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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

To-Guyen Truong, Esq.
Federal Communications Commission
445 12th Street, S.W. Room TW-A325
Washington, D.C. 20554

Re: CC Docket No. 98-141; CC Docket No. 98-184;
Notice of Written Ex Parte Presentation

Dear Ms. Truong:

On March 4, 1999, representatives of WinStar Communications, Inc ("WinStar") met with you and a number of your colleagues to discuss the several telephone company merger requests pending before the Commission. During that meeting, you requested that we provide you with some specific language to address some of the specific conditions WinStar feels should be imposed on the companies seeking to merge. Per your request, this language is attached for review.

Pursuant to Section 1.1206(a) of the FCC's rules, 47 C.F.R. § 1.1206(a), we are filing with the Secretary an original and 4 copies of this notice of ex parte presentation. Should there be any questions regarding the above, please do not hesitate to contact the undersigned at 202-833-5678.

Very truly yours,

Joseph M. Sandri, Jr.
VP & Regulatory Counsel

Enclosure

cc: Ms. Magalie Roman Salas, Secretary
Johnson Garrett

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DRAFT MERGER TEXT

Require Pre-Merger Conditions

A review of the incentive structure governing the several recent merger requests (and grants) of the major incumbent local exchange carriers ("ILECs") has revealed significant flaws. Rather than requiring these ILECs to modify their business practices *before* merging, the Commission instead traditionally utilized the approach of imposing conditions after the merger already has occurred, producing "voluntarily agreed-to" conditions which in practice have proven effectively unenforceable.

Simply put, the record now supports the conclusion that conditions placed on the merging parties which solely take effect only *after* the merger is concluded almost certainly result in few if any tangible benefits to the public interest. It is well-recognized that the Commission's stated goal of imposing conditions on mergers is to create pro-competitive benefits for consumers throughout the merged entity's region. Yet, in allowing ILECS to merge before the individual companies have made significant changes to their business practices, the incentive for the ILEC to fully comply with the merger conditions is removed – the merger has already occurred. Moreover, it is burdensome and often virtually impossible to "undo the merger" or swiftly impose and enforce compliance with the conditions after they have been violated. The end result is that consumers do not in fact realize the true benefits of competition from the merger conditions. In reviewing mergers, the only way for the Commission to ensure that a pro-competitive environment and its outflowing benefits are realized by the consumer is to impose the following *pre-conditions* on the outstanding merger requests.

Require Facilities-Based Local Telephony Service Be Effectuated in 30 Out-of-Territory Markets

The Commission should require the merging ILECs to collectively provide facilities-based service in the thirty (30) out-of-territory markets they have identified and committed to, before being allowed to merge. The goal of this requirement is two-fold: (1) it strongly encourages competition in the local exchange market in the thirty affected markets, and (2) equally, if not more important, it forces the ILEC to experience business life as a competitive local exchange carrier ("CLEC").

While the benefits of competition are obvious, the benefits of "business life as a CLEC" are more subtle. The goal, though, is quite clear. Requiring ILECs to compete in out-of-territory markets forces ILECs to face the interoperability, interconnection, building access, and other issues faced by the CLEC industry everyday. This will be an invaluable lesson to the ILECs when it comes to satisfying the other pre-merger conditions set forth below. Mandatory market entry is the only way for the large ILECs to be exposed to the difficulties of business life as a CLEC.

Finally, while on its face thirty markets may seem like a high figure, nevertheless the figure simply reflects what the proponents of the merger themselves have proposed. More importantly, in practice, it reflects the actual accomplishments in the marketplace to date of a number of much smaller, unaffiliated companies such as, for example, WinStar, e.spire and both MFS and Teleport prior to acquisition. With the resources available to them, the ILECs at a minimum reasonably can be expected to duplicate these accomplishments expeditiously.

Access To Inside Wire on an Unbundled Network Element Basis

Just as access to other unbundled elements, systems and databases, e.g., OSS, have been the explicit target of merger conditions in the past, so too – to the extent that an ILEC still owns or controls in-building riser cabling and/or conduit (both vertical and horizontal) (collectively, "house riser") – should the ILEC be required to make the house riser available as an unbundled element. The house riser should be made available just as the ILEC makes the network interface device ("NID") available as an unbundled element. For example, while US West largely divested itself of house riser, SBC, Bell Atlantic New York (NYNEX), Ameritech and others – to varying degrees – retain ownership and/or control over house riser. The Commission must require merging ILECs to make house riser available on an unbundled basis at TELRIC-based prices. These ILECs were able to access the house riser on a reasonable and nondiscriminatory basis, and CLECS, at a minimum, should be afforded this same opportunity.

Access to RBOC Controlled Rights-of-Way, Easements, and Licenses

Facilities-based, state certificated CLECs should be presumed to hold a sub-license allowing them to "stand-in-the-shoes" of the RBOC for purposes of access to RBOC licenses and easements which allow access to all rights-of-way, including in-building rights-of-way, as well as to in-building ducts, conduit, risers, etc. Specifically, the Commission should require the ILECs to provide access by facilities-based CLECs to such facilities at cost-based rates.

Section 224 clearly mandates nondiscriminatory access to rights of way, and CLECs should be entitled to utilize rights of way, including in-building rights of way, under the control of the ILECs for the purposes of developing a competitive local exchange network – just as the ILECs use the rights of way under their control to provide their telecommunications services. Without Commission intervention and the imposition of conditions regarding ILEC controlled rights-of-way, easements, and licenses, the full objectives of the Telecommunications Act of 1996 will never be fully realized.

Special Access Loops Should Be Priced on a TELRIC Basis

The Commission should require ILECs seeking to merge to make available special access loops under a TELRIC rate. Presently loops are provisioned to CLECs only on an unbundled network element / collocation basis. Yet, in practice, the ILECs have demonstrated unequivocally that they remain unable to provision large quantities of unbundled loops on a timely or seamless basis. As a result, in order to facilitate end user loop provisioning within a reasonable time frame, many CLECs in practice have been forced to fall back on ordering special access circuits out of the carrier tariff in lieu of UNE loops, at rates far higher than that provided for UNEs. Given the three-plus year failure of ILECs to meet their obligations to provide UNE loops at parity, and in order to alleviate this real life, economic straight jacket that has been foisted on the CLECs, the commission should require that local loops provisioned via special access must be provided at TELRIC-based rates.

Operations Support Systems Should Be Uniform Before Merger

It is absolutely imperative that the Commission require merging ILECs to develop and deploy uniform standards for operational support systems ("OSS") across their entire territory before merger. Specifically, the Commission should impose the following conditions on ILECs seeking to merge:

(1) to provide uniform interfaces to the Company's operations support systems ("OSS"), and complete operational testing of its OSS interfaces, followed by general commercial market deployment;
(2) have rates based on forward-looking economic costs adopted and effective; and
(3) have adopted and approved effective performance standards and enforcement mechanisms governing its OSS and network performance.

Moreover, the ILECs should be required to provide monthly performance monitoring reports regarding their OSS for at least six months' general market operation across the full ILEC territory so that the Commission has a full record before the merger is allowed to proceed. To meet this condition, the uniform OSS must be at full parity with the ILEC's treatment of its own end users, i.e., it must allow flow-through ordering and provisioning, with respect to both the pre-order and ordering functions, so that from time of entry, the customer of the CLEC is provisioned in a time frame no longer than that experienced by the customer of the ILEC.

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