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April 21, 1999

Application for interconnection EconoPhone GmbH
File No. BK 4c-99-008/Z 25.02.99

Dear President Knobloch,

The Competitive Telecommunications Association ("CompTel") submits these comments in support of EconoPhone's application for interconnection in the above-captioned proceeding. CompTel is the principal U.S. industry association representing competitive telecommunications carriers and their suppliers. CompTel's 338 members include large companies as well as scores of smaller, regional newer entrants. CompTel has 18 years of experience working actively to advance telecommunications competition in the United States. With the development of telecommunications competition in Europe and other parts of the world, many of CompTel's members have made significant investments to provide international, long distance and local telecommunications service in other countries, including Germany.

CompTel files in this proceeding both because of the importance of the German market, and because precedent set in this proceeding could have a significant, and potentially adverse, effect on the development of telecommunications competition in other countries.

Deutsche Telekom's ("DTAG's") "Network Concept" seeks to impose a combination of requirements that, although highly desirable for DTAG, would have a serious adverse effect upon competition. As DG IV and DG XIII warned in their letter of 23.12.98, obliging "operators newly entering the market to 'duplicate' in whole or in part the DTAG network" may constitute "a competition-distorting barrier to market entry." Letter of R. Verrue and A. Schaub to President Scheurle, 23.12.98. As CompTel will show, the requirements of the Network Concept are not necessary to achieve DTAG's stated interests and do not justify denial of interconnection rates under applicable law.

I. SUMMARY

Our comments address the following aspects of DTAG's 23.12.98 interconnection offer at issue in this proceeding:

- First, DTAG's failure to present sufficient evidence to justify its proposed surcharges and restrictions on carriers' freedom to plan their investments.

- Second, DTAG's suggestion that interconnection rates be conditioned upon a network operator's number of Points of Interconnection (POIs – in Deutsch "ICAs"). This proposal is fatally flawed because the number of a carrier's ICAs bears no relationship to the amount of traffic a particular operator is actually placing on DTAG's network, or consequently to the costs it is causing.

- Third, DTAG's proposal to impose further surcharges if the shortest path for a call would not travel through two of a network operator's ICAs is likewise not cost-based and compounds the anti-competitive effects of DTAG's proposed ICA surcharge scheme.

- Fourth, DTAG's contention that to qualify for interconnection rates all international traffic must be switched in Germany before touching DTAG's network violates European Community law regarding differential treatment of trans-border traffic.

- Fifth, DTAG's requirements that carriers: (1) commit to leasing an ICA for at least two years and (2) pay financial penalties if traffic through the ICA does not reach an average of 180,000 minutes annually. These rules are far more rigid and punitive to competitors than necessary for DTAG's stated (although publicly unproven) purposes of network planning and

limiting investment risk. Incumbent and competitive carriers in the United States use far more flexible and cooperative approaches to achieve the same goals.

Both rules ignore that in an increasingly competitive market with falling prices, DTAG will easily be able to reallocate under-utilized capacity to other uses. Moreover, they wrongly assume that competitors are entirely, or even largely, responsible for problems of over-ordering or inaccurate traffic forecasting. Many of these problems are attributable to DTAG's denial of interconnection unless competitors install more ICAs than they need, denial of pre-ordering information regarding available ICAs, refusal to commit to installing ICAs for new entrants in less than a year, and a combination of aggressive price cutting and regulatory uncertainty.

- Sixth, DTAG's requirement that carriers deploy an additional ICA if peak traffic through an ICA to an adjacent catchment area exceeds 48.8 erlang. If the Ruling Chamber endorses this view, it should make clear that a competing carrier may satisfy this requirement by *sharing* an ICA with another competing carrier (e.g., including by reselling that carrier's service). Furthermore, adoption of this rule would eliminate the need for DTAG's proposed ICA surcharge system.

- Finally, the requirement that all retail long distance operators who originate traffic to bear the costs of a 3 million DM. up-front payment for a national license, even though that payment has been enjoined by the Administrative Court of Frankfurt court because of its anti-competitive consequences.

II. DTAG HAS FAILED TO MAKE THE SHOWING NECESSARY TO JUSTIFY THE NETWORK CONCEPT

A. DTAG Has A Heavy Burden of Proof

§§ 24(1) and 27 of the TKG require that interconnection rates be cost-based. As RegTP's published conclusions of its 15 December 1998 public hearing make clear, network operators are entitled to interconnect with DTAG at interconnection rates unless DTAG establishes that they have imposed special costs due to atypical traffic. DTAG bears the burden of establishing these costs.

