Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Petitions of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the “ESP Exemption”

Docket No. 08-152

COMMENTS OF COMPTEL

August 21, 2008
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COMPTEL hereby submits its opposition to the above-captioned Petition of AT&T for an interim declaratory ruling that the ESP Exemption does not apply to IP-based traffic and, if it does, then a waiver of the Exemption to allow it to charge intrastate and interstate access for terminating IP-based traffic. In addition, COMPTEL opposes AT&T’s request for a waiver of the Commission’s rules to allow it to increase its SLC and interstate originating access charges to recoup any revenue it loses in the event it voluntarily lowers its intrastate access charges to interstate levels for all interexchange traffic (both IP-based and traditional circuit switched traffic) that terminates on its network. The applicability of the ESP Exemption to IP-based traffic is the subject of at least two existing rulemaking proceedings and should be addressed in those proceedings, not by declaratory ruling. Moreover, AT&T has failed to demonstrate good cause for the Commission to waive its rules and allow AT&T to inflate its interstate access charges to make up for reductions it voluntarily makes in its intrastate rates.

1 These Comments reflect the position of a majority of COMPTEL members. Individual members have, or may be, filing separate comments where they advocate positions on some issues that are different from those stated herein.
I. Introduction and Summary

The Commission should address the applicability of the ESP Exemption to IP traffic in the existing rule making proceedings and deny AT&T’s request for a declaratory ruling that the Exemption does not apply, or a waiver of the Exemption if it does apply. Extensive records have been developed in the rulemakings and it is on the basis of those records that the Commission should decide whether the Exemption applies on a going forward basis. AT&T has failed to demonstrate any legitimate reason why the Commission should disregard those records in favor of granting AT&T a ruling herein.

AT&T’s second proposal – to reduce its intrastate access charges to interstate levels in states where they currently exceed those levels – applies to all traffic terminating on its network, both packet-switched and circuit-switched. That proposal is conditioned upon the Commission granting a waiver of its rules to allow AT&T it to make up the revenue lost on the intrastate side with increases to its interstate rates. The Commission should deny AT&T’s request because AT&T has failed to demonstrate that good cause exists for a waiver.

AT&T opens its Petition with a quote attributed to Mark Twain as descriptive of the long pending intercarrier compensation proceeding: “Everybody talks about the weather, but nobody does anything about it.” Mr. Twain made another observation that aptly describes the substance of AT&T’s Petition: “Truth is the most valuable thing we

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2 Petition at 10.

3 Petition at 1. AT&T’s Petition acknowledges that the quote it chose to symbolize the intercarrier compensation debate is itself a source of confusion, for although the quote is attributed to Mark Twain, it originated with another author (Charles Dudley Warner). In our view, the confusion surrounding the quote’s origin is a better metaphor than the quote itself, for the quote’s history emphasizes the importance of looking beyond the rhetoric to facts.
have. Let us economize it.” As explained below, AT&T can easily “do something about
the weather.” It does not need the Commission’s approval to reduce its intrastate access
rates for any services to which they apply.4 However, it has chosen to make “revenue-
neutrality” its main priority and will not reduce its intrastate access rates without a
guarantee from the Commission that it can recoup any foregone revenue through
increases to its interstate access charges.

There are many interesting and relevant truths that AT&T chooses to leave out of
its Petition – in particular, the fact that AT&T has sufficient headroom in its earnings to
fully implement any intrastate access charge reductions it chooses without the
Commission waiving its rules to allow a corresponding increase in interstate rates. To
the extent that AT&T is experiencing a market reaction to its discordant termination rates
– and each of its complaints is, at core, a market reacting to uneconomic pricing signals –
then AT&T should take the market-step of reducing its terminating rates to cost.

