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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Access Charge Reform )  
 )  
Hyperion Telecommunications, Inc. and )  
Time Warner Petitions for Forbearance, )  
Complete Detariffing for Competitive Access )  
Providers and Competitive Local Exchange )  
Carriers )

CC Docket No. 96-262

CC Docket No. 97-146

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OFFICE OF THE SECRETARY

**COMMENTS OF  
Z-TEL COMMUNICATIONS, INC.**

Z-Tel Communications, Inc. ("Z-Tel"), by its attorneys, hereby submits its comments in response to the Commission's Public Notice (DA-00-1268) in the above-captioned proceedings. The Public Notice invites interested parties to update and refresh the record on a variety of topics related to the provision of interstate access services by competitive local exchange carriers ("CLECs"), including whether mandatory detariffing of CLEC interstate access service rates would provide a market-based deterrent to excessive terminating access charges.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

Z-Tel is a Tampa, Florida-based integrated communications provider that offers local, long-distance, and enhanced services to residential consumers in Massachusetts, New York, Pennsylvania, and Texas. Z-Tel has recently begun providing service on a test basis to residential consumers in Georgia, and hopes to begin providing service throughout Georgia shortly. Z-Tel delivers its telecommunications service to residential customers over the

<sup>1</sup> In these comments, Z-Tel addresses originating interstate access services in addition to terminating interstate access services.

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unbundled network element (“UNE”) combination known as the UNE Platform. Z-Tel self-provisions the long distance and enhanced services portions of its package.

In addition to the local, long distance, and enhanced services provided to retail customers, Z-Tel also offers access services to interexchange carriers that originate calls from or terminate calls to Z-Tel’s retail customers. Z-Tel provides originating interstate access services to interexchange carriers with which Z-Tel “shares” end users. Z-Tel also routes originating dial-around (*i.e.*, 10-10-XXX) and toll free (*e.g.*, 800) calls to interexchange carriers over Z-Tel’s access service. Z-Tel terminates interstate traffic generated by over 200 long distance companies to Z-Tel’s end users over its terminating access service. The rates, terms, and conditions of Z-Tel’s originating and terminating interstate access services are described in its federal tariff, which is on file with the Commission.

In these comments, Z-Tel opposes mandatory detariffing of CLEC access charges. Mandatory detariffing would place CLECs at a substantial competitive disadvantage as compared to incumbent local exchange carriers (“ILECs”). ILECs – Bell Operating Companies (“BOCs”) and independent ILECs – would continue to have the ability to bind IXCs with tariffs, but CLECs would have to negotiate access arrangements with hundreds of IXCs to provide those same services.

Z-Tel recognizes the Commission’s desire to avoid engaging in rate cases to set CLEC interstate access charges; however, mandatory detariffing is unlikely to achieve this end. The Commission presently has before it numerous actions by IXCs and CLECs regarding interstate access charge rates, including a primary jurisdiction referral from the U.S. District Court for the Eastern District of Virginia. As a result of one or more of such proceedings, the Commission will have to address the rate level of CLEC access charges. Thus, mandatory

detariffing will not enable the Commission to refrain from addressing directly the reasonableness of a CLEC's interstate access charges.

Mandatory detariffing of CLEC access charges would create substantial confusion and uncertainty for carriers and for the Commission. Although the Commission may avoid complaints filed pursuant to sections 203 and 204 of the Communications Act of 1934, as amended ("Act"), the Commission will face a landslide of new complaints and primary jurisdiction referrals regarding the interconnection requirements of the Act (*e.g.*, 251(a) interconnection complaints) and the appropriateness of rates set by CLECs. In addition, while these complaints are pending, the Commission should expect service outages to result by virtue of IXCs refusing to interconnect with CLECs. To avoid such a quagmire, the Commission should endorse the approach outlined by the Association for Local Telecommunications ("ALTS") in its October 29, 1999 filing, and (1) allow permissive detariffing of CLEC access charges and (2) set a safe harbor rate for CLEC access charges.

