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August 3, 2001

VIA HAND DELIVERY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Revised* Reply Comments of U.S Telepacific Corp; CC Docket No. 96-262

Dear Ms. Salas:

On August 2, 2001, U.S. TelePacific Corp. d/b/a TelePacific Communications filed the above-referenced Reply Comments. The Reply Comments contained typographical errors on page 4, section II and page 7. In particular, the word "*unreasonable*" was inadvertently used. In the corrected submission, please note that on page 4, the sentence in question should read, "Neither suggestion is *reasonable*."

Enclosed are an original and four copies of the revised Reply Comments of U.S. TelePacific Corp. submitted for filing in the above-captioned proceeding, and a diskette copy (in read-only mode) of the U.S. Telepacific Corp. Reply Comments. The revised copies contain a Certificate of Service confirming that this letter as well as corrected copies have been served to the appropriate parties associated with the above-referenced proceeding.

If you have any questions, please call me at (202) 637-3324.

Sincerely,

Ginna L. Melendez

Enclosures

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List A B C D E

555 ELEVENTH STREET, N.W., SUITE 1000 • WASHINGTON, D.C. 20004-1304
TELEPHONE: (202) 637-2200 • FAX: (202) 637-2201

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

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Reform of Access Charges Imposed by Competitive Local Exchange Carriers	)	

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REVISED REPLY COMMENTS OF U.S. TELEPACIFIC CORP. IN SUPPORT OF PETITION FOR CLARIFICATION

U.S. TELEPACIFIC CORP.

Kenneth K. Okel
Vice President, Regulatory Affairs
U.S. TELEPACIFIC CORP.
515 S. Flower Street, 47th Floor
Los Angeles, California 90071
(213) 213-3000

Karen Brinkmann
Alexander D. Hoehn-Saric
LATHAM & WATKINS
555 11th Street, N.W.
Suite 1000
Washington, D.C. 20004
(202) 637-2200 (phone)
(202) 637-2201 (fax)

Its Attorneys

Dated: August 3, 2001

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

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Reform of Access Charges Imposed by Competitive Local Exchange Carriers	)	

REVISED REPLY COMMENTS OF U.S. TELEPACIFIC CORP. IN SUPPORT OF PETITION FOR CLARIFICATION

U.S. TelePacific Corp. d/b/a TelePacific Communications ("TelePacific"), by its attorneys, hereby files its reply comments in the above-referenced proceeding in response to the comments filed regarding TelePacific's Petition for Clarification of the Commission's *Order*[1] on competitive local exchange carriers ("CLEC") access charges. TelePacific urges the Commission to establish a simple methodology by which an average benchmark rate will be set where a CLEC's service area includes territory served by more than a single incumbent local exchange carrier ("ILEC").

INTRODUCTION

On April 27, 2001, the Commission released its *Seventh Report and Order* in the above-referenced docket. In issuing the *Order*, the Commission did not consider the possibility that a CLEC's current service area or new markets entered into by a CLEC could include territory served by multiple ILECs. Because this was not addressed, CLECs and Interexchange

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1 *Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-262 (April 27, 2001) (the "*Seventh Report and Order*" or the "*Order*").

carriers ("IXC") are at odds regarding what the appropriate benchmark rate should be in such a situation.[2]

TelePacific and other CLECs request that the Commission establish a methodology by which a fair average rate is set because current access systems do not track individual end user access traffic by ILEC. Sprint and AT&T have attempted to minimize the magnitude of the problem. They argue that CLECs have three years to address the problems and should be forced to develop or modify current access billing systems, at their own expense, or be required to bill at the lowest ILEC rate.[3] As discussed below, the problem needs to be addressed now because CLECs must bill ILEC rates in any new markets they enter. CLECs are planning to enter new markets in the immediate future[4] and some of these markets may incorporate territories with multiple ILECs.