Significantly, AT&T’s Petition is not about intercarrier compensation reform or
rationalizing its rates for terminating traffic; it is merely another attempt to ensure that
any rate readjustment it undertakes, even on a voluntary basis, has a revenue-neutral
impact. AT&T’s request that the Commission sanction its revenue recoupment proposal
is directly contrary to “the Commission’s aim of bringing the access rate structure ‘into

4 COMPTEL will not debate the merits of what type of traffic should be subject to access
charges here because, as noted above, that issue should resolved in the context of the ongoing
rulemakings.
line with cost-causation principles." Indeed, AT&T emphasizes that its Petition is all about rates, not costs.

Granting AT&T’s request for interim relief will only delay the ultimate resolution of the Commission’s long pending proceeding to implement comprehensive intercarrier compensation reform. AT&T is free to seek state commission approval to reduce its intrastate access charges without any input from the Commission. Waiver of the Commission’s rules to allow AT&T to recoup lost revenues from its intrastate access reductions by increasing its interstate access charges, however, will only result in higher rates for both consumers and carriers without regard to the costs incurred in providing service. The central question raised by AT&T’s Petition is not whether a unified terminating structure is appropriate, but whether the FCC should authorize AT&T to recover from its end user and carrier customers any revenues it may forego by voluntarily reducing its intrastate access charges. In other words, AT&T wants to have its cake and eat it too. The Commission should deny AT&T’s Petition and focus its efforts on formulating a broad-based plan for intercarrier compensation reform.

To the extent the Commission is inclined to authorize AT&T to increase its interstate access rates to recover any reductions in its intrastate rates, those increases should be limited to the SLC, and not be extended to the originating access charges that are imposed on competitors. Any increases to the SLC should reflect the current balance between residential and business lines and be implemented statewide with no geographic variations.

\[^{5}\] AT&T Petition at 30.
\[^{6}\] AT&T Petition at 10, n. 27.
II. AT&T Has Not Shown Why The Applicability Of The ESP Exemption Should Be Determined Outside Of A Rulemaking

AT&T’s request for a declaratory ruling that the ESP Exemption does not apply to IP/PSTN traffic, or a waiver of the Exemption if it does apply, should be denied because the issue is being addressed in other pending proceedings. Other than its impatience with the Commission in implementing comprehensive intercarrier compensation reform, AT&T has shown no reason why the Commission should address the applicability of the ESP Exemption outside of the existing rulemaking proceedings.

Nonetheless, if the Commission grants AT&T’s Petition and waives the ESP Exemption and sanctions the assessment of interstate and intrastate access charges for IP calls originating on or terminating on the PSTN, it must make clear that any such waiver applies on a prospective basis only. The current confusion as to whether the ESP Exemption applies to IP traffic is due to the Commission’s failure thus far to determine its applicability. The Commission has declined for 10 years to render a definitive opinion regarding the proper legal and regulatory framework for addressing IP telephony services and whether providers of such services should pay access charges. In the meantime, it has been sending out conflicting signals and providers should not be subject to retroactive liability if the Commission determines in this proceeding that the ESP Exemption does not apply.

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In the *Intercarrier Compensation* NPRM, the Commission stated that Internet Protocol telephony threatens to erode access charge revenues for ILECs because it is exempt from the access charges that IXCs pay. Three years later, in the IP-Enabled Services rulemaking, the Commission stated its belief that as a policy matter, any service provider that sends traffic to the PSTN should be subject to similar compensation obligations regardless of whether the traffic originates on the PSTN, on an IP network, or on a cable network, but has not yet issued a ruling to that effect. In the Vonage Order released that same year, the Commission again declined to determine the statutory classification of VoIP service or which federal regulations apply to such traffic. When the Commission determined, two years later, that interconnected VoIP providers must contribute to the universal service fund, it again candidly acknowledged that it still had not yet classified interconnected VoIP services as “telecommunications services” or “information services” under the definitions of the Act.

As a result of the Commission’s failure to issue a definitive ruling on the access charge obligations of VoIP providers, any waiver granted in response to AT&T’s request or other determination that the ESP Exemption is not available for VoIP services must be applied on a prospective basis only and carriers such as AT&T should be specifically prohibited from attempting to collect access charges on a retroactive basis.

