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May 21, 2008

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08 MAY 22 PM 4: 14  
COMMISSION  
CLERK

Ms. Ann Cole  
Public Service Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Easley Building, Room 110  
Tallahassee, FL 32399-0850

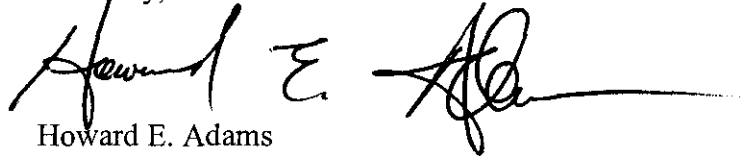
080000-0T

Re: Division of Competitive Markets and Enforcement Transit Data Request

Dear Ms. Cole:

Please accept for filing with the Division of Competitive Markets and Enforcement, the enclosed Transit Data Request. This material is being forwarded in response to a Transit Data Request which was forwarded to tw telecom of florida l.p. This material has also been forwarded by e-mail to Pat Lee of the Florida Public Service Commission. Please let me know if you have any questions regarding this filing of if we can be of further assistance in this matter.

Sincerely,



Howard E. Adams  
Attorney for tw telecom of florida l.p.

Enclosures

cc: Carolyn Ridley, TWTC

Ms. Pat Lee  
Division of Competitive Markets and Enforcement  
Capital Circle Office Center  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

HEA/kra  
Ann Cole Ltr. 05-21-08

DOCUMENT NUMBER-DATE

04408 MAY 22 08

215 South Monroe St., 2nd Floor (32301) • P.O. Box 10095 • Tallahassee, FL 32302-2095 • (850) 222-3533 • (850) 222-2126 fax

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FPSC-COMMISSION CLERK CLEARWATER

### TRANSIT DATA REQUEST

(Responses are due by May 23, 2008, and may be sent by US mail, e-mail to [plee@psc.state.fl.us](mailto:plee@psc.state.fl.us), or by facsimile to (850) 413-6454.)

Company Name: tw telecom of florida l.p.

Contact name & title: Carolyn Ridley; Vice President of Regulatory Affairs – Southeast Region

Telephone number: 615-376-6404 E-mail address: Carolyn.Ridley@twtelecom.com

For the purposes of the following questions, transit traffic is defined as local telecommunications traffic that (1) is originated by an end user of one carrier's customers, (2) is routed over an intermediary carrier's network, and (3) terminates to the end user of a third carrier or one of a third carrier's carrier customers. Transit traffic, as used here, includes Extended Area Service and ISP-bound traffic, as well as VoIP traffic.

1. Are you providing local telephone services? Please check yes or no. If no, you need not go any further. Please return this page by U.S. mail, fax, or e-mail.  
 Yes  No
2. Do you originate or terminate any local traffic that is transited by or from an intermediary carrier (CLEC, ILEC, other)? If no, you need not go any further. Please fax or e-mail this page back.  
 Yes  No
3. For local traffic you originate and transit over an intermediary carrier's network (CLEC, ILEC, or other) for termination to a third carrier, does the terminating carrier bill you for call termination?  
 Yes  No **We do not receive bills from all of the third parties.**
4. Do you have, or have you had, problems with the accuracy or detail of the bills you receive from the terminating carrier for call termination?  
 Yes  No
5. When local traffic originating on a third carrier's network is terminated on your network via a transit provider (CLEC, LEC, or other), do you charge the transit provider a termination charge or other charge?  
 Yes  No
6. As the terminating carrier, do you bill the originating carrier for call termination?  
 Yes  No **Yes, if the traffic is local and we have a contract, than we bill pursuant to the contract. If the call jurisdiction is toll, we bill pursuant to our Switched Access tariff.**
7. Are you having, or have you had, difficulties receiving adequate call detail information, including the original telephone number, to bill the originating carrier for call termination?

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FPSC-COMMISSION CLERK

Yes  No We experience difficulties with receiving adequate call detail information from BST/AT&T. Where we are interconnected to BST/AT&T, due to their network architecture, the records they provide have a 6 position BTN populated in the originating telephone number field versus the actual originating number. This does not allow for a terminating company to identify "phantom" traffic or ISP traffic.

8. Are you having, or have you had, difficulties getting paid for call termination billed to the originating carrier?  
 Yes  No If we have a contract in place, we generally get paid for the terminated traffic. But we have difficulties getting a contract with some third parties (CLECs and ICOS), and therefore, have had difficulties receiving payment.
9. Have you experienced any obstacles or barriers to accessing transit traffic arrangements in Florida?  
 Yes  No Yes, we have issues with the transit rates and with securing contracts with some third parties.
10. Do you believe there is a need for the FPSC to examine transit traffic matters?  
 Yes  No
11. Please provide any comments or information you believe will assist the FPSC staff in evaluating and identifying any industry issues concerning transit traffic.

