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December 31, 2003

Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Access Charge Reform, CC Docket No. 96-262
U.S. LEC Petition for Declaratory Ruling, CC Docket No. 01-92
Oral Ex Parte Notice

Dear Ms. Dortch:

On December 30, 2003, Hank Hultquist of MCI and A. Richard Metzger, Jr. of Lawler, Metzger, and Milkman, LLC, counsel to MCI, met separately with Christopher Libertelli, Senior Legal Advisor to Chairman Powell, and Jessica Rosenworcel, Legal Advisor to Commissioner Copps, to discuss certain matters pending before the Commission in the above-referenced proceedings.

With respect to the petitions for reconsideration and other requests pending in CC Docket No. 96-262, MCI urged the Commission to conclude that under the terms of its April 2001 order in that proceeding, competitive local exchange carriers (LECs) were permitted to tariff the benchmark rate for switched access services only in markets in which they served end users. Specifically, MCI pointed out that both the express text of the FCC's order (for example, paragraph 58) as well as the overall objectives of the order (as noted, for example, in paragraphs 44 and 54) clearly support this conclusion. Consistent with this finding and MCI's prior submissions in CC Docket No. 01-92, MCI also urged the Commission to deny U.S. LEC's Petition for Declaratory Ruling. In response to questions, MCI pointed out that an interexchange carrier's decision to use tandem switched transport or direct trunking in arranging for exchange access service is based on which arrangement is more economically efficient in light of the expected

traffic volumes. MCI also provided Ms. Rosenworcel with a copy of its opposition to the US LEC Petition for Declaratory Ruling, a copy of which is enclosed.

Pursuant to section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. § 1.1206(b)(2), this letter is being provided to you for inclusion in the public record of the above-referenced proceedings.

Sincerely,

/s/ A. Richard Metzger, Jr.
A. Richard Metzger, Jr.

cc: Christopher Libertelli
Jessica Rosenworcel

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of US LEC Corp. for	)	CC Docket No. 01-92
Declaratory Ruling Regarding	)	
Local Exchange Carrier Access	)	
Charges for CMRS Traffic	)	

OPPOSITION OF WORLDCOM, INC.

I. Introduction

On September 18, 2002, US LEC Corp. (US LEC) filed a petition in which it asked the Commission to make a superficially uncontroversial declaratory ruling: that local exchange carriers (LECs) are entitled to assess access charges for interexchange traffic that passes from commercial mobile radio service (CMRS) providers to interexchange carriers (IXCs), or vice versa, via the LEC's network. Under the long-standing access charge regime, incumbent LECs assess tandem-switching charges on IXCs for interexchange calls that originate or terminate on CMRS networks and transit the incumbent LECs' networks. But US LEC is not seeking Commission approval of its right to offer tandem transit services in competition with the incumbents. Instead, it wants the Commission to sanction a practice whereby a CMRS provider and US LEC conspire to route toll free calls that originate on the CMRS provider's network, through a US LEC Class 5 switch, then to the incumbent LEC's tandem before finally reaching the IXC network for which the calls are destined.

The only conceivable reason for this four-carrier routing scheme is to gin up access charges for US LEC to bill to IXCs. The IXCs have no reason to expect that calls that originate on wireless networks will be routed so inefficiently. Nor do US LEC's access bills provide any information that would allow IXCs to associate these calls with the wireless networks on which they originated. Finally, the actual charges that US LEC bills for this "service" are identical to those that it bills when its own end users make or receive calls, even though US LEC does not even provide local switching for the wireless end users who place the calls at issue. What US LEC is doing is not a reasonable practice worthy of the Commission's approval, but an outrageous one that deserves its condemnation.

II. Background

In most cases, CMRS providers and IXCs have not established dedicated connections to exchange traffic.[1] Instead, they interconnect indirectly through the incumbent LEC's tandem. This scenario is depicted graphically in Diagram 1 of Attachment A to these comments.

