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January 9, 2004

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 yesterday, January 8, 2004, Karen Brinkmann and I met on behalf of U.S. TelePacific Corp. d/b/a TelePacific Communications ("TelePacific") with Commissioner Copps and his Legal Advisor, Jessica Rosenworcel, concerning the provision of exchange access services by competitive local exchange carriers ("CLECs"). TelePacific urged the Commission to reject arguments that paragraph 58 of the *CLEC Access Charge Order* requires a CLEC to actually serve the end-user in order to charge access for that particular call. 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: Jessica Rosenworcel

Briefing Sheet on CLEC-CMRS Jointly-Provided Access Service

- TelePacific carries originating traffic for certain unaffiliated cellular carriers. Because these carriers often do not generate sufficient traffic warranting direct connections to IXC points of presence, they rely on TelePacific for interconnection of their interexchange traffic to IXCs. TelePacific provides the CMRS carriers individualized customer service and performs many of the access functions that an ILEC otherwise would perform, including switching, transport, and database dips.

- CLECs, such as TelePacific, are entitled to recover access charges from IXCs.

    - The *CLEC Access Charge Order* does not require CLECs to actually serve the end-user in order to charge access for that particular call.

        - Paragraph 58 of the *CLEC Access Charge Order* permits CLECs to charge the benchmark rate for access services in "markets where they have operations that are actually serving end-user customers."

        - In accordance with paragraph 58, TelePacific has end-users in all of the markets in which it jointly provides access service with a CMRS carrier, and therefore is permitted to charge the benchmark rate.

- A CLEC should not be denied access charges because the IXC refuses to establish a direct connection with the CLEC.

- ILECs are not limited to imposing access charges only when they actually serve the end-user, as MCI advocates for CLECs.

- TelePacific's presumptively reasonable rates may be imposed by tariff.

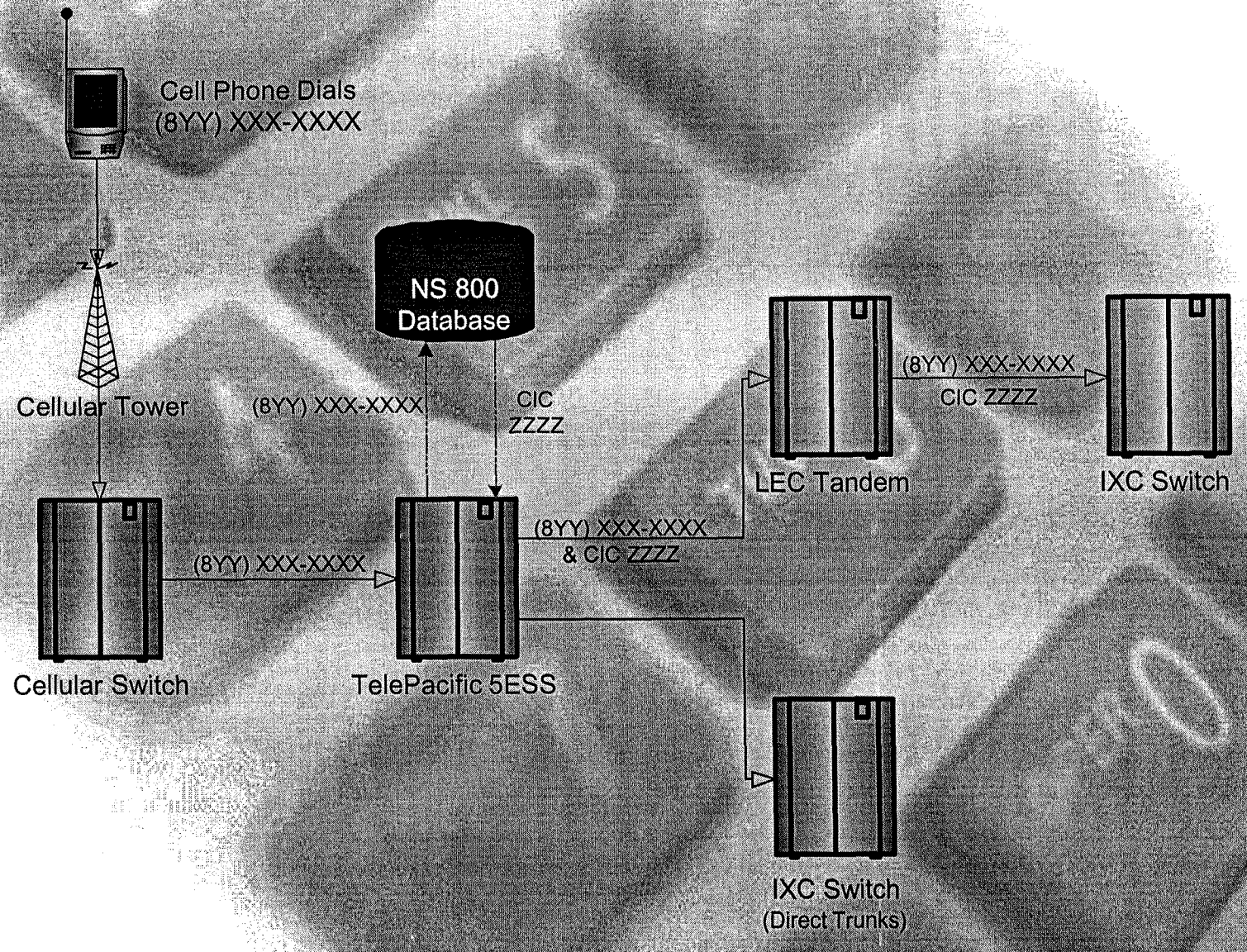
    - TelePacific's rates are at or below the benchmark level, and it therefore is entitled to payment from IXCs.

    - The FCC has concluded that, if a CLEC charges rates at or below the benchmark level for originating and terminating access service, including toll-free 8YY traffic, the CLEC's rates will be presumed just and reasonable and therefore may be tariffed.

- If the FCC determines that CLECs must actually serve the end-user in order to charge access for that particular call, the FCC may apply such a rule change on a prospective basis only.

- An IXC's failure to pay a CLEC's tariffed rate for access service constitutes self-help and violates Section 201 of the Communications Act of 1934, as amended.

    - The FCC has concluded carriers may not withhold payment for tariffed services but should first pay and then seek redress.

Originating 8YY Call

TelePacific COMMUNICATIONS