DG IV and DG XIII have cautioned RegTP that under European Community law, it is impermissible to differentiate between interconnection for network operators or resellers absent proof of a "*specific*" problem. Letter of Verrue & Schaub, 23.12.98.

Furthermore, they have indicated that a threat to network integrity alone is insufficient to justify differential treatment, and that instead the incumbent carrier must prove that a "risk . . . otherwise might be presented to network integrity *and security*." Id. By contrast, DTAG's justifications for its Network Concept relate solely to considerations of cost, investment risk, network integrity or network planning.

B. Confidential Treatment of Critical Cost and Operations Data

DTAG has chosen to seek confidential treatment of the cost and operating data that justify its Network Concept, and the Ruling Chamber on previous occasions has accepted such a designation. This is highly unfortunate because the Ruling Chamber would benefit from hearing both sides', rather than only one side's view of this evidence. For example, in the United States, the pricing of local loops declined significantly after competitors were allowed to review AT&T's cost data submitted to support its pricing scheme.

In practice, DTAG seeks a highly one-sided set of confidentiality rules regarding carrier network operations. Ironically, DTAG's standard "Special Network Access" offer requires competing carriers to disclose to DTAG some of the very same information -- concerning network deployment and traffic flows -- that would be useful in responding to DTAG's network integrity and investment risk arguments. Indeed, DTAG asks the Ruling Chamber to approve minimum commitments for ICA usage to increase its ability to obtain accurate traffic forecasts from competitors for *two years in advance*. Such binding projections are of greater sensitivity than information concerning DTAG's current traffic flows.

Transparency of the basis for interconnection rates is not only good policy. It is also a requirement of both European Community law, see Directive 96/19/EC, Article 4a, ¶ 1, and

under Germany's WTO Basic Telecommunications Agreement commitment. Reference Paper, Article 2.2(b).

CompTel recognizes that DTAG has certain rights under the Trade Secrets law. However, DTAG is invoking the aid of the Ruling Chamber to approve higher rates. The evidence that it submits under request for confidential treatment should at the very least be given less weight because it is submitted by a highly interested party concerning a fundamental and complex question, yet not subject to rebuttal.

To address DTAG's confidentiality concerns in a more pro-competitive fashion, CompTel suggests a compromise commonly used in similar circumstances in the United States. DTAG's confidentiality interests can be fully protected by requiring any party who inspects the cost or operations information to sign a protective (confidentiality) order agreeing not to use, disclose or otherwise reveal the information. Protective orders are ideally suited to a competitive environment, allowing competitors to respond in detail to confidential evidence, but barring its use or disclosure for any other purpose.

C. DTAG's Methodology Appears Seriously Flawed

DTAG attempts to justify its Network Concept both in its Response to this application and in its Atypical Traffic Surcharge Application. Other participants in this proceeding are at a severe disadvantage rebutting these data because they do not have access to them. However, the

methodology revealed in the non-confidential portions[1] of these documents is seriously flawed, and fails to satisfy DTAG's burden of proof under E.C. law to establish "specific" evidence justifying different interconnection terms.

First, DTAG makes a series of improper generalizations about the significance of the number and distribution of ICAs. Most importantly, DTAG incorrectly assumes that its costs will be based on the number of ICAs that a network operator has, relying upon the false premise that carriers with fewer ICAs will carry approximately the same amount of traffic as carriers with more ICAs. Response pp.9-10 – Deutsch pp.12-13..

DTAG makes the further incorrect assumption that carriers' traffic will be distributed sufficiently evenly in Germany that locating ICAs in each of the 8 numbering areas or all 23 basic catchment areas will be a more efficient routing scheme. Atypical Traffic Application, Deutsch Anlage 2A, pp.3-4; Response, p.9 – Deutsch p.11. In fact, this assumption will be false in many cases because network operators' traffic patterns differ. For example, some concentrate on long distance traffic between particular regions of Germany and others on international traffic to and from German business centers to points elsewhere in Europe and overseas. Requiring an even deployment of these carriers' ICAs throughout Germany would be an uneconomical incentive system that would increase, rather than decrease, DTAG's costs.

