

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

RECEIVED

NOV - 1 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Petition of US LEC Corp. for a)
Declaratory Ruling Regarding LEC) CC Docket No. 01-92
Access Charges for CMRS Traffic)
_____)

REPLY COMMENTS OF ITC^DELTA COM COMMUNICATIONS, INC.

ITC^DeltaCom Communications, Inc., d/b/a ITC^DeltaCom (“ITC^DeltaCom”), through its attorneys, submits these reply comments in the above-captioned proceeding.’

Comments in this proceeding show that US LEC has omitted material information in an effort to obscure the true nature of its access billing practices and the legal and policy questions presented by its petition. What US LEC really seeks is a Commission decision that would validate US LEC’s unlawful scheme, whereby US LEC unilaterally inserts itself between a wireless provider and an incumbent local exchange carrier (“ILEC”) as a pretext for imposing access charges on interexchange carriers (“IXCs”) at the full benchmark rate as though the end user were US LEC’s own customer, which is not the case. In the instant case, US LEC is neither the LEC serving its landline end user customer nor the a wireless carrier serving its wireless customer; instead, US LEC simply takes wireless-originated 8YY traffic and sends that traffic to an ILEC tandem. Thus, US LEC adds no value to the routing of traffic nor does it perform any

¹ See *Comment Sought on Petitions for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic*, Public Notice, CC Docket No. 01-92, DA 02-2436 (Sept. 30, 2002) (“*Public Notice*”). In the *Public Notice*, the Commission also sought comment on a joint petition filed by several CMRS providers, which requested that the Commission “reaffirm that wireless termination tariffs are not a proper mechanism for establishing reciprocal compensation arrangements between LECs and CMRS providers.” *Id.* ITC^DeltaCom limits its comments to the US LEC petition.

other necessary functions. The Commission should deny US LEC's petition, and confirm that access charges are appropriate only for the legitimate services that a LEC actually performs, and that the services US LEC "provides" do not qualify for access charges at the benchmark rate.

I. THE RECORD DEMONSTRATES THAT US LEC HAS FAILED TO DISCLOSE MATERIAL INFORMATION NECESSARY TO RESOLVING ITS PETITION

The Commission cannot address a petition for a declaratory ruling without a complete and accurate factual background.² The record in this proceeding is replete with evidence that US LEC has omitted material information relevant to the resolution of its petition. Thus, the Commission does not have an adequate factual background upon which to address the petition.

Although US LEC posits what appears to be a generic legal question – whether a LEC can recover access charges for the wireless-originated traffic that it sends to an IXC – record evidence demonstrates that US LEC has created **an** unlawful scheme for the sole purpose of manufacturing access charges, and that US LEC seeks a Commission decision to validate that scheme.³ As AT&T and WorldCom explain, US LEC has entered into arrangements with wireless carriers, pursuant to which the wireless carriers route traffic – predominantly toll free (8YY) traffic – to US LEC, which then routes the traffic to the ILEC.⁴ The ILEC then sends the

² Qwest Comments at 9 (citing *American Network, Inc., Petition for Declaratory Ruling Concerning Backbilling of Access Charges*, 4 FCC Rcd 550, 551, ¶ 18 (1989)).

³ As the evidence in the record demonstrates – as discussed in the text – that there is more than meets the eye to US LEC's petition, there is no merit to McLeodUSA's contention that US LEC's petition involves "simple non-payment of **an** access bill." Comments of McLeodUSA at 3.

⁴ See ITC^DeltaCom Comments at 3-4. ITC^DeltaCom noted that it appeared that US LEC has implemented this routing scheme predominantly for toll free traffic originating from a wireless customers. AT&T and WorldCom provide additional information regarding the call routing of toll free (8YY) telephone numbers. See AT&T Comments at 9-10; WorldCom Comments at 6-7.

call to the IXC for termination. The wireless carriers route traffic in this indirect way even though they have the ability to route traffic directly to the ILEC so that it may be handed-off to the IXC. US LEC provides them an incentive for such needless indirect routing by paying them a share of the access revenues it hopes to receive from the IXCs. In response to a complaint filed by ITC^DeltaCom in federal district court in Georgia, **US** LEC confessed that "in certain circumstances it shares revenue or provides rebates to wireless carriers for some portion of the revenue" generated by this scheme.⁵ The fact that **US** LEC purchases this traffic stream from the wireless carrier through "rebates" shows that its putative transit routing functions are entirely superfluous, and that the full benchmark rates are much higher than any costs that it actually incurs to route the traffic.

