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

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

REPLY COMMENTS OF TDS METROCOM, INC.

TDS Metrocom, Inc. (TDS Metrocom), by its attorneys, submits these reply comments responding to comments filed in the above-captioned proceeding on January 11, 2001 regarding alternative means of resolving disputes about Competitive Local Exchange Carrier (CLEC) access charges that have led certain Interexchange Carriers (IXCs) to use unlawful self-help by withholding payment or refusing to originate or terminate calls for customers using the access services of CLECs whose charges the IXCs disapprove. TDS Metrocom remains convinced that any across-the-board Commission prescription of a nationwide benchmark for CLEC rates to be deemed just and reasonable is unlawful and unfair. Nevertheless, TDS Metrocom commends the Association for Local Telecommunications Services (ALTS) for its efforts to develop a plan to end the costly and disruptive wrangling over CLEC access charges without seriously jeopardizing the nascent competition that CLECs are bringing to the nation's local telephone markets. TDS Metrocom also agrees with FairPoint Communications' Comments that CLECs that enter smaller and more-costly-to-serve markets within Bell Operating Company (BOC) areas require tailored access charge policies just as acutely as carriers serving in rural telephone company service areas, and in many cases more acutely. Because TDS Metrocom has targeted its competitive services primarily to smaller BOC-served cities and residential areas, and thus faces the higher costs and risks of this highly desirable form of competitive entry, TDS Metrocom suggests changes to the GREAT Plan proposed by ALTS that will reduce CLECs' access charges, especially in high density, lower-cost areas, while accommodating the differences in market costs and conditions which the Commission's "zone pricing" policies already recognize and many states and price cap carriers have already quantified and implemented in markets served by CLECs.

The Nationwide Benchmark Worldcom Advocates to Avoid "Inevitable" Self-Help Blocking of CLEC Switched Access Traffic It Considers Overpriced Would Undercut Competition and Customer Service in Markets Below the Densest, Most Urban Markets

Worldcom urges (pp. 2-3) against "fine-tun[ing]" the Commission's rules "to account for cost variations among CLECs." Instead, it favors a single nationwide benchmark or tariff ceiling, and threatens that IXCs will have no choice but to "block traffic from CLECs with the highest access charges." Both its proposal and its threat are fatally flawed.

In the first place, Worldcom's sole basis for the presumption that many CLECs' access charges are excessive is the comparison to ILEC rates. The Commission has already held that it cannot be assumed that CLEC rates above ILEC access charges are unjust or unreasonable.[1] Worldcom's claims (p. 3) that average ILEC rates, including rates of NECA pools or "all price cap ILECs," are significantly lower than one-third of CLECs' rates does not obviate the legal need for a showing -- rather than a presumption --that CLECs are charging rates above their costs, let alone that all CLECs should be subjected to a nationwide tariff ceiling. Although it

[1] See, Sprint Communications Co. L.P. v. MGC Communications, Inc., ___ FCC Rcd ___, 2000 FCC Lexis 5427 (Oct. 13, 2000).

acknowledges that "geographically variable" rates tied to the area in which each CLEC competes would be a valid approach, moreover, Worldcom claims that ease of administration and a single cap "somewhat above the national average ILEC rate" would allow CLEC tariffs that "provide[ ] a revenue stream roughly equivalent to the LEC with which they are competing." This standard for "the Commission's policy" is, of course, simply another way of stating the rejected presumption that rates above some ILEC access charge measurement are necessarily unreasonable.

There is no record evidence that CLEC access charges are excessive or that a single nationwide cap based on ILEC costs would achieve "just and reasonable" charges for all CLECs. The Commission should reject Worldcom's demand for a single, nationwide ceiling rate for CLECs, which a CLEC would have to prove "hardship" to exceed.

The ALTS GREAT Proposal Offers a Foundation for Determining a Workable Benchmark for CLEC Access Charges

ALTS suggests a plan in its comments designed to permit a resolution of the CLEC access charge dispute and to prevent further self-help actions prejudicial to CLEC customers, CLECs and the national pro-competition commitment. Even Worldcom, which "worked with" ALTS on the GREAT plan, describes the ALTS plan as "a good faith attempt to reach a compromise among competing interests."

The GREAT proposal would reduce CLECs' access charges by setting a ceiling for allowable charges, with mandatory detariffing for above-ceiling charges. In return, the Commission would issue an order (a) clarifying that IXCs may not use self-help refusal to pay to protest CLEC access charges, (b) setting out the legal limits upon carrier blocking traffic or terminating service to end user customers with charges above the "permissive detariffing ceiling," and (c) ensuring adequate carrier trunking capacity. ALTS proposes a ceiling rate level of 2.5 cents per minute, decreasing by 0.2 cents per year for Tier 1 markets. It proposes a ceiling of the tariffed access level of the ILEC in markets served by rural telephone companies. In these Tier 1 and rural telephone company markets, the CLECs would have a six-month transition to put the ceiling charge into effect. ALTS provides information to support the proposal for setting ceilings for CLECs with rates above the permissive detariffing benchmark.