## **II. MANDATORY DETARIFFING WOULD PLACE CLECS AT A SUBSTANTIAL COMPETITIVE DISADVANTAGE AS COMPARED TO ILECS**

At present, intercarrier compensation arrangements for access charges are governed by tariffs for all carriers, including BOCs, independent ILECs, and CLECs. Within their service territories, BOCs and independent ILECs have considerable market power over interstate access markets, and IXCs are required to pay the BOC or ILEC tariffed rate for interstate access charges. The Commission has not proposed mandatory detariffing for BOC or independent ILEC interstate access charges. In fact, by approving the CALLS proposal, the

Commission has assured that the major ILECs will submit tariffed access charges through July 2004.

Pursuant to this proceeding, only CLECs – the new entrants with the least negotiating leverage over national IXCs – stand to lose the ability to rely on tariffs for establishing the rates, terms, and conditions for interstate access charges under the detariffing proposal. Such a result would place CLECs at a substantial competitive disadvantage to BOCs and independent ILECs. ILECs with market power – BOCs and independent ILECs – would continue to have the protection of their tariffs, yet competitors would be forced to negotiate originating and terminating interstate access agreements with literally hundreds of interexchange carriers.

For originating access minutes, mandatory detariffing would subject CLECs to the whims of large IXCs, while BOCs and independent ILECs would continue to receive tariff protection. In a world without tariffs, large IXCs could force CLEC originating access charges below cost by refusing to allow CLEC end users to presubscribe to their interexchange carrier of choice. Many consumers have long-term contracts with their IXC provider, and these consumers cannot elect to take a CLEC's local exchange service if the IXC refuses to take originating access from the CLEC.

Mandatory detariffing could similarly lead to discrimination against CLECs and their customers by IXCs. In a detariffed world, IXCs could discriminate against CLECs and their customers by providing the IXCs' local exchange customers with long distance service while simultaneously denying competitors' customers their long distance carrier of choice.<sup>2</sup>

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<sup>2</sup> Z-Tel notes that this result may violate IXC rate integration, which is mandated by section 254(g) of the Act and the Commission's rules.

Moreover, dialing-parity obligations require CLECs to connect dial-around and toll-free calls to interexchange carriers, and without tariff protection, CLECs would be forced to deliver these calls without any assurance of reasonable compensation. At the same time CLECs become embroiled in regulatory uncertainty, BOCs and independent ILECs would continue to have the protections afforded by their tariffed rates, terms, and conditions for originating access services.

For terminating access minutes, mandatory detariffing would create a substantial barrier to entry for CLECs. Although Z-Tel actively markets local exchange services in only four states, Z-Tel presently renders terminating interstate access bills to over 200 IXCs that utilize Z-Tel's terminating access services. Without the benefit of its tariff, Z-Tel would have to negotiate individual arrangements with each of these carriers before providing interstate service, or risk not being compensated for terminating access services rendered. BOCs and independent ILECs, by contrast, would have the ability to rely on their tariffs for terminating interstate access traffic for each of these 200 IXCs. Forcing CLECs to obtain contracts with IXCs for terminating interstate traffic while BOCs and independent ILECs can rely on tariffs for these same services would thus create a regulatory barrier to entry for CLECs.

### **III. MANDATORY DETARIFFING WOULD CREATE UNNECESSARY REGULATORY UNCERTAINTY AND CONSUME EXCESSIVE COMMISSION RESOURCES**

The Public Notice in this proceeding seeks comment on whether mandatory detariffing would provide a market-based deterrent to excessive terminating access charges. Z-Tel submits that maintaining tariffs pursuant to section 203, instead of eliminating section 203 through mandatory detariffing, is the most appropriate means of ensuring that CLEC access charges are just, reasonable, and nondiscriminatory. Rather than eliminating rate issues through

forbearing from sections 203 and 204<sup>3</sup> for CLEC access services, mandatory detariffing would result in a shift from complaints pursuant to sections 203 and 204 to complaints pursuant to other sections of the Act, such as 251(a), which requires carriers to interconnect with one another.<sup>4</sup>

