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March 26, 2010

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 Nos. 07-135, 01-92

Dear Ms. Dortch:

On March 25, 2010, William Haas, Vice President of Public Policy and Regulatory of PAETEC Holdings Inc., parent company of PAETEC Communications, Inc., McLeodUSA Telecommunications Services, Inc. and various US LEC entities, all of which do business as PAETEC ("PAETEC") and the undersigned met with Jay Atkinson, Lynne Engledow, John Hunter, Albert Lewis, Marcus Maher and Douglas Slotten of the Wireline Competition Bureau.

PAETEC urged the Commission to continue to evaluate allegations that revenue sharing is an unreasonable practice on a case-by-base basis. PAETEC argued that revenue sharing is a common practice in the telecommunications industry and any prohibition on revenue sharing would be overbroad, harming legitimate business relationships, while at the same time failing to prevent traffic stimulation. PAETEC's presentation on this issue was consistent with the attached comments filed with the Iowa Utilities Board.

PAETEC expressed support for a unified rate per carrier so long as carriers have an adequate period (three to five years) to transition cost recovery from intercarrier compensation to end user rates. Although PAETEC advocates a cost-based uniform rate by carrier, it explained that benchmarks by class of carrier may be appropriate so long as CLECs like PAETEC are not benchmarked to AT&T and Verizon. Rather, based on similarities in network, scale economies, and other factors, CLECs should be benchmarked to mid-sized incumbent LECs.

PAETEC noted that even if the Commission were to adopt interim rules to address phantom traffic and classify IP-originated voice traffic as subject to intercarrier compensation, those rules likely will not solve the current problem of self-help and non-payment. So long as rates vary based on jurisdiction (interstate versus local) and there is uncertainty concerning whether a tariff applies or a traffic exchange agreement is required, carriers will still have an incentive to refuse payment of any compensation, let alone the higher rate. PAETEC urged the FCC to (1) reiterate that carriers must pay and

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dispute a tariffed rate, (2) establish an expedited mediation process to resolve disputes about application of intercarrier compensation rates, and (3) adopt enforcement mechanisms that punish self-help where the billing carrier is found to have applied the correct rate and the paying carrier refused to pay during the dispute. Ensuring that carriers are able to collect revenues for the termination services they provide would reduce uncertainty and free up accounting reserves and capital for more network and product investment. In short, if a carrier knew that Commission rules together with swift enforcement mechanisms were available to help it collect a uniform rate for every minute it terminates, the carrier might adopt a uniform rate earlier during the transition period proposed in the Broadband Plan and step that uniform rate down over time as it is able to transition cost recovery from intercarrier compensation to end user rates.

Sincerely yours,

/s/ *electronically signed*

Tamar E. Finn

Enclosure

cc (by e-mail):

Jay Atkinson
Lynne Engledow
John Hunter
Albert Lewis
Marcus Maher
Douglas Slotten

STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD

RE:	)	
HIGH VOLUME ACCESS SERVICES [199 IAC 22]	)	**DOCKET NO. RMU-2009-0009**

COMMENTS OF MCLEODUSA TELECOMMUNICATIONS SERVICES, INC. D/B/A PAETEC BUSINESS SERVICES IN RESPONSE TO ORDER ALLOWING ADDITIONAL COMMENTS

McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services ("PAETEC"), through its undersigned counsel, respectfully submits the following comments in response to the Order Allowing Additional Comments issued by the Iowa Utilities Board in the above-referenced docket.[1]

I. Introduction

PAETEC opted to not file comments in the initial phase of the proceeding in deference to the reasonableness of the Board's proposed rules. PAETEC has no objection to the adoption of the rules as originally proposed by the Board with some minor modification to accommodate increased traffic volumes for LECs that do not claim the rural rate exemption. Indeed, in an ex parte meeting with various members of the Federal Communication Commission Wireline Competition Bureau, PAETEC encouraged the FCC to consider the Board's proposed rules in WC-07-135 regarding the same traffic stimulation concerns with respect to interstate switched

1 *Order Allowing Additional Comments*, IUB Docket No. RMU-2009-0009 (January 11, 2010).

access services.[2] However, certain comments submitted in this docket have taken the Board's reasonable rulemaking proposal tailored to remedy true traffic pumping scenarios, and asked the Board to prohibit standard business practices. The measures proposed by various commentors are overreaching, and in some instances, would not even remedy the arbitrage caused by unreasonable traffic stimulation practices.

