



March 26, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals - 445 Twelfth Street, S.W.
12th Street Lobby, TW-A325
Washington, D.C. 20554

Re: Ex Parte Presentation in CC Docket No. 01-92

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Commission's rules, NewSouth Communications ("NewSouth") hereby files this notice of ex parte meeting. On March 25, 2004, Jake E. Jennings, Senior Vice President, Regulatory Affairs, NewSouth met with William Maher, Jr., Rob Tanner, Scott Morris, Victoria Schlesinger and Jeffrey Carlisle of the Wireline Competition Bureau to discuss matters in the above-captioned proceeding. In accordance with the rules, NewSouth requests that a copy of this ex parte notice be placed in the public file in this proceeding.

NewSouth believes that one particular aspect of the Commission's *Seventh Report and Order* in CC Docket 01-92, FCC 01-146 (rel. April 27, 2001), requires clarity in order to prevent another damaging round of litigation and uncertainty with respect to CLEC access charges: the CLEC benchmark rate after June 21, 2004 is reduced to the comparable ILEC rate. NewSouth request that the Commission reiterate that the comparable ILEC rate includes all ILEC switched access rate elements, rather than just an isolated rate element..

Section 61.26(c) provides that "[a]fter June 21, 2004, the benchmark rate for a CLEC's interstate switched exchange access services will be the rate charged for similar services by the competing ILEC" The FCC made it clear that the "ILEC rate" included all rate elements charged by the ILEC for switched access. "[W]e intend to permit CLECs to receive revenues equivalent to those the ILECs receive *from IXCS*, whether they are expressed as per minute or flat-rate charges." *Seventh Report & Order*, at ¶ 54.

Thus, the safe harbor 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.

Id. at ¶55, n.126.

In particular, NewSouth believes it is important to clarify that, to the extent that a CLEC provides access tandem functionality, the *Seventh Report & Order* requires that it be permitted to

charge all access elements, including tandem rate elements. The attached diagram demonstrates a typical NewSouth network arrangement. The FCC has already declared in the reciprocal compensation context that, whether access tandem functionality is performed by an alternative carrier is dependent solely on whether the geographic area served by the alternative carrier is equivalent to that served by an ILEC tandem. 47 C.F.R. § 51.711(a)(3); *Cost-Based Terminating Compensation for CMRS Providers*, 30 Comm. Reg. 363, at ¶ 19 (2003) (P&F). Of course, the same principles should apply in the access context since the same network infrastructure arrangements exist for both local and toll traffic, with the only difference being the jurisdictional nature of the traffic.

NewSouth is aware that some IXCs may argue that they should not have to pay twice for the tandem rate element if the CLEC system subtends an ILEC tandem. This argument is false for three reasons. First, there is no “tandem rate” for CLECs. The FCC established a benchmark rate for CLEC switched access charges based on the aggregate of ILEC switched access rate elements. The FCC specifically refused to set individual rate elements for CLEC access charges. *Seventh Report & Order*, at ¶ 55. As such, the aggregate switched access charge is simply an estimate that constitutes a form of “rough justice”, i.e., to ensure that the aggregate CLEC switched access rate is not too high. Therefore, CLECs are not charging any “tandem rate” and there is no basis factually to conclude that there is any double charging. Second, subtracting out the ILEC’s access tandem rate from the CLEC benchmark rate is arbitrary since a price cap ILEC’s tandem rate is untethered from its own costs. Since 1991, price cap ILECs have been allowed pricing flexibility to change individual rate elements so long as overall pricing baskets fall within the price cap and year-to-year rate element changes are within applicable rate bands. Therefore, there is no evidence that subtracting out an ILEC’s tandem rate would be reasonable in these circumstances. Third, CLECs have a right to compensation for tandem functionality. The FCC has never adopted what an appropriate network architecture is when ILECs and CLECs jointly provide access. It would be arbitrary to conclude that one of these two carriers can legitimately charge for its provision of tandem functionality whereas the other would not.

In the end, the IXC can take steps to avoid any purported “double charging,” which, as demonstrated above does not in fact exist. As long as an IXC can directly interconnect with a CLEC, it can limit its access payments. For example, if an IXC purchased a trunk to directly connect to a CLEC, it would avoid ILEC tandem charges. This is the way that IXCs limit their payments currently with ILEC access charges and no different rule should attach to CLEC access arrangements. If traffic volume makes such direct interconnection economically beneficial, IXCs can decide to limit their charges. If the traffic volume is not large enough, then an IXC is not harmed by paying the benchmark rate for that limited volume since there is no question that the IXC actually places traffic on the CLEC’s network providing access functionality. There is no basis for the Commission to interfere with this normal economic behavior by arbitrarily limiting payments to one of the providers of tandem functionality.

