FLEISCHMAN AND HARDING LLP

A. Enrico C. Soriano
(202) 939-7921
ESORIANO@FH-LAW.COM

April 7, 2008

VIA ELECTRONIC FILING

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

Re: Notice of Oral Ex Parte Communication, In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers; WC Docket No. 07-135

Dear Ms. Dortch:

On April 4, 2008, the undersigned as counsel to Tekstar Communications, Inc., together with David Arvig, President and CEO of Arvig Enterprises; David Schornack, Director, Tekstar Communications, met with Scott Bergmann, Senior Legal Advisor to Commissioner Adelstein, to discuss the above-captioned proceeding.

The attached document was used as the basis for discussion.

Pursuant to the Commission's rules, 47 C.F.R. § 1.1206(b) (1), this letter, along with the material distributed at the meeting, is being filed electronically for inclusion in the record of the above-referenced proceeding.

Respectfully submitted,

A. Enrico C. Soriano/BEF

A. Enrico C. Soriano
Counsel to Tekstar Communications, Inc.

Attachment

cc: Scott Bergmann

TRAFFIC STIMULATION FROM A SMALL RURAL CLEC'S PERSPECTIVE

Ex Parte **in WC Docket No. 07-135**

Submitted by:

David Arvig
David Schornack
TEKSTAR COMMUNICATIONS INC.

April 4, 2008

Counsel for Tekstar:
A. Enrico C. Soriano
Fleischman and Harding LLP
1255 23rd Street, N.W., 8th Floor
Washington, D.C. 20037
(202) 939-7900 (phone)
(202) 939-0928 (fax)
esoriano@fh-law.com

KEY POINTS

- Tekstar is being harmed now—potentially irreparably—because it is not getting paid for access charges.
- Tekstar is a for-profit business and is entitled to rely upon lawful means to maximize revenues and network use/utilization.
- IXCs are not being harmed. In fact, it is reasonable to assume that they are making money because Tekstar's access rates are generally lower than otherCLEC players in the industry.
- FCC must compel IXCs receiving access services from rural CLECs and not paying for them to (a) refrain from "self-help," (b) utilize the complaint process if they dispute the charges, and (c) compensate rural CLECs for tariffed access charges.
- There is no need to adopt regulations geared towards rural CLECs.
    - Rural CLEC access charge rate reduction not necessary.

- **Traffic volume triggers are inappropriate.**
- **Other regulatory requirements proposed in the NPRM are too onerous and will not solve perceived problems.**

ABOUT TEKSTAR

- **A small Minnesota-based CLEC operating exclusively in the rural areas of Minnesota.**
- **Owned by Arvig Enterprises, Inc. which also owns and operates several rural incumbent LECs in Minnesota.**
- **Certificated to provide competitive local exchange and other telecommunications services by the Minnesota PUC.**
- **It has approx. 15,000 customers, of which 19 are conference calling providers**
- **Has been providing telecommunications services since approx. 1997.**

TEKSTAR'S INTEREST IN THIS PROCEEDING

- **Tekstar provides intrastate and interstate exchange access services.**

- **Has tariffs on file with the Minnesota PUC and the FCC governing the provision of exchange access.**

  - **Minnesota "Access Tariff" consistent with the requirements of Minnesota PUC.**

  - **Tariff F.C.C. No. 1 consistent with the requirements of 47 C.F.R. § 61.26 and the FCC's *CLEC Access Charge Reform Order*.**

- **Provides exchange access services to large ILECs/IXCs, including but not limited to, AT&T, Qwest, Verizon, and Sprint.**

- **One ILEC/IXC in particular, Sprint, is refusing to pay Tekstar's tariffed exchange access charges, now totaling several million dollars.**

- **In a recent *ex parte*, Qwest singled Tekstar out as a rural CLEC engaged in "traffic stimulation."**
  - **Information provided by Qwest to the FCC is blatantly incorrect (*e.g.*, Tekstar's composite interstate access rate is closer to 3 cents/MOU, and its intrastate access rate is a flat rate of 4.3 cents/MOU).**

