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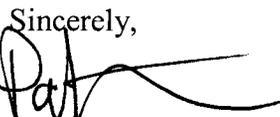
October 29, 2004

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

*Ex Parte*  
CC Docket Nos. 01-338  
WC Docket No. 04-313

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this will provide notice that on October 28, 2004, the undersigned and Peter Healy, TDS Metrocom, LLC, met with Matthew Brill, Office of Commissioner Kathleen Q. Abernathy and with Scott Bergmann, Office of Commissioner Jonathan S. Adelstein, and on October 29, 2004 with Christopher Libertelli, Office of the Chairman. We presented the views set forth in the attached document which was provided at the meetings.

Sincerely,  
  
Patrick J. Donovan

### *Interim UNE Order*

- Petition for Clarification and/or Errata filed August 27, 2004.
- States should be permitted to implement rate decreases.
- Change of law should not be initiated until new rules are adopted.

### **Impairment Standard**

- Capacity-based tests address potential deployment.
- BOCs seek unlawful non-granular impairment standard.

### **Special Access**

- Potential for ILEC price squeeze behavior by itself precludes reliance on special access as a substitute for UNEs.

### **Definition of Mass Market**

- SBA Survey (2004): Smallest businesses on average purchase 1.5 – 2 business lines and do not purchase T-1 services.

### **Proposed Market Definitions and Impairment Tests**

#### Small Enterprise Loops (DS1s) /Appropriate Market Definition: Building-by-Building

- Small enterprise customers present lower revenue opportunities, are geographically dispersed and resist signing long-term contracts, all of which negatively impact the ability to self-provision or obtain wholesale alternatives.
- There is no suitable proxy to use in administering a test, each building, even those next to each other or on the same street have distinctly different characteristics.
- Unlike transport, a wire center proxy does not work because individual loops do not aggregate traffic throughout a wire center, which is the justification for a transport proxy.
- Error costs of a broader definition or test are huge as evidenced by the tiny number of buildings that ILECs proposed to meet the TRO wholesale test - only 744 in 12 states.
- A national impairment finding with ILEC petition "safety value" based on TRO triggers can easily be justified to the court because of the high error costs of alternative tests.

#### Large Enterprise Loops (DS3s)/Appropriate Market Definition: Building-by-Building

- Again, there is no suitable proxy to use in administering a test, each building, even those next to each other or on the same street have distinctly different characteristics.
- However, because large enterprise customers are generally more concentrated within business districts of large MSAs the Commission could use a business line threshold as a filter to determine where to apply a test based on TRO triggers with impairment found outside these areas.
- An ILEC petition "safety value" based on TRO triggers and a CLEC self-reporting requirement can be used to determine alternative facility locations.

#### Low Capacity Transport (DS1)/Appropriate Market Definition: Route-by-Route

- The market for low capacity transport is distinctly different than for high capacity transport.
- The economics of transport deployment are based heavily on the ability to aggregate large amounts of traffic and DS1 transport by its nature has significant capacity limitations. Based on this capacity limitation, wire center size is not a suitable proxy with which to administer a self-provisioning or wholesale test.

- Because wholesale transport providers may be more concentrated within business districts of large MSAs the Commission could use a business line threshold as a filter to determine where to apply a test based on TRO triggers with impairment found outside these areas with a potential ILEC petition "safety value".
- Error costs of a broader definition or test are huge as evidenced by the tiny number of routes where QSI found that the TRO wholesale test triggers were met - only 49 in 12 states.

High Capacity Transport (DS3)/Appropriate Market Definition: Route-by-Route

- Allows for some traffic aggregation within a wire center, but still nowhere near the level of OCn transport. A proxy using wire center business lines may be useful, but only where the Commission can insure that the sample of routes is homogeneous within the proxy measure.
- A three part test is critical to minimizing error costs. The largest wire centers (greater than 40k business lines in top 50 MSAs) have common characteristics that point to non-impairment. Small and isolated wire centers (less than 10k business lines in top 50 MSAs and all wire centers outside the top 50 MSAs) have common characteristics clearly showing impairment. Wire centers in between are far too diverse to devise a non-route specific test that does not have the potential for significant error costs.
- An ILEC petition "safety value" in non-impaired areas and CLEC self reporting requirements will minimize potential errors.

ULS/UNE-P/Appropriate Market Definition: Wire Center

- MSA or LATA definitions are too broad because the addressable market and deployment costs are based not only on MSA or LATA-wide switching facilities but also collocation equipment deployment and backhaul transport which are directly linked to a specific wire center.
- An efficient CLEC must meet minimum efficient scale to justify deployment regardless of wire center size or size of CLEC. With the rationalization of the capital markets, blind forward investment is no longer possible which requires access to the non-facilities based platform for market entry or to provide service over a geographic area compared to the incumbent.
- A hard cap on UNE-P lines in a wire center is a tailored way to limit unbundling by directly tying it to the minimum efficient scale which is the basis for impairment.
- 1344 lines per CO (the equivalent of 2 DS3s) can be used as a proxy for minimum efficient scale and act as a hard cap on availability.