NewSouth urges the FCC to reemphasize the conclusions outlined in this letter so that there is not further litigation and uncertainty with respect to CLEC access charges after June 21,

2004. The inevitable self help measures that IXCs can be expected to take when uncertainty reigns will not be beneficial to consumers or carriers. Please let me know if you have any questions.

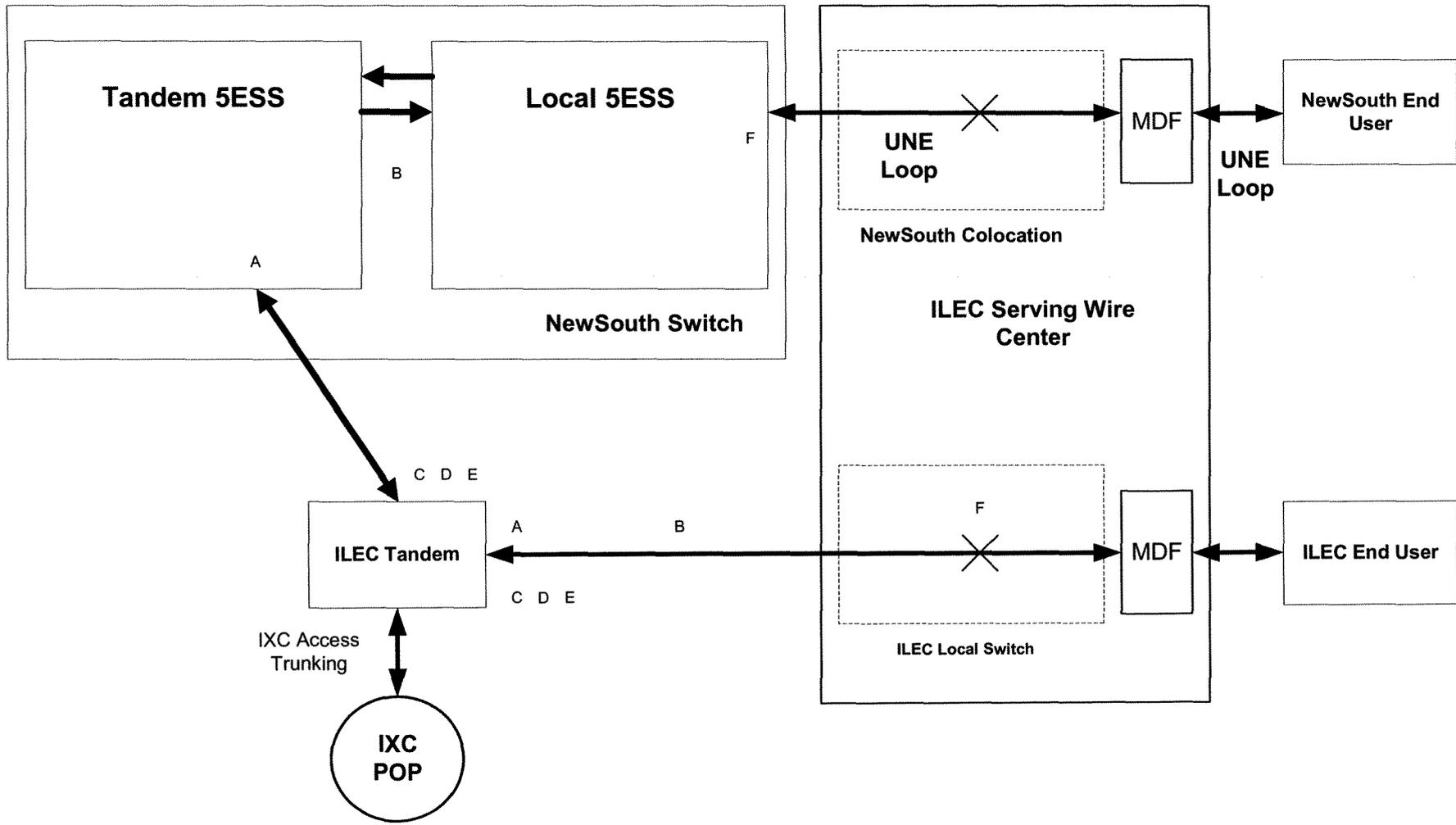
Sincerely,

/s/ Jake E. Jennings

Jake E. Jennings
Senior Vice President, Regulatory Affairs
and Carrier Relations

cc: William F. Maher, Jr.
Robert S. Tanner
Victoria Schlesinger
Jeffrey Carlisle
Scott Morris

NewSouth Communications
Trunking Diagram



- A = Tandem Switched (.000176/MOU)
- B = Tandem Switched Transport (.00276/MOU/Mile)
- C = Access Tandem Switching (.001177/MOU)
- D = Access Tandem Switching CMUX (.000387/MOU)
- E = Access Tandem Switching CTP (.0008/MOU)
- F = End Office Switched (.002158/MOU)