RURAL CLEC ACCESS SERVICE RATE REDUCTIONS ARE UNNECESSARY

- **No reason for further regulation of rural CLEC access rates.**
- **Requirements of section 61.26 and the *CLEC Access Charge Reform Order* are sufficient.**
- **FCC has properly chosen a market-based approach to benchmarking CLEC access rates, and CLECs, including rural CLECs, such as Tekstar, are fully complying with the requirements.**
- **FCC should act only where there is convincing evidence that rural CLECs are inflating rates (*e.g.*, unnecessarily relocating POIs to distant places in order to inflate transport costs), or where there is fraud (*e.g.*, artificial stimulation of traffic through automated technology and not initiated by legitimate users placing legitimate calls).**

- **FCC's sole inquiry should be whether the rural CLECs' rates are just and reasonable. The FCC has already found that CLEC rates that fall within the FCC's safe harbor benchmarks are presumed to be just and reasonable.**

- **Reducing the access rates charged by rural CLECs to the rates of the incumbent ILECs (*e.g.*, Qwest), as the large IXCs argue, would put rural CLECs at a competitive disadvantage—thereby putting the FCC in the position of choosing winners and losers.**

  - **Rural CLEC costs are demonstrably higher than those incurred by non-rural/national ILECs.**

    - **For example, rural CLECs have higher input costs (no economies of scale, relatively no bargaining power to secure deep discounts, etc.).**

- **In any event, the FCC has chosen a market-based approach (vs. cost-based approach) to CLEC access charges.**

- **Any reduction in rural CLEC access rates would inhibit local competition in rural and underserved areas and drive rural CLECs currently serving those areas out of business.**

- **In any event, any change in FCC law and policy regarding CLEC access rates should be applied prospectively, not retroactively. Moreover, a reasonable transition period would be necessary.**

TRAFFIC VOLUME CAPS ARE COMPLETELY INAPPROPRIATE

- **IXCs insistence on "capping" traffic terminating to rural CLECs should be rejected out-of-hand.**

- **Rural CLECs have no control over the number of calls terminating to their end user customers.**

  - **For example, IXCs and wireless carriers offer "all-you-can-eat" calling plans that, in and of themselves, create traffic stimulation.**

    - **Sprint and Verizon, for example, are offering "all-you-can-eat" packages for $99.00/month—this defeats their argument that they're losing money from access charges.**

- **Capping rural CLEC terminating traffic volumes would put them at the mercy of IXCs and wireless carriers, and keep them perpetually shackled to large IXCs' business plans.**

- **Capping would also hamstring rural CLECs from pursuing other legitimate businesses that would have the potential of increasing traffic on their networks.**

- **Significantly, the average length of calls placed to conference calling providers is only 16.7 minutes.**

- **What is clear is that the large ILECs/IXCs want rural CLECs to subsidize their customers/operations: instead of "realigning" their service packages and rates to keep up with industry trends and competition, they want rural CLECs to drastically reduce their access rates at their expense, without concomitant action on their part.**

- ♦ **Instead, the IXCs should adjust their own rates or offer packages that take traffic volumes generated by particular users into consideration.**

- ■ **CLECs have the right to pursue revenue-maximizing opportunities that are lawful.**

    - ♦ **Revenue sharing arrangements have not been found to be unlawful.**

    - ♦ **Network usage-maximizing activities are not unlawful; rather, they have pro-competitive benefits and serve the public interest.**

WHAT MUST BE DONE NOW?

- Take no further regulatory action related to rural CLECs. Let the market decide.
  - No need for further CLEC rate regulation or rate reduction.
  - No need for traffic triggers.
  - No need for other resource-intensive and unnecessary regulatory requirements, e.g., certifications, tariff refilings, quarterly reports, etc.
- FCC must require IXCs who are not paying lawfully tariffed access charges to pay NOW.
  - IXCs refusing to pay lawfully tariffed charges are in violation of federal law.

- **FCC should penalize violators.**
- **IXCs who refuse to pay rural CLECs are forcing these rural CLECs to subsidize their operations:**
    - **IXCs not paying even as they continue to use rural CLECs' access services.**
    - **Nonpayment could force some CLECs to go out of business. Rural CLECs are being harmed and the harm may prove irreparable.**
    - **CLECs are in precarious position: they cannot block calls originating from the IXCs because that would be in violation of the FCC's policy; at the same time, they are forced to provide service without compensation (unless the rural CLECs enter into**

unconscionable settlement agreements or pursue action in appropriate fora).

- **FCC should reiterate its policy against self-help.**
- **FCC should compel IXCs to use the FCC's complaint processes if they have an issue with the rural CLECs' rates or practices.**

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