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9 16 FCC Rcd 9610 at ¶ 133.
COMPTEL also takes issue with AT&T’s suggestion that the Commission has exclusive jurisdiction over IP traffic. AT&T itself acknowledges the “inevitable that voice is moving to IP,” which means that more and more traffic will be transported using IP-packet networks instead of circuit-switched facilities.¹³ Indeed, COMPTEL expects that the industry is approaching a point where carriers will request the ability to interconnect and exchange voice traffic in packet (as opposed to circuit-switched) form, and it is likely that the states will be asked to resolve differences should negotiations with an incumbent reach an impasse.¹⁴ Congress entrusted the states with the responsibility of arbitrating interconnection agreements under Sections 251 and 252 of the Act and that responsibility is not dependent on whether the traffic exchanged pursuant to the interconnection agreement is in packet-switched or circuit-switched format.

III. The Commission Should Not Adopt Yet Another “Temporary Fix”

As AT&T so eloquently describes in its Petition,¹⁵ the Commission has avoided for far too long any permanent resolution of the intercarrier compensation issues that impact not only the manner in which carriers compensate one another for originating and terminating traffic, but also the collection and distribution of universal service funds.

¹³ AT&T Petition at 21. Indeed, AT&T claims to be among the “nation’s leading IP-enabled service providers, with increasing amounts of traffic originating in IP.” AT&T Petition at 11.

¹⁴ COMPTEL notes that the National Association of Regulatory Utility Commissioners adopted a resolution last month recognizing that “carriers are substituting Next Generation Network technology in their networks in place of circuit switching technology,” and directed its General Counsel “to take any appropriate actions which protects the authority, under Sections 251 and 252, of State commissions and preservation of telecommunications carriers’ interconnection rights and traffic exchange obligations, under Sections 21 and 252, in a technologically neutral manner.” See Resolution Regarding the Interconnection of New Voice Telecommunication Services Networks, available at http://www.naruc.org/committees.cfm?c=53.

¹⁵ AT&T Petition at 1-4.
AT&T’s suggestion that the Commission adopt yet another band-aid to address a discrete class of calls traversing the PSTN (i.e., those associated with next generation networks being deployed by incumbents and entrants alike) will only further delay a resolution of the broader issues.

There is no question that intercarrier compensation raises difficult and complex issues that affect both consumers and the myriad industry participants providing services that allow consumers to complete voice communication calls among a “network of networks.” Seven years ago, the Commission opened a rulemaking proceeding to address these issues. More than three years ago, the Commission stated that the need to replace the “existing patchwork of intercarrier compensation rules with a unified approach” was “urgent.” To date, however, comprehensive reform has remained elusive. The difficulty and complexity of the issues are not alleviated with the passage of time. Granting AT&T’s petition for an interim declaratory ruling will simply add another “patch” to the existing patchwork quilt of intercarrier compensation rules contrary to the Commission’s acknowledged need to implement comprehensive reform on an urgent basis.

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18 The financial performance of AT&T’s ILEC affiliates, combined with the retail pricing flexibility they have secured in many states, have made it simpler for the Commission to implement reform for AT&T as its profits have soared while the importance of access revenues has decreased. Consequently, AT&T (at least) could financially accommodate significant reductions in its wholesale carrier charges without reducing its earnings unreasonably.
AT&T claims without support that its interim proposal would be “a substantial step toward the goal of a unified rate structure.” In a recent opinion, the Court of Appeals for the D.C. Circuit expressed frustration with the Commission’s delay in fixing the broken intercarrier compensation system as well as in providing a legal justification for its rules governing compensation for ISP traffic. The Court admonished that it is far too late to be taking *first steps* toward comprehensive reform, no matter how substantial:

It is now seven years since the FCC put in place the interim rules that it said would last only three. It is now six years since we held, for the second time, that the FCC’s legal justification for the rules was invalid and remanded for the agency to provide a valid justification. During all this time, the FCC has proceeded . . . to enforce rules for which it has articulated no lawful basis.