Second, the non-confidential portion of DTAG's cost methodology appears to make the incorrect assumption that *none* of DTAG's investments discussed in the studies are or will be of *any* use for handling DTAG's own traffic or in handling the traffic of other carriers. This

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[1] If the applicant and intervenors had access to DTAG's specific data, they would in all likelihood be able

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assumption is obviously false in light of increased demand for capacity in the German voice and data markets. Much of this need for capacity has or will shortly occur on DTAG's own network due to the explosive growth of DTAG's retail Internet service, which now has nearly 3 million subscribers, and its voice service, which will experience a rapid increase in volume due to DTAG's sharply discounted long distance and international calling rates.

Third, the Atypical Traffic Application, at Anlage 2A p.4 suggests, and we understand that DTAG informed the Federal Communications Commission in a meeting last month, that at least part of its cost data assumes a two-year depreciation schedule. Because DTAG has shielded its depreciation assumptions in this proceeding from rebuttal by classifying them as confidential, CompTel has no way to confirm DTAG's use of such a depreciation schedule. However, if this assumption is part of DTAG's analysis, it would grossly overstate DTAG's investment risk and costs. Based upon CompTel's experience with the telecommunications industry, new equipment will likely be used to provide wholesale service to the same carriers or a series of carriers for roughly 6 to 8 times longer. For example, the FCC's depreciation assumption for digital switching equipment under TELRIC is 16 years.[2]

Therefore, the methodology upon which DTAG bases its argument that atypical traffic is producing very large, uncompensated costs is highly suspect and should be rejected.

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to find additional problems with DTAG's methodology.

[2] For a general list of TELRIC depreciation rates, see Simplification of the Depreciation Prescription Process, Second Report & Order, 9 FCC Rcd. 3206, 3208, 3211 (1994); Third Report & Order, 10 FCC Rcd. 8442, 8444 (1995).

D. The Network Concept is an Unnecessarily Onerous Means by which to Achieve DTAG's Stated Interests.

The other justification for DTAG's Network Concept is network integrity. DTAG assumes that unless required to build out infrastructure and route traffic in a highly regimented way, competing carriers will disturb its network integrity. This argument fails to acknowledge that competitors – particularly newer entrants with relatively little infrastructure in place -- have at least as much interest as DTAG in preserving the integrity of the network. Without a reliable network, competitors will be unable to offer their services or to attract or retain customers.

CompTel directs the Ruling Chamber's attention to agreements in the United States that acknowledge this symbiotic relationship between the incumbent and competitors. See Anlage 1. They establish a far more cooperative, consultative approach to maintaining network integrity, in contrast to DTAG's approach of forcing specific network deployments based upon pre-established thresholds. For example, U.S. interconnection agreements typically require the parties to work cooperatively to install and maintain a reliable network and to exchange appropriate information and apply sound network management principles to alleviate or to prevent traffic congestion.

III. KEY ELEMENTS OF THE NETWORK CONCEPT SHOULD BE REJECTED BECAUSE THEY ARE ANTI-COMPETITIVE, AND NEITHER COST-ORIENTED NOR NECESSARY TO PREVENT A SPECIFIC THREAT TO NETWORK INTEGRITY OR SECURITY.

In this section, CompTel will show that many of the restrictions on interconnection DTAG proposes are anti-competitive and not necessary to achieve DTAG's stated goals of recovering costs and preserving network integrity.

A. Interconnection Rates Should Not Be Conditioned on Carriers Deploying a Minimum of More than 3 Points of Interconnection

This highly formalistic requirement must be rejected because it is not cost-based, is highly anti-competitive, improperly discriminates against new entrants, and is unnecessary to achieve network integrity.

1. A Surcharge or Minimum ICA System Is Not Cost-Based

First, the number of ICAs a network operator has bears no relationship to the traffic that an operator is placing on DTAG's network, and therefore no relationship to cost or a threat to network integrity and security. As DG IV and DG XIII have explained, European law precludes differentiating rights to interconnection based upon the sort of broad generalization that underlies pre-established ICA thresholds. 23.12.98 Letter of Verrue and Schaub. Using number of ICAs as a proxy for cost causation is misplaced because newer entrants will almost always carry less traffic than more established carriers. Consequently, they impose fewer burdens on DTAG's network and have little business need to invest in additional, under-used ICAs.[3]

As explained above, DTAG's further suggestion that carriers be required to distribute their ICAs according to the 23 basic catchment areas, Response, p.9 – Deutsch p.11, or 8 numbering areas falsely assumes that network operators will distribute traffic more or less equally throughout Germany. This sort of interference with competitors' freedom to plan their networks according to their business plans would likely produce inefficient investments, less efficient traffic routing and more under-utilized capacity.

