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June 29, 2010

Notice of Ex Parte Presentation

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

Re: *Framework for Broadband Internet Service*, GN Docket No. 10-127

Dear Ms. Dortch:

On June 28, 2010, Bill Haas, Vice President, Policy and Regulatory for PAETEC Holding Corp., parent company of PAETEC Communications, Inc., the US LEC entities, and McLeodUSA Telecommunications Services, Inc. (all of which operate as PAETEC), Tamar Finn of Bingham McCutchen and the undersigned met with Austin Schlick, General Counsel, David Tannenbaum, Chris Killion, Royce Sherlock, Marcus Maher, Ian Dillner and Nick Bourne to discuss the notice of inquiry in *Framework for Broadband Internet Service*, GN Docket No. 10-127, and the potential unintended consequences of the “Third Way” course of action proposed in that NOI.

PAETEC stated that to protect the type of broadband competition envisioned in the National Broadband Plan’s recommendations, the Commission needs to take into account in its analysis of possible broadband Internet access service reclassification the fact that the same facilities being used to provide Internet connectivity are also used to provide voice and other data services that are already classified under Title II. Therefore, any reclassification order needs to consider the impact on other services provided over those same facilities, including their provision as UNEs or special access services. Broad or categorical statements regarding forbearance may unnecessarily impede Commission efforts to enhance competition in other proceedings. In particular, any forbearance associated with reclassification of Internet connectivity service should be tailored so that it does not impact existing statutory obligations ILECs have to provide non-discriminatory interconnection with their networks under § 251, § 256 and § 271, or to provide services such as special access pursuant to § 201 and § 271, and the Commission rules implementing those provisions.

PAETEC noted that the NOI indicates that in the event of reclassification the Commission will not forbear from application of § 201, including the interconnection obligations imposed by § 201(a), to Internet connectivity service. PAETEC stated that §§ 251 and 256 give content to the general interconnection duty in § 201(a), and that the Commission does not need to and should not forbear from applying either of those sections in the event of reclassification. In addition, forbearance from § 251(a) will likely impede reform of rules to address IP-based interconnection and § 251(c) only applies to ILECs. Ideally, if it decides to follow the Third Way approach, the Commission should explicitly state either that it is not forbearing from the application of those sections to the reclassified services, or that its decision to reclassify consumer Internet services and forbear from application of certain provisions of Title II is not intended to and does not affect any existing obligations on facilities that are also used to provide other services, such as the obligations to provide interconnection, UNEs and special access under §§ 201, 251(a) and (c), 256 and 271.

PAETEC also urged the Commission to define clearly the term “facilities-based” for purposes of this proceeding. In particular, the Commission should recognize, in both the definition and its analysis, that the market does not consist only of full (or end-to-end) facilities-based and non-facilities based (pure resale) ISPs. While incumbents (both MSOs and ILECs) often own the whole end-to-end residential or business connection, wireline competitors most frequently employ a combination of owned and leased local access facilities. In the majority of cases for most CLECs, the CLEC leases a UNE DSO, DS1 or DS3 loop or special access channel termination and combines that local access facility with its own facilities such as a switch (digital or soft), interoffice transport, etc. Basing a classification and forbearance on this false dichotomy (full facilities-based versus solely resale) could have unintended (and detrimental) consequences for broadband competition, for competing providers and for consumers of broadband Internet service.

Finally, PAETEC expressed concern that language in the NOI could be read to suggest that forbearance is unlikely ever to be “undone,” which is contrary to precedent, such as the Commission’s statement in the Omaha Forbearance Order. In addition, the Commission has in the past committed to harmonizing the forbearance Verizon obtained in 2006 as a result of a “deemed grant” with the forbearance subsequently granted to AT&T, Qwest, Frontier and Embarq for the same services. Any reclassification order should not inadvertently foreclose the possibility that the forbearance granted in those orders would be revised under a more appropriate, data-driven market-specific forbearance analysis such as that conducted in the recent Qwest Phoenix order.

If you have any questions, please feel free to contact me at the above number.

Sincerely,

A handwritten signature in black ink that reads "Mark C. Del Bianco". The signature is written in a cursive style with a long horizontal flourish at the end.

Mark C. Del Bianco

Cc: Austin Schlick
David Tannenbaum
Chris Killion
Royce Sherlock
Marcus Maher
Ian Dillner
Nick Bourne