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March 8, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA MESSENGER DELIVERY

Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals - TW-A325
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Ex Parte
CC Docket Nos. 96-98 and 98- 84

Dear Ms. Salas:

Pursuant to Sections 1.1206 of the Commission's rules, 47 C.F.R. Section 1.1206, I am providing the attached letter for inclusion in the docket file of the above-captioned proceedings.

Eight copies of this letter are enclosed.

Sincerely,

Patrick Donovan

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March 4, 1999

VIA OVERNIGHT COURIER

Honorable William E. Kennard
Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C., 20554

Re: ***Ex Parte Presentation - CC Docket Nos. 96-98.***
Request for Prompt Action Following *AT&T Corp. v. Iowa Utilities Board*

Dear Chairman Kennard:

McLeodUSA, Incorporated ("McLeodUSA") is a competitive local exchange carrier headquartered in Iowa providing service to both residential and business customers in most areas of Ameritech and US West territory. McLeodUSA requests that the Commission vigorously oppose the efforts of the Regional Bell Operating Companies ("RBOCs") and GTE before the 8th Circuit following the recent decision of the United States Supreme Court in *AT&T Corp. v. Iowa Utilities Board* to delay reinstatement of the Commission's Section 251 pricing rules and other pro-competitive measures previously adopted by this Commission. McLeodUSA urges the Commission to use its authority under that decision to promptly implement a number of measures that could promote the development of competition. McLeodUSA believes that the measures described below will help ensure that opportunities for competitive entry are not thwarted by efforts of incumbent local exchange carriers ("ILECs") to frustrate the effects of that decision.

Pricing on the Basis of TELRIC Principles

The efforts of the RBOCs and GTE before the 8th Circuit to delay reinstatement of the Commission's rules show that ILECs will continue to thwart implementation of Total Element Long-Run Incremental Cost ("TELRIC") pricing and seek to establish pricing of unbundled network elements ("UNEs") based on recovery of ILECs' uneconomic historic costs that will preclude the development of meaningful competition. Moreover, it can be expected that ILECs are likely to raise a host of procedural and other objections before the Commission and state authorities to the prompt implementation of TELRIC pricing. The result of further delay in implementation of TELRIC pricing will be to hinder the achievement of the local service competition goals of the Act and the attendant benefits to consumers of reduced prices and greater choice of service options.

Accordingly, McLeodUSA urges the Commission to oppose before the 8th Circuit the efforts of RBOCs and GTE to delay prompt reinstatement of its pricing rules. In addition, once formally reinstated, the Commission should issue an order in the nature of a declaratory ruling that determines that its reinstated pricing rules fully govern the pricing of UNEs. As required by Section 51.503 of the reinstated rules, the Commission should determine that an ILEC's prices for UNEs must be set in accordance with the rate structure rules of Sections 51.507 and 51.509 of those rules, including the requirement for geographic deaveraging.

Most importantly, the ILECs' UNE prices must be set either pursuant to the forward-looking economic cost based pricing methodology set forth in sections 51.505 and 51.511, or, within proxy ceilings set forth in Section 51.513, at the election of the state commission. Competitive carriers will be reluctant to engage in widespread facilities-based entry strategies as long as certain states allow incumbents to charge inflated UNE rates. The uncertainty generated by the Supreme Court's decision makes it all the more vital that the Commission act now to promote the establishment of forward-looking, cost-based prices that will apply to future purchases of UNEs.

In an effort to promote the timely yet reasonable establishment of forward-looking UNE prices, McLeodUSA urges the Commission to announce that it will not enforce its reinstated pricing rules for a period of thirty days following the formal date of their reinstatement, in order to permit ILECs a reasonable period to comply and to permit states to determine whether ILEC prices have been set in accordance the Commission's rules. The state commissions should then: (i) verify that existing UNE prices are based on TELRIC principles; (ii) modify existing rates to comply with TELRIC principles; or (iii) establish interim prices that are consistent with the Commission's proxies. If the proxies are adopted on an interim basis for a particular jurisdiction, the relevant state commission could then later set TELRIC-based prices that would apply going forward from that decision. To ensure that rates are truly set on the basis of TELRIC principles, McLeodUSA would encourage the Commission to take an active leadership role throughout this process, offering guidance and technical assistance to the state commissions as necessary. The Commission should also specifically determine that states may establish UNE prices that are lower than FCC proxy rates and that any such rates previously established may remain in effect. McLeodUSA believes that any prices developed after the Supreme Court's decision by states or the FCC may only apply prospectively in view of prohibitions against retroactive ratemaking.

