Levine Blaszak
Block & Boothby LLP

August 12, 2004

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules – WC Docket. No. 02-112; CC Docket. No. 00-175; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, CC Docket No. 01-337

Dear Ms. Dortch:

Please find attached letter addressed to Michael Carowitz regarding the procurement and contracting experiences of large enterprise customers seeking interstate, interexchange telecommunications services. This letter is provided in response to Mr. Carowitz's request.

Pursuant to Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b), copies of this letter have been filed with the Office of the Secretary and the parties identified in the letter.

Sincerely,

Colleen Boothby

Colleen Boothby

Counsel for
Ad Hoc Telecommunications Users
Committee

Attachment

Levine Blaszak
Block & Boothby LLP

August 12, 2004

Mr. Michael Carowitz
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules – WC Docket. No. 02-112; CC Docket. No. 00-175; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, CC Docket No. 01-337

Dear Mr. Carowitz:

You have requested information regarding the procurement and contracting experiences of large enterprise customers seeking interstate, interexchange telecommunications services. This letter is provided in response to your request and the questions posed by your colleagues.

The data and other information provided below are based on the cumulative experience of attorneys with the firm of Levine, Blaszak, Block & Boothby, LLP ("LB3") and consultants with LB3's consulting affiliate, TechCaliber Consulting, LLC ("TC2") in the representation of large enterprise customers when they negotiate customer network service agreements, network outsourcings, and related transactions. The lawyers of LB3 have provided legal advice and the consultants of TC2 have provided financial analysis to enterprise customers in over 1,000 procurements of telecommunications products and services, including procurements by about half of the Fortune 100 companies. The firm is counsel to the Ad Hoc Telecommunications Users Committee, which participates in the Commission's regulatory proceedings, and to the Enterprise Customers Committee in the WorldCom bankruptcy, and regularly consults with clients on the state of the telecommunications marketplace and market opportunities for enterprise customers.

2001 L Street NW • Suite 900 • Washington, DC 20036 • 202.857.2550 • 202.223.0833 Fax www.lb3law.com

You have asked us to categorize enterprise customer contracts according to the size or dollar value of the contract and the type of services covered by contracts according to size. Under current market conditions, the size or dollar value of a contract would not be a useful barometers of the services, rates, terms, and conditions typically obtained by enterprise customers. The mix and type of service and the complexity of the contract do not vary in any linear relationship by size or scope of contract. Although the very largest customers tend to buy more complex combinations of services and more sophisticated services and equipment, there are many niche markets in which smaller customers have equally sophisticated service requirements, *e.g.,* companies that rely heavily on E-commerce strategies. While it is true that the percentage of sophisticated customers with high volume or technologically complex requirements typically increases for deals above $5 million in value, similar customers spending less than that amount can get comparable deals. This is because the ability of both large and small customers to negotiate competitive prices and reasonable terms and conditions depends not on the size of the customer's total spend but on the customer's perceived willingness to negotiate aggressively and shift traffic to alternative providers in response to deficient offers from carriers.

There are correlations between the type of services provided under contract and the industry sector in which the customer operates. Manufacturing companies, for example, tend to require more data services than voice. Financial services companies tend to require more web-based services than outbound voice. The hospitality and airlines industries tends to require more outbound voice and call center services. Generally, however, IPVPNs and data networks dominate enterprise customer needs.

We have been asked to describe the scope of services and geographic footprint covered by enterprise customer contracts and address whether it is practical to break up national contracts into regional contracts. In the current market, enterprise customer deals are typically not regional, with the exception of a handful of enterprise customers who have geographically-concentrated service needs. Sophisticated customers (who buy at all dollar levels) typically require national deals, for several reasons. It is burdensome for customers to manage multiple vendors. Customers need seamless service level agreements or SLAs, which are the performance standards and technical service specifications for the services they obtain. Enterprise customers require account support across the geographic footprint of their networks. These factors require enterprise customers to avoid or limit traffic hand-offs between carriers and to use a dedicated national account team to integrate their network requirements.

You have asked about the contract descriptions in RFPs and the service providers who typically participate in the RFP process, particularly the Bell Operating Companies ("BOCs"). The RFPs from our client sample typically include the top twenty or so key terms and conditions but not as a sample contract. Instead, our clients will provide in their RFPs a summary list of the outcomes and terms the customer prefers. But it is also common for customers who are not advised by LB3 and TC2 to release RFPs that attach contracts. Customers may also use a form supplied by the carrier, which typically constrains the provisions they are able to negotiate.

The size of the customer can make a difference in RFP content and the subsequent negotiation process. Larger customers tend to use their own contract forms as the starting point for negotiation and to employ more experienced, sophisticated negotiators who are more successful at getting a final contract that differs from the carrier's form contract. Vendors who are negotiating with larger customers tend to use their more sophisticated, better qualified negotiators and tend to give them authority to vary from the standardized terms and conditions contained in the contract forms supplied by the carrier.

You have asked us to identify the service providers that typically participate in enterprise customers' RFPs. For interstate, interexchange services, those providers are AT&T, MCI, and Sprint plus a group of "spoilers," meaning less-established, second tier companies who are likely to price aggressively to win the customer's business. This group includes companies such as Broadwing, Qwest, Global Crossing, Level 3, and Wiltel. For international services, typical providers are Equant, British Telecom, and Telstra.

Enterprise customers do not often receive RFP responses from the BOCs and, when they do, the responses are typically limited in the services provided or the geographic area in which service is available. In a majority of cases, these limitations prevent the BOC from being the lead vendor in a procurement. Their role is typically limited to providing a subset of the most basic services (*e.g.,* "plain vanilla" outbound voice) rather than the more sophisticated data applications (*e.g.,* frame relay or MPLS) or services with a national footprint. In addition, the BOCs do not offer the suite of advanced features enterprise customers typically require for commodity voice services, such as toll-free service to call centers, which are highly sensitive to any technology churn associated with using a carrier who cannot provide those features from within its network.

The experience of enterprise customers is that the constraints on the BOCs' ability to be fully responsive to an RFP stem not from regulatory barriers but from other factors under the BOCs' control, such as the BOCs' failure to offer the full suite of services that enterprise customers require; the BOCs' negotiating rigidity, inflexibility, and lack of sophistication regarding the procurement practices used by enterprise customers in competitive markets; the BOCs' unwillingness to deviate from their forms; and the BOCs' refusal to use regulatory flexibility where authorized under the Commission's rules. Moreover, the BOCs do not appear adept at capitalizing upon some of the significant advantages that they enjoy over other Tier 2 providers, such as the credibility and customer relationship "history" they have as incumbent local exchange service providers which prompts customers to send RFPs to them and take their responses seriously.

Please feel free to contact the undersigned if you require any additional information or clarification of the responses above.

Sincerely,

Colleen Boothby

Colleen Boothby

Counsel for
Ad Hoc Telecommunications Users
Committee

cc: Ben Childers
William Cox
Bill Dever
Kimberly Jackson
William Kehoe
Jon Minkoff

200\02ACCOST\Broadband Rulemaking\LTR ex parte 8 12 04 FCC info req.