For the higher-cost Tier III and Tier IV markets, such as those served by TDS Metrocom, ALTS was much less specific. It urged the Commission (p.5) to "consider" either an exemption from mandatory detariffing requirements or adoption of a mandatory detariffing requirement coupled with "a significantly slower phase down period to address the … recognition … that competition is more tenuous, and will take longer to develop in high-cost RBOC markets."

TDS Metrocom supports ALTS in its effort to bring an end to costly litigation, withholding of CLEC charges and threats to deny IXC service to CLECs' end users. It agrees that both areas served by rural ILECs and smaller markets served by large ILECs need and deserve revenues significantly above urban-centered ILECs' average access rates. TDS Metrocom could also support the first ALTS alternative for exempting smaller markets served by large ILECs from permissive detariffing ceilings, as long as the Commission prohibited IXC non-payment or denial of interconnection or service to any CLEC or CLEC end user in these markets. However, TDS Metrocom is concerned that the absence of a specific standard for markets below Tier 1 markets that are not "rural telephone company" markets will result in imposition of a permissive detariffing ceiling that is too low and a transition period that is too short for CLECs serving smaller BOC cities and rural or residential areas.

The Commission Should Only Impose Benchmarks or Ceilings on CLEC Access Charges That Accurately Reflect the Differences in Costs Among Different Markets within Large LECs' Service Areas

TDS Metrocom explained in its January 11, 2001 comments that the costs it encounters in smaller markets of the largest companies and in targeting residential customers are higher than ILEC rates for reasons the Commission recognized in seeking comments. FairPoint shows (pp. 1-4) why its slightly different business strategy and target markets also involve costs above ILECs' costs. Indeed, FairPoint indicates that the higher costs even for incumbents in the less urban portions of their markets served by FairPoint (and by TDS Metrocom) result in deaveraged UNE loop charges that "can run two to three or more times the loop rates in major metropolitan areas within the same states" and pose "a major barrier to CLEC market entry into underserved rural and semi-rural areas." Yet, while FairPoint and TDS Metrocom face similar problems in serving their smaller BOC markets, FairPoint does not propose specific recognition of the barriers to serving residential markets and the sparser parts of cities with more than 100,000 inhabitants.

TDS Metrocom urges the Commission to tailor its CLEC access charge policies to reflect the conditions identified in the ALTS plan and the comments of TDS Metrocom, FairPoint and the CLECs that serve rural markets. TDS Metrocom suggests a plan based largely on the ALTS GREAT plan, made more specific as to the access charge standards in the smaller markets served by large ILECs. The TDS Metrocom proposal would build upon the cost differences already established in the zones for deaveraging used by price cap companies that serve smaller, as well as more urban, markets. The cost differentiation zones that states and these largest carriers have already determined can provide a valuable tool for reflecting the higher costs of CLECs that take on the added costs and risks of market segments, regardless of whether they target residential, smaller city or other more-costly-to-serve portions of BOC markets.

Section 51.507(f) of the Commission's Rules requires states to establish different rates for unbundled network elements (UNEs) in at least three defined geographic areas within the state to reflect geographic cost differences.[2] The resulting UNE pricing zones therefore reflect cost-related characteristics, which are already in use to determine which rate centers are most densely populated and thus less costly to serve. Price cap companies are also permitted to have "density pricing zones" for switched and special access transport. For example, in all the states where Metrocom provides CLEC services, there are at least 3 density zones per state – large cities, usually designated as pricing zone A or 1, medium-sized cities and suburbs, zone B or 2, and small towns and rural areas, zones C and D or 3 and 4.[3] TDS Metrocom suggests a plan that uses these existing zones to identify market portions with different costs for CLECs as well as the BOCs that serve them.

The elements of the plan TDS Metrocom proposes to build on the foundation of the ALTS GREAT plan are:

1. TDS Metrocom agrees with the ALTS plan that any limitation on CLEC access rates must be accompanied by a Commission ruling that IXCs may not refuse to pay charges below the permissive detariffing ceiling. IXCs should also be required to pay all tariffed charges billed by CLECs up until the new ceilings take effect.[4]

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[2] 47 C.F.R. §51.507(f).

[3] In some states density zone designations are reversed, with zone 1 being the most rural and zone 3 being the most densely populated. TDS Metrocom's proposal bases rate levels on the density of the area, not the alphanumeric designation.

[4] See, MGC Communications, Inc. v. AT&T Corp., ___ FCC Rcd ___, 1999 Lexis 6601 (1999).

2. Again based on the GREAT plan, mandatory detariffing would apply to CLECs that charge rates in excess of the CLEC rate ceiling unless they cost-justify higher rates. This would effectively give the large IXCs the ability to force CLECs to reduce their rates to at least the level of the ceiling unless they were willing to support a higher charge. Otherwise, if the CLECs wanted to carry any major IXC traffic they would have to negotiate agreements with those carriers. Accordingly, the Commission should expressly prohibit IXCs from blocking CLEC traffic or refusing to provide service to CLECs' customers as a means to challenge their rates.

