Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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In Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

KENTUCKY PUBLIC SERVICE COMMISSION'S COMMENTS REGARDING THE FCC'S SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

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KENTUCKY PUBLIC SERVICE COMMISSION'S COMMENTS REGARDING THE SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

The Kentucky Public Service Commission ("Kentucky PSC"), by counsel, offers the following comments on the Federal Communications Commission's ("FCC") second further notice of proposed rulemaking concerning the United States Supreme Court's remand to the FCC of 47 C.F.R. 51.319:

1. State Commissions Should Retain the Right to Evaluate Future Unbundled Network Element ("UNE") Availability.

Although the Kentucky PSC supports the list of UNEs prescribed by Rule 319, and believes that guidelines regarding the provision of additional UNEs should be issued by the FCC, it believes that State Commissions should retain the right to evaluate issues that arise in the future in regard to the necessity of incumbent local exchange carriers' ("ILECs") providing UNEs not specifically addressed in the FCC's rules. 47 U.S.C. 252(e)(3) specifically preserves state commissions' authority to establish and enforce state law in reviewing interconnection agreements for compliance with state service quality standards or requirements. Provision of necessary UNEs is central to preserving service adequacy, and state commissions are in the best position to determine which UNEs are necessary in a particular instance.

The Kentucky PSC further believes it is inappropriate for state commission decisions regarding future UNE issues to be appealed to the FCC. Should a state commission decision appear to be in conflict with the FCC's rules, courts are available to resolve the issue. The provision of an additional avenue for litigation would slow the growth of competition. In addition, appeals of state commission decisions to the FCC do not appear to be contemplated in the Act, and such appeals would inevitability result in strained FCC-state commission relationships.

2. The FCC Should Retain Its National List of UNEs, Together With Guidelines for Future Evaluation of UNE Requests.

As stated above, the Kentucky PSC believes that state commissions should evaluate issues involving UNEs not specifically prescribed by the FCC. However, a national list of necessary UNEs, together with guidelines to evaluate future UNE requests by competitive local exchange carriers ("CLECs"), should be prescribed by the FCC on the bases that [1] certain UNEs are crucial to the provision of nondiscriminatory service regardless of jurisdiction, [2] national guidelines will provide a certain amount of stability to the law and will therefore expedite local exchange competition across the nation, and [3] national guidelines will ease CLEC entry in multiple markets through common service offerings. The list of UNEs provided in Rule 319 -- the local loop, the network interface device ("NID"), switching capability, interoffice transmission facilities, signaling networks and call-related databases, operations support systems functions ("OSS" functions), and operator services and directory assistance -- provide the very basis of the local telecommunications network. A competitor's ability to provide service would clearly be impaired if those UNEs could not be obtained from the incumbent local exchange carrier ("ILEC").

3. The List of Essential UNEs Prescribed in Rule 319 Can and Should Be Retained, With Definitions of "Necessary" and "Impair" That Meet the Supreme Court's Criteria.

The FCC may lawfully reinstate its list of necessary UNEs in its rulemaking, together with a rationale supporting the listing under the "necessary" and "impair" standards. Section 251(c)(3) of the Telecommunications Act of 1996 directly obligates ILECs to "provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." Reinstatement of the FCC's initial list of UNEs is necessary to promote meaningful competition, and ILEC denial of these UNEs to a competitor would impair the competitor's ability to provide service. The Kentucky PSC has implemented the 1996 Act relying upon this basic list of UNEs. In addition, the Kentucky PSC has concluded that local competition will not occur unless key UNEs are available on a platform basis.

Requiring a competitor to purchase one of these UNEs from a provider other than the ILEC would contradict the Act's provision, at Section 251(c)(3), requiring an ILEC to permit competitors to provide service solely through use of an ILEC's facilities. Further, by allowing an ILEC the right to separate UNEs (the inevitable result of requiring CLECs to go to third parties to obtain UNEs) the Commission would render meaningless a CLEC's right to obtain the unbundled network element platform. Network degradation (through the introduction of impedance, stray signal, etc.), as well as the imposition of upfront costs so large as to constitute a barrier to entry, would result from a competitor's inability to obtain these key UNEs from an ILEC. The FCC should also implement the Supreme Court's mandate by establishing guidelines, based on the "necessary" and "impair" standards, establishing when a barrier to entry is created by a cost differential between obtaining a UNE from an ILEC and obtaining it elsewhere.

Respectfully submitted,

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