

ORIGINAL

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Melissa Newman
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March 23, 2000

Ex Parte

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 - 12th Street, SW, Room TW-A325
Washington, DC 20554

RE: CC Docket No. 96-98

Dear Ms. Salas:

On, Tuesday, March 21, 2000, Molly Martin, Jeff Brueggeman and the undersigned, representing U S WEST, met with Sarah Whitesell, Legal Advisor to Commissioner Tristani and Kyle Dixon, Legal Advisor to Commissioner Powell, to discuss the above-referenced proceeding. The attached material was distributed at the meeting and served as the basis of the discussion.

In accordance with Section 1.1206(b)(2) of the Commission's rules, an original and one copy of this letter and attachment are being filed with your office for inclusion in the public record of this proceeding.

Acknowledgment and date of receipt of this submission are requested. A duplicate of this letter is attached for this purpose.

Sincerely,



Melissa Newman

Attachments

cc: Kyle Dixon
Sarah Whitesell

No. of Copies rec'd 0+1
List A B C D E

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Jeffry Brueggeman
Molly Martin

The FCC Has the Legal Authority to Limit the Availability of UNES As a Substitute for Special Access

- ❖ *MCI and CompTel claim that any restriction on the use of UNES is contrary to Section 251(c)(3) and the FCC's rules.*
- ❖ This argument ignores the fact that the impairment test of Section 251(d)(2) is a statutory limitation on the availability of UNES.
 - ❖ Section 251(d)(2) requires a service-specific analysis. The use of UNES as a substitute for special access service plainly does not satisfy the impairment test because the special access market is highly competitive.
 - ❖ The FCC's recent decision to limit the availability of unbundled switching confirms there is no merit to the absolutist interpretation.
- ❖ The "just and reasonable conditions" language of Section 251(c)(3) provides an independent legal basis for limiting the conversion of special access services into UNES.
 - ❖ Permitting the unrestricted conversion of special access into UNES would cause serious harm to local competition, universal service subsidies and the FCC's market-based approach to access reform.
 - ❖ The crossover of switched access customers would magnify the problem.

The February 28th Joint Ex Parte is Fully Consistent with the FCC's Orders.

- ❖ *MCI and CompTel complain that the scope of the Joint Ex Parte exceeds what the Commission discussed in the Supplemental Order.*
- ❖ The three options in the Joint Ex Parte are consistent with the FCC's restriction on UNE conversion:
 - ❖ In the Supplemental Order the FCC expanded the restriction on UNE conversion beyond entrance facilities.
 - ❖ In particular, the FCC imposed a local service requirement as a condition of Special Access to UNE conversion. The Joint Ex Parte addresses this requirement.
 - ❖ The FCC cited Options 1 and 2 favorably in the Supplemental Order.
- ❖ The Joint Ex Parte is a compromise, and is flexible. It provides CLECs with three options depending on the amount of local service they are providing.

There are Good Legal and Policy Arguments for a Collocation Requirement

- ❖ *CompTel says that requiring collocation to obtain the EEL undermines a CLEC's ability to incorporate EELs into an efficient network deployment plan.*
- ❖ In the Third Report and Order (para. 486) the FCC held that "any requesting carrier that is collocated in a service wire center is free to order loops and transport to that service wire center" as UNEs. Nothing in the Supplemental Order eliminated the collocation requirement. The FCC merely added an additional requirement that the loop/transport combination must be used to provide a significant amount of local exchange service.
- ❖ Collocation limits the CLECs' ability to "game" the system under Options 1 and 2. There is no collocation requirement for Option 3.
- ❖ Without collocation, a CLEC will have no incentive to invest in local facilities. The requirement to make elements available at UNE rates is intended to be temporary – a method for a CLEC to serve and grow its customer base until it can more fully deploy its own facilities.
- ❖ A UNE is different than a retail service. It is the use of a facility and function – not just a cheaper rate for Special Access service. CompTel would have "cheaper" be the key to an efficient network deployment plan without the requirement to collocate and manage the facility.

Auditing Provisions are Limited and Strike a Fair Balance

- ❖ *MCI and CompTel claim that the audit requirements in the Joint Ex Parte are burdensome and should be replaced with self-certification and Section 208 Complaints.*
- ❖ Audit rights have been in LEC tariffs and interconnection agreements for years. They are the norm, and are very rarely exercised. The audit rights contained in the Joint Ex Parte are quite limited, but necessary. Given the revenues at stake, this is not unreasonable.
- ❖ Without audit rights, ILECs will not know whether a Section 208 complaint is warranted. Access to this information should result in fewer complaints to the Commission.
- ❖ Audits are a powerful incentive for CLECs to provide accurate data to the ILECs, since costs of an audit are only born by the CLEC if the resulting findings indicate the CLEC is in violation of the conditions.