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June 9, 2003

BY ELECTRONIC FILING

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

Re: ***Notice of Ex Parte Presentation***
Petition of US LEC Corp. for a Declaratory Ruling Regarding LEC Access Charges for CMRS Traffic, CC Docket No. 01-92

Dear Ms. Dortch:

In accordance with section 1.1206 of the Commission's rules, 47 C.F.R. 1.1206, ITC^DeltaCom Communications Inc., d/b/a ITC^DeltaCom, through its attorneys, files this notice of *ex parte* presentation. On June 6, 2003, Andrew Walker, Larry Williams, and Jerry Watts, each from ITC^DeltaCom, and Robert Aamoth and I, counsel to ITC^DeltaCom, met with Jessica Rosenworcel, Legal Advisor to Commissioner Michael J. Copps, to discuss the above-referenced petition.

During the meeting, ITC^DeltaCom discussed the issues raised in US LEC's petition, and explained the applicable call routing scenarios. ITC^DeltaCom distributed the attached presentation at the meeting.

Please contact me at (202) 887-1234 if you have any questions regarding this filing.

Sincerely,

Jennifer Kashatus

Jennifer M. Kashatus

Attachment

cc: Jessica Rosenworcel (via hand delivery)
Victoria Schlesinger (via hand delivery)
Gregory Vadas (via hand delivery)
Qualex International (via email)

ITC DELTACOM®

Presentation to the
Federal Communications Commission

Opposition to US LEC Corp.'s Petition for Declaratory Ruling,
CC Docket No. 01-92

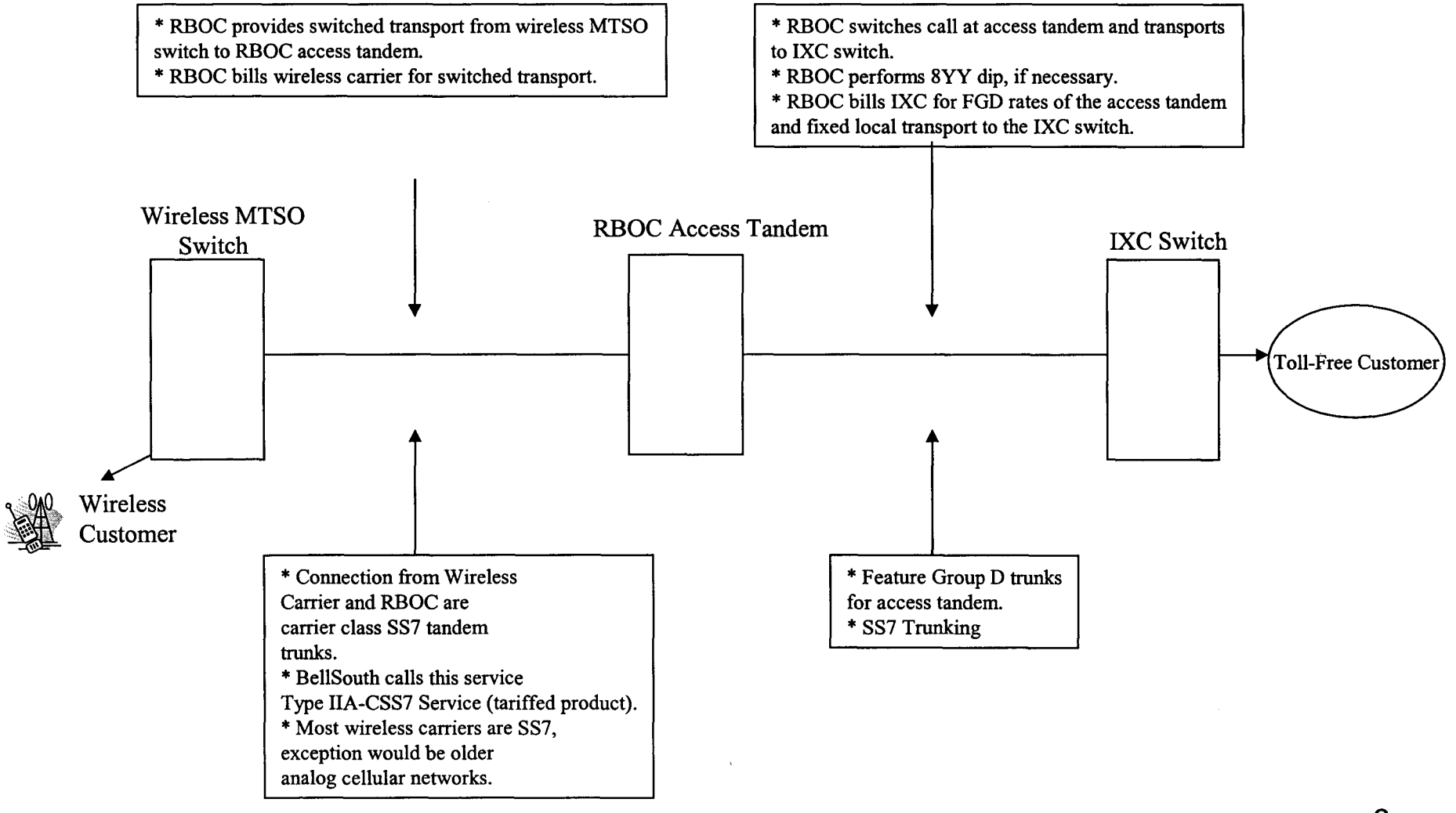
Larry Williams, Chairman, CEO, ITC^DeltaCom
Andrew Walker, President, COO, ITC^DeltaCom
Jerry Watts, Vice President, Government and Industry Affairs
Robert Aamoth, Kelley Drye & Warren LLP
Jennifer Kashatus, Kelley Drye & Warren LLP

