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October 27, 2009

VIA ELECTRONIC FILING

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

On October 26, 2009, Dave Schornack, Director of Business Development for Tekstar Communications, Inc. ("Tekstar"), Erick Soriano and James N. Moskowitz, Fleischman and Harding, LLP, counsel for Tekstar met with Jennifer Schneider, Senior Legal Advisor to Commissioner Michael J. Copps, to discuss traffic stimulation from a small CLEC's prospective. Dave Schornack participated telephonically. The substance of the discussion is outlined in the attached presentation.

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

Respectfully submitted,

James N. Moskowitz

Attachment

cc: Jennifer Schneider

207057

TRAFFIC STIMULATION FROM A SMALL RURAL CLEC'S PERSPECTIVE

***EX PARTE* IN WC DOCKET NO. 07-135**

SUBMITTED BY:

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OCTOBER 26, 2009

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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 (www.Arvig.com).**
- **Certificated to provide competitive local exchange and other telecommunications services by the Minnesota PUC.**
- **Has approx. 15,000 customers (serving approximately 14,000 lines), of which 17 are conference calling providers.**
- **Has been providing telecommunications, Internet and video services since approximately 1997.**

TEKSTAR'S ACCESS SERVICES

- **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 services.**
  - **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 telecommunications carriers, including but not limited to, AT&T, Qwest, Verizon, XO, and Sprint.**

DISPUTES RELATED TO TEKSTAR'S PROVISION OF EXCHANGE ACCESS SERVICES TO LARGE IXCs

- **Several IXCs have improperly disputed Tekstar's charges for intrastate and interstate switched exchange access assessed against the IXCs for completing IXC-originated calls to Tekstar's conference calling provider customers.**
  - **Several IXCs have settled their disputes with Tekstar; the settlement agreements are confidential.**
  - **Two IXCs (Qwest and Sprint) continue to withhold payment for Tekstar's tariffed access charges.**
    - **The vast majority of charges are for interstate calls (intrastate calls constitute no more than 10% of the calls at issue).**
- **Qwest filed a complaint against Tekstar before the Minnesota Public Utilities Commission on March 17, 2009.**
  - **Sprint and Level 3 sought and were granted intervention.**

- **MPUC required supervised mediation.**
- **Mediation did not result in settlement.**
- **Contested case likely to proceed.**
- **Meanwhile, the IXCs involved continue to withhold payment for Tekstar's tariffed switched exchange access services.**

■ **Tekstar filed a complaint against Sprint before the U.S. District Court in Minnesota on April 23, 2008.**

- **Discovery is virtually complete.**
- **Presiding judge referred two issues to the FCC and stayed the federal case pending resolution of the issues by the FCC.**
- **The parties have had several discussions with the Enforcement Bureau/MDRD on how to proceed with the district court referral.**
- **Meanwhile, Sprint continues to withhold payment for Tekstar's tariffed access charges totaling millions of dollars.**

- **It is apparent that the IXCs are engaged in scorched earth litigation that is negatively impacting Tekstar.**
  - **Only a small portion of the disputed calls are intrastate, yet Tekstar is being forced to defend itself against the IXCs before the MPUC.**
  - **Tekstar has spent significant amounts of money prosecuting a collections action against Sprint while Sprint continues to ignore its Title II obligations and the FCC's policy against self-help.**

IMPACT OF IXCs' REFUSAL TO PAY TARIFFED ACCESS CHARGES

- **Tekstar is effectively providing services to IXCs for free.**
  - **No access revenues coming in from provision of exchange access to certain IXCs.**
  - **Tekstar cannot block calls, so it has no choice but to complete calls originated by the IXCs.**
  - **There is no dispute that the IXCs are receiving services from Tekstar, and that the IXCs' calls are being completed to their intended destinations.**
- **At the same time, Tekstar is being forced to spend money on litigation.**
- **Significant Tekstar resources are being spent on prosecuting/defending claims, rather than on running its core business.**
- **Exempting IXCs from paying access charges for calls completed to conference calling provider customers of Tekstar would likely constitute impermissible "taking".**

WHAT MUST BE DONE

- **FCC must require IXCs who are not paying lawfully tariffed access charges to pay NOW.**
- **FCC should strictly enforce its policy against self-help.**
  - **Must discourage IXCs from forcing rural LECs to litigate to collect properly tariffed charges.**
  - **FCC should compel IXCs to use the FCC's complaint processes if they have an issue with the rural LECs' rates or practices.**
  - **FCC should impose penalties against IXCs who withhold payment for tariffed charges.**
- **FCC should promptly reaffirm its prior findings that (a) long distance calls to conference calling providers are subject to switched access charges, and (b) revenue sharing arrangements are not per se impermissible.**

- **FCC should continue to utilize the market-based approach for access rates established in the CLEC Access Charge Order.**
  - **If new rates are established, they must be applied prospectively.**