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May 29, 2009

**VIA ELECTRONIC FILING**

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

Re: Notice of Ex Parte Communication, WC Docket No. 07-135 and  
WC Docket No. 05-25

Dear Ms. Dortch:

On May 28, 2009, William Haas, Associate General Counsel of PAETEC Communications, Inc. ("PAETEC") and the undersigned, spoke via teleconference with Mark Stone, Legal Advisor to Commissioner Jonathan Adelstein, and on May 29, 2009 met separately with Jennifer Schneider, Legal Advisor to Acting Chairman Michael Cops and Nicholas Alexander, Legal Advisor to Commissioner Robert McDowell.

The participants discussed the proposals made in the above-referenced WC Docket No. 07-135. PAETEC's recommendations were consistent with its comments and June 12, 2008 ex parte filed in this proceeding. Specifically, PAETEC argued that the best way to prohibit traffic stimulation is to rely on the complaint process and take swift action against the alleged traffic pumpers if the facts show violations of FCC rules. PAETEC reiterated that the proposed rulemaking solutions, including access minute of use thresholds, certifications, and declaratory rulings, are overbroad, unworkable, and could have unintended consequences that would thwart competition for end user customers. For example, a brick and mortar customer such as a university could qualify as a "calling provider" for the purposes of the AT&T/RICA revenue sharing prohibition. As another example, the proposed minute of use certifications are unworkable in that a CLEC would be required to assign working loops to an ILEC study area and calculate its minute of use per study area in order to make the threshold certification. PAETEC's systems are not currently capable of generating such data.

In 2004, the FCC refused to adopt a broad brush solution proposed by AT&T that would have dropped all CLEC access rates based on the alleged misdeeds of a few CLECs. The FCC instead invited IXC's to address situations of excessive or fraudulent calling on a case-by-case basis through the complaint process. It should reach the same result in this docket.

With respect to special access, PAETEC expressed support for CompTel's May 18, 2009 letter filed in WC Docket No. 05-25. PAETEC explained that it is a large purchaser of special access and has seen prices rise in price flex territories of most of the RBOCs. If the Commission feels it needs to collect additional data before taking action, it should include in any data requests the number of buildings per market where the ILEC has

Boston  
Hartford  
Hong Kong  
London  
Los Angeles  
New York  
Orange County  
San Francisco  
Santa Monica  
Silicon Valley  
Tokyo  
Walnut Creek  
Washington

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exclusive access. Even if PAETEC has a metro fiber ring passing a building, if the ILEC has an exclusive contract with the building owner, PAETEC will not be able to serve the building. The Commission should also examine the anti-competitive conditions included in price flex contracts, such as requiring a CLEC to buy 90% of its special access needs from the RBOC and prohibiting the CLEC from purchasing UNEs across the RBOC's territory. Finally, PAETEC recommended that the Commission narrowly target the data requests and move expeditiously to evaluate the data and take action.

Sincerely yours,

*/s/ electronically signed*

Tamar E. Finn

Enclosure

cc (by e-mail):

Mark Stone  
Jennifer Schneider  
Nicholas Aelxander