* * *

The FCC urges us to stay our hand until the conclusion of its ongoing rulemaking proceeding “in which it is considering comprehensive, industry-wide reforms to the system of intercarrier compensation.” . . . “[T]his broad rulemaking,” we are told, “will, among other things, address the issues raised by this Court’s remand in Worldcom, Inc. v. FCC.” *Id.* Indeed, counsel suggests that the Commission is on the brink of concluding its rulemaking and responding to our remand. We have heard this refrain before.

Seven years ago, in April 2001, the Commission issued an NPRM that announced its intention to promulgate a comprehensive regime to supersede what it said would be only a “three-year” interim regime under the *ISP Remand Order.* . . .

* * *

More than three years later, when “significant additional delay” had indeed transpired, Core filed the instant petition. Then, one business day before we heard oral argument in this case, FCC counsel informed us that the Commission had issued an order adopting an interim cap on the

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19 AT&T Petition at 10. As discussed below, AT&T did not include in its Petition any data quantifying the likely effect of its requested waivers, or even identify the states that are impacted by its request.
support that certain telecommunications carriers can receive from the Universal Service Fund. Quoting a press release from the FCC’s Wireline Competition Bureau calling the order “a crucial first step” toward ‘comprehensive reform’ not only of Universal Service but also of intercarrier compensation,” counsel stated: “Now that the Commission has capped payments from the fund, the Commission ‘can move forward expeditiously on comprehensive reform’ of intercarrier compensation.” But the Commission order that the press release touts does not mention comprehensive reform of intercarrier compensation, let alone the specific problem of ISP-bound traffic. Rather, it refers only to “comprehensive reform of high-cost universal service support.” . . . And in any event, it is far too late for the Commission to be taking a “first step,” even if it is a “crucial” one.  

The Commission must provide a legal justification for its ISP compensation rules by November 5, 2008 or they will be vacated.  

Even if the Commission is unable to achieve broad-based comprehensive intercarrier compensation reform by that deadline, it should devote its resources to responding to the Court’s mandate, including an analysis of whether it is in the public interest to continue imposing lower rates for ISP-bound traffic in the absence of comprehensive reform. The Commission should not be distracted from either of these immediate goals – i.e., real long-term reform or, at a minimum, a legally sustainable basis for the treatment of ISP-bound traffic – by devoting time and effort to formulating “interim” measures to deal with other types of traffic (as AT&T advocates), which will only serve as an excuse for additional delay.

History has shown that interim fixes often remain in place long past their expiration dates. For example, the ISP compensation rules that are the subject of the

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21 Id. AT&T’s request for relief specifically excludes dial-up ISP bound traffic that is the subject of the Core mandamus ruling. AT&T Petition at 4, n. 12.
Core decision were adopted in 2001 as a “three-year interim intercarrier compensation mechanism” “to afford the Commission adequate time to consider comprehensive reform of all intercarrier compensation regimes.”\(^\text{22}\) Although the D.C. Circuit determined that the legal basis for the rules was invalid in 2002 and remanded for the Commission to provide a different legal justification,\(^\text{23}\) the “interim” rules remain in effect, long past their three year life.

Similarly, when the Commission adopted the CALLS plan in 2000, the Commission described it as:

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\text{[A] transitional [five year] plan that moves the marketplace closer to economically rational competition, and it will enable us, once such competition develops, to adjust our rules in light of relevant market developments. Consequently, as the term of the CALLS Proposal nears its end, we envision that the Commission will conduct a proceeding to determine whether and to what degree it can deregulate price cap LECs to reflect the existence of competition.}\(^\text{24}\)
\]

It is now three years past the termination date of the CALLS plan, yet the rules have not been adjusted.

