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June 23, 2003

VIA ELECTRONIC SUBMISSION

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

JUN 23 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Notice of *Ex Parte* Presentation, CC Docket No. 01-92

Dear Ms. Dortch:

In accordance with Section 1.1206 of the Commission Rules (47 C.F.R. 1.1206), US LEC Corp., through its undersigned attorneys, files this notice of *ex parte* presentation.

On Friday, June 20, 2003, Michael Shor (General Counsel of US LEC Corp.), Patrick Donovan, and I met with Bill Maher, Tamara Preiss, Steve Morris, Victoria Schlessinger, and Josh Swift of the Wireless Competition Bureau to discuss the US LEC Petition for Declaratory Ruling in the above-referenced proceeding. The parties discussed the attached outline.

Pursuant to Section 1.1206(a)(i) of the Commission's Rules, an original and one (1) copy of this notice is being submitted to the Secretary for filing in the above-referenced proceeding.

Sincerely,



Richard M. Rindler

RMR/kas
Enclosure
cc w/enclosure:

Bill Maher (FCC WCB)
Tamara Preiss (FCC WCB)
Victoria Schlessinger (FCC WCB)
Steve Morris (FCC WCB)
Josh Swift (FCC WCB)
Michael Shor

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US LEC Petition for Declaratory Ruling

- US LEC's petition does not ask that multiple competitive carriers each be permitted to charge the benchmark rate. The "daisy chain" argument is a red herring.
- The *Sprint Declaratory Ruling* does not govern because US LEC operates in a tariffed CPNP regulatory environment and because FCC rules require IXCs to pay.
- Under the current CPNP regime and the *CLEC Benchmark Order* IXCs must pay for access services they receive.
- The Commission has not made any general legal or policy determination that IXCs should not be required to pay access charges for wireless traffic to carriers operating in a CPNP, tariffed regulatory environment.
- - The *Sprint Declaratory Ruling* correctly found that it is lawful for CMRS providers to provide, and IXCs to receive and pay for, access services for wireless traffic.
 - US LEC's access arrangements may only be altered going-forward by prospective rulemaking.
- US LEC's access arrangements are additionally permissible under the transition benchmark.
 - The Commission stated that it wanted to preserve CLEC access revenues during the transition.
 - US LEC's arrangements predated the *CLEC Benchmark Order* and the *Sprint Declaratory Ruling*.
- Taken to its logical conclusion, the "duplicate or unnecessary" function argument would justify a monopoly environment for local competition.
 - IXCs may address this concern by establishing direct connections to CLECs.
 - The "unnecessary" function issue will recede as CLECs mature towards direct connections with IXCs and access arrangements become governed by contract.
- IXCs have taken no steps to reduce liability while continuing to receive the benefits of access.

- IXC's have marketplace solutions available.
 - ITC DeltaCom refuses to negotiate with competitive LECs or CMRS providers.
 - Its position is that it is entitled to free access for wireless calls.
 - 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 *CLEC Benchmark Order Reconsideration* is the appropriate proceeding for resolving the “duplicate and unnecessary” function issue.