



February 4, 2003

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20054

Re: Notice of Ex Parte Communication
CC Docket No. 01-338, 96-98, 98-147

Dear Ms. Dortch:

On February 4, 2003, a copy of the attached letter was sent to each of the Commissioners. Courtesy copies were also sent to those listed at the end of the letter.

If you have any questions concerning this matter, please contact me.

Sincerely,

Mark Jenn
Manager - Federal Affairs
TDS METROCOM
608.664.4196



February 4, 2003

Honorable Michael K. Powell, Chairman
Honorable Kathleen Q. Abrnathy, Commissioner
Honorable Michael J. Copps, Commissioner
Honorable Kevin J. Martin, Commissioner
Honorable Jonathan S. Adelstein, Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20054

Re: Ex Parte
CC Docket No. 01-338, 96-98, 98-147

Dear Chairman Powell and Commissioners,

One of the laudable goals that each of you have discussed on numerous occasions is a desire to create a regulatory structure that provides incentives for the deployment of advanced network infrastructure. One specific proposal apparently under consideration at this time would limit unbundled access to new or upgraded facilities to speeds of 1.5 mbs per second. This is generally the maximum speed attainable over copper facilities. While this proposal clearly merits further discussion, this letter is intended to identify a number of technical and operational issues that could impact the feasibility of such a proposal. With these issues in mind, it may be in the best interest of the entire industry and consumers for the Commission to continue to research the details of implementing such a proposal and not rush to judgement ahead of the February 20 deadline for action in the Triennial Review proceeding.

Issues of Concern

CLEC-Owned Electronics

When looking at the speed capabilities of certain types of transmission facilities - copper, fiber or hybrids, it is important to remember that it is the electronics attached to the loop that truly determines the speed of traffic that traverses the pipe within the limits of the medium. For facilities-based carriers such as TDS Metrocom, the electronics on either end of leased fiber facilities are owned and operated by the CLEC, not the ILEC. Similarly, for all copper loops at the DS-1 level and above, CLECs usually own

equipment at the customer premises and at the collocation site or switch to maximize the capabilities of the line.

The question with respect to a proposal to limit capacity then becomes, how (or better yet why) should limits be placed on the abilities of electronics owned by CLECs to maximize the use of the facilities to which they are attached? Even if a technical solution that limits throughput over certain facilities can be developed, this would seem contrary to the spirit of Commission pronouncements to maximize the availability of the best and most advanced services.

If limits are placed on how CLEC-owned equipment can be used, there will be a disincentive for CLECs to purchase currently available equipment. Vendors have developed multi-functional equipment that maximizes the efficiency of bandwidth usage. Under the scenario above, CLECs would be forced to either spend scarce capital dollars on equipment that they can only partially use or to wait for vendors to develop products that take into account the new regulatory structure. Again, asking vendors to take a step backwards and develop more limited product offerings seems contrary to overall goals to advance technology and best use scarce resources.

Hybrid Fiber-Copper Loops

With respect to hybrid fiber-copper loops, CLECs may own equipment at the switch, remote terminal and the customer premise to manage traffic. TDS Metrocom uses this configuration to provide service through a remote terminal (RT) in one of its Illinois markets. The questions raised above relate directly to such cases. Unfortunately, due to high costs and inadequate RBOC sub-loop ordering processes, TDS Metrocom cannot justify further deployments to remote terminals at this time.¹ Without equipment at the remote terminal, CLECs should still theoretically be able to install equipment on either end of a loop to at least maximize capacity to the limits of the copper portion of the loop. However, the RBOCs have established a choke point at the RT, essentially limiting CLECs to voice grade and dial-up access speeds.

While in one respect this may provide evidence that RBOCs could implement a technological solution to limit CLEC access to certain capacities or speeds on hybrid loops, it also points out a serious implementation issue. How will the Commission structure the language in its rules to identify how, where and when capacity limits should be employed? Without detailed and specific rules, interpretations will differ, parties will likely try to game the system and disputes will end up before this Commission, state commissions and the courts, wasting valuable time, energy and financial resources that could be devoted to further investment in facilities.