II. Proposed Revenue Sharing Ban

In its order seeking further comment, the Board asks whether its proposed rules should preclude all revenue sharing agreements. PAETEC submits that taking such a drastic step is unwarranted and unreasonable, and should not be adopted by the Board.

"Revenue sharing" is a common business practice in telecommunications and other industries, and in and of itself, is not the root cause of the problem. IXCs themselves have been known to share end user revenue with marketing agents, sometimes only retaining a token fee as the service provider; international carriers share settlement revenue to increase traffic on their networks; payphone providers share revenue with premises owners; operator service providers pay commissions to traffic aggregators. Wireless carriers have been known to share revenue with various business partners (*e.g.* handset equipment vendors). The reality is that every volume discount offered by an IXC or LEC to an end user customer is a form revenue sharing "paid" by the carrier to the customer for increasing the volume of traffic (*i.e.*, stimulating traffic) on that carrier's network.

Revenue sharing by itself does not create traffic flow into an exchange that would not otherwise exist, and is, therefore, by itself, not the root cause of the problem. Granted, revenue sharing is a business tool that provides incentives to move existing traffic from one carrier's

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2 *Notice of Ex Parte Communication*, WC Docket No. 07-135, Letter to Ms. Marlene H. Dortch, Secretary from Tamar E. Finn (September 25, 2009)(attached).

network to another's. Indeed, the FCC has recognized on several occasions that revenue sharing is a legitimate means of promoting competition. That is especially true with respect to revenue sharing that incents a local exchange customer to move from one LEC to another LEC within the same local exchange. Clearly, offering such incentives is pro-competitive and should not be made unlawful. However, targeting only switched access "revenue sharing" is arbitrary when other forms of revenue sharing that incent end users to move their telecommunications traffic to another carrier would presumably continue to remain lawful.

Moreover, it cannot be seriously argued that every revenue sharing arrangement is an unreasonable traffic pumping scheme. For example, when RBOCs were required to offer the unbundled network element platform ("UNE-P"), the RBOCs allowed its CLEC wholesale customer to collect the switched access revenues generated by the toll traffic to and from the retail end users. In that relationship the RBOC was engaged in "sharing" the switched access revenues with the CLEC. The ILEC switch was providing the access services using its switch port, but the CLEC was the entity that ultimately realized the access revenue (and sometimes did its own billing as well). That type of revenue sharing relationship continues today under commercial UNE-P agreements offered by RBOCs such as Qwest, and in wholesale services offered by other facilities-based carriers.

PAETEC offers a local wholesale product in competition with Qwest's commercial UNE-P offering to non-facilities-based CLECs. PAETEC's local wholesale service is offered to CLECs in several states, including Iowa. In fact one party that supports a ban on revenue sharing is one such wholesale CLEC providing service to customers in Iowa using PAETEC's local wholesale service. Under its local wholesale offering, PAETEC credits its wholesale CLEC customer a portion of the collected switched access revenues. This is clearly a form of revenue sharing of switched access revenues that are billed by PAETEC to the IXCs. However, this arrangement allows PAETEC to offer wholesale local service to a CLEC that wants to provide a competitive choice of local service primarily to residential and small business customers in Iowa. The switched toll traffic generated by this revenue sharing arrangement is standard toll traffic to and from typical end users. This type of arrangement has existed ever since UNE-P was made available. PAETEC is not aware of any IXC or wireless provider challenge that such a revenue sharing arrangement was an unreasonable business practice between the facilities-based LEC and its wholesale CLEC customer. Yet, the proposal to ban *all* revenue sharing would render these types of pro-competitive wholesale local service offerings illegal.

