



Public Knowledge

July 28, 2010

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

RE: Notice of *Ex Parte* Communications
WC Docket No. 05-25

Dear Ms. Dortch:

On behalf of Public Knowledge, this letter is to provide information relating to discussions between Public Knowledge (PK) and members of the Commission's staff on July 27, 2010.

Present at the meeting were: Harold Feld, Legal Director, PK; Jodie Graham, Law Clerk, PK; Sharon Gillett, Albert Lewis, Donald Stockdale, Pamela Arluk, Nicholas Alexander, and Jenny Prime of the Wireline Competition Bureau; and Jonathan Baker, Chief Economist.

Regarding special access, PK argued that the Commission's Qwest forbearance order¹ provides a way forward for the Commission to determine whether special access market rates are "just and reasonable" under sections 201 and 202 of the Communications Act. The Commission should use the product market analysis and market power analysis as outlined in that order. To determine whether prices exceed the competitive rate, or whether discounts or other pricing arrangements create discrimination for a particular class of user, the Commission should request data from ILECs and CLECs in the market on: 1) the cost of inputs into the relevant market products; 2) copies of actual service agreements from representative samples of customers; 3) any other information necessary to determine whether the profit margin for a specific product market dramatically exceeds the cost+reasonable rate of return formula obtainable under a tariff.

In making this analysis, it is not necessary for the Commission to determine with any level of exactitude a precise "just and reasonable" rate. Nor would the Commission need to include all necessary inputs into cost. The purpose of the inquiry is simply to settle the dispute between proponents of reform and opponents of reform as to whether there appears to be evidence of supracompetitive pricing. For example, a determination that in Phase II markets ILECs were able to obtain a rate of return well above the 15% considered reasonable in markets subject to tariffs would give rise to a presumption that the rate reflects collection of monopoly rents.

PK recommended that the Commission also require the filing of enterprise service contracts to determine whether ILECs engage in a price squeeze with regard to competitors by offering discounted service to end users below the special access rates charged to rivals.

¹ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, Mem. Op. & Order (2010).

With regard to determination of the appropriate geographic market, PK suggested the Commission had wide latitude to balance administrative convenience with the need for a precise definition. The reasonableness standard gives the Commission broad latitude especially where, as here, the purpose of the data request would be to resolve the question pending for more than five years as to whether the Commission should take action at all.

In accordance with the Commission's *ex parte* rules, this document is being electronically filed in the above-referenced dockets today.

Sincerely,

_____/s/_____

Harold Feld
Legal Director
Public Knowledge

CC: Sharon Gillett
Albert Lewis
Donald Stockdale
Pamela Arluk
Nicholas Alexander
Jenny Prime
Jonathan Baker