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Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

Access Charge Reform	)	CC Docket No. 96-262
Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers	)	CC Docket No. 97-146

SUMMARY

In this proceeding, the Commission has expressed concern over the impact of the "Filed Rate Doctrine" – specifically, the Commission noted that some CLECs could set access charges at unreasonable levels and enforce payment through their federal tariffs. The Commission

ceiling will be subject to mandatory detariffing. Third, a provision to lessen the likelihood that CLECs will be subject to unlawful self-help and harassing litigation by large interexchange carriers. Based on the results of the Report on CLEC Cost Issues and Survey Of CLEC Interstate Access Rates, prepared by QSI Consulting and appended as Attachment 1, adoption of the GREAT Proposal would result in average reductions of about 60% – from 4.27¢ to 2.5¢ – in the average rates charged to IXCs by CLECs and would provide for further reductions on an annual basis. This bifurcated detariffing scheme would serve the public interest by considerably reducing CLEC access charges, promoting regulatory certainty, deterring collection action litigation, and relieving the regulatory burden borne by the Commission, while allowing the industry to retain the efficiencies that accrue by providing service through federal tariffs.

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COMMENTS OF THE ASSOCIATION FOR
LOCAL TELECOMMUNICATIONS SERVICES

The Association for Local Telecommunications Services ("ALTS"), pursuant to the Public Notice ("Notice") in the above captioned proceedings, released December 7, 2000, hereby files its comments to provide additional information regarding competitive local exchange carrier ("CLEC") interstate access charges.

I. INTRODUCTION

In this proceeding, the Commission has expressed concern over the impact of the "Filed Rate Doctrine" – specifically, the Commission noted that some CLECs could set access charges at unreasonable levels and enforce payment through their federal tariffs. The Commission

however, we recognize the Commission's concerns and therefore submit a proposal that would address those concerns through less drastic means than a complete mandatory detariffing regime.

In its earlier comments in this proceeding, ALTS acknowledged that the Commission may rightly be concerned over the possibility that some CLECs could set access charges at unreasonable levels. ALTS posited that, if the Commission found that some regulatory action were necessary to protect against unreasonable access charges, the establishment of a "bellwether" rate level – under which CLEC access charges would be deemed reasonable – could be a practical solution. ALTS and other commenting parties noted that this limited form of regulation would be minimally burdensome, while providing substantial benefits to the industry. In particular, this approach would keep transaction costs low and provide regulatory certainty that would eliminate litigation.

In the interval since the Commission first received comments on this issue, another significant development involving CLEC access charges has occurred. Specifically, collection actions have been filed against two of the largest interexchange carriers ("IXCs") – AT&T and Sprint – that have engaged in widespread self-help by simply refusing to pay for access services they have obtained from CLECs.[1] The first litigation in this matter was a Formal Complaint proceeding heard by the Enforcement Bureau in *MGC v. AT&T*.[2] On July 16, 1999, the Bureau ruled in favor of MGC, finding that AT&T acted unlawfully in practicing self-help, and that

AT&T could not unilaterally withhold payment for access services that it obtained from a CLEC. That decision was subsequently affirmed by the full Commission.[3]

Since that time, several other actions have been – and are being – litigated, both before the Commission and federal courts. A coalition of 14 CLECs has filed a collection action against AT&T and Sprint in the Federal Court for the Eastern District of Virginia, which action is pending.[4] Individual CLECs have filed collection actions against AT&T in Federal Courts in North Carolina[5] and the District of Columbia,[6] and Formal Complaints have been filed against Sprint[7] and AT&T[8] before the Commission. Sprint filed a Formal Complaint against a CLEC, arguing that its rates were excessive, which complaint was dismissed by the Commission on October 13, 2000.[9] In addition, there have been several additional federal court actions that have been settled.

In light of these developments over the last year, ALTS appreciates that the Commission must consider regulatory action that accomplishes several different goals:

1. Ensure reasonable CLEC access charge levels,

2. Prevent unlawful self-help and harassing litigation by large carriers, and

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3 *See MGC Communications, Inc. v. AT&T Corp.*, 15 FCC Rcd 208 (1999).

4 *Advamtel, LLC v. AT&T Corp.*, Civil Action 00-643-A (E.D. Va. filed Apr. 17, 2000); *Advamtel, LLC v. Sprint Communications Co. L.P.*, Civil Action 00-1074-A (E.D. Va. filed Apr. 17, 2000).

3. Ensure that all carriers retain the ability to provide service efficiently and economically.

The proposal described below achieves these goals, and ALTS respectfully requests that, if the Commission determines that regulatory action is necessary, it adopt rules to put this proposal into effect rather than mandate detariffing of all CLEC interstate access charges.