**An Incumbent LEC's duty to interconnect for the routing of transit tandem traffic arises under 47 U.S.C. §251(c)(2)(A). The rate for transporting transit traffic is, therefore, governed by 47 U.S.C. §251(b)(5) and priced pursuant to 47 U.S.C. §252(d)(2). All important "universal connectivity" is accomplished by requiring all carriers to interconnect with all other carriers by law pursuant to 47 U.S.C. §251(a)(1). Under section 251(a)(1), all carriers – CLECs, rural carriers, and ILECs -- have the duty to interconnect, directly or indirectly, with every other carrier. Section 251(a) provides: "Each telecommunications carrier has the duty – to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Section 251 is part of the Telecommunications Act of 1996, a law intended to spur new competition and new market entrants. This Commission has recognized that § 251(a) requires all telecommunications**

carriers to interconnect directly or indirectly. Order No. PSC-06-0776-FOF-TP. It is obviously economically impossible for any carrier – much less a new market entrant – to directly interconnect with every other carrier in the nation. To make it easier for new market entrants (as well as to create rationally efficient network architectures), Congress did two things: 1) it allowed for “indirect” interconnection<sup>1</sup>; and (2) Congress imposed the duty to provide interconnection and routing of calls at cost-based rates on Incumbent carriers.<sup>2</sup> Congress well understood that without controlling both the duty to transit traffic across networks and the rate for that transiting, new market entrants would be exposed to regulatory arbitrage by ILECs endeavoring to keep new entrants out of their markets. Without the obligation to transit traffic, an ILEC can refuse to route calls across its network – forcing new entrants into the economically impossible task of directly trunking to every other carrier. Alternatively, without controlling the rate, ILECs can require economically impossible rates for routing traffic across their networks. Accordingly, Congress created a regulatory construct where new entrants could easily interconnect with every other carrier in the nation by directing interconnecting with the incumbent at regulated cost-based rates.

Specifically, under section 251(c)(2)(A), incumbents have the duty to provide interconnection to their network for any requesting carrier. The express purpose of the incumbent providing such interconnection is for the “transmission and routing” of telecommunications traffic. Importantly here, the statute does not limit the incumbent’s transmission and routing obligation to only that traffic which terminates on the

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<sup>1</sup> 47 U.S.C. §251(a)(1).

<sup>2</sup> 47 U.S.C. §252(d)(2).

incumbent's network – the obligation applies generally to the “transmission and routing of telephone exchange service and exchange access” – or said more simply, local and long distance calls.<sup>3</sup> Section 251(c)(2) also requires that the interconnection be provided at any technically feasible point, in a non-discriminatory manner<sup>4</sup> and at TELRIC rates.<sup>5</sup> The FCC has interpreted this provision to require the physical linking of the incumbent and requesting carriers' networks at TELRIC rates.<sup>6</sup>

In sum: Congress provided a relatively inexpensive method by which new market entrants could easily fulfill their obligation to interconnect with the nation's telecommunications network – request direct interconnection with the local incumbent (and thereby fulfill the obligation under Section 251(a) by achieving “indirect” interconnection with all other carriers through the incumbent). Congress also, rationally, required that the incumbent route all traffic across its network at cost-based rates.<sup>7</sup> After all, it would be a meaningless gesture to require the incumbent to allow carriers to connect to its network without also requiring the incumbent to allow carriers to send traffic over

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<sup>3</sup> Section 251(c)(2)(A), in relevant part, reads: “each incumbent local exchange carrier has . . . [t]he duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network – (A) for the transmission and routing of telephone exchange service and exchange access.”

<sup>4</sup> Section 251(c)(2)(C) requires the provision interconnection “that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection.” In 271 proceedings, the FCC measured such “quality” based on the rate of call blocking on ILEC tandems

<sup>5</sup> 47 U.S.C. §251(c)(2)(D).

<sup>6</sup> First Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, et al., CC Docket No. 96-98, 95-185, FCC 96-325, Released August 8, 1996, ¶ 176.

<sup>7</sup> 47 U.S.C. §251(c)(2)(A) and (D).

the network at reasonable rates. The FCC expressly stated that section 251(b)(5) “clearly expressed” that duty.<sup>8</sup> The rate an incumbent can charge for 251(b)(5) routing is set using the methodologies set-forth in section 252(d)(2).<sup>9</sup>

**In their effort to erect barriers to cable entry into the telecommunications market, ILECs often assert that there is absolutely no regulatory obligation to transit calls across their networks nor any regulatory limit to the price they may charge when they benevolently provide such service. This argument is absurd. The idea that Congress chose to create – in a statute expressly designed to facilitate market entry – a regulatory construct obligating new market entrants (absent benevolence from the monopolies) to directly interconnect with every carrier in America strains reason and credibility beyond breaking. Considering the additional problems for every new market entrant – before they ever sell a single phone service – of negotiating interconnection agreements with every one of the thousands of carriers in America AND paying the sunk costs of obtaining literally thousands of interconnection trunks with no traffic – much less foreseeable economic traffic – spanning, in most instances, thousands of miles in order to achieve universal connectivity and the regulatory world the ILECs assert Congress created makes no sense. Consistent with its goals to prevent barriers to competitive entry, the Florida Public Service Commission should soundly reject any effort to erect this potentially enormous barrier to entry and competition.**

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<sup>8</sup> First Report and Order, *supra* note 10 at ¶ 176 (“We also reject CompTel’s argument that reading section 251(c)(2) to refer only to the physical linking of networks implies that incumbents LECs would not have a duty to route and terminate traffic. That duty applies to all LECs and is clearly expressed in section 251(b)(5).”).

<sup>9</sup> 47 U.S.C. §252(d)(2)(A).

NOTE: The data request file is available at <http://floridapsc.com/utilities/telecomm/>. The file is named *Transit data request.doc*.