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Via ECFS

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

Re: Notice of Ex Parte Communication
WC Docket No. 16-143, WC Docket No. 05-25, WC Docket No. 15-247, RM-10593

Dear Ms. Dortch:

Pursuant to 47 CFR § 1.1206(b), this letter provides notice that the undersigned, on behalf of U.S. TelePacific Corp. ("TelePacific"), made an oral *ex parte* presentation on October 17, 2016, to Deena Shetler, Eric Ralph, Pamela Arluk, William Kehoe, Christopher Koves, Justin Faulb, David Zesiger and Robin Cohn, staff of the Wireline Competition Bureau. Russell Blau of this firm and Bill Hunt and Nancy Lubamersky of TelePacific participated by telephone.

The purpose of the presentation was to discuss unintended consequences of the proposed rules outlined in the Chairman's fact sheet, and options to ensure that DS1 and DS3 rates do not increase as a result of moving from Phase II pricing flexibility to price cap rates.

First, TelePacific suggests that the Commission state explicitly that the elimination of "Phase II" pricing flexibility in those Metropolitan Statistical Areas (MSAs) where it is currently in place should not result in rate increases to any customers. This would be similar to the position the Commission took in the recent *Inter-Carrier Compensation Transformation Order* to ensure that the transition plan it adopted for gradual reductions in inter-carrier compensation rates did not result in short-term rate increases for any customers. TelePacific noted that in California, DS1 and DS3 rates under almost every term plan are priced lower in Phase II MSAs than they are in areas subject to price cap

regulation. To illustrate the rate difference, TelePacific presented staff with copies of the two attached tariff pages (Pacific Bell Tel. Co. Tariff F.C.C. No. 1, 10th Revised Page 7-192 and 4th Revised Page 31-57.12). Without a specific provision to prevent it, elimination of Phase II pricing flexibility in these MSAs could result in rate increases if rates were reset to the price cap levels immediately. Because California accounts for more than 10% of nationwide special access demand, a rate increase in the Phase II MSAs would have a significant deleterious effect on users of these services.

One solution would be to provide that MSAs previously under Phase II pricing flexibility, and any density zones within those MSAs, should be treated as separate density zones under 47 CFR § 61.47(f) when price cap regulation is re-introduced to those MSAs.[1] Each density zone in a former pricing flexibility area should be paired with the corresponding density zone in the legacy price cap regulated area. For example, on the effective date of any order, those MSAs or non-MSAs under price caps could be designated as Zones 1A, 2A, and 3A and MSAs under Phase II pricing flexibility could be designated as Zones 1B, 2B and 3B. Until such time as rates are equalized between the paired density zones, the following transition rules should apply:

(1) the ILEC may not increase any rate element that is lower than the corresponding rate element in its paired density zone,

(2) the ILEC may use downward pricing flexibility, to the extent permissible under § 61.47(f), to target any catch-up rate reductions that are mandated for DS1 and DS3 services to the density zone in each pair with the higher rates,

(3) the ILEC may not use downward pricing flexibility to reduce the rate in the higher-priced density zone <u>below</u> that in the paired zone, unless it also reduces the rate in the lower-priced density zone to the same level, and

(4) once the rates in two paired density zones are equal, the paired zones shall be merged into a single density zone and the transition rules will no longer apply.

This approach creates a rule that can adjust to various scenarios, including instances where some Phase II rate elements, but not all, currently have lower rates than price cap rate elements and instances where an ILEC may have Phase II rates but no price cap rates.

<u>Second</u>, TelePacific noted that some ILECs have existing contract tariffs containing provisions that apply only in MSAs with Phase II pricing flexibility, or that apply with respect to services purchased in such MSAs (*e.g.*, volume discounts based on the quantity of services purchased in Phase II areas). The fact sheet specifically notes that contract tariffs are permitted under the new regulatory regime, and TelePacific understands the

[1] The Commission should also amend the requirement in 47 CFR § 69.123(b)(1) that each density zone must account for at least 15 percent of total trunking basket revenues, to make it inapplicable to density zones established pursuant to this transition rule.

Commission's intent to be that contract tariffs already filed before the effective date should remain in effect in accordance with their terms, except to the extent the Commission grants a "fresh look" opportunity.[2] Nonetheless ILECs may argue that where existing tariffs specifically refer to services or geographic areas subject to Phase II pricing flexibility, those tariffs cannot be applicable if Phase II flexibility no longer exists.

To ensure that parties to existing contract tariffs receive the benefit of their bargains, TelePacific urges the Commission to declare expressly that any contract tariff provision in effect as of the effective date of the order that refers to Phase II pricing flexibility should be construed as referring to services and MSAs that were subject to such flexibility at the time the tariff was filed, irrespective of the subsequent elimination or modification of the Phase II pricing flexibility rules.

Third, TelePacific discussed examples of ILEC pricing behavior that indicates exercise of market power. Although there is anecdotal record evidence of declining Ethernet rates, an ILEC has proposed to *increase* TelePacific's current Ethernet monthly recurring rates upon the expiration of its contract. Moreover, the ILEC's proposed rates have a greater percentage increase in areas where the ILEC is likely the only provider with near-net facilities (17-20% increase for 10-50 Mbps services). TelePacific argued that an Ethernet rate increase for the same volume and term upon contract expiration is an indication of market power and an indication of an unjust and unreasonable rate.

Sincerely,

/s/ Tamar E. Finn

Tamar E. Finn
Counsel to U.S. TelePacific Corp. d/b/a TelePacific Communications

Attachments

cc: Deena Shetler
Eric Ralph
Pamela Arluk
William Kehoe
Christopher Koves
Justin Faulb
David Zesiger
Robin Cohn

[2] TelePacific does not oppose providing customers with a "fresh look" opportunity.