II. THE "GUARANTEED REDUCED EXCHANGE ACCESS TARIFFS" PROPOSAL

In response to the concerns discussed above, ALTS hereby submits its proposal for assuring reasonable CLEC access charges while protecting CLECs from unlawful self-help and

b) For CLECs serving Tier 1 markets:
- Starting "ceiling" rate level would be 2.5¢ per minute
  - Rate will include all switching and transport components
  - Rates will be the same for originating and terminating access
  - Following adoption by the Commission, CLECs will be given 6 months to amend their tariffs to put this rate into effect
- Ceiling rate would phase down by 0.2¢ per year
  - After three years, the Commission may revisit this plan if it determines the Proposal is not producing reasonable rates

c) For CLECs serving markets served by rural ILECs:
- The permissive detariffing level will be the ILEC tariffed interstate access rate in that area
- This rate will include all switching and transport components and any other access-related revenues that are otherwise not accounted for in the switched access rates
- Following adoption by the Commission, CLECs will be given 6 months to amend their tariffs to put this rate into effect

d) For CLECs serving Tier III and/or Tier IV markets (i.e., high cost markets) served by

3. The Commission should clarify interconnection and payment obligations of carriers

- The Commission should affirm that self-help refusal to pay lawfully filed tariff rates is impermissible
- The Commission should expand on the ruling in *MGC v. AT&T* to define the terms under

ILEC rate were per se unreasonable.[11] Moreover, local service affiliates of two of the largest IXCs currently charge access rates well in excess of the ceiling rate proposed in this filing: ACC National Telecom Corp., an affiliate of AT&T, currently charges access rates of 9¢ per minute, and Sprint Spectrum, the wireless local service affiliate of Sprint, sets its terminal rate of

Commission in May, 2000, and with the reductions proposed in the Multi-Association Group ("MAG") Plan, which is now pending before the Commission. Furthermore, the GREAT Proposal contains no make-whole provisions as are incorporated into both the CALLS and MAG plans – under this Proposal, most CLECs would make considerable reductions in their access charges with no mechanism to recoup those reductions in revenue.

Moreover, as discussed above, the last two years have witnessed widespread reliance on unlawful self-help by AT&T and Sprint, which has sparked extensive litigation before federal courts and this Commission. This has been a substantial drain on the resources of the

costs over a larger usage base, and to realize lower per-unit costs. CLECs, on the other hand, are growing their customer base, and have lower levels of demand – and therefore utilization – when they install switches and transport. This leads to higher per-unit costs for CLECs. The Commission expressly acknowledged this cost difference in its *UNE Remand Order.*[13]

- Higher use of transport/longer lengths of haul. CLEC customers tend to be located farther from CLEC facilities than ILEC customers are from ILEC facilities. As a result, CLECs perform greater amounts of "backhauling" to and from switching facilities. In addition, their networks typically are characterized by longer lengths of haul than ILECs. The Commission expressly acknowledged this cost difference in its *UNE Remand Order.*[14]

- Less dense customer base. Even CLECs that provide service to customers located in densely populated urban areas do not provide service to *all* customers in that service area. As a result, the distribution of CLEC customers – even in urban areas – tends to resemble a typical customer distribution pattern in ILEC suburban or rural areas. Just as ILEC costs for serving customers in less densely populated areas are higher, CLECs find that the costs of serving their more widely distributed customer base are higher.

- Higher ratio of Traffic-Sensitive to Non-Traffic-Sensitive Costs. CLEC networks are not deployed in the same hierarchical configuration as ILEC networks. Rather, CLECs frequently deploy SONET nodes and transport – which reflect traffic-sensitive costs – to perform many of the functions performed by ILEC Class 5 switches, which reflect predominantly non-traffic sensitive costs. This higher level of traffic sensitive costs justifies higher levels of cost recovery through usage-sensitive

Commission expressly acknowledged this cost difference in its *UNE Remand Order.*[16]

C. The Permissive Detariffing Ceiling Reflects Sound Public Policy

A complete mandatory detariffing scheme that applied only to CLECs, as proposed by the Commission, would unfairly disadvantage CLECs compared to their ILEC competitors and IXCs.[17] ILECs would have the advantage of the convenience and cost savings of filing tariffs for access services while CLECs would be forced to negotiate with every IXC with which they originate or terminate traffic. Moreover, larger IXCs with greater bargaining power would be advantaged during those negotiations. Such a policy would not be in the public interest.