As detailed in the Petition, an averaging of ILEC rates is the fairest method of establishing a benchmark rate.[5] Forcing CLECs to develop new tracking methodologies and billing system configurations will be unduly burdensome, complex and disadvantageous to CLECs in comparison to their primary competitors, the ILECs. Requiring CLECs to use the lowest ILEC rate would be even more unfair. Many CLECs would be forced to charge less than

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2 *See, e.g.*, Comments of AT&T Corp. ("AT&T") at 15-17 (July 23, 2001) ("AT&T Comments) and Comments of Sprint Corporation ("Sprint") at 2-3 (July 23, 2001) ("Sprint Comments"); *compare* Comments of The Association for Local Telecommunications Services' ("ALTS") at 6-9 (July 23, 2001) ("ALTS Comments") and Comments of Time Warner Telecom ("TWTC") at 2-3 (July 23, 2001) ("TWTC Comments").

3 It is interesting to note that the same IXCs who have repeatedly urged a standardization of the CLEC access billing systems are now suggesting that CLECs develop unique billing methodologies.

4 *See, e.g.*, Time Warner Telecom Petition for Reconsideration at 8 (June 20, 2001) ("TWTC plans to being serving end user customers in Chicago, Columbia, Minneapolis, Denver, and Atlanta before the end of the year.").

5 *See* TelePacific Petition for Clarification at 6-9 (June 20, 2001) (the "Petition").

the market rate as set by the ILECs in the area they serve. Such a policy could result in CLECs deciding not to enter into new market areas served by multiple ILECs.

I. THE TERM "COMPETING ILEC RATE" IN THE *SEVENTH REPORT AND ORDER* IS AMBIGUOUS AND SHOULD BE CLARIFIED

AT&T argues that the Commission's *Order* is not ambiguous because of the Commission's definition of "Competing ILEC" in its newly propagated rules.[6] The Commission, however, stated in the *Order* "[w]e conclude that the benchmark rate, above which a CLEC may not tariff should eventually be equivalent to the switched access rate of *the incumbent provider operating in the CLEC's service area.* [Fn. 100] We refer to this rate as the 'competing ILEC rate.'"[7] By its terms, the Commission's definition is premised on the incorrect assumption that there is only one ILEC in the service area of a CLEC. Based on this assumption, the Commission modified its rules and defined "competing ILEC" as the ILEC "that would provide interstate exchange access service to a particular end user if that end user were not served by the CLEC."[8] Because the definition of "competing ILEC rate" did not take into consideration the possibility of multiple ILECs operating in a CLEC's service area, it is unclear how the Commission intended that the benchmark should be set in such circumstances. TelePacific filed its Petition for Clarification to obtain guidance from the Commission and avoid potential disputes with carriers that may result from the ambiguity.[9]

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6 *See* AT&T Comments at 16.

7 *Order* at ¶ 45 (emphasis added).

8 47 C.F.R. § 61.26(a)(2).

9 *See* Petition at 3-4.

II. THE INABILITY OF CLECS TO TRACK AND BILL ACCESS TRAFFIC BY ILEC TERRITORY USING CURRENT TECHNOLOGY HAS IMMEDIATE ADVERSE RAMIFICATIONS

AT&T and Sprint have suggested that the CLECs either take the next three years to develop and/or modify and implement systems necessary to track individual users by ILEC territory or charge the lowest ILEC rate for all access traffic where the CLEC service area includes multiple ILEC territories.[10] Neither suggestion is reasonable.[11]

Contrary to the assertions made by AT&T and Sprint, the issue of what benchmark rate CLECs should use when serving an area with multiple ILECs has consequences today. Under the Commission's *Order*, a CLEC providing service in a new Metropolitan Statistical Area ("MSA") must use the ILEC access rate as the benchmark rate.[12] If the new market includes territories with multiple ILECs, such as Los Angeles, the CLEC needs to understand how the benchmark rate should be set.

