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April 22, 2005

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

Ex Parte
WC Docket No. 05-65

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 November 21, 2005, Wanda Montano, Vice President, US LEC Corp., John Sumpter, Vice President, Pac-West Telecomm, Inc, Richard M. Rindler of this firm, and the undersigned met with the following persons concerning the above-captioned proceeding: Bill Dever, Marcus Maher, Kent Nilsson, Jon Minkoff, Gail Cohen, Jim Bird, Craig Stroup, Joel Rabinowitz, Pam Megna, Ben Childers, Karen Onyeije, C. Anthony Bush, Jonathan Levy, Chuck Needy, Paul Zimmerman, Roger Wook, and Anne Bushmiller. We presented the views set forth in the attached documents which were provided at the meeting.

Sincerely,



Patrick J. Donovan

US LEC

voice / data / Internet

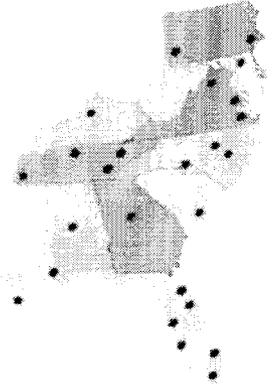
Wanda Montano, Vice President
Regulatory and Industry Affairs

April 21, 2005

US LEC CORP. COMPANY OVERVIEW

WELCOME TO US LEC.

We are a telecommunications carrier providing integrated voice, data and Internet services. Headquartered in Charlotte, NC, we serve major cities throughout the southeastern and mid-Atlantic United States.



- Headquartered in Charlotte, NC
- 23,000 small, medium, and large-sized business customers
- 100 markets served
- Offers local, long distance, calling card, dedicated Internet access, digital private line and frame relay services
- Consistent revenue growth, \$356 M revenue for 2004

KEY FACTORS UNDERSCORING US LEC'S INTEREST

- US LEC is a major customer of ILEC facilities (3rd largest purchaser in BellSouth territory).
- Among top ten purchasers from Verizon.
- US LEC primarily uses Special Access, rather than UNEs, to provision service to end users.
- US LEC purchases 1+ termination, 800 origination, international termination, and private line services from AT&T.
- US LEC operates as a CLEC in Indiana in SBC territory and has intrastate long distance authority in most SBC states.

REGULATORS MUST CONSIDER TRENDS

- Pending mergers must be considered together
- Other BOCs could acquire remaining facilities-based IXC
 - Sprint local operations will be spun off after Nextel merger
 - Independent facilities-based long distance industry may not survive
- Other BOCs could acquire other Internet backbone providers (also issue of last mile)
 - Level 3 recently removed its “poison pills”
 - Sprint, as noted above

BOCs POSSESS MARKET POWER

- US LEC has no alternative to ILEC facilities in the vast majority of situations
- AT&T and MCI are two of the larger providers of alternative facilities.
- FCC recently found in the *Triennial Review Remand Order* that CLECs are impaired with respect to DS1 and DS3 loops and transport based in part on number of fiber-based collocators.
 - Mergers could skew impairment threshold if AT&T (or MCI) fiber-based collocations counted as unaffiliated, reducing the availability of UNEs.

CONCERNS

- Discrimination in provision of facilities
- Diminished choice in competitive access providers
- Acquisition of in-region enterprise customers
- Loss of independent facilities-based IXC's
- Concentration in and access to IP backbone

DISCRIMINATION

- Price squeeze behavior
 - SBC can charge high access prices to its affiliate without harm because they are transfers within the affiliated enterprise
 - Volume, “growth,” discounts for which only the IXC affiliate could qualify
 - Growth commitments are barriers to entry
 - Example of BellSouth Florida tariff
 - Region-wide purchase agreements

DISCRIMINATION (Cont'd)

- Price squeeze behavior (cont'd)
 - BOCs have been raising special access prices under pricing flexibility.
 - FCC investigating in Special Access Rulemaking
 - BOCs have been successful in gaining long distance market share by setting long distance prices low in relation to access.
 - Bundling facilitates discrimination.