"Best Practices"

One of the most significant problems that carriers such as McLeodUSA must confront in seeking to enter an RBOC's service territory is the likelihood of repetitive litigation in state after state in attempting to secure even the most basic conditions necessary for competitive entry. Accordingly, McLeod USA urges the Commission to develop a detailed set of "best practices" to govern ILECs' provision of interconnection, collocation, UNEs, and resale. While the Commission's rules currently impose a number of requirements in these areas, they leave ample room for ILECs to frustrate interconnection on reasonable terms and conditions. In *AT&T Corp. v Iowa Utilities Board*, the Supreme Court found that the Commission possesses ample authority to implement the local competition provisions of the Act. McLeodUSA urges the Commission to use this authority to promptly issue a notice of proposed rulemaking to establish such a comprehensive of set of best practices. McLeodUSA believes that this would be a key step in assuring that the local competition goals of the Act are achieved.

Access to UNEs

McLeodUSA is pleased that a number of incumbent LECs have pledged to continue to provide UNEs in accordance with existing agreements while the Commission considers issues on remand from the Supreme Court.. McLeodUSA urges the Commission in an order or Public Notice to determine that ILECs are required to provide UNEs in accordance with existing contracts and that new entrants may "opt in" to these contract provisions.

Nondiscriminatory Access to Operations Support Systems

Competitive LECs will be unable to compete effectively unless they can order and provision service on the same basis as incumbent LECs. Although the Commission is examining Operations Support Systems ("OSS") issues in a rulemaking proceeding,[1] McLeodUSA urges the Commission to take immediate steps to provide nondiscriminatory access to OSS. That rulemaking has been pending for some time and McLeodUSA is concerned that continued delay will harm new entrants ability to provide competitive services.

To ensure that nondiscriminatory access is available, the Commission should establish performance metrics to measure parity of service. If the Commission believes that it cannot presently establish detailed "permanent" performance standards, it could adopt interim performance standards that are based upon how each ILEC provides service in the context of its retail operations. Specifically, the Commission could first direct each ILEC to identify a level of performance that mirrors its own self-provisioning of service, and after several months of reports, the Commission could revisit this issue and adjust the standards as necessary. Alternatively, the Commission could

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[1] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996), at ¶ 525. *See also*, *Comments Requested on Petition for Expedited Rulemaking to Establish Reporting Requirements and Performance and Technical Standards for Operations Support Systems*, Public Notice, DA No. 97-211 (rel. June 10, 1997).

utilize a "floating" standard of performance for each category, such that the standard for each month would be set by looking at ILEC's performance in running its retail operations during that month. In either case, these standards could be superseded once permanent performance benchmarks are established in the Commission's OSS rulemaking proceeding. McLeodUSA respectfully submits that absent such action, ILECs will retain the ability to stymie competitive entry.

Unlawful Number Portability Charges

In providing service through Centrex resale, McLeodUSA has found that US WEST and Ameritech impose baseless and patently discriminatory charges associated with the use of telephone numbers by McLeodUSA customers. First, when McLeodUSA places an order to provide Centrex service to an existing customer who wants to retain its number, U S WEST and Ameritech require that McLeodUSA pay a charge simply for letting that customer retain the number. Second , US WEST imposes a "block compromise charge." U S WEST imposes this charge whenever an existing McLeodUSA Centrex resale customer ports a McLeodUSA number to US WEST, thereby breaking up a block of McLeodUSA numbers within the Centrex arrangement. US WEST imposes a charge varying from $60 to $450 for each block of numbers. These charges are imposed separate and apart from any service order charges.

These charges violate the Commission's rules implementing number portability cost recovery. Those rules permit incumbent LECs to recover their costs of number portability from end users, not from other carriers.[2] The Commission determined that it would not be competitively neutral if incumbent LECs were permitted to burden carriers seeking to enter the local service markets with incumbents' costs of implementing number portability.[3] McLeodUSA is also concerned that the above charges are not cost-based and that they permit a "double recovery" of number portability costs. Accordingly, McLeod urges the Commission to take steps to assure that USWest and Ameritech comply with the Commission's number portability cost recovery rules.

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[2] 47 U.S.C. Sec. 52.33

[3] *In the Matter of Telephone Number Portability*, Third Report and Order, CC Docket No. 95-116, FCC 98-82, released May 12, 1998, para. 135.

McLeodUSA stresses that it is continuing its efforts to provide competitive choices to both residential and business customers in Ameritech and U S WEST territories. The foregoing measures would substantially enhance the ability of McLeodUSA and other competitive carriers to do so.

Respectfully submitted,

Lyle Patrick
Group Vice President - Public Policy
McLeodUSA, Incorporated

cc: Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael Powell
Commissioner Gloria Tristani
Christopher Wright
Lawrence Strickling
Randall E. Rings, General Counsel, McLeodUSA
David Conn, Vice President - Law & Regulatory, McLeodUSA
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