

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

PATRICK J. DONOVAN
DIRECT DIAL (202) 424-7857
PJDONOVAN@SWIDLAW.COM

THE WASHINGTON HARBOUR
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7643
WWW.SWIDLAW.COM

NEW YORK OFFICE
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NY 10174
(212) 973-0111 FAX (212) 891-9598

September 16, 2003

Via ECFS

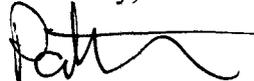
Marlene R. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

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

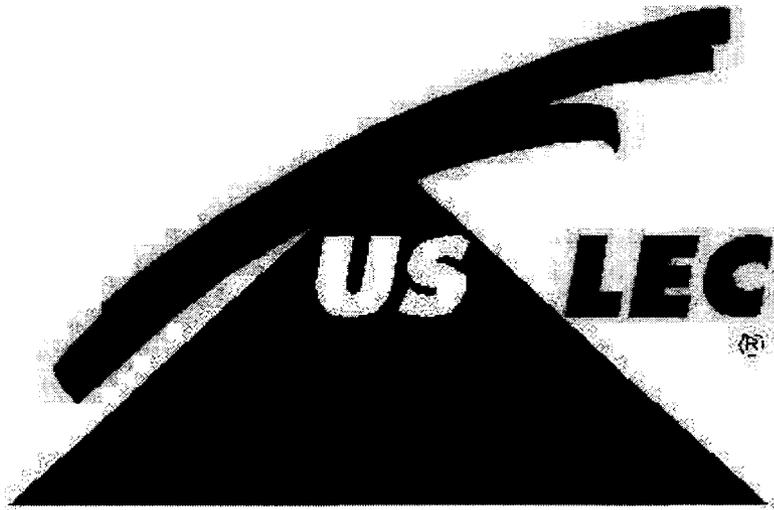
Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, this will provide notice that on September 15, 2003, Wanda Montano, Vice President – Regulatory, US LEC Corp., Richard M. Rindler of this firm, and the undersigned met with Dan Gonzalez, Office of Commissioner Kevin J. Martin. We presented the views set forth in the attached document, which was provided at the meeting.

Sincerely,



Patrick J. Donovan



US LEC CORP.

- Wanda Montano, Vice President Regulatory Affairs
 - September 15, 2003

US LEC CORP. COMPANY OVERVIEW

WELCOME TO US LEC.

We are a telecommunications carrier providing integrated voice, data and Internet services. Headquartered in Charlotte, NC, we have major offices throughout the southeastern and mid-Atlantic United States.



- Headquartered in Charlotte, NC
- 12,000 small, medium- and large-sized business customers
- 70 markets served
- Offers local, long distance, calling card, dedicated Internet access, digital private line and frame relay services
- Fully funded business plan

CMRS ARRANGEMENTS

- 8YY originating traffic.
- Percentage of access.

BENEFITS

- New access arrangements reflect the growth of facilities-based competition.
- Network efficiencies captured by CLEC and CMRS providers.
- 8YY arrangements a market entry strategy.
- IXC's have marketplace solutions.
 - IXC's may establish direct connections to CMRS providers or negotiate with CLECs.

SPRINT DECLARATORY RULING

- Does not apply to CLECs.
- CLECs governed by Calling Party Network Pays (“CPNP”) benchmark regime.

SPRINT DECLARATORY RULING

- Commission said that CMRS access arrangements are lawful, but that absent a contract, CMRS providers could not collect because CMRS access had been detariffed.
- Decision backfired because IXCs have no incentive to negotiate.

TIMELINE

- 1983 - CPNP access regime established post-divestiture.
- 1996 - CLECs offer exchange access pursuant to 96 Act.

- Mid- 90s - CLEC/CMRS access arrangements initiated under CPNP regime.

TIMELINE (Cont'd)

- April, 2001 - *CLEC Benchmark Order* modifies CNPN regime for CLECs.
 - Presumption of lawfulness for benchmark compliant tariffs.
- July, 2002 - *Sprint Declaratory Ruling*
- September, 2003 - US LEC Petition for Declaratory Ruling

LEGAL CONCERNS

- Sprint Declaratory Ruling did not address CLECs.
- No APA notice of any intent to modify the preexisting CPNP benchmark regime applicable to CLECs.
- Order did not purport to address CLECs or CPNP regime.

LEGAL CONCERNS (Cont'd)

- FCC may not now interpret its previous interpretation to apply to CLECs.
- There are limits to the Commission's ability to make retroactive interpretive rulings.

INTERCARRIER COMPENSATION PROCEEDING

- CLEC wireless access issues should be addressed in this proceeding.
- Commission should ask for comment in forthcoming *Further NPRM*.

- Prospective treatment only.

CLEC BENCHMARK RECONSIDERATION PROCEEDING

- No record on CMRS issues.
 - Petitions for reconsideration do not address CMRS issues.
-

CLEC BENCHMARK RECONSIDERATION PROCEEDING

- Qwest Petition for Reconsideration - Carve-Out for ILEC Tandem Function
- Benchmark rate derived and constructed as a composite rate.
- There is no practical way for CLECs under current rules to set separate rates for each rate element, and certainly not retroactively.

CLEC BENCHMARK RECONSIDERATION PROCEEDING

- Commission must have understood that pending full facilities-based competition there could be some duplication of ILEC functions.
- Transition rates were intended to preserve CLEC revenues.
- Any change must be prospective only.

SUMMARY

- Current arrangements consistent with rules applicable to CLECs.
- *Intercarrier Compensation Proceeding* the appropriate proceeding.
- *CLEC Benchmark Reconsideration Proceeding* does not address wireless access issues.
- Any changes must be prospective only.