As noted above, adoption of the GREAT Proposal would allow CLECs to enjoy the continued efficiencies of tariffing, while also addressing the IXCs' concerns about unreasonable CLEC access charges. The approach recommended in the Proposal accomplishes this with minimal regulatory involvement, which conserves the resources of both the Commission and the industry. In so doing, adoption of the GREAT Proposal would further the public interest.

16 *Id.* ¶ 265.

17 ALTS Comments, filed June 12, 2000, in CC Docket Nos. 96-262, 97-146.

IV. CONCLUSION

[redacted]

ATTACHMENT 1

QSI CONSULTING

REPORT ON CLEC COST ISSUES

AND

SURVEY OF CLEC INTERSTATE ACCESS RATES

REPORT ON CLEC COST ISSUES

CLECS' COST STRUCTURES DIFFER SIGNIFICANTLY FROM THE LARGE ILECS' COST STRUCTURES

In comparing the competitive local exchange carriers' ("CLECs'") switched access charges to those of the incumbent local exchange carriers ("ILECs"), one should recognize the differences between those two categories of companies. Most importantly, one should be careful not to automatically conclude that a CLEC is inefficient or that its access rates are unreasonable if it charges interexchange carriers ("IXCs") more for originating or terminating traffic than certain large ILECs do.

In a multi-product environment, one cannot evaluate the overall efficiency of a firm by focusing on a single product out of an array of the firm's product offerings. To properly explain differences in switched access rate levels, one should, at a minimum, consider the differences between the CLECs and ILECs network architectures and cost structures.

CLECS USE OPTIMALLY EFFICIENT FACILITIES BUT GENERALLY EXPERIENCE LOWER LEVELS OF UTILIZATION FOR SWITCHING AND TRANSPORT FACILITIES

In general, CLECs use state-of-the-art, optimally efficient facilities. As discussed above, these facilities consist of state-of-the art switches and transport facilities, constructed to serve a target customer base consistent with the CLEC's specific market entry strategy.

As discussed previously, CLECs typically purchase large switches, such as a Lucent 5ESS, or Nortel 500, capable of serving tens of thousands of customers. Likewise, the SONET facilities constructed to transport traffic to end-users and other carriers are often capable of carrying large amounts of traffic. However, most CLECs must install these facilities substantially before they are able to acquire sufficient numbers of customers to achieve levels of utilization for which the facilities are designed. This means that over the ramp-up period, the utilization of CLECs facilities is substantially below full capacity.

This situation contrasts sharply with that of the ILECs. Often, when an ILEC places a new digital switch

[redacted]

utilization rates on existing digital switches in wire centers that are experiencing growth. In such situations, the ILEC will often grow the digital switch by installing additional switch modules in the same central office, or it will place remotes that are served by the existing host switch. In either case, the overall level of switch utilization will be high. The same is true for the ILECs' transport facilities. Here too, ILECs reap the benefit of having a mature network that serves a large, existing customer base so that new facilities can be added incrementally as new demand is anticipated to materialize.

Thus, even though CLECs may employ optimally efficient, state-of-the-art facilities, they are likely to experience average utilization rates -- over the economic life of the facilities -- below those enjoyed by the larger ILECs.

CLECS TEND TO SERVE A SPARSE CUSTOMER BASE

By and large, CLECs will operate in urban, or sub-urban environments that are densely populated. However, while a high population density in these areas translates into a dense customer base for the large, urban ILECs, the CLECs may be faced with customers that are spread-out over a fairly large area. Once CLECs enter a particular geographic market, they often tend to serve customers over an area that is roughly comparable to the local calling areas of the ILEC. However, given the limited scope of their facilities, among other factors, they will only serve a fraction of the customers in such areas. Thus, if the CLEC's customer base is expressed on a customer-per-square-mile basis, it is sparse relative to that of the urban ILECs.