It is important to note that this particular type of revenue sharing fosters competition in the residential and small business local exchange market. Iowa Code § 476.95 directs the Board to consider the effects of its decisions on competition in telecommunications markets, and, to the extent reasonable and lawful, act to further development of competition in those markets. A decision that bans all revenue sharing would be detrimental to local exchange competition and does not even address the root cause of the traffic pumping issue. A ban on *all* access revenue sharing is an overbroad remedy that should not be adopted.

The Board proposal also fails to recognize that there are some types of business customers that, due to the nature of their business, legitimately involve very large volumes of toll traffic. For example, Cedar Rapids is home to a significant call center that handles large volumes of inbound 800 traffic. The call center partners with large businesses to respond to customer telephone inquiries about products or services. Likewise, insurance companies have call centers in various locations in Iowa. The monthly recurring charges for local services to a call center are in many instances relatively insignificant in comparison to the amount of inbound toll traffic generated to such call centers. However, that does not mean that the call center is not a legitimate local exchange customer. A LEC should not be prohibited from using all of the tools in its marketing arsenal to win the entire book of telecommunications business of that call center and have that toll (as well as local) traffic on its network. Otherwise, any existing call center could be forever bound to take local service from an ILEC if a net payor test is imposed.

The Board also requested comment on the interpretation of language in the FCC's *Qwest v. Farmers* decision stating. PAETEC does not believe the FCC's order should be interpreted to mean that every customer must be a "net payor" for local exchange services. It is apparent from the same footnote cited by the Board that the FCC was concerned with the unusual contractual relationship between Farmers and its free conference calling customer wherein Farmers had agreed to provide *all* services without charge. This was clearly evidence that Farmers had no intention of recovering any costs from its free conference calling customer, but instead sought to recoup all costs (and make extraordinary profits) through charging the higher rural exemption access rates to interexchange carriers. As long as a LEC is charging reasonable access rates (such as rates based on the LEC's cost of providing switched access services) and is providing legitimate service(s) to its own end user customer in accordance with its filed tariffs, it should not be unlawful for the LEC to pay commissions to a customer to encourage them to become a customer of the LEC.

III. Net Recipient Test

The Board's order seeking further comment also asks whether revenue sharing should be prohibited when an end user is a "net recipient" of revenues from a LEC. The application of a "net recipient," or as it has been proposed at the FCC, a "net payor" test, is also not a valid indicator of unreasonable traffic stimulation.

For example, the willingness of a LEC to share revenues with a hotel, university, call center or other traffic aggregator, does not provide any incentive to the LEC's end user customer to place or receive an unreasonable amount of long distance traffic. The LEC's end user (*e.g.*, the hotel) is not actually placing the vast majority of toll calls in that type of environment.[3] The fact that PAETEC is willing to share a small percentage of access revenues with the hotel when one of its hotel customers chooses to make a toll call from a hotel room in order to encourage the hotel to choose PAETEC as its LEC is good for the hotel and good for competition. That type of revenue sharing in and of itself does not cause traffic pumping. However, the proposal to declare all such arrangements as unlawful does not distinguish this reasonable business practice from a true traffic pumping situation.

In fact, the type of traffic stimulation about which IXCs (including PAETEC and its operating affiliates) have legitimate complaints can occur without any revenue sharing whatsoever. For example, free conference calling services will stimulate calls to a free conference bridge regardless of whether the LEC providing local service to the conference bridge shares access revenues with the conference bridge provider. Rather than sharing access revenues, the "free" service could be subsidized by higher-end user paid services, push advertising, or some other arrangement. In this example, a net payor test would be under-inclusive and would not detect the spike in traffic volumes, and IXCs would still be charged access rates of the LEC for highly exaggerated traffic flow directed to the LEC.

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[3] *Id.* ("The IXCs have failed to demonstrate that commission payments to 8YY generators such as universities or hotels translate effectively into incentives for individuals who actually use those facilities to place excessive or fraudulent 8YY calls.").