As is shown in Diagram 1, in the most common configuration, both the IXC and the CMRS provider connect to the incumbent LEC's tandem switch. Thus, when a CMRS customer originates a toll free call,[2] the call is routed from the CMRS provider's switch to the nearest tandem. At that point, the incumbent LEC launches a database query to determine how to route the call. The query will identify the appropriate IXC, and the LEC will then route the call directly to that IXC. For this service, the IXC will

[1] The principal exception to this is that wireless carriers often contract with IXCs for long-haul services. In that case, the wireless carrier is the IXC's customer. It is not a form of carrier-to-carrier interconnection.
[2] Since CMRS carriers do not provide toll dialing parity, 8YY dialing comprises the vast majority of CMRS-originated traffic destined for IXCs.

pay the LEC a flat per-query charge of approximately $0.004 and a per-minute tandem switching charge of approximately $0.003.

Similarly, when an IXC's customer places a call to a CMRS end user, that call is routed over the IXC network, to the incumbent LEC tandem switch that is identified in Telcordia's local exchange routing guide (LERG) as the routing point for the CMRS customer's NPA-NXX.[3] The LEC routes the call to the CMRS provider's trunk group for completion. In this case, the IXC pays only the per-minute tandem switching charge.

In the routing scheme devised by US LEC, toll free calls originating on a CMRS network are diverted to the US LEC Class 5 local switch. Since US LEC does not interconnect directly with IXCs such as WorldCom, the calls must then be forwarded to the nearest incumbent LEC tandem so that they can be routed to the appropriate IXC. This scenario is depicted in Diagram 2. The routing of interexchange calls destined for CMRS end users does not change, since US LEC has not figured out a way to force the incumbent LECs to misroute these calls.

In this configuration the US LEC Class 5 switch provides only a metering function – there is literally no need for these calls to be switched at all, since every single one of them must be routed to the incumbent LEC's tandem. For this "service," US LEC bills IXCs the Commission's benchmark CLEC access charge rate, which is currently $0.018 per minute. Of course this is on top of a per-query charge and the tandem switching charge, which the IXCs continue to incur. Thus, this convoluted routing scheme increases IXC costs by 257% per call on a one-minute call and 474% on a five-minute call, all of which must be passed on to toll free customers.

[3] Since CMRS providers do not yet provide local number portability, all calls to CMRS end users are routed based on NPA-NXX.

From the IXC's perspective, at first it appears that nothing has changed. CMRS-originated toll free calls are still routed through the incumbent LEC tandem. However, a month or two later when US LEC sends out an access bill, the IXC is faced with a puzzle. Because US LEC aggregates minutes that originate on CMRS networks with the minutes that originate on its own network, the IXC, if it undertakes an audit of the US LEC bill, will discover that US LEC has billed it for more originating minutes than are identified as US LEC minutes in the IXC's own systems. Only if the IXC decides to dispute US LEC's usage charges, and is able to obtain call detail records from US LEC, will the IXC ever uncover US LEC's routing scheme. After all, according to supposedly authoritative public routing information found in the LERG, the CMRS provider's switch subtends the incumbent LEC's tandem, not US LEC's Class 5 switch.

III. Argument

A. US LEC's routing scheme is an unjust and unreasonable practice.

Under section 201(b) of the Communications Act of 1934, as amended, it is unlawful for common carriers to maintain any unjust or unreasonable charges, practices, classifications, or regulations in connection with the provision of interstate or foreign carriage.[4] In this case, US LEC has virtually conceded that it conspires with CMRS providers to route IXC-bound traffic in a manner that increases IXC costs by almost 500% on a five-minute call, without providing any benefit to the IXCs who are allegedly US LEC's customers.[5] This is unquestionably an unjust and unreasonable practice, and therefore unlawful.

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[4] 47 U.S.C. § 201(b).

[5] According to US LEC's petition, it applies the benchmark rate authorized by the Commission for CLEC access charges. Petition at 3.