In 2001, the Commission capped CLEC tariffed access rates at the ILEC level, describing the mechanism as “a transitional one,” not designed as a “permanent solution to the issues surrounding CLEC access charges.”\(^\text{25}\) The caps remain in place.

Also in 2001, the Commission imposed an interim freeze of Part 36 category relationship and jurisdictional cost allocation factors on price cap carriers for five years.


\(^{23}\) WorldCom, Inc. v. FCC, 288 F. 3d 429 (D.C. Cir. 2002).

\(^{24}\) Access Charge Reform, Sixth Report and Order, 15 FCC Rcd 12962 at ¶ 36 (2000).

\(^{25}\) In the Matter of Access Charge Reform, Seventh Report and Order, 16 FCC Rcd 9923 at ¶ 7 (2001).
or until the Commission completed comprehensive reform of the jurisdictional separations process, whichever came first.²⁶ In 2006, the Commission extended the interim freeze on an “interim basis” for an additional three years – i.e., a total of eight years -- to allow complete comprehensive reform of the jurisdictional separations process.²⁷

What this history demonstrates is that “interim” fixes tend to become permanent. Contrary to AT&T’s allegation, the industry does not need another “interim” fix. The urgency of the need for comprehensive reform is no less today than it was in 2005 when the Commission adopted the Further Notice of Proposed Rulemaking. The Commission should continue to work toward that goal.

IV. AT&T Has Sufficient Headroom In Its Earnings To Lower Its Intrastate Access Rates Without Increasing Its Interstate Rates

The central premise of AT&T’s Petition is that a single uniform rate to terminate all access traffic – irrespective of the jurisdiction (interstate or intrastate), tariff label (intrastate or interstate), or technology (packet or circuit-switched) – would be the most efficient and economic system. The issue presented by the Petition, however, is not whether a uniform terminating rate is sound policy, but whether the Commission should protect AT&T’s profit, irrespective of its magnitude, through waivers permitting AT&T to increase interstate access rates to offset the lower revenues AT&T allegedly would receive by voluntarily reducing select intrastate rates to interstate levels.

COMPTEL opposes AT&T’s request for waivers of the Commission’s SLC and switched access rules so that it can increase its interstate access rates to offset reductions it voluntarily makes in its intrastate rates. The pro-competitive policies that the Commission has encouraged are designed to force excess revenues from the market, not merely shift them into the prices of other services. Before the Commission may even consider permitting AT&T to increase its federal SLCs and/or originating access rates to offset any voluntary reductions to its intrastate rates, the Commission must first determine whether any offsetting revenues are appropriate. AT&T has failed to provide the evidentiary support necessary to make that determination.

As Figure 1 below shows, there is no reason for the Commission to waive its rules for the sole purposes of protecting AT&T’s earnings. The composite return on investment from regulated services that AT&T’s ILEC affiliates enjoyed in 2007 was 26.6% in 21 of the 22 states the affiliates serve, far exceeding the last authorized return established by the FCC (11.25%).

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28 The return on investment shown in Figure 1 is calculated using revenues and expenses reported as “subject to separations” in ARMIS 43-01. As a result, the calculations are based on the AT&T State ILEC’s revenues, expenses and investments before any allocation between regulatory jurisdiction (interstate or intrastate) or service classification (such as access and local). In effect, the “subject to separations” column in ARMIS provides a measure of the overall profitability of the affiliate providing regulated services (such as access), without any of the controversy introduced by allocations that attempt to measure the profitability of individual services that are commonly provided over a shared network platform and/or that consume marketing and administrative resources in common with other services.
Section 1.3 of the Commission’s rules, 47 C.F.R. §51.3, provides that the Commission may waive its rules for good cause shown. AT&T has not come close to demonstrating good cause. Notably, AT&T provided no factual information demonstrating that there is any cause for the Commission to waive its rules to permit its interstate rate increases, let alone good cause. AT&T did not identify the states where its intrastate access charges exceed its interstate rates, estimate the magnitude of the rate disparity between interstate and intrastate access in those states, or quantify the revenue shift that it is proposing to implement. Moreover, AT&T failed to provide any estimate
of the additional revenue it expects to receive if the Commission grants its request to apply access charges to IP traffic. Without such information, the Commission cannot possibly find that AT&T has demonstrated good cause to increase its interstate access rates.