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[3] As shown below, DTAG's insistence that new entrants deploy ICAs that they do not need produces problems of over-ordering and under-utilization of ICAs, for which DTAG seeks additional compensation as an uncompensated "investment risk."

2. A Surcharge or Minimum ICA System Is an Unlawful Barrier to Competition

Second, both types of ICA-based surcharges or minimums must be rejected because, as Directors Verrue and Schaub have explained, they operate as a clear barrier to entry, even in the case of a requirement of as few as 3 ICAs. This is so because imposing artificial investment requirements to qualify for lower rates raises costs for new entrants and discourages entry into the German market. When combined with DTAG's up to 12-month delay in provisioning these points of interconnection in desirable locations and a requirement to pay a national license fee to originate traffic throughout the country, the requirement would force competitive carriers to make very significant up-front investments with little prospect of being able to provide service from desirable locations in less than a year.

If adopted, DTAG's proposed rule would discourage entry into the German market, reducing employment, investment and competition, while raising prices for consumers. Adoption of the rule would be a major blow to competition and would set a very negative precedent for the rest of Europe and for Asia.

Finally, if the Ruling Chamber decided to implement this rule, unless cost-oriented rates are available as soon as the requisite number of ICAs has been ordered by a competing carrier, the rule would also have the highly anti-competitive effect of rewarding DTAG with higher rates for delaying installation of ICAs for its competitors.

3. Illegal Discrimination

Third, DTAG's ICA system must be rejected because it would illegally discriminate against new entrants in violation of Article 4a, ¶ 1of the Directive 96/19/EC of 22.03.96. As DG IV and DG XIII noted in their letter of 23.12.98, imposing a multiple ICA requirement for newer entrants may violate E.C. prohibitions against discrimination because DTAG allowed

interconnection based upon only 1 ICA until spring of 1998. See Letter of Verrue & Schaub of 23.12.98. Indeed, as DTAG acknowledges in its Atypical Traffic Surcharge Application p. 5, Deutsch pp.4-5, additional charges should be imposed on carriers who cause costs. Applying surcharges only on a forward-looking basis produces "discrimination against . . . new market participants who have not yet expanded their network," but have not imposed significant costs on DTAG's network. Cf. id. p.5.

4. The Requirement Is Unnecessary and Can Be Achieved Through More Pro-Competitive Means Used in the United States

There are, of course, far less severe and less anti-competitive ways to address atypical traffic patterns than imposing surcharges and requirements for additional ICAs. Germany is not the only market in the midst of competitive change where incumbent carriers have more points of interconnection than newer entrants. In interconnection agreements in the United States, interconnection points are typically determined by mutual negotiation in the context of the parties' respective network requirements.

For example, in recognition that the incumbent has a larger number of ICAs, Bell Atlantic's agreements provide that the incumbent pays the competitor's tariffed non-distance sensitive entrance facility charge for the transport of traffic from an incumbent's ICA to a competitors' ICA (i.e., the incumbent is not required to pay for transport). In this way, the disparity of ICAs between the incumbent and competitor is addressed without requiring the competitor to invest in additional facilities. See Anlage 2.

B. Imposing Resale Rates on Traffic Not Most Efficiently Routed Through 2 ICAs

DTAG's proposal to impose higher "resale" rates (tariff B 2-R) if the shortest path for a call would not travel through two of a network operator's ICAs, see DTAG Response at 5 – Deutsch p.6, is likewise not cost-based and greatly compounds the anti-competitive effects of DTAG's proposed ICA surcharge scheme. The effect of this rule appears to be to require competing carriers to place ICAs in as many as 293 catchment areas in order always to qualify for interconnection rates. As a practical matter, the rule would create widely divergent and arbitrary pricing rules that bear no relationship to the distance of a call. DTAG's argument in support of this requirement must be rejected. It is not based upon considerations of cost or network integrity and security, but rather upon a pure legal formalism[4] that is incompatible with the "essential requirements" allowed under E.C. law.

C. Requiring that All International Traffic Be Switched in Germany by the Network Operator

DTAG also invokes an aspect of this Chamber's FaciliCom decision that all international traffic be switched to qualify for regulated interconnection rates. DTAG Response p.8 – Deutsch p.10. This rule creates another barrier to entry for new entrants who are network operators licensed to provide service in Germany, but do not switch in Germany all the international traffic that they bring into the country without transiting DTAG's network to reach their switch. It should be rejected because it violates a core principle of European Community law by treating

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[4] Indeed, DTAG attempts to "have things both ways" in its Response. First, it seeks an ICA surcharge system which is based upon cost arguments that need not be accepted under § 27(2) of the TKG. Then it seeks to impose an even larger ICA requirement through resort to a legalistic rule that is not cost-based.

traffic to and from other European countries which has been switched in those countries differently than intra-German traffic switched in Germany,[5] as well as Germany's WTO commitment with regard to resale of services from WTO member networks.

