Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	

Comments of TEXALTEL

TEXALTEL is a trade association of Competitive Telecommunications providers who have business interests in Texas. The members of TEXALTEL have an interest in the issues being decided by the Commission in this proceeding and appreciate the opportunity to offer comments.

Background

The Commission cites three separate, albeit related, problems in its NPRM:

1. Rural ILECs may negotiate payments to customers who originate or terminate high volumes of long distance traffic and include those payments as costs in cost studies justifying higher switched access rates.
2. Rural ILECs may negotiate payments to customers who originate or terminate high volumes of long distance traffic and not include such payments in cost studies, but such traffic stimulation increases the switched access payments from IXCs to those Rural ILECs. Such stimulation should drive rates down.
3. CLECs that make payments to customers who originate or terminate high volumes of long distance traffic.

Discussion

Conference bridges, chat lines and call center customers who may originate or terminate large volumes of long distance calls and thus generate switched access traffic on the serving LEC's network are engaged in legitimate business. In fact, all situations cited by the FCC appear to constitute legitimate business operations that most, if not all, LECs service, to some extent, on their networks. We believe that the term "stimulation" is a serious misnomer in these circumstances. The situations described by the Commission in its NPRM are just high volume customers who may move their business from an ILEC, such as at&t, to a CLEC or a rural ILECs area. By adopting at&t's term "stimulation", it appears that the Commission has prejudged that this is some sinister activity that demands immediate attention.

There are two aspects to these customer groups that seem to give rise to the care needed when defining "traffic-stimulation". First, as is typical of most businesses, these customers can select where they locate to conduct their business. Business location will be affected by many factors such as cost of real estate, availability of a compatible workforce, and municipal tax abatements as well as others. Second, these customers can generate high volumes of switched access traffic for the connecting LEC. There is nothing wrong or inappropriate for these customers to negotiate the rates they are charged. So long as the traffic is part and parcel to a legitimate business purpose, the traffic is not a "traffic-stimulation" and new regulations relating to the contracts such end users negotiate would not be appropriate.

On the other hand, where the traffic would be considered to be "bogus" or "fraudulent"; created by something other than providing services to legitimate customers for legitimate business purposes; then a sinister characterization such as "stimulation" is appropriate and immediate regulatory action would be justified. Thus the terms "traffic stimulation" and "traffic pumping kick back" must only be applied when there is something sinister or negative about the true nature of the traffic. We do not read the Commission's NPRM as seeking comment on these more sinister/unlawful activities.

Unfortunately, there appear to be some in the industry that seek to regulate what in reality appears to be situations where LECs are serving legitimate customer needs. The examples in the NPRM, for example, are situations where little or no stimulation is occurring. Instead, much of what is being seen in call traffic is movement of businesses from urban ILEC areas to rural ILEC areas or to CLEC services. That providers would be creative in finding new ways that their networks can provide telecommunications services to a growing and migrating customer class should not be at all surprising to anyone.

There appears to be a preliminary conclusion by the FCC that these high volume customers can be lured to rural areas where higher access rates exist because of reduced telecommunications costs (such as the free services cited by the NPRM or by some access revenue sharing arrangement). We see no basis for these concerns. Most of these operations involve the business paying employees to talk on the phone (i.e. call centers). This is legitimate traffic for legitimate purposes. Should a rural ILEC or a CLEC seek to offer incentives for such a customer to locate in their area and do business with that ILEC or CLEC seems just as proper and legitimate as rural communities offering tax abatements and other incentives that are so common today.

TEXALTEL agrees with the preliminary conclusion that any costs incurred by a LEC to win a customer that has high switched access revenues should not be included as a business expense that would justify higher switched access rates. TEXALTEL also agrees with the preliminary conclusion that should increased switched access traffic occur on the network of a rate of return ILEC, that its costs per minute of such traffic should be re-examined. However, small changes in usage, such as a 10% increase in switched access traffic, will only reallocate more costs from local to toll jurisdictions and would not normally cause a material change in switched access rates. We suspect that the Commission's NPRM discussion of "fixed" and "variable" costs are colored by incremental cost theory. In the embedded cost world of Part 36 cost studies, all costs are variable. Doubling toll traffic volumes will almost double the costs allocated to toll, and the cost per minute change will not be as great as one might initially think. A 1000% increase may be a threshold where material changes in switched access rates would be expected to result. And these same ILECs should be allowed to immediately refile higher switched access rates when these customers go away, as they do so quickly.