It would appear that AT&T did not provide any data in support of its request for waivers because such data would show that reducing its intrastate access rates to the interstate level would not significantly affect AT&T’s earnings. To demonstrate the resiliency of AT&T’s earnings to intercarrier compensation reform, COMPTEL estimated AT&T’s return on investment assuming that all terminating access revenues were eliminated. Even under this scenario, AT&T’s local exchange affiliates would collectively produce returns on investment in excess of 21.9%, roughly double the level the Commission last determined was appropriate.29 See Figure 2 below.

Figure 2: AT&T Return on Investment by State After Elimination of All Terminating Access Revenues (2007)

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29 The potential effect on AT&T’s earnings from the elimination of all terminating switched access revenues is estimated by reducing by 50% the total interstate and intrastate switched access revenues reported by each AT&T local exchange affiliate (ARMIS 43-04) and recomputing its earned return on investment. This approach understates AT&T’s profitability, however, because the analysis does not adjust AT&T’s income taxes or reduce any expense that could decline with the elimination of all terminating access billing.
The actual returns on investment that AT&T’s ILECs would enjoy would be much higher than shown because AT&T is only proposing to reduce its intrastate terminating access rates to the interstate level and to do so only in approximately half of its 22 states, not eliminate terminating access altogether as Figure 2 assumes. In addition, AT&T apparently believes that it would earn additional access revenue from the IP traffic terminating on its network if the ESP Exemption does not apply. With returns on investment of this magnitude, AT&T cannot possibly show that there is good cause for the Commission to waive its rules to allow it to increase its interstate access charges to recoup the voluntary reductions it makes in its intrastate charges. AT&T’s earnings are far above reasonable levels, inflated by a variety of prices for its wholesale

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30 AT&T Petition at 8.
services, including special access services.\textsuperscript{31} The Commission will never achieve any meaningful intercarrier compensation reform by shifting revenue generated through one set of wholesale prices to other wholesale prices without regard to the cost of providing service.

V. AT&T Enjoys the Pricing Flexibility To Respond To Market Pressures With A Market Response

The analysis above demonstrates that AT&T’s earnings can easily absorb a reduction in its intrastate terminating access revenues without offsets from its interstate rates, in particular originating access charges. By any traditional regulatory measure, AT&T’s earnings are excessive and, if it were still subject to earnings-based regulation, substantial rate reductions would be warranted.\textsuperscript{32}

In addition to enjoying robust earnings, AT&T also enjoys substantial retail pricing flexibility in many (if not all) of its states. For instance, in Texas, after the vast majority of AT&T’s lines were declared competitive, AT&T responded with a series of rate increases that raised prices for most consumers by between 58\% (in its largest

\textsuperscript{31} See Letter from Norina Moy, Director, Government Affairs, Sprint to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 and WC Docket No. 04-36, August 7, 2008.

\textsuperscript{32} To be clear, COMPTEL is not recommending that the Commission apply rate-of-return regulation to the full panoply of AT&T’s retail and wholesale services. The nation is committed to competition and market forces determining, where effective, the prices charged to consumers. Importantly, however, that commitment to retail-level competition makes the Commission’s role in achieving efficient wholesale prices all the more critical and AT&T’s proposal to merely shift revenues from intrastate access to interstate access does nothing to improve wholesale rates overall. For a broader discussion of the interrelationship between wholesale prices and retail competition, see \textit{The Importance of Wholesale Competition to Market Performance}, COMPTEL, Spring 2008, available at http://ftc.timberlakepublishing.com/content.asp?contentid=678.
markets) and 90% (in its smaller markets).\textsuperscript{33} Even in states where AT&T’s basic local exchange rates may be capped, AT&T typically has the freedom to price its popular packages and bundles in any manner that it wishes. Because AT&T has the ability to respond to competition and investor pressures through the retail pricing strategies that it chooses, there is simply no reason for the Commission to sanction an increase in federal access charges to offset a decrease in state access charges that AT&T voluntarily implements.

