October 18, 2007

TC3 Telecom Inc. comments in response to NPRM
WC Docket No. 07-135

Background

TC3 Telecom was established in 1999 as a competitive LEC (CLEC), and began operations in 2000. The company provides phone and broadband services to residential and business customers in Michigan.

Comments

In paragraph 20 of the NPRM, the Commission invites comments as to whether an action by the commission to exclude revenue sharing payments from revenue requirements would be enough to satisfy the Commissions obligation to ensure just and reasonable rates. TC3 Telecom concurs with the tentative conclusion of the Commission in paragraph 19, that the inclusion of revenue sharing payments would be a violation of section 201(b). This "unreasonable" practice lies at the heart of the issue. A revenue sharing arrangement with a LEC is an arbitrary agreement between the LEC and the communications provider to determine the amount of compensation to be paid to the communications provider. If this amount is allowed to be deemed a "cost" by the LEC, then truly, the costs are simply being passed on to the IXC, and there is no limit to what the LEC could ultimately charge for access rates.

By ensuring that these compensation arrangements are not included as costs, the factors that the commission has identified in paragraphs 14 and 15 will suppress any upward pressure on access rates, especially in cases of dramatic increases in demand.

Even with a mechanism established to ensure that a LEC's cost are not artificially inflated, the caveat remains that a access stimulation could still drive a rate-of-return carrier's revenue beyond an 11.25% ROI. This is a unique situation which the current set of rules did not anticipate. TC3 Telecom does not have any specific recommendations at this time. However, TC3 Telecom would invite the commission to consider the following points.

- The recent access stimulating activity, coupled with the inclusion of artificial costs, has allegedly led to exorbitant access rates by some LEC's. The retro-active application of a mechanism to disallow these artificial costs in the calculation of access rates would have the effect of reducing access rates to pre-access stimulation era levels for any carrier with inflated access rates.

www.tc3telecom.com
Toll Free :: 888-682-1256
Ph :: 517-266-0402 «» Fax :: 517-265-7046
247 S. Main St. Adrian, MI 49221

- Rate-of-return carriers who experienced a dramatic increase in demand during a given two-year tariff period, would be driven by the factors identified in paragraphs 14 and 15 to reduce rates in order to maintain lawful access rates with the submission of the next tariff filing.
- Even though the access rates of a rate-of-return carrier filed prior to a significant increase in demand may be high enough, given the increased demand, to ultimately produce an ROI greater than 11.25% for the two year tariff cycle, the access rates themselves will be in line with rates that IXC's have previously paid to these carriers, rates that have been considered “reasonable and just”.

While the commission contemplates additional regulation to ensure just and reasonable rates, TC3 Telecom would like to express its concern over the unintended consequences of establishing the arbitrary growth caps discussed in paragraph 22 and elsewhere. The ramifications of arbitrarily established limits on growth would likely have the most pronounced effect on CLEC’s like TC3 Telecom. Unlike Incumbent or Price Cap LEC’s, CLEC’s enjoy no established customer base on which to rely for a steady source of revenue. Instead, a CLEC must identify a set of competitive advantages in the market, and then exploit those advantages to win over a customer base from the Incumbent carrier. Often times this may involve finding a niche market, and aggressively pursuing those particular customers. Or, it may involve the “first mover” advantage, and the introduction of a new technology to the market. In either case, the CLEC may very well experience exponential growth during the early stages of deployment. In the later case, the market opportunity may be relatively short lived before the Incumbent carrier adopts the new technology and brings economies of scale to bear which tend to reduce, and ultimately eliminate, the CLEC’s competitive advantage.

Hence, without any guaranteed revenue stream, CLEC’s need the ability to quickly recover their capital investment. The risk is high, and therefore, the rate of return must also be substantial. The establishment of artificial growth caps which limit the potential return on investment would surely discourage competition in this already beleaguered space.

Further Comments

TC3 Telecom would invite the commission to further consider these additional factors in the rulemaking process.