We agree that all incumbent LECs should be periodically recalculating costs and reducing rates and with the concept that a trigger, such as a doubling of switched access traffic, should invoke a requirement to restudy costs and reset switched access rates at lower levels retroactive to the time that the traffic increases commenced. For average schedule carriers, evaluating cost data will be a troublesome task, as these companies do not do cost studies and their ability to develop costs are very limited. And there are two issues to bear in mind – changing average schedule switched access rates may not materially affect the settlements paid to one or two average schedule ILECs. If the Commission is worried about market aberrations, it may need to look more at the settlements paid to average schedule ILECs than at the access rates they are charging collectively as a group.

For the process of re-examining small ILEC costs, the Commission may need to be mindful of those ILECs that are engage in cost/revenue pooling. A pool participant is not going to stand to gain as much from addition of a high access revenue customer as one that is not a pool participant. We frankly think that the periodic re-evaluation of pool revenue requirements should be more than adequate to assure just and reasonable rates for pool participants collectively.

We believe that switched access traffic can grow significantly if there is an effort to market to high traffic customers, such as conference bridges, chat line facilities, call center operations, and help desk provisioning.[1] We are at a loss as to why efforts to lure such customers away from urban ILECs and into areas served by rural LECs are even questioned as to its propriety, other than the points raised in the two previous paragraphs. We can certainly understand why at&t hates to lose its urban retail customer, but we are concerned that at&t would try to use the Commission to protect it from competition. What we are seeing are customers making telecom purchase decisions form the many choices offered them. We assume that, after looking further into these issues, the Commission will conclude that it does not need to act to protect at&t's market share from intrusion by rural ILECs and CLECs. CLECs and some Rural ILECs have discovered a manner of competing that benefits rural America. We urge the FCC to deal with the two issues outlined in the two preceding.

Comments to specific questions

The business world is transiting toward business models which are more telecommunications intensive. The trend to outsource customer service and/or marketing, for example, has given rise to call centers. Large call centers are able to enjoy some economies of scale over very small ones. Since call centers are labor intensive, call centers often attempt to locate where labor costs are lower. Disappointingly, that choice puts many of them off shore. But many also remain in the U.S. Data from the Bureau of Labor Statistics demonstrates that often wage rates are lower in rural areas and call centers may find rural settings attractive. One member of TEXALTEL has located his call center near a smaller town university so that he can attract student help. Call centers can be outbound, such as telemarketing centers, and in bound, such as customer service centers. Some call centers are extremely high tech, with many tools to allow their techs to answer calls for numerous clients and to respond to client specific issues seamlessly.

TEXALTEL is aware that fees may be paid to brokers of access traffic. But, under these circumstances, the broker/customer pays for the transport and other expenses to connect to the CLEC.

[1] Paragraph 13 of the NPRM

These are legitimate businesses looking for the best deal on telephone services. They are assuming upfront costs and risk as part of the contracts they negotiate. This is how competition is supposed to work.

Conclusion

The critical threshold issue is to make sure that the definition of “traffic stimulation” be tailored to a real harm to the public interest and not a cloaked means of protecting one urban ILEC’s market. Business arrangements relating to call traffic that is based on an end user’s legitimate business purpose is not “traffic stimulation”. The traffic is not being “stimulated”. The traffic is real and legitimate.

We do agree with the Commission that under some conditions, the growth of switched access traffic should trigger a re-evaluation of the switched access rates of a rural ILEC. We would hope that normal periodic refilling of cost studies and access rates should be adequate to cause such rates to remain “just and reasonable but would support an expedited review.

TEXALTEL thanks the Commission for the opportunity to participate in this proceeding.

Respectfully submitted

TEXALTEL

Charles D. Land, P.E.
Executive Director
500 N Capital of Tx Hiway
Bld 8, Suite 250
Austin, Texas 78747
512-320-0430 telephone