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April 2, 2003

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

Re: *Ex Parte* Presentation in CC Docket No. 01-92 and CC Docket No. 96-262

Dear Ms. Dortch:

Yesterday, Karen Brinkmann and I met on behalf of U.S. TelePacific Corp. d/b/a TelePacific Communications (“TelePacific”) with William Maher, Jane Jackson, Joshua Swift, Tamara Preiss, Steve Morris, and Victoria Schlesinger of the Wireline Competition Bureau concerning TelePacific’s provision of exchange access services for the delivery of 8YY calls from commercial mobile radio service (“CMRS”) carriers to interexchange carriers (“IXCs”). The attached enclosures were distributed during the meeting.

During the meeting, TelePacific urged the Commission to grant US LEC’s Petition in CC Docket No. 01-92. TelePacific explained that, as a competitive local exchange carrier (“CLEC”), it is entitled to compensation for the access services it provides to IXCs. TelePacific sends traffic to IXCs via either direct connect trunk groups or an incumbent local exchange carrier (“ILEC”) tandem. With respect to the non-direct connects, TelePacific provides the local switching functions, performs the database dips required to identify the IXC to which the traffic should be routed, provides the transport functions necessary to connect customers to the ILEC tandem before the traffic is delivered to the IXC, and forwards the ANI call set-up and billing information to the IXC. TelePacific provides this service for all but one of the CMRS carriers in the Los Angeles market. TelePacific pointed out that IXCs should not be permitted to benefit from access services provided by CLECs without paying for such services. TelePacific’s rates are at or below the benchmark level, and therefore it is entitled to payment from IXCs. The Commission has made clear that carriers may not withhold payment for tariffed services but should first pay under protest and then seek redress.

In response to staff questions during yesterday’s meeting, TelePacific notes that approximately 18% of the traffic delivered to Tel-America in October 2002 was 1+ or casual dialing, which includes traffic for which approximately 257 lines were presubscribed to Tel-America. Tel-America has refused to pay access charges for this wireline traffic as well as the 8YY cellular traffic for which TelePacific provides Tel-America access services. Although

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TelePacific is equipped to carry all types of CMRS traffic, it generally carries only 8YY traffic for cellular carriers.

In accordance with Commission rules, this letter and the attachments are being filed in the aforementioned dockets. If you have any questions, please contact me at (202) 637-1023.

Sincerely,

Tonya Rutherford
Counsel for U.S. TelePacific Corp.

Enclosures

cc: William Maher
Jane Jackson
Joshua Swift
Tamara Preiss
Steve Morris
Victoria Schlesinger

**Briefing Sheet on CLEC-CMRS Jointly-Provided Access Service
for Delivery of 8YY Traffic**

- TelePacific carries originating 8YY traffic for certain unaffiliated cellular carriers. Because these carriers often do not generate sufficient traffic warranting direct connections to IXC points of presence, they rely on TelePacific for interconnection of their interexchange traffic to IXCs. TelePacific provides the CMRS carriers personalized customer service and shares with them access revenue generated by their interexchange calls.
- When a cellular customer dials a toll-free number, the cellular carrier transports the call over dedicated trunks to TelePacific's switch. TelePacific's switch recognizes the 8YY number, and the SS7 data links determine how the call should be routed. If the call is identified in the 800 database as an interexchange call for Carrier X, Carrier X's carrier identification code is returned and appended to the message. TelePacific transports the call from its wire center to the ILEC tandem, and the call is delivered to Carrier X.
- CLECs, such as TelePacific, are entitled to recover access charges from IXCs.
 - TelePacific performs functions equivalent to those that the ILEC would provide if TelePacific were not present in the calling path.
 - TelePacific provides local switching functions, performs database dips required to identify the IXC to which the traffic is routed, provides transport functions necessary to connect customers to the ILEC tandem before the traffic is delivered to the IXC, and forwards the ANI call set-up and billing information to the IXC.
 - The FCC concluded that CLECs may seek compensation for the same elements of switched access service as ILECs, including common line charges, local switching and transport.
 - The FCC also has acknowledged that LECs may recover access charges from IXCs when interstate interexchange traffic passes from CMRS customers to IXCs via LEC networks.
 - Finally, the FCC has recognized in the past that CMRS carriers are entitled to recover access charges from IXCs.
- TelePacific's presumptively reasonable rates may be imposed by tariff.
 - TelePacific's rates are at or below the benchmark level, and it therefore is entitled to payment from IXCs.
 - The FCC has concluded that, if a CLEC charges rates at or below the benchmark level for originating and terminating access service, including toll-free 8YY traffic, the CLEC's rates will be presumed just and reasonable and therefore may be tariffed.
- An IXC's failure to pay a CLEC's tariffed rate for access service constitutes self-help and violates Section 201 of the Communications Act of 1934, as amended.
 - The FCC has concluded carriers may not withhold payment for tariffed services but should first pay and then seek redress.

Originating 8YY Call

