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

In the Matter of	**)**	
Additional Comment on Issues	**)**	**CC Docket No. 96-262**
Relating to CLEC Access Charge	**)**	
Reform	**)**	
	)	

COMMENTS OF ESCHELON TELECOM, INC.

I. INTRODUCTION.

Eschelon Telecom, Inc. (Eschelon), by its undersigned attorneys, submits these Comments in response to the Commission's December 7, 2000 Public Notice in the above-referenced docket.[1] Eschelon is a competitive local exchange carrier (CLEC) currently providing service in the states of Arizona, Colorado, Minnesota, Nevada, Oregon, Utah, and Washington. Eschelon operates primarily in metropolitan areas within those states. These Comments will therefore not address the issue of a rural exemption. Eschelon will address comparisons of CLEC and ILEC access rates and alternatives for access charge reform.

II. THE COMMISSION SHOULD REJECT A "ONE SIZE FITS ALL" APPROACH TO CLEC ACCESS CHARGES.

A. CLECs Should Be Allowed to Continue Tariffing Access Charges.

As a small CLEC, Eschelon urges the Commission to reject mandatory detariffing as a solution to access charge issues, especially for small CLECs. The current permissive

[1] Common Carrier Bureau Seeks Additional Comment on Issues Relating to CLEC Access Charge Reform, Public Notice, CC Docket No. 96-262, DA 00-2751 (rel. December 7, 2000) (Public Notice).

tariffing is an important administrative convenience that significantly reduces costs and eases contracting burdens for small CLECs. Without the tariff option, small CLECs would be in the unenviable position of trying to negotiate access charge arrangements with literally hundreds of IXCs, the largest of which have legal and technical personnel whose only job is to negotiate such agreements. CLECs, especially smaller CLECs, are simply not in a position to actively negotiate such agreements, especially against the much larger IXCs.

Second, mandatory detariffing would place small CLECs at a major disadvantage relative to the large IXCs, the primary customers of exchange access service. Even under existing tariff regulation, some of the prominent IXCs are ignoring their duties toward access providers under the Telecommunications Act of 1996 and this Commission's decisions regarding access charges. IXCs are threatening refusal to interconnect with Eschelon and are refusing to pay Eschelon for tariffed access services at the tariffed rate in direct contravention of the Act and of Commission rulings. In fact, some IXCs have refused to pay Eschelon anything at all unless and until Eschelon agrees to charge the ILEC rate.

This approach would only be exacerbated under a totally detariffed scheme. Thus the Commission should not only continue the option of tariffed access rates for small CLECs, it should actively enforce the duty of the IXCs to interconnect with CLECs and pay the tariffed rates. Most of all, IXCs must not be allowed to engage in strong-arm "self-help" tactics by refusing to interconnect or pay for access services. No changes to CLEC access charges should be required unless and until IXCs comply with the Act and

Commission rulings as to payment of current access charges. Access charges should not be detariffed for CLECs.

B. CLECS Should Not Be Required to Mirror ILEC Access Charges

As the Commission's Public Notice recognizes, and as the Commission has concluded on other occasions, it is not appropriate to simply benchmark all CLEC access charges at the ILEC rate. This is especially true and especially important for small CLECs. As the Commission has already recognized, the unit costs incurred by CLECs to provide access are higher than large ILECs and only decrease as demand increases. "The Commission has recognized that smaller telephone companies have higher local switching costs than larger incumbent local exchange carriers (ILECs) because the smaller companies cannot take advantage of certain economies of scale."[2] In its Public Notice the Commission repeated its earlier observation in this docket that many CLECs' access rates may be "higher due to the CLECs' high start-up costs for building new networks, their small geographical service areas, and the limited number of subscribers over which CLECs can distribute costs."[3] The Commission has also recognized that a "one size fits all" approach to access charges is not appropriate. As the Commission remarked in its Public Notice, it "has recognized that it may be problematic to limit all CLECs to a single benchmarked rate, regardless of the characteristics of the market that they serve."[4]

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[2] *National Exchange Carrier Assn., Inc. Proposed Modification to the 1998-99 Interstate Average Schedule Formulas,* 13 FCC Rcd 24225, (Dec. 22, 1998 at n. 6.

[3] *Pricing Flexibility Order,* 14 FCC Rcd at 14343, ¶244.

[4] Public Notice, CC Docket No. 96-262, DA 00-2751 (rel. Dec. 7, 2000).

In fact, despite the position taken by the IXCs in this docket, many of the IXCs have there own CLEC subsidiaries or affiliates who charge access rates higher than ILECs. Thus, while IXCs claim that CLEC access charges are unreasonable because they exceed ILEC rates, their own CLEC affiliates charge rates that exceed those of the ILECs. Furthermore, the fact that these companies have CLEC subsidiaries or affiliates provides them with an incentive to make life as difficult as possible for their CLEC competitors. One way to do this is to use bullying tactics to force CLEC competitors to reduce access charges. One wonders whether the IXCs are refusing to pay their own CLEC affiliates for access.

Therefore, the Commission should take a close look at the unique characteristics of the various CLECs in determining any access charge policy. Such a policy should be flexible and take into account the size and volume differences between CLECs and ILECs as well as between CLECs.

III. ACCESS REDUCTIONS MUST BE PHASED-IN.

Finally, to the extent that the Commission imposes a reduction of current access charges any such approach should be flexible and phased-in over time. Access charges currently represent a significant revenue source for many small CLECs. Therefore, a sudden and dramatic decline in those revenues would be a difficult blow to absorb if imposed on an immediate basis. At a time when many CLECs are struggling to enter new markets and compete with ILECs, such a sudden revenue loss could be their death knell. Certainly, such a sudden change in policy could greatly delay CLEC entrance into new markets. Therefore, if any decreases are mandated they should be phased-in over a period of several years.

IV. CONCLUSION.

There remains little evidence that CLEC access charges should be set at the same level as ILEC access charges. The size and characteristics of CLECs vary greatly from each other and from ILECs. A uniform approach is not reasonable under these conditions. Any change in the current policy regarding CLEC access charges must take into account these differences. Any reductions ordered as a result of this docket must be gradually phased in. Finally, and most importantly, IXCs must be required to interconnection with and pay CLECs for that interconnection.

Respectfully submitted,

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