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INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 23, 2002

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Ms. Dortch:

Please find enclosed an original and four copies, plus one copy for date-stamp return receipt purposes, of the ex parte communication of the Independent Telephone and Telecommunications Alliance in the *2000 Biennial Review, Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules* (CC Docket No. 00-175). If you have any questions regarding this document, please do not hesitate to contact me directly at (202) 775-8116. Thank you for your assistance in this matter.

Sincerely,

David Zesiger
Executive Director

Enclosures

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OFFICE OF THE SECRETARY

Claudia Pabo
Wireline Competition Bureau
Competition Policy Division
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: 2000 Biennial Regulatory Review; Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules (CC Docket No. 00-175)

Dear Ms. Pabo:

This letter responds to questions you and other bureau staff raised at a meeting with me and other representatives of the Independent Telephone and Telecommunications Alliance on February 20, 2002. To prepare these responses, ITTA distributed a written information request to its members, solicited information during a meeting of the members conducted by conference call, and requested information from individual members directly. In addition, ITTA has searched for responsive, publicly available information. As a result of this process, ITTA has gathered the following information.

(1) Which manufacturers offer switching products that integrate local and interexchange switching capability? What is the relative cost of these switches compared to standalone local exchange switches?

ITTA is aware of at least two manufacturers that now offer switching products with both local exchange and interexchange switching capability. Nortel Networks Limited offers its DMS-500 Local and Long Distance Switching System, which combines the local exchange functionality of its DMS-100 switch and the interexchange functionality of its DMS-250 switch. Similarly, Coppercom, Inc. now offers its CSX 2100 Media Gateway, which combines Class 4 and Class 5 switching capability. ITTA has been unable to identify publicly-available pricing information on these products, but such information may be available from the manufacturers. It is ITTA's understanding that the cost of such dual-capability switches is considerably less than the cost to purchase each type of switch individually.

(2) How many (facilities-based) unaffiliated CMRS carriers operate in independent LEC markets?

ITTA members report that there is not perfect overlap between their CMRS and ILEC service territories, and that there are many regions where they provide one service, but not the other. As such, there are many cases where there is no *affiliated* CMRS provider within a midsize ILEC's service territory.

ITTA members report that there are at least one or two unaffiliated CMRS carriers in virtually all of their ILEC operating territories, and many face as many as five or six. The top four CMRS carriers (Verizon, Cingular, AT&T and Sprint PCS) operate facilities-based wireless networks that are virtually nationwide and thus offer service in virtually all, if not all, independent ILEC service territories. Additionally, there are unaffiliated sub-national carriers such as Leap Wireless that have specifically targeted rural areas (and, hence, most independent LEC service territories) in their CMRS build-out. Coverage maps for these carriers are generally available from the respective companies should the Commission want to explore this issue further.

(3) Is there a need for some degree of continued separation, such as potential non-structural "Computer-III"-type or "separate corporate division" requirements, even if the separate affiliate rule is repealed? Would such non-structural separation continue to impose obstacles to efficient operation by the independent ILECs? Would such non-structural separation requirements reduce the regulatory burden on independent ILECs in a meaningful way?

ITTA finds it difficult to comment meaningfully on such changes in the abstract. In general, however, ITTA believes that the primary cause of inefficiency in the current separate affiliate rule is the prohibition on joint ownership of switching and transmission facilities. If these changes would eliminate this restriction, ITTA sees such changes as a step in the right direction.

ITTA, however, does not believe that any possible benefits of continued separation would outweigh the burden it would impose on the ILEC. The existing cost allocation rules strictly govern the allocation of costs between regulated local exchange services and other services, even in the absence of specific Computer III-type accounting rules. These cost allocation rules would continue to apply whether a separate corporate division were established or not. Further, while a separate corporate "interexchange division" might be operationally desirable for some carriers, ITTA does not believe that a mandate to establish such a corporate division would serve any regulatory purpose or public interest goal of the Commission.

Further, ITTA believes that the Computer III model is not workable for midsize carriers. First, the Computer III regime was designed for the Bell Operating Companies and it remains burdensome and complex. Among other requirements, the Computer III safeguards originally required the BOCs providing enhanced services to obtain Commission approval for service-specific "comparably efficient interconnection" plans, under which the BOCs were required to demonstrate how they would make available to competing enhanced service

providers ("ESPs") all of the basic services that were integrated into the BOC's own enhanced services offerings. In addition, the BOCs were required to obtain Commission approval of "open network architecture" plans that would require the unbundling of additional network services that ESPs could use in providing services.

