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May 5, 2003

Via Electronic Filing

Marlene R. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte*
CC Docket Nos. 96-262, 01-92, 01-318, 01-321

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, this will provide notice that on May 2, 2003, Wanda Montano, Vice President – Regulatory, US LEC Corp. and the undersigned met with Commissioner Kevin J. Martin and Emily Willeford. We presented the views set forth in the attached document, which was provided at the meeting.

Sincerely,



Patrick J. Donovan

Performance Metrics

- Weak federal UNE metrics that legally or as a practical matter supplant state standards would be worse than no federal metrics at all.
- Strong comprehensive federal UNE metrics are needed.
- Where states have adopted intrastate special access metrics (Tennessee, Georgia), US LEC has seen a marked improvement concerning outages.

Wireline Broadband Proceeding

- In addition to implications for UNES, CLECs have a vital interest in assuring the continuation of a competitive market for ISPs.
- Stand-alone broadband transmission service must remain a Title II telecommunications service because it is now, and always has been, offered as a common carrier service, is requested by large numbers of customers, and has no substitutes.
 - The Commission may not under *NARUC I & II* reclassify a Title II service as subject to Title I.
 - Regulatory symmetry can be achieved by tailored Title II forbearance, if appropriate.
 - BOCs will vigorously resist specific Title I regulation as unlawful.
- The FCC already has a regulatory framework governing wireline broadband Internet access – *Computer II/III*.
 - ILECs may offer broadband Internet access as customers of their own common carrier telecommunications services.
 - Fully consistent with statutory definitions.
 - BOCs sought nonstructural safeguards to permit efficiencies.
 - ILECs have the incentive and ability to discriminate against independent ISPs.
 - Minimal regulatory burden, substantial public interest benefits.
- ILECs possess market power in provision of broadband services.
 - A cable/ILEC duopoly in loops does not justify deregulation.
 - Cable does not offer service to most business customers.
 - Any diminution of intramodal broadband competition helps preserve ILEC market power.
 - Satellite, Wi-Fi, powerline alternatives not here yet.

US LEC Petition

- At a minimum, it is lawful for a CLEC to charge its tariffed benchmark rate and share it with other carriers participating in completing access arrangements.
- “Duplicate or unnecessary” function issues vis a vis the ILEC are benchmark rate regulation issues separate from the issue raised in the petition -- whether CLEC/CMRS access sharing arrangements are lawful.
- IXC’s have marketplace solutions available.
 - ITC DeltaCom refuses to negotiate with competitive LECs or CMRS providers.
 - Its position that it is entitled to free access from CMRS providers.
 - In effect, ITC Deltacom seeks a regulatory approach – FCC efficiency standards or further benchmark rules – to preserve free access.
 - Other IXCs negotiate access arrangements. IXCs can, and do, establish direct connections to competitive carriers, and negotiate lower rates.
- The FCC should not attempt to engineer the network. Not practical for the FCC to identify “duplicate” or “unnecessary” functions.

CLEC Access Charge Order Reconsideration

- Qwest Petition.
 - Refinement of the transition benchmark unwarranted.
 - For permanent benchmark, IXCs have marketplace solutions to “unnecessary” function concerns: establish direct connections, negotiate lower rates.
 - The “unnecessary” function issue will recede as CLECs mature towards direct connections with IXCs and access arrangements become governed by contract.

8YY NPRM

- CLEC access costs are the same as for other traffic.
- Current benchmark rules address any issues.
- Does not inflate usage.