The Commission has stated that stability is critical for both the long distance and exchange access markets.[13] The lack of guidance as to how the appropriate benchmark rate should be established undermines the stability the *Order* sought to create. Without a clarification, the CLEC will have to decide either to enter the new market using what it believes to be the appropriate rate but knowing that the rate may be challenged by its IXC customers, or decide that the risks and potential costs are too great and not enter the market. As is clear from

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10 *See* AT&T Comments at 16-17; Sprint Comments at 2-3.

11 The alternative proposals are also inconsistent with IXCs' attempts to make CLEC access billing standardized. *See, e.g.,* Qwest Petition for Clarification or, in the Alternative, Reconsideration at 4-5 ("Qwest Petition") (seeking a ruling from the Commission that CLECs must provide specific billing information); *see also* AT&T Comments at 19 (supporting the Qwest Petition).

12 *Order* at ¶ 58.

13 *Order* at ¶ 44.

the AT&T and Sprint Comments, unless the CLEC decides to provide access service at the lowest ILEC rate, there is a good chance that the CLEC's rates will be contested. Based on AT&T's and Sprint's past behavior, this may mean that the IXCs will refuse to pay for access services and litigation will ensue.[14] Given this prospect, it is not unreasonable for a CLEC to delay new market entry until the method of establishing the benchmark rate becomes clear. As a result, competition will be harmed and the growth of CLECs stunted.

AT&T's and Sprint's alternative proposal, that CLECs charge the lowest ILEC rate applicable, is unreasonable. As the Commission has noted, if the operation in an area "justifies higher access rates for the regulated incumbents, we conclude that it justifies equivalent rates for any competitor operating in the area."[15] Thus, in MSAs served by multiple ILECs, CLECs access rates should reflect an average of the rates of the ILECs in the MSA. Under AT&T's and Sprint's suggested method, however, CLECs without the ability to track end users by ILEC territory would be precluded from obtaining compensation for access services at rates deemed just by the Commission. IXCs would be able to obtain access rates from CLECs at less then they pay the ILECs and their profits would increase accordingly. CLECs would be under-compensated thereby inhibiting their ability to compete and expand their markets. The only reasonable and fair approach that gives credence to the findings of the Commission is to establish an averaged rate based on one of the methodologies discussed in the Petition or the comments of ALTS and TWTC.[16]

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14 While these large IXCs may have the time and resources to resolve disputes through extended litigation, CLECs do not. It is in the benefit of all to address this issue before it becomes a problem. Predictability and clarity is vital to CLECs in forming their business plans and this predictability is all that TelePacific seeks.

15 *Order* at ¶ 51.

16 *See* Petition at 6-9; ALTS Comments at 8; TWTC Comments at 3.

III. FORCING CLECS TO DEVELOP AND/OR MODIFY A TRACKING AND/OR BILLING SYSTEM WOULD BE OVERLY COMPLEX AND BURDENSOME

Like TWTC and certain ALTS members, TelePacific does not have an access billing system that identifies the ILEC relevant to an end user's access traffic.[17] Access billing systems focus on the switch location where access services are provided and not on particular end users. Without end user information, TelePacific and similarly situated CLECs cannot determine the volume of access traffic within its service area to or from end users in the territory of an individual ILEC. Based on a preliminary assessment, TelePacific believes that developing such a system(s) would be complex, unduly burdensome and deviate from the industry standards for access billing.[18] The time and expense a CLEC would need to devote are burdens not faced by their ILEC competitors. A blended benchmark rate, as discussed in the Petition, would avoid these unnecessary costs. However, as ALTS notes in its comments, if CLECs are forced to develop such a system(s), they should be allowed to charge higher access rates than the competing ILEC to recover those costs.[19]

In developing or modifying access billing systems, ILECs and CLECs may need to work together to establish a method of identifying the ILECs associated with individual calls using ILEC specific indicators in the traffic. In order to avoid conflicting codes and to establish

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17 ALTS' and TWTC's comments make clear that TelePacific is not alone in its inability to identify the ILEC relevant to an end user's access traffic. *See* ALTS Comments at 7 ("Like TelePacific, other ALTS members would be required to develop software and administrative systems to track traffic based on the ILEC territory in which calls originated and terminated."); TWTC Comments at 2 ("Like U.S. TelePacific, TWTC's billing systems are currently incapable of billing different interstate switched access rates based on whether a particular line is located in one ILEC region or another within an MSA."). *See also* Petition at 5-6.

