555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Tel: (202) 637-2200 Fax: (202) 637-2201
www.lw.com

LATHAM&WATKINS LLP

FIRM / AFFILIATE OFFICES
Boston, Brussels, Chicago, Frankfurt, Hamburg, Hong Kong, London, Los Angeles, Milan, Moscow, New Jersey, New York, Northern Virginia, Orange County, Paris, San Diego, San Francisco, Silicon Valley, Singapore, Tokyo, Washington, D.C.

November 21, 2003

BY ELECTRONIC FILING

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:

On today, November 21, 2003, Karen Brinkmann and I met on behalf of U.S. TelePacific Corp. d/b/a TelePacific Communications ("TelePacific") with Christopher Libertelli, Senior Legal Advisor to Chairman Powell, concerning the provision of exchange access services by competitive local exchange carriers ("CLECs"). TelePacific urged the Commission to reject Qwest's Petition for Clarification or, in the Alternative, Reconsideration, filed in CC Docket No. 96-262, on June 20, 2001, in which Qwest urges the Commission to conclude that a CLEC must provide each of the services listed in paragraph 55 of the *CLEC Access Charge Order* as necessary to originate and terminate interexchange calls in order to tariff its access services at the benchmark rate established in that order. The attached briefing sheet, which TelePacific distributed during the meeting, summarizes the points TelePacific made during the meeting.

In accordance with Commission rules, this letter is 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.

cc: Christopher Libertelli

U.S. TelePacific Corp. d/b/a/ TelePacific Communications
November 21, 2003

BRIEFING SHEET ON CLEC ACCESS SERVICES

- Qwest's proposal to require CLECs to perform all of the functions enumerated in paragraph 55 of the *CLEC Access Charge Order* in order to tariff their access services at the established benchmark rate represents a departure from the language in the *CLEC Access Charge Order.*

    - Although the FCC requires that the composite rate for access service not exceed the benchmark, it acknowledged that the benchmark rate "applies, but is not necessarily limited, to the following specific rate elements and their equivalents: carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching."

    - The FCC concluded that the CLEC benchmark rate "does not require any particular rate elements or rate structure."

    - The FCC recognized that CLECs do not structure their service offerings in the same way as ILECs, and that there are differences in the terminology that LECs use to refer to the functions they perform.

    - The FCC wanted to "preserve the flexibility which CLECs currently enjoy in setting their access rates."

- A CLEC should not be required to reduce the total charges it assesses an IXC by an amount equal to the ILEC's rate for the services the ILEC provided to the IXC.

    - TelePacific performs functions equivalent to those that the ILEC would provide if TelePacific were not providing access.

- If the FCC determines that CLECs can no longer charge the full benchmark, it may order CLECs to alter their rates on a prospective basis only.

    - Qwest's proposal constitutes an impermissible retroactive ratemaking.

    - To conclude now that CLECs are required to provide all of the access functions listed in paragraph 55 of the *CLEC Access Charge Order* would supplant the current rule with a new one. Such a rule change could be lawfully applied on a prospective basis only.

- If the FCC requires CLECs to emulate ILEC rates, it should clarify which ILEC rate applies for CLECs operating in areas with multiple ILECs.