

LEVINE, BLASZAK, BLOCK & BOOTHBY, LLP

2001 L STREET, NW
SUITE 900
WASHINGTON, D.C. 20036
(202) 857-2550
FAX (202) 223-0833

May 16, 2000

Mr. Lawrence E. Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Ex Parte contact in CC Docket No. 98-137

Dear Mr. Strickling

Certain ILECs have asked that the Commission allow them to account for the amortization of the difference between the depreciation reserves shown on their regulatory and financial books of account as an above-the-line cost. In May 8, 2000, to you the same ILECs stated that, "they will not seek to recover *any* portion of the proposed FCC amortization amount by increasing interstate or intrastate rates."¹ These ILECs further state that, "[i]n any state jurisdiction that automatically mirrors FCC depreciation rates, the ILECs agree not to seek intrastate price increases to recover the increases in intrastate amortization expense that would occur as a result of this amortization action."²

The ILECs' commitments are not equivalent to "below the line" treatment of the amortization and higher depreciation expenses. They have apparently committed only to insulate consumers from interstate and intrastate rate *increases* associated with the *amortization*. They make no commitment with respect to the effects of depreciation *rates*. Their commitment is far short of the economic protection ratepayers and competitors would have if the amortization and higher depreciation expenses were accounted for as below-the-line costs.

Listed below are conditions that would give consumers a level of protection that is almost as effective as that which they would have if the depreciation reconciliation were effected below-the-line. In addition to the

¹ Letter of May 8, 2000 to Mr. Lawrence E. Strickling from Frank J. Gumper, Robert T. Blau, Donald E. Cain and Alan F. Ciamporcerio, at 2.

² *Id.*

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commitments already made by the ILECs, the Commission should require that they agree to:

- not seek to recover through interstate or intrastate rates any portion of the increased depreciation expenses resulting from the use of higher financial depreciation rates;
- not seek any flow through in high-cost amounts drawn from universal service funding mechanisms as a result of using higher financial depreciation rates in the development of ILEC cost benchmarks, either by administrative ruling or by legislation;
- not seek any flow through in UNE rates as a result of using higher financial depreciation rates in the development of UNE costs, either by administrative ruling or legislation;
- not seek any flow through in rates for pole and conduit attachments (used by competitors in providing local exchange services) established under FCC rules based on a formula that includes as one of its components a carrying charge factor based on depreciation costs, either by administrative ruling or legislation;
- not use low reported regulatory earnings resulting from the use of higher financial depreciation rates (and/or the accompanying amortization) to avoid intrastate or interstate rate reductions;
- not use low reported regulatory earnings from the use of higher depreciation rates and/or the accompanying amortization to support a "takings claim" under the Fifth Amendment;
- provide the information necessary to permit the Commission Staff to independently maintain appropriate depreciation ranges for major plant accounts for use in its cost models for universal service high cost support and UNE/interconnection prices. The reporting requirement would include information concerning forecast additions and retirements for major network accounts and replacement plans for digital central offices.

The above list is intended to be as comprehensive as possible. Nevertheless, no matter how comprehensive the list, the ensuing protections may not be as reliable or comprehensive as those provided automatically with a

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below-the-line write off. Whether depreciation expenses/amortization is above-the-line or below-the-line matters to end users and ILEC competitors.

Sincerely,

A handwritten signature in black ink, appearing to read "James S. Blaszak". The signature is fluid and cursive, with the first name "James" written in a larger, more prominent script than the last name "Blaszak".

James S. Blaszak
Counsel for the Ad Hoc
Telecommunications Users Committee

Cc: Chairman William E. Kennard
Commissioner Susan Ness
Commissioner Harold W. Furchtgott-Roth
Commissioner Michael K. Powell
Commissioner Gloria Tristani