June 6, 2003

Overview

- The Commission should deny US LEC's petition.
  - US LEC seeks to validate its scheme whereby it charges for services that it does not perform, performs unnecessarily, or performs without the consent of all parties.
  - US LEC's scheme subjects IXCs to a potentially endless "daisy chain" of access charges.
  - US LEC's scheme is contrary to FCC rules and the public interest.
- The Commission should act on US LEC's petition at this time and should not address it as part of the intercarrier compensation proceeding.

Traditional Wireless Toll-Free Call not involving US LEC



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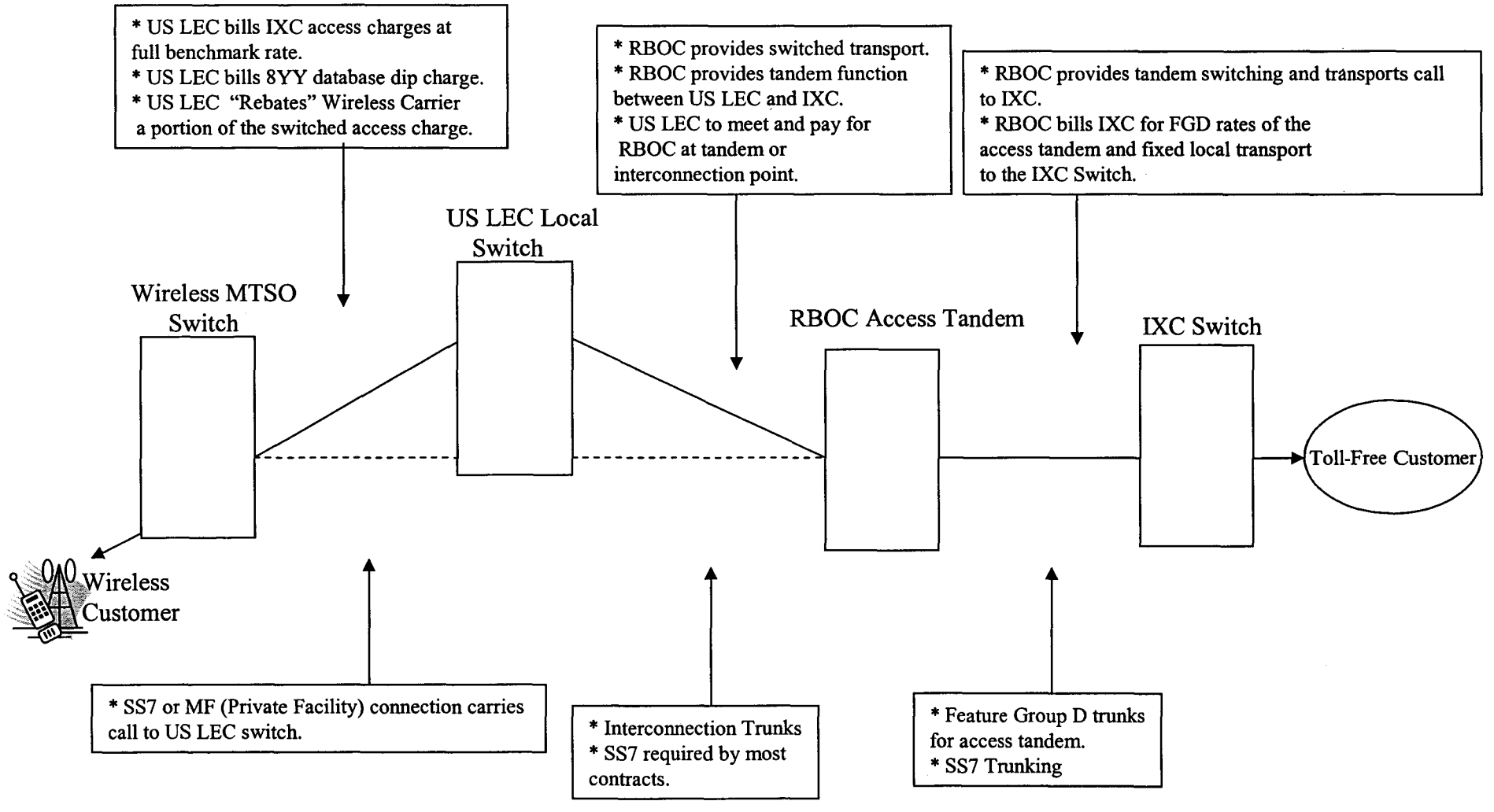
Wireless Toll-Free Call involving US LEC