3. Fine-tuning the ALTS GREAT plan, CLEC access charges for smaller markets would vary according to the state and interstate density pricing and exchange access zones described above, as reflected in the federal and state access tariffs of the large serving ILEC in each zone. The ceiling rates for Tier 1 markets and for areas served by rural telephone companies would be set at the GREAT plan levels and decreased following the GREAT plan's schedule. Further specificity would be added as to the access charge ceilings and schedule and amounts of rate decreases for the non-Tier 1 markets of large LECs:

Density Zone	Effective Rate	Notes
1 or A – Large cities	2.5 cents per minute, decreasing by 0.2 per year down to 1.9 cents	Same as ALTS Plan.
2 or B – Medium-sized cities and suburbs	3.5 cents per minute, decreasing by 0.2 per year down to 2.9 cents	Moves rate down from average NECA rates to low end.
3 or higher and C or higher – Small towns and rural areas	4.5 cents per minute, decreasing by 0.2 per year down to 3.9 cents	Moves rate down from higher NECA rate band levels to average rates for rural markets.
Non-RBOC Areas	Rural ILEC rate is the cap	Same as ALTS Plan.

In applying these modifications to the ALTS plan, TDS Metrocom suggests that a CLEC would be allowed to charge different rates in each of the ILEC density zones where it provides service. The rates would recognize the similarity of these CLECs to certain groups of NECA pool member ILECs. If the CLEC preferred to use a single rate,[5] it could use a composite rate based on its customer base. For example, if CLEC XYZ had 50% of its customers in density zone A and 50% in density zone B, it could set an overall rate covering both areas no higher than 3.0 cents (decreasing to 2.4 cents) -- the average of the ceilings for zones A and B.

TDS Metrocom's plan to build on the ALTS GREAT plan is relatively simple, a goal for this proceeding that participants such as Worldcom have emphasized. It follows much of the ALTS plan, but fills in some gaps in the specifics of the ALTS plan which are of critical importance to CLECs -- like Metrocom and FairPoint -- that are undertaking the challenge of bringing competition to smaller BOC markets and residential areas. It draws on today's NECA rates as a general indicator of the higher costs encountered by carriers with smaller and less dense customer bases, even if the customers and service areas are within the area formerly ubiquitously served by the ILEC as a monopoly. The plan provides for continued rate reductions from starting points appropriate to the specific conditions where the CLEC is competing. Finally, it enables small CLECs to use "Edge Out" strategies to enter neighboring small towns currently served by RBOCs, thus effectively implementing the spirit of the Commission's "rural exemption" proposal by incorporating rural areas served by RBOCs, as well as those served by rural telephone companies.

TDS Metrocom's diverse serving areas provide an excellent example as to how the above plan would work in practice. TDS Metrocom's largest market, Madison, falls in Ameritech density zone A and therefore would be subject to the 2.5 cent rate ceiling. Another of TDS Metrocom's markets, Green Bay, is a city with less than 100,000 in population. It is clearly less densely populated than Madison and, therefore, more costly to serve, but would likely be too

[5] Many small CLECs have argued that they should not be forced to charge different rates in different parts of their service area and this addresses their concern. Minnesota CLEC Consortium Comments (p. 9).

large to fall under any narrow rural exemption. Green Bay lies in Ameritech density area B and thus would have a slightly higher rate ceiling. TDS Metrocom also serves the city of Stoughton, a small town with less than 10,000 residents. Stoughton is located in an area more costly to serve than either Green Bay or Madison, and there are many fewer customers over which to spread costs. Since Stoughton is in Ameritech density zone C, it would accordingly have a slightly higher rate ceiling. Finally, TDS Metrocom serves the city of Middleton in competition with a rural ILEC and would be subject to a cap in that area of no more than the ILEC rate. As these examples show, TDS Metrocom serves a wide variety of areas with vastly different cost drivers. The proposal outlined above would allow a carrier such as TDS Metrocom to account for its unique characteristics through differing access rates or through a composite rate based on its individual circumstances and customer base.

Conclusion

TDS Metrocom believes that ALTS has provided a great service to the Commission and the carriers it regulates by developing a plan that can serve as the foundation for resolution of the controversy over CLEC access charges and IXC self-help at CLECs' and end users' expense. The record shows clearly that a single, nationwide ceiling for CLEC access charges would be impractical, unfair and unlawful, since CLEC service areas and costs of service differ significantly. Accordingly, TDS Metrocom urges the Commission to adopt its modifications to the ALTS GREAT plan that account specifically for the differences in costs of service for CLECs targeting smaller BOC markets and residential areas. The TDS modifications would create greater certainty for this group of CLECs, while preserving both the ALTS structure of immediate and continuing access rate reductions and the ALTS plan's specific proposals for permissive detariffing access charge ceilings for CLECs competing in Tier 1 markets and areas served by rural telephone companies.

Respectfully submitted,

TDS METROCOM, INC.

By: /s/ Margot Smiley Humphrey
Margot Smiley Humphrey

Its Attorneys

HOLLAND & KNIGHT LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801
(202) 457-5915
mhumphre@hklaw.com

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