D. 180,000 Minute Minimum Traffic Surcharge and Two Year Minimum Commitment

The stated justification for the minimum traffic surcharge and two-year facilities commitment is that they are necessary to compensate DTAG for costs incurred due to over-ordering of ICAs and to allow DTAG to forecast traffic.

1. These Rules Are Unnecessary As Demonstrated by Pro-Competitive Alternatives Used in the United States.

Experience from competition in the United States reveals that DTAG's proposed requirements are not necessary to protect DTAG's stated interests. Regional Bell Operating Companies in the United States face the same "investment risks."

Many BOCs require competing carriers to provide day trunk group forecasts of approximately 90 days -- far less than the DTAG's binding two-year forecast in its standard interconnection agreement. If any trunks in a trunk group in excess of a certain threshold (e.g., 4 DS-1s) are not warranted by actual traffic volumes, a competing carrier may be financially responsible for the unused capacity for a *maximum* of 90 days. However, at any time during the 90-day period, the competing carrier may request disconnection of trunks to conform to a revised

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[5] See, e.g., E.C. Directive 96/19/EC 03.13.96 at Preamble 13 (Member states "may not discriminate on the basis of the origin of the calls and/or the networks); Treaty Article 59 (requiring non-discrimination on the basis of nationality in the treatment of services).

traffic forecast. The carrier is financially responsible for unused trunks only until the date on which it requests disconnection. See Anlage 3.

Furthermore, in the United States, competing carriers benefit from a number of safeguards that enable them to develop more accurate network planning than is possible under DTAG's interconnection system. First, during interconnection negotiations, they typically have access to incumbent LECs' Operational Support System (OSS) database so that they know in advance which points of interconnection will be available, allowing the carrier to begin planning earlier. Second, in many states, incumbent LECs are required by law to provision collocation within a set deadline. For example, in New York and Ohio, ICAs must be provisioned within 76 days and 90 days, respectively. Consequently, competing carriers can make traffic forecasts far closer to the date when they will actually be providing service from an ICA.

Both safeguards improve traffic forecasting. Unfortunately, DTAG refuses access to pre-ordering information regarding availability of ICAs, and does not guarantee installation of new ICAs in less than 12 months.[6]

2. DTAG Has Failed to Meet Its Burden to Justify These Requirements

DTAG has failed to justify this proposed rate increase as well. Nowhere in the non-confidential portion of its filing does DTAG explain why 180,000 minute usage is an appropriate measure for under-utilization, or even mention its own average usage of its network capacity. Furthermore, as discussed above, DTAG has failed to explain in the public portion of its filing

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[6] In CompTel's view, the Ruling Chamber should invalidate the anti-competitive provisions portions of Section 1.1 of Annex E of DTAG's 23.12.98 agreement that give it 12 months to provision new ICAs. Indeed, DTAG's ability to install a new ICA within 3 months in the case of traffic migration conforming

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why it cannot devote unused or under-utilized capacity to its own use or the use of other competing carriers either at the same site or by moving and reinstalling it. Nor does DTAG explain the cost basis for the per-minute surcharge, or the two-year minimum commitment.

a) The Minimum Traffic Surcharge

DTAG attempts to justify the minimum traffic penalty in general terms upon "the principle of causation." Response p.16; Deutsch p.20. However, the proposed surcharge is not cost-oriented because it wrongly assumes that competing carriers are entirely or largely responsible for a short-fall in traffic.

In fact DTAG's Network Concept and other conduct vis-à-vis competitors appear principally responsible for over-ordering. First, DTAG's insistence that network operators order ICAs that they do not need as a condition for interconnection rates is an obvious cause of such over-ordering. (Indeed, a surcharge for failure to meet a 180,000 minute traffic minimum would significantly aggregate the anti-competitive effects of an artificial ICA deployment rule.) Furthermore, DTAG 's refusal during interconnection negotiations to provide competing carriers with pre-ordering information regarding the availability of ICAs makes competitors' network planning unnecessarily difficult. Finally, DTAG's long delays in installing ICAs create significant uncertainty for competing carriers that results in over-ordering. Therefore, it is inappropriate to impose all of the costs of over-ordering on competing carriers.