In a recent complaint proceeding, the Commission found that a common carrier violates section 201(b) when it engages in an unreasonable scheme to inflate the access charges assessed against an IXC.[6] In that case, the Commission found that it was an unreasonable practice for a carrier to charge indirectly, through a sham arrangement, rates that it could not charge directly.

CMRS providers must interconnect with IXCs in order for CMRS end users to successfully dial and complete 8YY calls. Less than four months ago, the Commission held that, in this context, CMRS providers had no unilateral right to impose access charges on IXCs for these toll free originations.[7] The Commission cannot allow CMRS providers to skirt this prohibition by the transparent expedient of interconnecting with CLECs such as US LEC in order to disguise their traffic as CLEC-originating minutes. There can be little doubt that US LEC's arrangements with CMRS providers amount to sham arrangements intended to result in the application of access charges to traffic that would otherwise not cause IXCs to incur such charges. Under the reasoning of *Total Telecommunications Services, Inc.*, section 201(b) forbids this practice.

B. US LEC fails to provide any justification for its routing scheme.

US LEC's attempts to characterize its practices as "well-established," "vital," and "appropriate," completely ignore their effects on toll free customers, who are forced to foot the bill for the routing scheme cooked up by US LEC and the CMRS provider. Perhaps that is because the only conceivable reason for US LEC's scheme is to foist costs on those customers. That is not, however, a legitimate justification.

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[6] *Total Telecommunications Services, Inc., and Atlas Telephone Company, Inc. v. AT&T Corp.*, Memorandum Opinion and Order (rel. March 13, 2001), File No. E-97-03 (filed Jan. 14, 1997), ¶18.
[7] *In the Matter of Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, Declaratory Ruling (rel. July 3, 2002), ¶ 9.

According to US LEC, it is performing the traditional role of a local exchange provider in providing this "access service."[8] As described above, this is completely inaccurate. The traditional role of a LEC with respect to this traffic is to provide a tandem transit service, which CMRS providers and IXCs may utilize in lieu of direct interconnection. This is a function that US LEC could conceivably provide if it offered IXCs a value proposition that yielded cost savings in comparison with the incumbent LEC's tandem transit services. For example, US LEC could offer IXCs tandem transit at a lower rate than what is offered by the incumbent. In that case, IXCs would be able to justify a direct interconnection with US LEC for the purpose of interconnecting indirectly with CMRS providers that also subscribe to US LEC's service. However, for an IXC that does not subscribe to such a service, the only reasonable course for US LEC to follow would be to forward the traffic on to the incumbent LEC's tandem switch without billing the IXC for a service to which it has not subscribed.

Of course, US LEC does not even pretend to be offering a competitive tandem transit service. Instead, it is billing IXCs the same access charges that it bills for switched access to its own end users, for the "valuable" service of routing originating 8YY calls through an additional and completely redundant switch.

US LEC's claim that this service is made necessary by the increased usage of wireless phones for long distance calling is ridiculous.[9] Most "long distance" calls that originate on wireless phones are undoubtedly made to ordinary NPA-NXXs. There is no evidence whatsoever to support the proposition that 8YY dialing from wireless phones has increased so substantially as to strain the capacity of the incumbent LECs. Even

[8] Petition at 2.
[9] *Id.* at 3.

more importantly, US LEC has not shown that its service in any way reduces the use of the incumbents' networks. Indeed, as shown in Diagrams 1 and 2, US LEC's scheme does not displace any traffic from traversing the incumbents' networks, but merely routes the same traffic more circuitously before ultimately handing it off the incumbents.

US LEC also claims that it is charging IXCs "the appropriate benchmark rate" for the traffic at issue. US LEC's reliance on the *CLEC Access Charge Order* to support this proposition is utterly misplaced.[10] In the *CLEC Access Charge Order*, the Commission established a presumptively reasonable benchmark for access charges associated with CLEC end users. The Commission never imagined that a CLEC such as US LEC would attempt to impose that rate on IXCs for access services associated with end users served by other carriers.