A shift of Commission enforcement activity from sections 203 and 204 complaints to section 251(a) complaints would result in substantial regulatory uncertainty and could cause substantial service disruptions. Complaints filed under section 203 presume that carriers are interconnected with one another and will continue to exchange traffic until such time as the Commission resolves the rate issue. Indeed, section 204 expressly authorizes the Commission to direct parties to “track and true-up” disputed rates pending resolution of the complaint. In addition, section 204 sets statutory timeframes for the resolution of rate disputes, which serve to minimize regulatory uncertainty.

If the Commission were to forbear from sections 203 and 204 for CLEC access charges, the presumption of interconnection and continued traffic flow would cease, and service disruptions would likely result. As AT&T and Sprint have made abundantly clear, large IXC's in a detariffed world will likely refuse to interconnect with CLEC's as a means of gaining leverage in pricing negotiations. Given the substantial market power of the largest IXC's, CLEC's will either have to acquiesce to the demands of these IXC's or file interconnection complaints pursuant to section 251(a) of the Act.

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<sup>3</sup> Section 203 of the Act addresses “schedules of charges,” commonly known as tariffs. 47 U.S.C. § 203. Section 204 addresses the lawfulness of charges filed with the Commission. 47 U.S.C. § 204. If the Commission were to forbear from section 203, pursuant to which CLEC's file tariffs, then, by implication, the Commission also would forbear from section 204. The Commission would have difficulty reviewing a rate pursuant to section 204 if a CLEC were foreclosed from filing a “schedule of charges” due to a section 203 forbearance action by the Commission.

<sup>4</sup> 47 U.S.C. § 251(a).

Under a 251(a) complaint, IXCs will have the ability to withhold interconnection pending the resolution of a complaint. In contrast to section 204, section 251(a) imposes no statutory deadline for resolving disputes, and without such a deadline, section 251(a) complaints will likely be protracted, creating increased regulatory uncertainty for CLECs. Moreover, because traffic will not likely flow during the course of a section 251(a) complaint, substantial service outages could result while these complaints are pending.

**IV. THE COMMISSION SHOULD ENDORSE THE ALTS PROPOSAL AND ALLOW PERMISSIVE DETARIFFING AND SET A BENCHMARK FOR CLEC ACCESS CHARGES**

If the Commission wishes to adopt access charge rules for CLECs and other nondominant carriers, it should adopt the approach proposed by ALTS in its October 29, 1999 comments in this proceeding. In those comments, ALTS endorsed permissive detariffing, such that competitive providers of exchange access would have no obligation to file tariffs with the Commission under section 203 of the Act. Carriers that seek the protection of tariffs, however, would have the ability to continue to file tariffs.

As for rates, Z-Tel also agrees with the ALTS approach regarding a bellwether rate for CLEC access charges. Under this approach, the Commission would adopt a “safe harbor” rate. CLECs would not be prohibited from setting rates above this level, but would be subject to challenge under the section 208 process if they tariff a rate in excess of the bellwether rate. Over time, IXCs could petition the Commission to revisit any bellwether rate adopted by the Commission as the access charge market evolves. Z-Tel submits that such an approach would minimize the burden placed on the Commission, minimize access charge regulation on

CLECs, set a reasonable benchmark for IXC's to compensate CLECs, and further the goals of the Act by encouraging, rather than discouraging, all carriers to interconnect with one another.

**V. CONCLUSION**

For the reasons presented herein, the Commission should reject mandatory detariffing. Consistent with the ALTS proposal of October 29, 1999, the Commission instead should (1) allow permissive detariffing of CLEC access charges and (2) set a safe harbor rate for CLEC access charges.

Respectfully submitted,



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