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TCG

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June 3, 1994

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William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Written Ex Parte Presentation in CC Docket No. 93-162: Investigation of Expanded Interconnection Tariffs

Dear Mr. Caton:

Teleport Communications Group, Inc. ("TCG") hereby submits an original and two copies of this written ex parte communication concerning the above referenced investigation. *See* § 1.1206 of the Commission's Rules.

One of the issues designated for investigation by the Commission is whether the LEC's so-called "warehousing" provisions are reasonable. *See* Designation Order, paragraphs 42 to 44. These provisions typically require that an interconnector activate expanded interconnection arrangements within a set time from when a collocation area is handed over to the interconnector, and if the interconnector fails to do so it can be required to forfeit its collocation space.

These warehousing provisions actually have a two-fold impact on collocators. First, they position the LEC to confiscate its competitor's assets if the competitor fails to comply with the letter of these requirements. Second, if the competitor wishes to prevent the loss of its collocation space, its only recourse is to "activate" cross connections to its collocation space, whether it needs them or not. The activation of these cross connections, however, will trigger the beginning of "fresh look" periods, the implementation of zone density pricing arrangements, and the implementation of volume and term discounts for switched local transport arrangements. The LEC therefore has a number of important business reasons to force premature activation of cross connections.

TCG's experience with collocation since the tariffs have taken effect have highlighted these "warehousing" provisions as a serious potential source of competitive abuse by the LEC. In particular, TCG has had a series of disputes with Pacific Bell about its interpretation and application of its warehousing

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provisions. Pacific Bell has repeatedly threatened to confiscate TCG's collocation spaces -- as well as the hundreds of thousands of dollars in fees TCG had paid for their construction. Pacific Bell has relented from doing so due to extensive negotiations and discussions between the parties, aided in part by the unofficial intervention of FCC staff.

Under Pacific Bell's access tariff, interconnectors are obligated to activate one or more cross connections within 90 days of when the collocation space is turned up. During the summer of 1993, TCG requested that Pacific Bell provision several collocation arrangements in Los Angeles, San Francisco and San Diego. TCG requested these arrangements because, at the time, it appeared that the California Public Utility Commission would be taking steps to open up their local markets to competition in late 1993 or early 1994, and TCG anticipated this would provide substantial market opportunities. TCG also anticipated that it would be expanding its networks into new areas, and would need collocation arrangements to serve customers who could not be reached directly through the TCG network. TCG routinely requested prompt installation because Pacific Bell employees advised TCG that they expected collocation space would be utilized quickly, and TCG needed to obtain its space quickly to avoid being shut out.

For a variety of reasons, TCG was unable to activate cross connections at these offices within the 90 day window allowed under the Pacific Bell tariff, which tariff was and remains under investigation by the Commission. For example, supplier delays and delays in network construction constituted technical impediments to prompt utilization. More generally, the fact that the California PUC rescinded its order permitting increased local competition (due to improper ex parte contacts by Pacific Bell employees) served to substantially diminish market opportunities for competitors such as TCG in California.

At the expiration of the 90 day interval for each office, Pacific Bell commenced to send "15 day Notice of Termination" letters to TCG, advising TCG that it must activate services or Pacific Bell would "terminate Teleport's EIS and reclaim the spaces at any of [the central offices] without further notice." At no time, however, did Pacific Bell allege that TCG was in violation of any other aspect of its expanded interconnection tariff, and in particular TCG paid all recurring monthly costs and nonrecurring construction costs associated with its use of the central office spaces in question.

Upon receipt of these threatening letters, TCG inquired of Pacific Bell if Pacific Bell had another, more pressing use for these collocation spaces, such as another interconnector requiring the space. TCG posed this question since the ostensible reason for these warehousing requirements has been the need to ensure that space is used efficiently. Pacific responded by stating that "the only criteria is whether or not the EIS customer has complied with the tariff by interconnecting. Contention for the EIS space is not a factor to be considered." TCG considers Pacific Bell's admission to be most illuminating, since it discloses that the true purpose of these warehousing provisions is not to ensure that other customers are able to obtain space. Rather, the intention is to permit the LEC to oust its competitors and confiscate their collocation spaces, or else force them to prematurely activate cross connections so that the LEC can receive pricing flexibility.

TCG then proceeded to negotiate with Pacific Bell to attempt to convince them to relent from their threat of confiscation. Pacific Bell staff indicated to TCG that they would only relent from their threats if TCG could convince them that we had experienced technical or operational difficulties which precluded TCG from turning up cross connections within the ninety day interval. As a consequence, TCG was forced to disclose the existence of its supplier and network construction delays in order to avoid the loss of these expensive collocation arrangements. Obviously, Pacific Bell was thereby able to obtain valuable information about TCG's business operations which it could use to TCG's disadvantage in the marketplace.

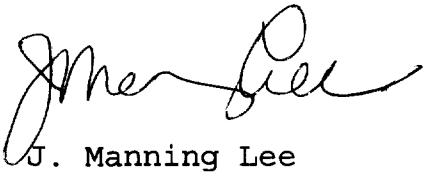
After extended negotiations with Pacific Bell, it agreed to provide some temporary extensions of time, while at the same time asserting that it retained its option to confiscate the collocation arrangements at any time. TCG also developed some business opportunities which permitted it to activate cross connections to several of its collocation arrangements. Finally, TCG sought the assistance of Bureau staff, and after the Commission staff discussed the matter with Pacific Bell the LEC appears to moderate its stance somewhat.

TCG's real-world experience with these warehousing provisions confirms that the suspicions and worries voiced by petitioners about these provisions are real and genuine. Despite claims that these provisions are necessary to manage "contention" for collocation space among different competitors, Pacific Bell honestly admits that "contention" has nothing to do with it. Getting competitors out of their central offices, after having

collected tens or hundreds of thousands of dollars from them, has everything to do with it.

TCG therefore urges the Commission to ensure that these warehousing provisions are eliminated from all LEC tariffs. So long as collocators are paying their monthly rental fees, LECs are being adequately compensated and should not be permitted to evict any collocator. Additionally, TCG urges the Commission to consider establishing strict procedures, with appeal to the Commission, to govern any eviction procedures which LECs wish to bring against collocators.

Respectfully submitted,



J. Manning Lee
Senior Regulatory Counsel

cc: David A. Nall
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