The commission should not overlook the fact that “access stimulation” is NOT a tactic to somehow transform traffic normally compensated at a low rate into higher rate traffic. Nor is it a maneuver to redirect traffic from one network to another in order to gain higher level of compensation. Instead it is traffic from real end users, utilizing a new, innovative service.

As the commission speculated in paragraph 13, this traffic is most likely generated by chat lines and conference bridge services, among other things. These services in themselves are nothing new and are both widely offered today. The innovation that is driving the extraordinary growth in the use of these services is the new approaches to promoting them, as well as the novel approach to the revenue model.

Chat services provide, perhaps, the best example of why the new approaches are having such success. Historically, access to chat services has been through 900 number providers, which generally carry a very high price tag, easily surpassing $2.00 per minute in many cases. Communications providers, together with carriers, are now marketing similar services for “free”, with the added benefit of allowing customer create their own, customized “chat rooms”. These huge market advantages have propelled the demand for the service to exponential growth.

TC3 Telecom wishes to point out to the commission that while the communications providers can correctly promote the use of their product “free”, the end user does in fact, incur a cost. The offering is always structured so that the end user must dial a long distance number to utilize the service. Inherent in the use of the service is the cost to the end user for the capability to make a long distance call. In theory, either via a per minute plan, a flat rate plan, or as a bundled package of local and long distance minutes, the end user is paying an IXC for long distance service.

Hence, on its surface, “access stimulation” would appear to be a benefit to the market. Innovation by the communications providers has brought to the market an enhanced product for which there is high demand. “Access stimulation” has actually driven end users to purchase more of the IXC's products.

However, as has been duly represented to the commission by various IXC's, rate-of-return carriers have attempted to artificially inflate their access rates in order to extract a larger share of the revenue generated by these new services. As TC3 Telecom has suggested above, preventing rate-of-return carriers from these practices, would effectively resolve the concern of the IXC's.

TC3 Telecom does not claim to posses a thorough understanding of the mechanisms and cost considerations used by the IXC's to determine the pricing plans for their long distance products. Nonetheless, TC3 Telecom anticipates that the IXC’s may contend that further regulation is still needed over and above the preclusion of artificial costs for rate-of-return carriers involved in “access stimulation” because of the dramatic increase in traffic to higher access rate carriers. Undoubtedly, the IXC’s rate plans, especially flat-rate and bundled plans, are dependant upon average costs distributed over average traffic patterns to various carriers, where rate-of-return carriers with higher access rates compose a small minority. A significant increase in the amount of traffic to these high-rate carriers would erode the overall margin of the IXC’s rate plans.

To this argument TC3 Telecom would like to highlight two points to the commission. First, it is not uncommon for the IXC’s to place certain restrictions on low rate packages to end users. For example, many flat-rate long distance packages stipulate that the service cannot be utilized for dial-up Internet access. TC3 Telecom suggests that “access stimulating” services are easily identifiable and definable, and as such, could be restricted within the terms of service for an IXC’s customer, very similar to the restrictions placed on dial-up Internet access.

Secondly, IXC’s have every opportunity to leverage the innovations of “access stimulation” to actually increase revenues. As has been pointed out previously, the use of these new services

www.tc3telecom.com
Toll Free :: 888-682-1256
Ph :: 517-266-0402 «» Fax :: 517-265-7046
247 S. Main St. Adrian, MI 49221

REQUIRES the end user to purchase long distance service in some shape or form. Again, the chat line product example, which previously cost $2.00 per minute, can now be made available for pennies per minute. It would seem logical for the IXC's to strategically align with communication providers and local service providers to create a competitive offering which drives traffic on to their own network.

In summary, TC3 Telecom supports the commission's postulation that an action to exclude revenue sharing payments from the calculation of access rates would be sufficient to ensure just and reasonable access rates.

www.tc3telecom.com
Toll Free :: 888-682-1256
Ph :: 517-266-0402 «» Fax :: 517-265-7046
247 S. Main St. Adrian, MI 49221