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to DTAG's 48.8 erlang rule suggests that DTAG is able to devote the resource to provision interconnection far more quickly when it wants to do so.

b) The Two Year Minimum Commitment

The two-year commitment appears unnecessary as a matter of cost as well as network integrity and security because the same equipment may be used to carry traffic from other network operators. It is particularly one-sided and inappropriate when DTAG keeps its own network information confidential and its standard interconnection agreement refuses to guarantee provision of new entrants' ICAs in less than one year. Indeed, the combination of the minimum traffic penalty and two-year commitment is likely simply to provide DTAG with a windfall when network operators are unable to meet their two-year commitments.

In fact, the minimum commitment rule is by no means necessary for network planning. DTAG could still obtain the two-year forecasts it demands from competitors without penalizing them if their traffic predictions differ from expectations. This approach would be far more equitable because in a competitive environment two-year traffic projections are necessarily nothing more than estimates and an inappropriate basis for imposing added costs. If a penalty system is to be adopted in any form, it should be based upon a ramp up time of 12 months for reaching the minimum traffic threshold – rather than an averaging over 12 months – to avoid discrimination against newer entrants who are in the process of rolling out their network.

D. 48.8 Erlang Threshold for Installing a New ICA

DTAG again chooses to seek confidential treatment of the technical basis for the 48.8 erlang rule, so that CompTel and other intervenors are at a severe disadvantage in responding to the appropriateness of this particular figure.

In principle, it is not unreasonable to require that a carrier secure access to an additional ICA from a surrounding area code where the carrier is originating or terminating large amounts

of traffic (whether or not 48.8 erlang is the appropriate traffic threshold). However, if the Ruling Chamber adopts this view, it should make absolutely clear that a competing carrier may satisfy this requirement by *sharing* an ICA with another competing carrier (e.g., by reselling that carrier's service). In this way, DTAG's network integrity and cost concerns are fully addressed without anti-competitive effects.

If the Ruling Chamber endorses the 48.8 erlang rule or a variant of that rule, it will have required network operators to deploy additional ICAs when their traffic warrants such deployment. Consequently, it will have eliminated any need for DTAG's ICA surcharge system, which is designed to serve the same goal of preventing atypical traffic in a far less precise way, and should be rejected.

Assuming that the Ruling Chamber adopts this rule, it should also reject the 180,000 minute minimum surcharge and two-year commitment. Combining the 48.8 erlang rule and the 180,000 minute minimum rule means that unless a competitive carrier's traffic remains in a narrow range, the carrier must either pay a large penalty, or else invest in an additional ICA and immediately meet the 180,000 minute minimum. Basing the 48.8 erlang figure on peak traffic flows (or an average of peak traffic flows) would make this target range even narrower, complicating competing carriers' forecasting with regard to the 180,000 minute rule and minimum commitment.

Furthermore, DTAG's two-year commitment rule and 180,000 minute minimum should certainly not apply to additional ICAs installed on a flexible, rolling basis to accommodate DTAG's migration rule. The effect of combining these rules would be to require competitors to deploy their networks in a manner that mirrors DTAG's, which DG XIII and DG IV have specifically warned risks anti-competitive effects.

Therefore, if this Chamber endorses the ICA migration rule, it should reject all other core features of the Network Concept.

E. Requiring a National License to Originate Retail Traffic

DTAG also asserts that carriers need a national license to originate traffic from end user customers throughout Germany. However, the Administrative Court in Frankfurt has ruled that that RegTP's current method of imposing this license fee (in an up-front, 3 million DM payment for 30 years) is "clearly unlawful" because it is a barrier to entry for small and medium-sized firms.

CompTel submits that until a lawful national license fee is in place, this requirement must be waived. Requiring carriers to pay 3 million DM now and to wait for a refund later, as was suggested at the 14.04.99 public hearing on this application, is not an acceptable solution. It would needlessly require competitors to tie up capital in an unlawful fee and would thereby continue the serious barrier to entry that prompted the Administrative Court's ruling.

New entrants who were unable to obtain an interconnection agreement with DTAG before Spring of 1998 and those faced with unilateral termination of existing agreements have faced a broad array of barriers to entry in the German market. They should not be obliged to continue to adhere, even temporarily, to one that has been invalidated by the courts.

For all these reasons, the application should be granted. Thank you for considering our views. We would be happy to respond to any questions you may have.

Sincerely,

Carol Ann Bischoff
Executive Vice President
and General Counsel