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December 11, 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:

ITC^DeltaCom Communications Inc., d/b/a ITC^DeltaCom, through its attorneys, files this notice of *ex parte* presentation. On December 10, 2003, Jerry Watts and Larry Williams, ITC^DeltaCom, and Steve Augustino and I, counsel to ITC^DeltaCom, met with Christopher Libertelli, Senior Legal Advisor, Office of the Chairman, to discuss the above-referenced petition.

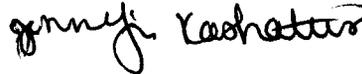
During the meetings, ITC^DeltaCom urged the Commission to deny US LEC's petition for declaratory ruling. ITC^DeltaCom reiterated that US LEC's scheme of imposing the full benchmark access charge on interexchange carriers ("IXCs") for wireless-originated traffic is unlawful under existing precedent, as ITC^DeltaCom previously has stated in its filings with the Commission. *See, e.g.*, Letter to Marlene Dortch from Robert Aamoth (Sept. 11, 2003). In particular, ITC^DeltaCom emphasized that carriers are permitted to charge only for those services that they legitimately perform. ITC^DeltaCom also reiterated that US LEC's access charge practices are unlawful under both the *CLEC Access Charge Order* and the *Sprint PCS Declaratory Ruling*. Nothing in the *CLEC Access Charge Order* permits US LEC to impose the full benchmark rate for services that it did not perform. Moreover, in the *Sprint PCS Declaratory Ruling*, the Commission explicitly reiterated that CMRS carriers are not permitted to collect access charges for CMRS-originated traffic absent a contract with an IXC. US LEC cannot do indirectly what a CMRS provider cannot do directly.

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During the meeting, ITC^DeltaCom addressed US LEC's contention that any decision should be applied only on a going-forward basis. ITC^DeltaCom explained that to the extent that the Commission clarifies existing law, it is well-established that the Commission may clarify existing law – regardless of whether the Commission considers existing law to be clear or ambiguous – and apply the clarification to the conduct at issue. To solely apply the clarification prospectively not only would be contrary to Commission precedent, but also would reward bad actors for their unlawful conduct.

ITC^DeltaCom respectfully requests that the Commission deny US LEC's petition and confirm that US LEC's conduct of imposing the full benchmark rate on wireless-originated traffic is unlawful. Please contact me at (202) 887-1234 if you have any questions regarding this filing.

Respectfully submitted,



Jennifer M. Kashatus

cc: Christopher Libertelli (via email)
Victoria Schlesinger (via email)
Gregory Vadas (via email)
Qualex International (via email)