Second, the Commission developed the Computer III regime to address a very different set of public interest concerns than it is faced with today in addressing the LEC-IX separate affiliate rule. The Computer III safeguards were developed, fundamentally, to ensure that independent ESPs would be able to obtain equal access to LEC telecommunications services that were an essential input to their enhanced services. Today, equal access obligations, Section 251 unbundling rules, and alternative local loop technologies all make additional Computer III-type CEI and ONA plans redundant and unnecessary. Recognizing these legal and technological changes, the Commission has actively been reducing the Computer III obligations of the BOCs as part of its 1998 Biennial Review, and is currently examining whether to eliminate these requirements, even as they apply to information services provided by the BOCs.

(4) Do the Part 64 cost allocation rules need to be amended to prohibit cross subsidization of IX service by ILEC's local exchange service through improper allocation of IX costs to the LEC side?

No. The Part 64 rules already strictly govern the allocation of all types of costs between regulated and non-regulated activities. These rules require ILECs to allocate their costs between regulated and non-regulated services on terms that are very favorable to the regulated side and, if anything, require non-regulated services to subsidize regulated ones.

For example, to allocate the costs of central office equipment and outside plant investment, section 64.901(b)(4) of the Commission's rules require that the ILEC project relative regulated and non-regulated use three years into the future, and allocate these costs between regulated and non-regulated activity according to projected relative use in the calendar year in which non-regulated use is greatest.

(5) Are any safeguards necessary to prevent federal universal service mechanisms from supporting costs that the ILEC incurred to provide IX service on an integrated basis or through joint ownership of facilities?

No. As discussed above, the Commission's Part 64 rules require allocation of costs between regulated and non-regulated activities on terms that are very favorable to the regulated activity. The elimination of separate affiliate restrictions, therefore, should tend to reduce overall regulated local switching and transmission costs because of efficiency gains realized by ILECs as they replace their switches with dual-use switching equipment and eliminate redundant transmission trunks.

High-cost support for both rural and non-rural carriers is not based on actual local switching costs in any event. This support, which represents the lion's share of all support

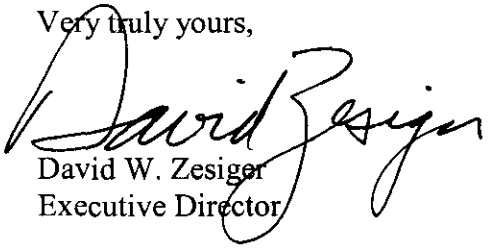
provided to local exchange carriers, is based on a cost proxy model for non-rural carriers that is not based on the actual costs of any individual carrier's switches. Rural carriers receive high-cost support based on their loop costs in relation to the national average unseparated cost per loop, currently fixed at $240 per year.

While local switching support ("LSS") for rural carriers is based on actual switching costs, the elimination of the separate affiliate rule should not have a material effect on this support mechanism. While the Part 64 rule that requires cost allocation based on relative use could theoretically increase the local switching costs of a carrier that invested in a dual-use switch, but that did not experience demand for its interexchange services, this remote possibility is unlikely to have a material impact on the LSS mechanism and should not prevent the Commission from moving ahead with beneficial reforms. First, LSS is available only to the smallest LECs – those with fewer than 50,000 loops. These carriers are the least likely to begin providing facilities-based interexchange services and, so, are least likely to invest in dual-use switches. Secondly, by permitting efficient integration of local and interexchange switching functions in a single switch, the elimination of the separate affiliate rule should have the overall effect of reducing demand for LSS, even if unforeseen business difficulties may cause demand for an individual carrier's interexchange to decline.

Third, the Commission should not and cannot effectively "second-guess" a carrier's market-driven investment decisions in this way. The risk is fundamentally no different from that inherent in other universal service mechanisms that are based on a carrier's actual costs. For example, a carrier that relies on an overly-optimistic forecast of demand for local switching capacity might purchase a switch to meet that demand. Even though the demand never materializes, the LSS mechanism properly would continue to support a portion of the costs of that switch.

I appreciate the opportunity to share ITTA's views on this important matter with you, and continue to believe that rapid Commission action to eliminate the LEC-IX separate affiliate rule would serve the public interest. Please feel free to contact me if you would like to discuss any of the material discussed in this letter.

Very truly yours,



David W. Zesiger
Executive Director