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Ex parte Notice

September 8, 1999

The Honorable William Kennard, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street SW Room 8-B201  
Washington, DC 20554

The Honorable Susan Ness, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street SW Room 8-B115  
Washington, DC 20554

The Honorable Harold W, Furchtgott-Roth, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street SW Room 8-A302  
Washington, DC 20554

The Honorable Michael K. Powell, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street SW Room 8-A204  
Washington, DC 20554

The Honorable Gloria Tristani, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street SW Room 8-C032  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Re: *CC Docket No. 96-98: Second Further Notice of Proposed Rulemaking in the Matter of the Local Competition Provisions in the Telecommunications Act of 1996***

Dear Chairman Kennard and Commissioners:

As the Commission considers the record before it regarding what ILEC network elements are subject to unbundling pursuant to the Supreme Court's decision in *AT&T v. Iowa*, I urge the Commission to adopt policies that maximize consumer welfare, and not the individual interests of ILEC competitors. Such policies must recognize the burgeoning competition in local

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exchange markets that the Commission's most recent report on local competition underscores. In competitive markets, mandatory unbundling of ILEC networks is unnecessary and would be inconsistent with the Supreme Court's instructions to the Commission to limit ILEC obligations to provision UNEs under the Act's necessary and impair standard.

AT&T and other ILEC competitors all want the prior list of UNEs readopted, along with a wish list of additional items, without any serious analysis by the Commission of the competitive alternatives that exist. The self-serving purpose of their position is obvious. The facts are critical to the Commission's inquiry and USTA has submitted a detailed factual report that looks at every proposed network element and shows where the CLECs are already self-provisioning that element and where they are obtaining it from third parties. This *UNE Fact Report* demonstrates that an across-the-board mandatory unbundling of all ILEC network elements is simply unsupportable and must be rejected by this Commission.

Many network elements are freely available from sources other than ILECs, particularly in urban areas. Yet many CLECs want the benefits of the UNE platform at TELRIC pricing. They have ignored the facts and urged the Commission to take an approach that would mandate unbundling everywhere simply because some CLEC somewhere conceivably might need the element in question. They have also attempted to establish an alleged need for the UNE-platform as a way of bootstrapping all the individual elements within it. Neither approach is sustainable. The Commission must consider the factual record before it. Those facts require the Commission to reject attempts by ILEC competitors to undermine the Court's opinion. The Commission must adopt policies that limit ILEC unbundling requirements based upon competitive conditions that exists in a geographically specific market for the requested UNE.

For example, the *UNE Fact Report* provides data on the rate exchange areas where CLECs have obtained NXX codes. As of March 1999, over one third of all BOC and GTE rate exchange areas in the United States were served by at least one CLEC voice switch. Eighteen percent were served by at least two CLEC switches. Twelve percent were served by at least three CLEC switches. Nearly eight percent were served by four or more. These numbers are conservative in that they only reflect those CLEC switches that are operational. As the data in the *UNE Fact Report* demonstrates, CLECs are using their own switches to serve over one third of BOC and GTE rate exchange areas and that number is much higher in major markets. Clearly, access to ILEC switching as a UNE is not necessary in these competitive markets

The Commission should similarly avoid adopting policies that would allow CLECs to bootstrap access to ILEC UNEs for purposes never intended by the Act. For example, the Commission should reject efforts by CLECs to use extended local loops for special access. The Commission has recognized that the market for special access is highly competitive. Efforts by CLECs to use unbundled loops to provision special access at TELRIC rates would eviscerate the current market-driven competition for ILEC special access.

Imposition of broadband and spectrum unbundling, including line-sharing regulations, on ILECs would also be inconsistent with the Court's mandate in *AT&T v. Iowa* that the Commission adopt policies that limit ILEC obligations to provide network unbundling. The

Commission has acknowledged that CLECs are way ahead of ILECs in broadband deployment. There is simply no market-based need for ILECs to provide line-sharing.

The real danger in UNE unbundling proposed by some CLECs and the Commission's line-sharing proposal is the chilling effect they will have on *all carriers'* incentives to invest and innovate. Why risk a large investment in facilities when you can get a free ride on the investment of ILECs? Why risk a large investment in facilities when you will have to share the fruits of that investment with your competitors? Facilities-based CLECs certainly will be disadvantaged because other CLECs can secure the same facilities from the ILEC at lower prices. As USTA stated in its comments in this proceeding "Given the feasibility of unbundling the entire loop for use by the CLEC, and given the desirability of increasing competition in the local telephone market, the consumer benefits of mandatory spectrum unbundling are nonexistent."

The Commission must reject self-serving attempts to protect competitors at the expense of consumers and true market-based competition. I urge you to consider the facts before you as you address unbundling and establish a limiting standard that comports with the Act and the Court's decision.

Sincerely yours,

Handwritten signature of Roy M. Neel in black ink, appearing as "Roy / LBS".

Roy M. Neel  
President and CEO

cc: Commissioner Furtchgott-Roth  
Commissioner Ness  
Commissioner Powell  
Commissioner Tristani