accelerated comment cycle on this discrete issue that provides sufficient time to act prior to July 1, 2005. There can no complaint of hardship in light of the fact that carriers have previously had notice of the Commission's intent.<sup>10/</sup>

In accordance with the Commission's rules, this letter is being provided to you for inclusion in the public record of the above referenced proceedings.

Respectfully submitted,

/s/

Michael H. Pryor  
Counsel for Comptel/ALTS

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<sup>8/</sup> *Notice* at 2037, ¶ 131.

<sup>9/</sup> *eTUG/API Letter* at 2-3.

<sup>10/</sup> CompTel/ALTS would also support eTUG/SPI's alternative proposal of delaying the date of the annual access filing. *eTUG/API Letter* at 3.