COMPTEL is particularly concerned by AT&T’s request to increase the interstate originating access charges that it would impose on competitors. AT&T not only seeks authority to increase its \textit{existing} interstate originating access charges, it asks for authority to introduce a completely \textit{new} rate element.\textsuperscript{34} AT&T further intends to exclude from its price cap calculations its “make whole rate increase” in its entirety, thereby ensuring that the rate increase does not preclude any further increases in access rates under the Commission’s price cap rules. In effect, AT&T’s proposal is to remove these revenues from state review (to the extent any exists) and park them in an interstate rate element specifically crafted to reside outside the Commission’s price cap regime.

It is unclear how the solution to one set of non-cost justified wholesale rates (\textit{i.e.}, intrastate terminating access charges) is to increase a different set of wholesale rates (\textit{i.e.},


\textsuperscript{34} AT&T Petition at 47 requesting waiver of Section 69.4 of the Commission’s Rules to the extent it prevents AT&T from including an additional rate element in its interstate access charges beyond those rate elements listed in the rule.
interstate originating access costs) so that they rise further above cost. AT&T’s proposal merely shifts the distortions caused by one inflated wholesale rate to another.\(^{35}\)

To the extent that the Commission believes that any rates should be increased in order to rationalize or neutralize the impact of any rate reductions, those increases should be limited to end-user prices where competitive pressures have the best chance, over time, of driving prices down. Specifically, to the extent that the Commission decides to allow any offsetting rate increase to compensate AT&T for reducing certain intrastate rates to interstate levels, AT&T should be limited to increasing its interstate SLCs. Even these increases should be carefully monitored, however, to ensure that any increase satisfies the following three conditions.

First, any increase in SLC charges and offsetting access charge reduction should maintain the same relative balance between the residential and business marketplace as exists prior to the rate change. In other words, AT&T should increase residential and business SLCs so that the reduction in switched access revenues attributable to the residential and business markets approximates the revenues recovered from these groups through the switched access charges imposed on carriers.

Second, AT&T should not be permitted to selectively increase its SLC charges in those areas of a state where it faces less competition. To the extent that AT&T is permitted to increase its SLC charges to offset intrastate access charge reductions, those

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\(^{35}\) The distortions caused by AT&T inflating its originating access charges are just as troubling as the administrative problems it cites as being caused by assessing different rates for termination. The largest “purchaser” of originating access is AT&T itself, and yet it is unlikely that AT&T would increase its deregulated retail interstate toll rates in response to an increase in the access charges that “it pays to itself.” As such, any increase in AT&T’s originating access charges will merely further increase a price squeeze on the competitors that must pay such charges in hard cash, not as an imputed expense item and affiliate transaction.
SLC increases should be implemented statewide, both in areas that are facing competition and areas that are not. No geographic variations in the SLC charge should be permitted.

Third, AT&T’s reductions in intrastate switched access charges should not merely produce the same “average traffic sensitive” charge, with AT&T retaining the flexibility to choose which rate elements to reduce (as AT&T has requested). Instead, the reductions should be proportionally spread among the rates for end-office switching, common transport and tandem switching. Only through proportional reductions can the Commission be assured that AT&T would not strategically adjust its access rates to favor its affiliates.

**CONCLUSION**

For the foregoing reasons, COMPTEL respectfully requests that the Commission deny AT&T’s Petition and focus its efforts on resolving intercarrier compensation issues on a comprehensive basis.

August 21, 2008

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