DISCRIMINATION (Cont'd)

- Untimely and substandard ordering, provisioning, repair, and maintenance
 - “Integration” of IXC and ILEC facilities would make detection of discrimination difficult or impossible
- Previous discrimination validates the concern
 - FCC in 2003 TRO found that restrictions on commingling and Verizon’s “no facilities” policy were unlawfully discriminatory
 - NYPSC found in 2001 that Verizon discriminated in provision of special access

DIMINISHED CHOICE IN COMPETITIVE ACCESS PROVIDERS

- SBC and Verizon will be acquiring the largest competitive special access providers
- Increase dependence on ILECs
- Fewer choices for local metro networks
- Reduced justification for pricing flexibility
- CLECs will lose reasonable access to AT&T collocations/POPs

UNDUE BOC ADVANTAGE IN THE ENTERPRISE MARKET

- BOCS will use AT&T/MCI strengths along with anticompetitive tools to dominate the enterprise market.

PROBABLE DEMISE OF INDEPENDENT FACILITIES-BASED IXC_s

- Independent facilities-based IXCs not likely to survive because BOCs will shift traffic to affiliates.
- For the first time since 1984, a majority of the nation's traffic will be handled exclusively over BOC networks.
- Increased dependence on ILECs -- not only for local access but long distance service as well.

CONCENTRATION, COLLUSION IN THE IP BACKBONE MARKET

- Verizon and SBC will be “super peers”
- Post merger, fewer IP backbone providers will likely have the same volumes of traffic
- Current approach to peering would permit Verizon and SBC to charge all others higher prices
- Further BOC acquisitions would compound the concentration
- Control of IP backbone enables price and quality of interconnection discrimination
 - Discrimination in favor of ILEC affiliate facilitated

CONDITIONS

- Safeguards against discriminatory treatment of competitors.
- Reduce undue in-region concentration
- Safeguards to assure open IP-enabled marketplace
- Transition safeguards
- Enforcement

SAFEGUARDS AGAINST DISCRIMINATION

- All Agreements Between Bells Regarding Access Available To Others Via Contract or Tariff
 - Lowest Rate Must Be Available For Opt-in Regardless Of Volume Or Term
- Set Special Access Pricing Based On LRIC

SAFEGUARDS AGAINST DISCRIMINATION (Cont'd)

- Comprehensive UNE and Special Access performance metrics
- Continuation of Section 272 separate affiliate
 - For existing as well as acquired LD.
- BOCs now using 272 affiliate even in states where the requirement has lapsed

REDUCE UNDUE IN-REGION CONCENTRATION

- Divestiture of in-region AT&T local exchange and exchange access facilities.
- Divestiture of in-region AT&T mass market, small and medium-sized business customers, and enterprise customers.

SAFEGUARDS TO ASSURE OPEN IP-ENABLED MARKETPLACE

- Divestiture of AT&T IP backbone, or require provision of interconnection and transit service to non-peering ISPs and CLECs based on LRIC pricing
- Divestiture of UNE-P customers.
- Net neutrality requirements prohibiting ILEC blocking, or provision of inferior access to non-ILEC IP-enabled services

TRANSITION PLAN

- Promotional discounts for UNEs and Special Access for 3 years, beyond existing plans.
- Commitment not to raise existing Special Access prices pending completion of LRIC price cases.

ENFORCEMENT

- Self-enforcing conditions to the extent possible, especially with respect to performance metrics.
- Authorize states to enforce merger conditions.
- Performance metric penalties paid to competitors.
- Meaningful penalties beyond cost of doing business.

SIMPLIFIED HIGH SPEED INTERMODAL ACCESS TECHNOLOGIES

Darren Sandford, Pac-West
Current Revision 1.0, Apr 6 2005

