

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the)
Local Competition Provisions)
of the Telecommunications Act of 1996)

CC Docket No. 96-98

REPLY COMMENTS OF FOCAL COMMUNICATIONS CORPORATION

Focal Communications Corporation (Focal) respectfully submits these reply comments in response to the Fourth Further Notice of Proposed Rulemaking in this proceeding, as modified by the Supplemental Order released on November 24, 1999.¹

Focal agrees with several of the commenting parties that nothing in the Telecommunications Act of 1996² or its legislative history leads to the conclusion that permanent restrictions on the use of unbundled network elements (UNEs) would be lawful. Focal intends to continue to participate in this proceeding as it concerns the legal and policy issues associated with usage restrictions.³ Focal's principal purpose here is to urge that if the Commission does adopt such restrictions, they must be interim in nature and as narrowly tailored as possible to achieve clearly articulated goals.

¹*Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238, released November 5, 1999 ("UNE Remand Order"). The UNE Remand Order was amended in a Supplemental Order in CC Dkt 96-98, FCC 99-370, released Nov. 24, 1999 Supplemental Order.*

²Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et. seq. (Telecommunications Act).

³See Comments of KMC Telecom, Inc. and Focal Communications Corp., filed January 19, 2000.

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Additionally, any usage restrictions must not adversely impact CLECs' ability to purchase enhanced extended links (EELs) from ILECs even when they are not collocated at ILEC switch facilities.

I. INTERMEDIA'S PROPOSALS ARE MINIMALLY INTRUSIVE AND CAN BE INTERIM IN NATURE

While Focal does not agree entirely with Intermedia Communications, Inc. (Intermedia), that the Commission has "both the statutory authority and the public policy justification to restrict the use of loop and transport combinations,"⁴ Focal believes that the alternative mechanisms proposed by Intermedia in its comments are acceptable on an interim basis⁵ to ease the Commission's concerns that conversion of special access circuits to EELs would reduce the ILECs' special access revenues, possibly jeopardizing the universal service fund.

In essence, Intermedia proposes that the Commission allow the conversion of special access circuits to UNE loop/transport combinations only in cases where such circuits terminate in CLEC switches that provide local service functionality. This approach has the dual benefit of imposing minimal restrictions on the use of UNEs to provide telecommunications services, and using switch

⁴Comments of Intermedia Communications, Inc., p. 2. While Focal generally disagrees with this statement, it will not address it specifically in the context of these reply comments.

⁵Even those parties that filed comments urging the Commission to implement UNE use restrictions noted that the restrictions should be interim in nature. *See e.g.*, BellSouth's Comments On Fourth Further Notice (Commission "should not declare network facilities used to provide traditional special access and dedicated switched transport services to be UNEs *until doing so is consistent with the 1996 Act and the Commission's own policies.*" (Emphasis supplied.)

capability rather than usage requirements to determine whether a carrier is using loop/transport combinations solely to provide interexchange access services.⁶

Focal agrees with Intermedia that, if this approach is adopted, the Commission must ensure that the ILECs do not impose order processing impediments that significantly delay the processing of CLEC requests to convert pre-existing UNEs to EELs. Based on its own interactions with ILECs, Focal shares Intermedia's concerns that some ILECs will implement inefficient processing procedures, such as those used to process Local Service Requests (LSRs), to delay conversion of exiting UNEs to EELs.

In addressing the issues raised in this proceeding, the Commission should clarify that ILEC use of manual order processing mechanisms which slow the conversion process will not be tolerated, and that ILECs must process conversion requests using the more automated Access Service Request (ASR) process. ILECs and CLECs have used the ASR process for years to process requests for access and there is no reason why this efficient and well-known process should not be used for conversion requests.

⁶This approach has the added benefit of appearing to satisfy parties who filed comments indicating that their main concern was that ILECs would be required to make UNEs available solely as a *substitute* for services that are predominantly interexchange voice services. *See e.g.*, Joint Comments of the National Exchange Carrier Association, National Rural Telecom Association, National Telephone Cooperative Association and Organization for the Promotion and Advancement of Small Telecommunications Companies, pp. 1-2 (allowing the use of UNEs "to substitute access services ... would completely undermine the Commission's access charge plan . . .").

II. THE COMMISSION SHOULD CLARIFY THAT CLECs NEED NOT COLLOCATE AT ILEC SWITCHES IN ORDER TO PURCHASE EELs

Focal agrees with Teligent, Inc., that the Commission should clarify that CLECs need not collocate at ILEC switch facilities in order to purchase EELs from ILECs for the purpose of providing local exchange service to customers.⁷ In *The UNE Remand Order*, the Commission stated that "any requesting carrier that is collocated in a serving wire center is free to order loops and transport to that serving wire center as unbundled network elements because those elements meet the unbundling standard, . . ."⁸ The Commission did not by this statement intend to determine that ILECs must provide EELs to CLECs only when those EELs terminate at collocation spaces. Rather, this reference is nothing more than an example of one of the scenarios in which ILECs must provide EELs to CLECs. It does not establish a limitation on the ability of CLECs to obtain combinations of unbundled network elements. This is especially true since the intent of EELs is not to encourage collocation, but to reduce the need for collocation in the first place. Moreover, if the Commission's purpose in imposing usage restrictions on UNEs is intended to mitigate the erosion of special access revenues, it is irrelevant whether the EELs are found in spaces where a CLEC is collocated at an ILEC switch or not.

⁷See Comments of Teligent, Inc., pp. 1-5.

⁸*UNE Remand Order*, ¶ 486. A similar statement found in the *Supplemental Order*, states that the Commission's supplemental holding "does not affect the ability of [CLECs] that are collocated and have self-provided transport (or obtained it from third parties), but are purchasing unbundled loops, to provide exchange access service." *Id.*, ¶ 5.

Accordingly, the Commission should clarify that nothing in the *UNE Remand Order* or the *Supplemental Order* permits ILECs to refuse to honor CLECs' requests for EELs, regardless of whether or not the EELs terminate in a collocation space. This important clarification is to assure that the ILECs cannot attempt to rely on the *UNE Remand Order* or the *Supplemental Order* to impose collocation as a condition of providing EELs to CLECs on an unbundled basis.

III. GTE's ARGUMENT REGARDING FLAT RATE ACCESS CHARGES IS MISPLACED

GTE Service Corporation (GTE) asserts in its comments that under the CALLS Plan, "implicit support in usage based rates is replaced with flat end-user charges".⁹ Focal takes this opportunity point out that GTE has offered no support for the proposition that usage local switching rates, or usage based rates in general, contribute disproportionately to implicit support. Neither GTE nor any of the other CALLS proponents have shown that usage based rates recover the costs of special access and thereby constitute a form of implicit support. Thus, these parties have not shown that there is any basis to phase out usage based rates in favor of flat rate end user surcharges. The Commission should specifically reject GTE's characterization of usage based rates as constituting "implicit support."

IV. CONCLUSION

For the foregoing reasons, Focal urges the Commission to ensure that any restriction on the use of UNEs is narrowly tailored and interim in nature. The Commission should clarify that collocation at an ILEC switch is not a prerequisite for CLECs to purchase EELs from ILECs on an

⁹Comments Of GTE, p. 21.

unbundled basis. The Commission should also specifically reject GTE's characterization of usage based rates as constituting "implicit support."

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CERTIFICATE OF SERVICE

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