¹ TDS Metrocom has previously provided the Commission with a more detailed description of the challenges it has encountered when deploying facilities at RTs. See *Ex Parte Letter from Mark Jenn to William Maher*, November 21, 2002, CC 01-338, 96-98, 98-147, 01-318, Pages 4-5. (*Maher Letter*)

Data Availability

An issue that TDS Metrocom has previously raised in this docket is that of the accuracy and availability of data related to facilities as well as the location of DLCs deployed in RBOC networks.² Currently, CLECs have access to woefully inadequate information related to network design. If the Commission were to institute a capacity limit on new and upgraded facilities, access to accurate facility records will be imperative for numerous reasons:

- Differing ordering and provisioning processes and intervals may depend on the type of loop facilities including when they were deployed as well as differentiating between legacy and upgraded hybrid facilities. The only way CLECs will know who they can serve and how to order service to a certain location is with accurate pre-ordering information.
- Performance measures will likely need to be altered to exempt or at least account for limits on capacity use or changes in order processing.
- Pricing and billing systems would have to take into account new arrangements and CLECs will need accurate loop data in order to reconcile bills.
- If the Commission truly desires for CLECs to deploy fiber farther out in the network, CLECs must have a clear understanding of the specifics of the ILEC network including the location of new and old fiber, DLCs and affected service areas. Only with this information can network planning and business plan development occur.

Enforcement

Because of the complexity of implementing a system of capacity limits on new and upgraded facilities, adequate enforcement will be critical. However, it is difficult to envision that this will be an easy process. Questions abound:

- If capacity capabilities are truly a function of the attached electronics, will the RBOCs be expected to police capacity limits used by equipment owned by CLECs?
- Where does the burden of proof lie when disputes arise over how facilities are being used? Can CLECs self-certify that capacity limits are being adhered to? Can RBOCs stop orders, cut off service or require audits if they suspect improper use?
- How will terms like "new facilities," "upgraded facilities" and "fiber to the home" be defined? If the facilities connect somewhere to the legacy voice network should they ever be considered completely new builds or simply upgrades or extensions to the current network?
- Will the capacity limits also apply to currently deployed hybrid facilities where CLECs have limited access today? If so, how will the rules be written to ensure that loopholes do not allow the RBOCs to avoid unbundling obligations by claiming that they have not unbundled these hybrid facilities in the past or that it is technically infeasible? If not, will the Commission be able to adequately justify a distinction between "new" and "old" hybrid facilities that will withstand legal review?

² *Maher Letter*, Pages 1-2, 5.

- What happens in cases where there is incomplete data on current facilities and new builds? How will disputes be resolved if one carrier considers the facility as still subject to regulation while the other feels that it is properly categorized as deregulated?
- How will pricing and negotiation disputes be dealt with related to all of these elements, especially if some facilities are covered by unbundling requirements while others are not? Through state commissions, the FCC or the courts?

It is likely that there exist many more technical, operational and enforcement questions that will need to be addressed before any type of capacity limit for new or upgraded facilities could be implemented. Without more clarity it is very difficult for TDS Metrocom, and presumably other carriers, to accurately determine the potential costs and benefits of such an approach. There will be costs to the RBOCs to upgrade systems, processes and data to make this possible. Similar costs to CLECs exist along with the impact of increased or decreased access to certain facilities in the future. Additionally, it is unclear whether or not such a system would in fact provide incentives for carriers to deploy advanced networks.

TDS Metrocom advises the Commission to act with caution in this area and take more time to determine the potential costs and benefits of a capacity limitation proposal. It may in fact prove to be worthy of implementation, but there are far too many unanswered questions at this point to rush into a significant policy change without a full understanding of the proposal's feasibility and the impacts of its implementation.

If you would like to discuss these issues further please feel free to contact me at any time.

Sincerely,

s\ James Butman

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