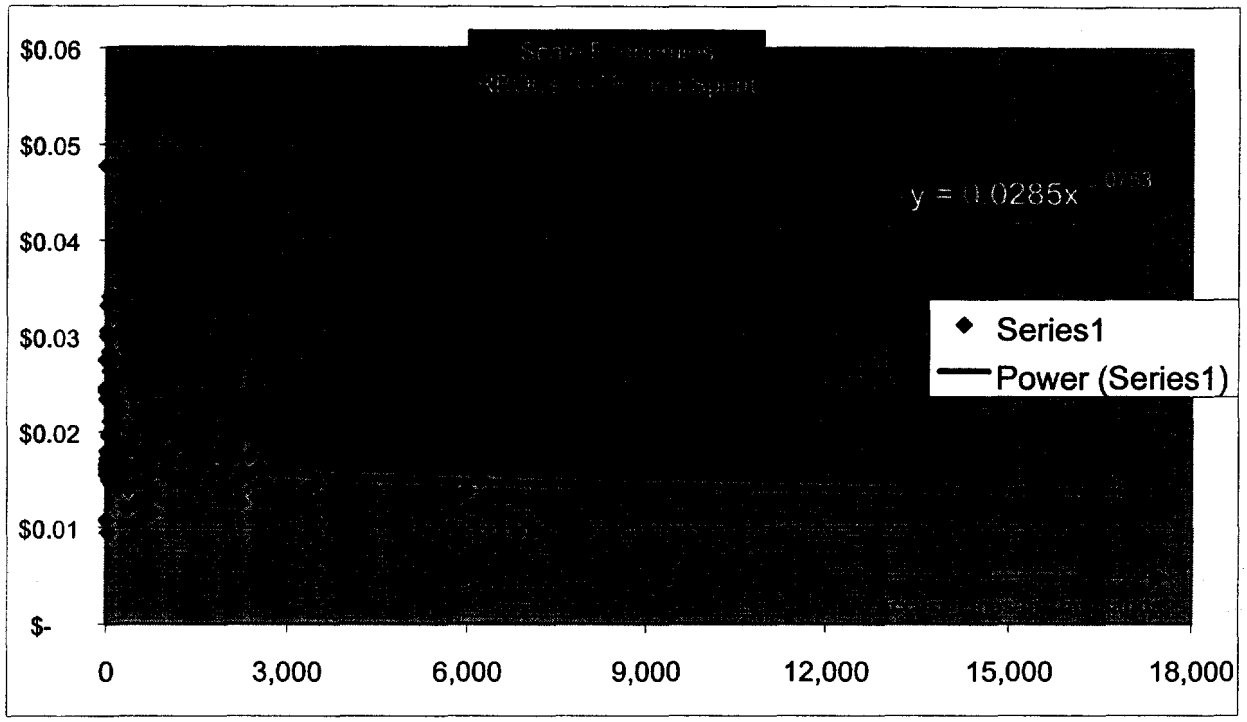
CLECS CUSTOMERS TEND TO BE LOCATED AT A GREATER DISTANCE FROM THE CLEC SWITCHING FACILITIES

Some of the shortest loops for ILECs are found in their densely populated urban serving areas. However

CERTAIN OF THE CLECS' COST CHARACTERISTICS ARE SIMILAR TO THOSE OF THE SMALLER ILECS

As discussed above, there are a number of reasons for why the CLECs cost structure is different from that of the larger ILECs. Many of those reasons, though not all, have to do with the fact that the CLECs, at

While the data are not unambiguous, there appears to be a pattern correlating the level of switched access charges to the size of the ILEC's operations, measured in terms of customer access lines. The graph below shows how the ILECs' (RBOCs, GTE and Sprint) interstate switched access charges are correlated to the size of the ILECs, measured in number of access lines served.



Graph: Terminating Interstate Access Rates plotted against Access Lines for RBOCs, GTE and Sprint

Obviously, there are many factors influencing the determination of interstate switched access charges. Nevertheless, it appears that the larger the company's operations, the lower are its interstate switched access charges. This suggests that the economies of scale enjoyed by the RBOCs (because of the maturity

SURVEY OF CLEC INTERSTATE ACCESS RATES

METHODOLOGY

CLEC Interstate access tariffs were provided to ALTS and the law firm of Kelley Drye & Warren for inclusion in the survey. Each tariff was reviewed for all rate elements regarding interstate access charges. The following is a listing of the rate elements that are included:[19]

- Carrier Common Line (originating)
- Carrier Common Line (terminating)
- Local End Office Switching
- Interconnection Charge
- Information Surcharge
- Tandem Switched Transport Termination (fixed)
- Tandem Switched Transport Facility (per mile)
- Tandem Switching

After identifying the tariffed rate for the appropriate rate elements for each CLEC,[20] composite rates for originating and terminating charges were developed for each CLEC by summing those rate elements.

An industry study average was calculated by averaging the composite rates of all study CLECs' originating and terminating services.

RESULTS

Thirty-six CLECs participated in the survey. The composite rates ranged from .43¢ on originating access and .38¢ on terminating access to 7.85¢ on both originating and terminating, with an industry study average of 4.27¢ on originating and 4.26¢ on terminating. Twenty-nine of the CLECs surveyed have composite access rates currently above 2.5¢ per minute.

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19 Each CLEC has a slightly different access charge rate structure and hence may not have a rate associated with each rate element identified.

20 Several CLECs reported access charges for several areas (generally states) in their interstate access tariffs. For these companies an overall company average was calculated and that company average was included in the survey.