



May 24, 2005

Ex Parte

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

**Re: Special Access Rates for Price Cap Local Exchange Carriers, WC
Docket No. 05-25
July 1, 2005 Annual Access Charge Tariff Filing, WCB/Pricing 05-22**

Dear Ms. Dortch:

Global Crossing, by and through undersigned counsel, hereby files in support of the request submitted to the Federal Communications Commission ("FCC" or "Commission") by the eCommerce & Telecommunications User Group ("eTUG") and the Telecommunications Committee of the American Petroleum Institute ("API") to adopt an interim X-Factor of 5.3 percent for interstate special access rates.^{1/}

The *eTUG/API Letter* ably explains the basis for the request. The comment cycle for the Commission's special access rates proceeding will not close prior to July 1, 2005.^{2/} The Commission stated in the *Notice*, however, that it anticipated adopting an

^{1/} Letter from Brian R. Moir, counsel for eTUG and C. Douglass Jarett, counsel for API, to Marlene H. Dortch, Secretary FCC (May 10, 2005) (filed in WC Docket No. 05-25 & WCB/Pricing Docket No. 05-22) ("*eTUG/API Letter*").

^{2/} See *Special Access Rates for Price Cap Local Exchange Carriers*, 70 Fed. Reg. 19381 (April 13, 2005) (establishing July 12, 2005 as the deadline for reply comments in the rulemaking procedure). See also *Special Access Rates for Price Cap Local Exchange Carriers*, Notice of Proposed Rulemaking, WC Docket No. 05-25, 20 FCC Rcd. 1994 (2005) ("*Notice*").

interim order prior to July 1, 2005, to “ensure special access price cap rates remain just and reasonable.”^{3/} The concern correctly identified by the Commission is that, absent further Commission action, special access rates effectively will remain frozen as a result of the *CALLS Order*,^{4/} despite “substantial evidence suggesting that productivity has increased and continues to increase in the provision of special access service.”^{5/} At the same time, BOCs’ accounting rates of return have been “substantially in excess” of the prescribed 11.25 percent rate of return for rate of return LECs.^{6/} The *eTUG/API Letter* adds to this evidence by noting that the latest ARMIS filings show accounting rates of return in excess of 76% for three of the four largest Price Cap LECs.^{7/}

This evidence clearly indicates that special access rates are not just and reasonable and that, at a minimum, the Commission promptly should impose an interim productivity or X-Factor of 5.3%, the last productivity factor adopted by the Commission and judicially upheld.^{8/} Adoption of a 5.3% productivity factor is purely an interim measure and is in no way intended to prejudge the questions raised in the Notice regarding the appropriate productivity factor or level at which to reinitialize price cap rates.

As the *eTUG/API Letter* noted, the Commission is accorded substantial deference in fashioning interim relief and parties were provided ample notice that the Commission was considering taking such an interim step.^{9/} Any residual concerns may be alleviated, however, by issuing a separate notice on the *eTUG/API* request, with an accelerated comment cycle on this discrete issue that provides sufficient time to act prior to July 1,

^{3/} Notice at 2037, ¶ 131.

^{4/} *Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 99-249, 96-45, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) (“*CALLS Order*”), *aff’d in part, rev’d in part, and remanded in part*, *Texas Office of Public Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001), *cert. denied*, *Nat’l Ass’n of State Util. Consumer Advocates v. FCC*, 535 U.S. 986 (2002), *on remand*, *Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 99-249, 96-45, Order on Remand, 18 FCC Rcd 14976 (2003).

^{5/} Notice at 2037, ¶ 131.

^{6/} Notice at 2009, ¶ 35.

^{7/} *eTUG/API Letter* at 2.

^{8/} Notice at 2037, ¶ 131.

^{9/} *eTUG/API Letter* at 2-3.

Marlene H. Dortch

May 24, 2005

- 3 -

2005. There can be no complaint of hardship in light of the fact that carriers have previously had notice of the Commission's intent.^{10/}

In accordance with the Commission's rules, this letter is being provided to you for inclusion in the public record of the above referenced proceedings.

Very truly yours,

GLOBAL CROSSING



By: Paul Kouroupas
Vice President & Sr. Counsel

PK:ms

^{10/} Global Crossing would also support eTUG/SPI's alternative proposal of delaying the date of the annual access filing. *eTUG/API Letter* at 3.