18 *See also* TWTC Comments at 2 ("if required to charge the same rate as the ILEC in which a line is located, TWTC would need to incur significant expense and time upgrading its billing systems").

19 ALTS Comments at 7.

relevant standards, carriers would need to agree upon a national standard. Coordination of multiple carriers is always a slow and difficult process. As is demonstrated by Qwest's Petition and AT&T's comments in support thereof,[20] IXCs want the ability to monitor the accuracy of CLECs' access charges. Involving IXCs in the coordination and development of a tracking and billing methodology will increase the burdens on all parties and make implementation more onerous. Because of the fiscal and operational burdens that the creation of such systems would place on CLECs and the complexities of auditing, TelePacific respectfully requests that the Commission reject this method of applying the benchmark rate.

IV. BY ESTABLISHING A METHODOLOGY BY WHICH ILEC RATES ARE AVERAGED, THE COMMISSION WILL PROMOTE THE GOALS OF THE *ORDER* AND PREVENT FUTURE CONFLICTS

The purpose of the *Seventh Report and Order* is to establish a simple and stable method by which CLECs could be reasonably compensated for access services provided to IXCs. The method by which a benchmark rate is set where multiple ILECs are involved should reflect these goals. It should be easy to administer and not unduly burdensome on any group of carriers. As discussed above and in its Petition, TelePacific submits that establishing a benchmark rate based on the average of the ILEC rates in the service area of the CLEC would be both simple to implement, easily verifiable and address the immediate quandary faced by CLECs entering new markets with multiple ILECs.[21] By acting now, the Commission will encourage competitors' entry into new markets and prevent potential disagreements between carriers now and in the future.

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20 *See* Qwest Petition at 4-5; AT&T Comments at 19.

21 *See* Petition at 6-10.

CONCLUSION

For the foregoing reasons, TelePacific urges the Commission to establish a methodology for setting the benchmark in service areas and new market MSAs where more than a single ILEC operates using an average of the ILECs' access rates.

Respectfully submitted,

Karen Brinkmann
Alexander D. Hoehn-Saric
LATHAM & WATKINS
555 11th Street, N.W., Suite 1000
Washington, D.C. 20004
(202) 637-2200 (phone)
(202) 637-2201 (fax)

Attorneys for U.S. TELEPACIFIC CORP.

Kenneth K. Okel
Vice President, Regulatory Affairs
U.S. TELEPACIFIC CORP.
515 S. Flower Street, 47th Floor
Los Angeles, California 90071
(213) 213-3000

August 3, 2001

CERTIFICATE OF SERVICE

I, Ginna L. Melendez, hereby certify that a copy of the foregoing revised Reply Comments of U.S. TelePacific Corporation was delivered upon the following in the manner described, on this 3rd day of August in the year 2001:

VIA HAND DELIVERY

Magalie Roman-Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Room 5TW-B204
Washington, D.C. 20554

Jane Jackson
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 5-A225
Washington, D.C. 20554

Judy Boley
Federal Communications Commission
445 12th Street, S.W.
Room 1C-804
Washington, D.C. 20554

Edward C. Springer
OMB Desk Office
10236 NEOB
725 17th Street, N.W.
Washington, D.C. 20503

International Transcription Services, Inc.
(diskette)
445 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554

Dorothy Atwood
Chief
Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W.
Room 5-A848
Washington, D.C. 20554

A.J. DeLaurentis
Federal Communications Commission
The Portals
445 12th Street, S.W.
Room 5-C812
Washington, D.C. 20554

Jeffrey Dygert
Assistant Bureau Chief
Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W.
Room 5-C317
Washington, D.C. 20554

Michael K. Powell
Chairman
Federal Communications Commission
The Portals
445 12th Street, S.W.
Room 8-B201H
Washington, D.C. 20554