It is noteworthy that the FCC has declined to date to adopt net payor and revenue sharing tests even thought many of the same commentors have urged comparable proposals in WC-07-135. One of the likely reasons that the FCC has declined to take a broad brush approach to outlaw such practices is because the proposals rely on vague terms or are so ill-defined that they are unworkable.

For example, a new payor a test is particularly unworkable if it applies to other carriers. In an industry where two carriers typically interact as both purchaser and seller, potentially using various affiliates, for variety of services, in different geographic markets or regions, a net payment test would have no possible relevance to detect unreasonable traffic stimulation in a particular market.

Moreover, while a net recipient or net payor test may sound simple, the reality is that it could be virtually impossible for a LEC to develop a systematic means that would enable a LEC to verify with any reasonable degree of confidence that any of its customers were not "net recipients" or "net payors." Today, PAETEC does not have any way to systematically determine whether a customer is a net payor to PAETEC. PAETEC personnel would have to manually review each contract and invoice issued to each customer and tally up the figures to determine "net payor" status. Inherent in that manual approach is an assumption that a LEC could find each and every contract it has in place with each and every customer. It is simply not a valid assumption that each LEC has perfect contract records that would be required for compliance.

Complicating compliance for some LECs such as PAETEC (and potentially affecting many other LECs) is the fact that PAETEC has multiple LEC operating subsidiaries, each with their own billing and revenue reporting systems. Many customers take service in multiple states from PAETEC, sometimes subscribing to local service from all three of PAETEC's certified

LECs depending on the states in which the multi-location customer takes local service. Again, PAETEC would have to manually cross check contracts from potentially all three of its LEC subsidiaries, against multiple invoices issued by three different LECs that may include services provided in up to as many 45 states. And that check would only accomplish verification as to whether a customer is a net payor for telecommunications services.

PAETEC also provides ancillary non-telecommunications services to a significant number of its business customer base. For example, PAETEC has an IP equipment manufacturing arm and is also a software vendor. The prices paid for these non-telecom services by "end users" of PAETEC's telecommunications services are not reflected anywhere within the multiple LEC billing systems. The non-telecom revenues paid by an end user presumably should be considered in the application of any net payor test.

Accordingly, imposing a requirement that would require PAETEC to certify in Iowa whether Customer X is a net payor to PAETEC would be impossible without a significant overhaul and interlinking of multiple telecommunications and non-telecommunications billing and invoice systems. PAETEC believes that any other LEC that operates in multiple states with multiple operating subsidiaries would face similar compliance difficulties. Moreover, compiling the data necessary to verify a customer's status would force LECs to spend finite resources reviewing customer contracts and trying to fit round pegs into square holes rather than investing in new network infrastructure, developing new broadband service offerings and maintaining or creating jobs. Committing its limited resources to fulfill a compliance requirement that does not directly remedy traffic pumping is an especially untenable result for PAETEC since none of the traffic pumping complaints filed with the Board or at the FCC involve any of its operating subsidiaries.

Finally, a Net Recipient or Net Payor proposal could also place a LEC in the unenviable position of effectively having to police its customers' use of services. Policing could be required because not all "free service providers" are necessarily part and parcel of an illicit traffic pumping scheme. For example, presumably a LEC should not be penalized for providing free service that is in the public interest (*e.g.*, a suicide prevention or missing persons hotlines; poison control centers, religious institutions, etc.). However, a LEC would have to complete due diligence on each customer to know whether the customer's business meets some legitimate public interest criteria. The FCC has long recognized that creating barriers for customers to switch to a different LEC improperly favors the ILEC since they continue to be dominant in their respective local markets. The net payor test would create unnecessary barriers to competition and not solve the problem.

In summary, any form of "net payor" or "net recipient" test is problematic because both are overbroad and underinclusive. Therefore, any such criteria should not be incorporated by the Board in rules that it ultimately adopts.