In order to provide switched access service to an IXC, it is axiomatic that a carrier such as US LEC must provide some type of local exchange service to an end user customer. The Commission clearly recognized this fact in the *CLEC Access Charge Order*. For example, in describing problems inherent to the structure of the exchange access market the Commission noted that, "the end user chooses her access provider."[11] Here, the end user has chosen the CMRS carrier, not US LEC. The Commission also observed that, "IXCs are subject to the monopoly power that CLECs wield over access to their end-user customers."[12] Here, US LEC is attempting to extend its monopoly power to CMRS end users to whom it provides no services whatsoever. Finally, it is noteworthy that in most circumstances the eventual benchmark rate is equal to the corresponding

[10] *In the Matter of Access Charge Reform*, CC Docket No. 96-262, Seventh Report and Order (rel. April 27, 2001).
[11] *Id.*, ¶ 31.
[12] *Id.*, ¶ 38.

tariffed rate of the incumbent with which a CLEC competes. In this case that rate is zero, since incumbents do not purport to provide switched access to CMRS end users.[13]

C. IXC payment of US LEC access bills does not demonstrate consent to this practice.

US LEC suggests that the fact that IXCs have previously paid access bills which included charges for CMRS-originating traffic, has some relevance to this inquiry.[14] In fact, it has none. US LEC's access bills do not disclose that they include this extraordinary traffic. Instead, they aggregate it with minutes that may be legitimately associated with US LEC end users. An IXC would uncover US LEC's scheme only if it both audited US LEC's bills and obtained call detail records from US LEC.

The Commission cannot assume that IXCs are aware of and consent to US LEC's scheme. For example, WorldCom has a usage dispute with US LEC, but because US LEC has not provided WorldCom with call detail records, WorldCom has no way of knowing whether this dispute is the result of US LEC unlawfully billing WorldCom for traffic originated by CMRS end users.

IV. Conclusion

The Commission cannot give its approval to US LEC's convoluted call routing scheme. For the reasons given above, US LEC's petition for declaratory ruling must be rejected.

Respectfully submitted,

WorldCom, Inc.

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[13] Incumbents do charge IXCs for tandem switching, but do not apply local switching, PICCs, or common line charges to minutes originated by CMRS providers' customers.
[14] Petition at 4.

_____/s/_____
Henry G. Hultquist
1133 19th Street, N.W.
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October 18, 2002