US LEC Seeks to Validate its Unlawful Access Charge Scheme

- US LEC wants the Commission to make a blanket statement that LECs (whether CLECs or ILECs) are entitled to impose access charges for any and all CMRS–originated traffic that transits their networks.
- US LEC wants the Commission to ignore the routing scenario pursuant to which it imposes access charges.
- It is relevant to consider what functions, if any, US LEC performs in this call routing scenario.

US LEC's Access Charges Are Unlawful

- ITC^DeltaCom should not be required to pay access charges to US LEC in this scenario.
- Under US LEC's interpretation of the FCC's access charge rules, IXCs would be subjected to a potentially endless "daisy chain" of access charges.
- US LEC's scheme is contrary to the public interest, because it will result in higher rates to end user customers.
- US LEC's scheme violates Commission precedent.

US LEC's Access Charge Scheme is Unlawful: Violation of the *CLEC Access Charge Order* and Other FCC Precedent

- The aggregate CLEC benchmark rate incorporates the following three components of access charges:
  - Local loop;
  - Local switching; and
  - Transport
- A carrier can charge only for those services that it actually performs.
  - In a CMRS-originated call, the CMRS carrier provides the loop and local switching. Therefore, there is no lawful basis for US LEC to impose access charges at the benchmark rate, and US LEC is charging for services that it did not perform.
  - These issues are integrally related to the generic issue raised in US LEC's petition.
- US LEC cannot use the benchmark rate to increase the type and amount of access charges that it imposes on IXCs.
- US LEC adds no value to the call. US LEC inserts itself as a faux transit carrier and performs duplicative and unnecessary functions, if any.

US LEC's Access Charge Scheme is Unlawful: Violation of the *Sprint PCS Declaratory Ruling*

- US LEC circumvents the Commission's *Sprint PCS Declaratory Ruling* by collecting access charges that the CMRS provider otherwise could not collect.
  - There is no arrangement between ITC^DeltaCom, US LEC, and the wireless carrier permitting the imposition of access charges.
  - A CMRS provider cannot unilaterally impose access charges on IXCs.
  - US LEC rebates a portion of the access revenues that it collects to the CMRS provider.
- US LEC's scheme frustrates an IXC's efforts to negotiate access charge arrangements.

Joint Billing Arrangements Do Not Justify US LEC's Calling Scheme

- In a meet point billing arrangement, each LEC bills the IXC only for those services that it actually – and legitimately – performs.
- In a true meet point billing arrangement, ITC^DeltaCom would not have been billed for the same function by both US LEC and the ILEC.

Conclusion

- The Commission should deny US LEC's petition.
- Alternatively, the Commission at most should confirm that LECs can impose access charges – at reasonable rates – only for those functions that they legitimately perform with the consent of all parties.