IV. Revenue Sharing Certification

The Board asked whether companies could simply be asked to certify that it does not share revenues. As previously explained, there are many legitimate revenue sharing arrangements in the telecommunications industry that have been used without complaint for a very long time. These arrangements by and of themselves have never been shown to amount to traffic pumping. For the reasons previously stated, PAETEC opposes any attempt to require LECs to certifiy that they do not share revenues. Revenue sharing is not the crux of the traffic pumping problem. Revenue sharing arrangements promote local competition and should not be discouraged. A prohibition of all revenue sharing will harm local exchange competition in Iowa, and, therefore, should not be adopted.

V. Any Rules Adopted by the Board Should Focus on the Narrow Problem of Traffic Pumping Schemes

Proponents of traffic stimulation regulations are usually able to typically identify by name the 10 to 20 bad actors with high rural access rates. Yet, they urge the Board to impose burdensome regulations on all LECs. The proposed "remedy," which as explained above is not a reliable indicator of traffic stimulation, is disproportionate to the problem. Moreover, there has arguably been some consensus in FCC filings on the same topic that higher rural exemption access rates are the real crux of the problem. Thus, the Board should narrowly tailor its rules to address the entities that are allegedly stimulating traffic that would not otherwise exist; this problem applies virtually exclusively to LECs that rely on the rural rate exemption. In Iowa that would be LECs that have concurred with the ITA tariff and rates. Therefore, if the Board adopts a presumptive trigger requiring adoption of a new rate, the trigger should apply only to those carriers.

VI. Conclusion

For the foregoing reasons, PAETEC requests that the Board should not adopt a prohibition on revenue sharing or a net recipient test with respect to switched access revenues.

Respectfully submitted this 1st day of February, 2010.

By: /s/ William A. Haas

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September 25, 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

Dear Ms. Dortch:

On September 24, 2009, William Haas, Vice President of Public Policy and Regulatory of PAETEC Holdings Inc., parent company of PAETEC Communications, Inc., McLeodUSA Telecommunications Services, Inc. and various US LEC entities, all of which do business as PAETEC ("PAETEC") and the undersigned met with Albert Lewis, John Hunter, Douglas Slotten, and Lynne Engledow of the Pricing Policy Division.

The participants discussed a proposed rule for High Volume Access Service ("HVAS") included in an Iowa Utilities Board Notice of Rulemaking.[1] Under the proposal, the Iowa Telecommunications Association tariff, in which many LECs concur, would prohibit billing for access minutes of use to a HVAS customer. A LEC would be presumed to have a HVAS situation if its access minute of use volume increased by 100% over a period of six months. The LEC would be required to identify HVAS customers to IXCs and either negotiate a rate or seek a Board resolution if necessary. The LEC serving the HVAS customer would not be permitted to bill access for HVAS until its tariff is accepted for filing and has become effective. PAETEC explained that based upon its initial review, the Iowa proposal appears to target the problem of extraordinarily high volume customers for LECs with higher rates based on presumed lower volumes of use. PAETEC explained how it believed a LEC could reasonably implement measures required to monitor and enforce compliance with the proposed Iowa rule, in contrast to the difficulty presented by other proposals. The participants also discussed the similarities between the Iowa proposal and the FCC's tariff investigation order, which was also included in the NPRM.

PAETEC reiterated that many of the solutions proposed by parties in the FCC's docket, including per access line minute of use thresholds, certifications, and declaratory rulings, are overbroad, unworkable, and could have unintended consequences that would thwart competition for end user customers. PAETEC noted that the Iowa Board refused to adopt a prohibition on revenue sharing in the order granting Qwest's complaint against

[1] *High Volume Access Service*, Docket No. RMU-2009-0009, Order Initiating Rulemaking (Iowa Utils. Bd. Sept. 18, 2009)

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numerous LECs.[2] PAETEC urged the Commission to continue to evaluate allegations that revenue sharing is an unreasonable practice on a case-by-base basis.

Sincerely yours,

/s/ electronically signed

Tamar E. Finn

Enclosure

cc (by e-mail):

Albert Lewis
John Hunter
Douglas Slotten
Lynne Engledow

[2] *Qwest Communications Corp. v. Superior Telephone Cooperative, et. al,* Docket No. FCU-07-02, Final Order, 57 (Sept. 22, 2009).