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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	

COMMENTS OF MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.

McLeodUSA Telecommunications Services, Inc. ("McLeodUSA") hereby submits these comments on the Federal Communications Commission's ("FCC" or "Commission") *Fifth Report and Order and Further Notice of Proposed Rulemaking* in the above-captioned proceeding.[1]

Background

McLeodUSA is a facilities-oriented communications provider supplying competitive local exchange services in 12 Midwestern and Rocky Mountain states. As of September 30, 1999, McLeodUSA had 27 switches, 9,400 route miles of fiber optics network, and 7,800 employees, with over 616,000 local access lines. Currently, McLeodUSA provides the bulk of its CLEC services by reselling the underlying services of the incumbent RBOCs in various states. In certain areas, however, McLeodUSA provides service using its own switching and transport facilities and either unbundled loops leased from the incumbent provider, or its own facilities direct to the customer. As

[1] *Access Charge Reform,* CC Docket No. 96-98, *Fifth Report and Order and Further Notice of Proposed Rulemaking* (FCC 99-206, rel. Aug. 27, 1999) (*"Notice"*).

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a result, McLeodUSA charges long-distance carriers for access associated with the use of these facilities to originate or terminate long-distance calls. McLeodUSA anticipates that the use of unbundled loops and its own facilities to provide service will increase in the future, and that the number of these lines used by IXCs to originate and terminate long-distance calls will also increase.

Comments

It is uncertain what the implications would be in the event an IXC is not required to purchase tariffed access services from CLECs. For example, the absence of such a requirement might mean that the IXC may refuse to provide originating service to customers of certain CLECs. It might also mean that the IXC would be allowed to block calls made by its customers which would terminate to customers of certain CLECs. Conceivably, the IXC could be asking that CLECs like McLeodUSA -- which are in the process of building out their networks, forcing RBOCs to open their local markets to competitors, and actually marketing and providing their services to end-users -- be additionally required to negotiate "customized" access rates with each individual IXC in each jurisdiction where service is provided. None of these options is necessary, desirable or appropriate.

The essence of the IXCs' argument is that CLECs are necessarily charging "unreasonable" rates if their rates are higher than the rates of ILECs in the same area; and that, therefore, the IXCs may refuse to deal with CLECs who charge these rates. What the IXCs fail to recognize is that CLECs, at their current stage of development, are fundamentally different from ILECs.

Obviously, the typical CLEC does not perform the same types of cost studies as do most ILECs; such studies are fundamentally at odds with the fact that CLECs do not possess market power in their markets.[2] Nevertheless, McLeodUSA has some familiarity with the traditional "ILEC access charge" world, by virtue of its affiliation with Illinois Consolidated Telephone Company (ICTC), and incumbent local exchange carrier serving about 90,000 access lines in Illinois. Thus, while McLeodUSA does not (and likely could not) perform the same type of access charge cost study as ICTC, McLeodUSA personnel understand how access rates are developed for incumbent carriers, and the elements which influence those rates. Several of those elements lead to the conclusion that CLECs access rates can be expected to be higher than corresponding ILEC rates, at least for some period of time.

Like many other CLECs, McLeodUSA is currently in a "startup" mode with respect to deployment of switches and network facilities. This leads to a high level of cost relative to the traffic volumes generated. Thus, while the RBOC ILECs against which McLeodUSA competes have many customers on their switches, generating many access minutes over which costs can be spread, the same if not true of McLeodUSA. The smaller CLEC customer base associated with the CLEC's network facilities leads to the conclusion that CLEC access costs may be higher than the access costs of the RBOCs, when measured on a "per access minute" basis. The simple fact is, most CLECs

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[2] The Commission has noted that "We determined that competitive LECs do not appear to possess market power and that the imposition of regulatory requirements with respect to competitive LEC terminating access is unnecessary." In the Matter of Hyperion Telecommunications, Inc. Petition Requesting Forbearance, FCC 97-219, CCB/CPD No. 96-3, slip op. ¶22 (FCC June 19, 1997) ("Forbearance Order"), citing In the Matter of Access Charge Reform, First Report and Order, FCC 97-158, CC Docket No. 96-262, slip op. ¶ 363 (FCC May 16, 1997) ("Access Reform Order").

currently do not generate the large traffic volumes per switch that can help achieve lower per-minute access charges.