ATTACHMENT A

Diagram 1: CMRS Origination via ILEC

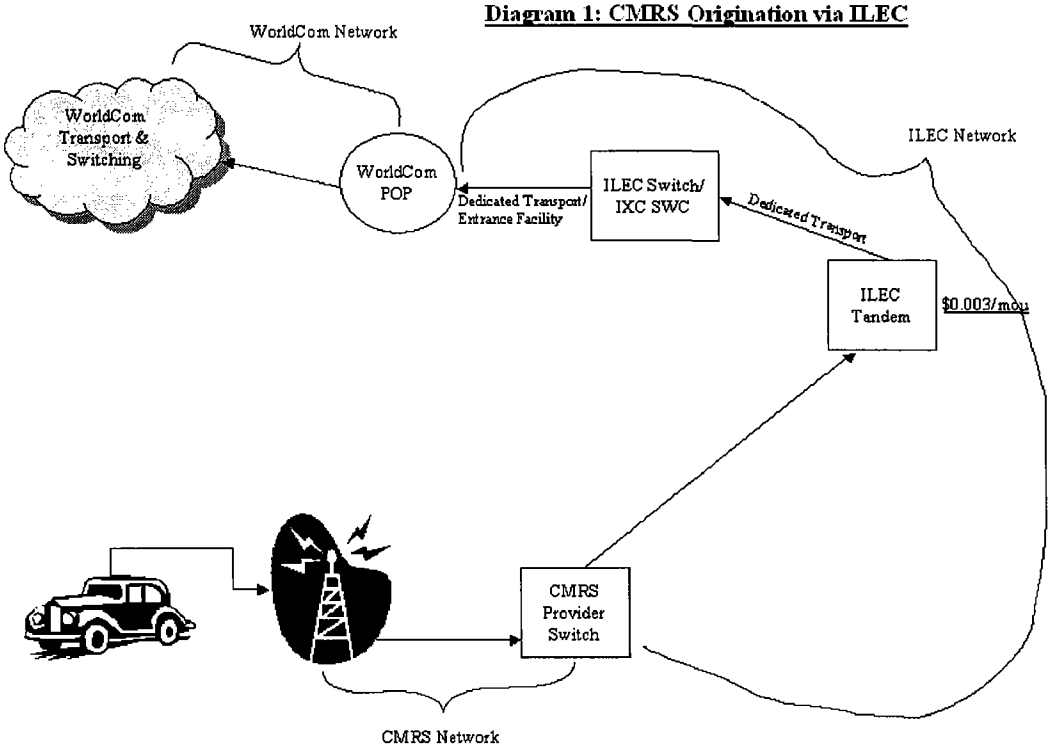
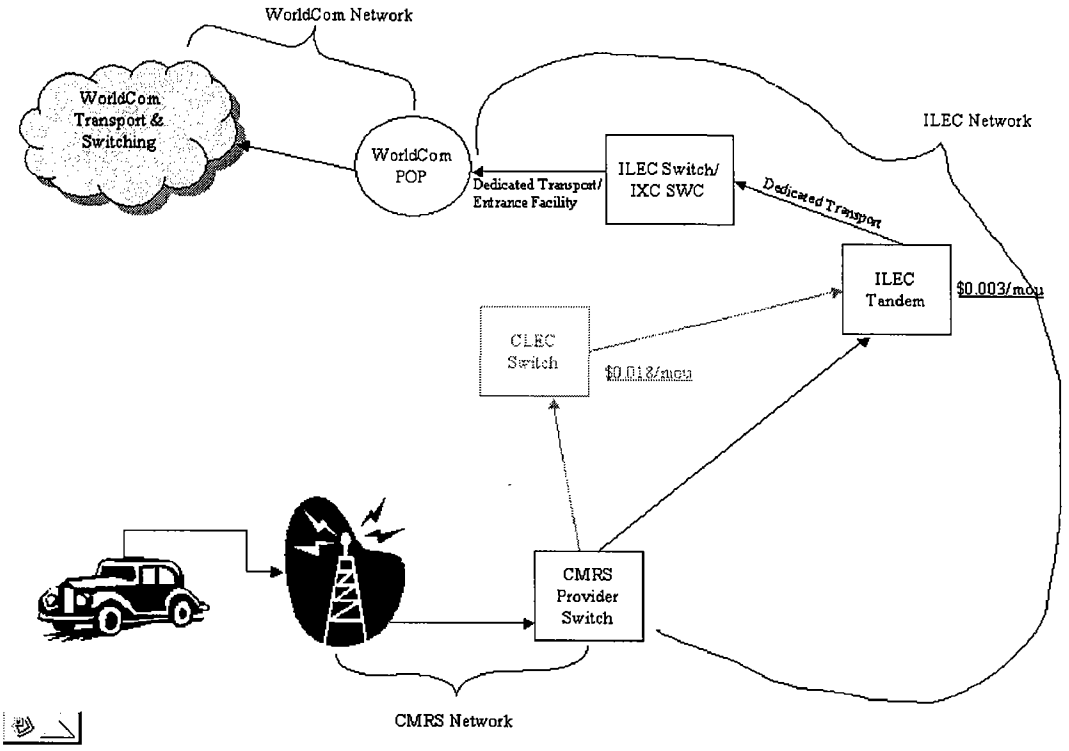


Diagram 2: CMRS Origination with CLEC Inserted



CERTIFICATE OF SERVICE

I, Kecia Boney Lewis, do hereby certify, that on this eighteenth day of October, 2002, I have caused to be served by first-class U.S. mail, a true and correct copy of WorldCom's Opposition, CC Docket No. 01-92 on the following:

Marlene Dortch*
Secretary
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