Scott Bergman
Federal Communications Commission
The Portals
445 12th Street, S.W.
Room 6-A261
Washington, D.C. 20554

Kyle Dixon
Federal Communications Commission
The Portals
445 12th Street, S.W.
Room 8-A204
Washington, D.C. 20554

Jordan Goldstein
Federal Communications Commission
The Portals
445 12th Street, S.W.
Room 8-B115
Washington, D.C. 20554

Anna Gomez
Federal Communications Commission
The Portals
445 12th Street, S.W.
Room 8-B201
Washington, D.C. 20554

Richard Lerner
Federal Communications Commission
The Portals
445 12th Street, S.W.
Room 5-A221
Washington, D.C. 20554

Kathleen Q. Abernathy
Commissioner
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Glenn T. Reynolds
Federal Communications Commission
The Portals
445 12th Street, S.W.
Room 5-A847
Washington, D.C. 20554

Deena Shetler
Federal Communications Commission
The Portals
445 12th Street, S.W.
Room 5-C410
Washington, D.C. 20554

Carol Mattey
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Tamara Preiss
Federal Communications Commission
The Portals
445 12th Street, S.W.
Room 5-A207
Washington, D.C. 20554

Michael J. Copps
Commissioner
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Gloria Tristani
Commissioner
Federal Communications Commission
The Portals
445 12th Street, S.W.
Room 8-C302
Washington, D.C. 20554

VIA FIRST CLASS MAIL, POSTAGE PREPAID

Jonathan E. Canis
Ross A. Buntrock
Kelley, Drye & Warren, L.L.P.
1200 19th Street, N.W.
Fifth Floor
Washington, D.C. 20036
Association for Local Telecommunications Services

Teresa K. Gaugler
Jonathan Askin
Association for Local Telecommunications Services
888 17th Street, N.W.
Suite 900
Washington, D.C. 20006
Association for Local Telecommunications Services

Henry G. Hulquist
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
WorldCom, Inc.

Michael J. Bradley
Richard J. Johnson
Moss & Barnett
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4129
Minnesota CLEC Consortium

Jonathan E. Canis
Michael B. Hazzard
Kelley, Drye & Warren, L.L.P.
1200 19th Street, N.W.
Fifth Floor
Washington, D.C. 20036
Z-Tel Communications, Inc.

David Cosson
John Kuykendall
Kraskin, Lessee & Cosson, L.L.P.
2120 L Street, N.W.
Suite 520
Washington, D.C. 20037
Rural Independent Competitive Alliance

Leon Kestenbaum
Jay Keithley
Richard Juhnke
Sprint Corporation
401 9th Street, N.W.
Suite 400
Washington, D.C. 20004
Sprint Corporation

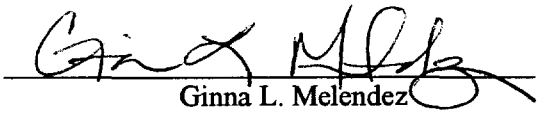
Andrew D. Lipman
Patrick J. Donovan
Harisha J. Bastiampillai
Swidler Berlin Shereff Friedman, L.L.P.
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007
Focal Communications Corporation
RCN Telecom Services, Inc.
Winstar Communications, Inc.

Daniel Meron
Sidley & Austin
1722 I Street, N.W.
Washington, D.C. 20006
AT&T Corporation

Stuart Polikoff
Director of Government Relations
OPASTCO
21 Dupont Circle, N.W.
Suite 700
Washington, D.C. 20036
The Organization for the Promotion and Advancement of Small Telecommunications Companies

Thomas Jones
Willkie, Farr & Gallagher
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20036
Time Warner Telecom

Lawrence E. Sarjeant
Linda L. Kent
Keith Townsend
John W. Hunter
Julie E. Rones
1401 H Street, N.W.
Suite 600
Washington, D.C. 20005
United States Telecom Association



Ginna L. Melendez