As noted above, this factor is merely directional, since McLeodUSA does not perform any sort of cost study for access charges. Instead, in determining a reasonable access rate to charge, McLeodUSA looked to other companies which carry relatively small traffic volumes on their network facilities: those using the NECA access rates. Because McLeodUSA believes that, at this stage of its development, its characteristics are more like those smaller companies than a large incumbent ILEC, McLeodUSA determined that it was most appropriate to base its access rates on the NECA rates. As a result, both McLeodUSA's interstate and intrastate access rates are based upon NECA access rates.

Conceptually, the NECA rates represent an "average" access rate for relatively small companies carrying relatively small amounts of traffic. This is not unlike the characteristics of McLeodUSA at the current time. Over time, it is likely that access rates will fall as access traffic volumes increase; and McLeodUSA's traffic and access cost characteristics may begin to resemble those of an established, incumbent RBOC. Until that time, however, it is unrealistic to assume that McLeodUSA is similar to an incumbent RBOC, with established operations and large numbers of customers per switch.

McLeodUSA' s objective is not to simply have the highest access rate possible. Indeed, if that were McLeodUSA's goal, it could "mirror" the rates of an incumbent local carrier with rates higher than the NECA rates. As the Commission is aware, there are numerous companies around the United States which have access rates that are <u>higher</u>

than the NECA rate. The fact that McLeodUSA did not choose to sets its rates in this way is indicative of its attempt to find a reasonable, objective benchmark for use in setting its access rates. At the current time, McLeodUSA believes that the best such benchmark is the NECA access rates.

Clearly, certain IXCs believe that they are being "overcharged", at least in some sense, when they pay the access rates of particular CLECs in originating or terminating a long-distance call. Although the IXC may have never "ordered" access services from CLECs in these instances, this claim overstates the IXC's case. When an IXC routes CLEC access traffic through an ILEC access tandem, it must analyze the traffic volumes that will result and determine the capacity of interoffice facilities accordingly. In addition, facilities-based CLECs must get their own number prefixes, and must inform all carriers, including the IXC, of those prefixes prior to providing service. As a result, IXCs are aware of the CLEC's operations prior to service being provided. If an IXC attempts to give the impression that it had no knowledge that traffic would be routed to CLECs because "industry standard documentation" contains CLEC NXXs which are served by each access tandem, that action indicates only that the ICX itself did not spend sufficient resources to fully analyze the documentation. Furthermore, the relevant access tariffs have often been on file long before service was actually provided to the IXC, giving it ample opportunity to contest the rates if it so chose. Thus, to imply that traffic is routed to and from CLECs inadvertently is misleading.

If an IXC truly believes that some CLEC access rates are unreasonable, however, the Commission itself has already noted the remedy. By entering local exchange access markets and competing for (and winning) the local exchange customers in question, the

IXC may relieve itself of the obligation to pay access rates which it feels are excessive.[3] In this sense, the IXC is never "forced" to pay the access rates it finds onerous; it implicitly chooses to pay them by offering a customer long-distance services, but not providing that same the customer with local exchange services. Thus, as the IXC aggressively enters local exchange markets, this problem will be reduced or eliminated.

Conclusion and Recommendation

McLeodUSA acknowledges that the Commission has a legitimate interest in ensuring that the access charges applied by all local carriers be reasonable. McLeodUSA recommends that the Commission apply the least intrusive forms of access charge regulation that will protect the interests of consumers with respect to all classes of carriers. There is no evidence that competitive local exchange carriers have been charging unreasonable rates for access service and, therefore, they do not need to be regulated.

To the extent that the Commission deems regulation necessary, McLeodUSA recommends that the Commission should adopt a benchmark analysis to determine presumptively reasonable rates for local carriers. In turn, the Commission should find that IXCs are obligated to pay any presumptively reasonable rate, that self-help refusal to pay is not justified under any circumstances, and that carriers wishing to dispute rates must use the enforcement mechanisms that the Commission has established. Accordingly, IXCs will be assured that access charges will be set at reasonable levels, and CLECs will be assured they will be paid for the services they provide.

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[3] Access Reform Order at ¶ 362; Forbearance Order at ¶23.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Comments of McLeodUSA Telecommunications Services, Inc. have been served by hand delivery to the persons on the attached list.

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