ITC^DeltaCom strongly agrees with those commenters, including AT&T and WorldCom, who contend that **US** LEC adds absolutely no value to the routing of this traffic. As Qwest agrees, **US** LEC is performing duplicative and unnecessary functions as a transiting carrier.⁶ US LEC's role as a faux transit carrier is entirely gratuitous and is designed solely for the purpose of manufacturing access charge revenues from IXCs. Despite providing no legitimate transit services, and performing at most a modest transit routing function, **US** LEC nevertheless is seeking to impose access charges on IXCs, such as ITC^DeltaCom, at the full benchmark rate.⁷

It should be noted that US LEC's petition, if granted, would create a basis for even more extensive abuses than ITC^DeltaCom and other commenters have already documented. The motivation to produce access revenue through the billing of unnecessary

⁵ *ITC^DeltaCom Communications Inc. v. USLECCorp.*, et al., Civil Action File No. 3:02-CV-116-JTC, **US** LEC Answer ¶ 24.

⁶ See AT&T Comments at 1-2; WorldCom Comments at 1-2; Qwest Comments at 8.

⁷ See ITC^DeltaCom Comments at 8.

services could incent other CLECs to engage in these schemes. Moreover, a carrier such as US LEC could manufacture even more access billing minutes through the expedient of sham auto-dialer operations simply to collect the excessive access charges it seeks to impose on IXCs. **As** another example, US LEC's approach, if validated by the FCC, would subject IXCs to a potentially endless chain of access charges. For example, the CMRS carrier could send a call to US LEC, which then could send the call to another LEC, which then could send the call to yet another LEC before the call is delivered to the ILEC, which then hands it off to the IXC. Under US LEC's theory, each and every LEC in this daisy-chain scheme – regardless of the number of LECs involved – would be entitled to bill the IXC access charges at the full benchmark rate for its “transit” routing functions. The Commission cannot authorize such abusive routing and billing practices.

11. THERE IS NO BASIS FOR US LEC TO IMPOSE ACCESS CHARGES IN THE CALL ROUTING SCENARIO IT EMPLOYS

ITC^DeltaCom and other IXCs would incur substantial additional costs in the form of access charges due to US LEC's misconduct. **As AT&T** explains, where an ILEC routes wireless-originated traffic to an IXC, the ILEC charges only for tandem switching and the 8YY database dip.⁸ In contrast, US LEC imposes access charges at the full benchmark rate, even though it does not perform any necessary functions, and calls could be routed from the CMRS provider to the IXC without US LEC's involvement. US LEC solely routes the call to the ILEC tandem; the ILEC in turn assesses tandem switching, and in some instances, transport charges on

⁸ See **AT&T** Comments at 14.

the IXC. Thus, contrary to McLeodUSA's position, it is US LEC that has caused the IXC to incur costs; the IXC has *not* caused any costs to be incurred by US LEC.⁹

ITC^DeltaCom agrees with those commenters who show that US LEC does not add any value to the call, and that there is no basis for US LEC to impose access charges in its call routing scenario, particularly at the benchmark rate. The majority of comments filed in this proceeding, including some comments filed in support of US LEC's petition, recognize that a LEC – whether an ILEC or a CLEC – can charge only for those services that it actually performs.” Indeed, not a single commenter in this proceeding supports US LEC's position that IXCs must remit access charges at the full benchmark rate in the factual scenario US LEC posits. The Commission already has stated that the benchmark rate includes various functions, such as common line charges, local switching, and transport,“ and, further, that ILECs cannot charge carrier common line charges for CMRS-originated traffic.” By imposing access charges at the full benchmark rate in the call scenario US LEC employs, US LEC has charged for services either that it did not perform or that it performed unnecessarily.

No comments in this proceeding have presented a sufficient factual basis upon which to grant US LEC's petition. The comments presented in support of US LEC's petition merely support the generic legal principle: that a LEC – whether a CLEC or **an** ILEC – may legitimately seek to impose some access charge for some wireless-originated traffic. These commenters, however, do not support the precise factual scenario raised in US LEC's petition,

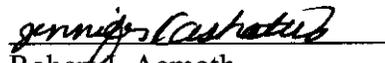
⁹ Comments of McLeodUSA at 4-5 (stating that a “refusal to pay **an** access bill is an attempt to avoid paying for the costs the IXC causes on the LEC network. . .”).
¹⁰ See, e.g., AT&T Comments at 13; Sprint Comments at 2.
¹¹ See *Access Charge Reform, Reform of Charges Imposed by Competitive Local Exchange Carriers*, 16 FCC Rcd 9923, 9946, ¶ 55 (2001); see also AT&T Comments at 14-15.
¹² See, e.g., *Bell Atlantic Tel. Cos. Revisions to FCC Tariff No. 1*, 6 FCC Rcd 4794, ¶ 6 (1991).

and specifically state that carriers are only entitled to compensation for services that they actually perform. One commenter filing in support of US LEC's petition even reserved its right to change its position if additional facts came to light.¹³

III. CONCLUSION

For the foregoing reasons, the Commission must deny US LEC's petition

Respectfully submitted,



Robert J. Aamo
Jennifer M. Kashatus
KELLEY DRYE & WARREN LLP
1200 19th Street NW, Suite 500
Washington, D.C. 20036
(202) 955-9600 (telephone)
(202) 955-9792 (facsimile)

*Counsel for ITC^DeltaCom
Communications, Inc. d/b/a
ITC^DeltaCom*

November 1, 2002

¹³

See Comments of the Montana LECs at 3 n.6 (stating that the “Montana LECs read the Petition as applying only to the normal situation in which the LEC provides substantial facilities to carry the call and so is deserving of compensation, and support the Petition with that understanding.”).

CERTIFICATE OF SERVICE

I, Alice R. Burmss, hereby certify that on this 1st day of November, 2002, copies of ITC^DeltaCom's Reply Comments in CC-Docket No. 01-92 were served via the Electronic Comments Filing System with courtesy copies by hand on the following:

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room CY-B402
Washington, D.C. 20554

Tamara Preiss, Chief
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Barry J. Ohlson, Chief
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Victoria Schlesinger
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Gregory Vadas
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Qualex International
Portals II
445 12th Street, SW
Room CY-B402
Washington, D.C. 20554

Steve Morris
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554


Alice R. Burmss



The FCC Acknowledges Receipt of Comments From ...
ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom
 ...and Thank You for Your Comments

RECEIVED
 NOV - 1 2002

Your Confirmation Number is: '2002111271971 '		
Date Received: Nov 1 2002		
Docket: 01-92		
Number of Files Transmitted: 1		
File Name	File Type	File Size (bytes)
REPLY TO COMMENTS	Adobe Acrobat PDF	293800
DISCLOSURE		
This confirmation verifies that ECFS has received and accepted your filing. However, your filing will be rejected by ECFS if it contains macros, passwords, redlining, read-only formatting, a virus or automated links to source documents that is not included with your filing. Filers are encouraged to retrieve and view their filing within 24 hours of receipt of this confirmation. For any problems contact the Help Desk at 202-418-0193.		

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

[Initiate a Submission](#) | [Search ECFS](#) | [Return to ECFS Home Page](#)

[FCC Home Page](#) | [Search](#) | [Commissioners](#) | [Bureaus/Offices](#) | [Finding Info](#)

updated 02/11/02

No. of Copies rec'd 0+4
 List ABCDE