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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of the) CC Docket No. 96-98
Local Competition Provisions)
of the Telecommunications Act of 1996)

REPLY COMMENTS
OF THE
UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association¹ ("USTA") hereby files its reply comments in the above-referenced proceeding in response to the Commission's *Fourth Further Notice of Proposed Rulemaking* ("Fourth FNPRM").²

In the *FNPRM* and *Supplemental Order*, the Commission sought comments on (1) whether there is any basis in the 1996 Act or Commission regulations whereby incumbent LECs could decline to provide combinations of loops and transport network elements at unbundled

¹ Formally the United States Telephone Association.

² *In the Matter 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, released November 5 1999 ("Fourth FNPRM"); *Supplemental Order*, CC Docket No. 96-98, released November 24, 1999 ("Supplemental Order").

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network element prices to be used by requesting competitive carriers as a substitute for existing special access services provided by ILECs, and (2) whether requesting competitive carriers may use dedicated or shared transport facilities with unbundled switching to originate or terminate interstate toll services to their customers where the requesting competitive carrier does not provide local exchange services to its customers.³

As a matter of public policy, special access should not be converted to UNEs because the service is competitive, is not necessary for CLECs to compete and the absence of UNE combinations to provision special access would not impair the ability of requesting carriers to compete against ILECs consistent with Section 251(d)(2) of the Act. Such conditions are just, reasonable, and non-discriminatory consistent with Section 251(c)(3) of the Act and competing statutory obligations in Sections 251(g) and 254 of the Act.

The Commission is required by Section 251(d)(2), and the Supreme Court's decision in *AT&T v. Iowa*,⁴ to determine if ILEC unbundling is necessary and would constitute an impairment of a CLECs' ability to compete if a UNE was not made available. Since the implementation of the 1996 Act, the Commission has conditioned the use of UNEs, identifying which network elements were subject to unbundling, and defining when and where ILECs and CLECs would interconnect their facilities. CLECs have been required to provide local exchange carrier services to their customers as a condition for using UNEs to provide special access and

³ See *Supplemental Order* at 3, ¶6; *FNPRM* at 223, ¶494-495.

⁴ 119 S.Ct. 721, 734 (1999).

toll services to those same customers.⁵ Those who argue that the Commission has no authority to condition how UNEs are used are simply ignoring the record since 1996.⁶ Moreover, allowing long distance carriers to substitute network elements for special access services would “undermine the investments that facilities-based carriers have already made in competing facilities.”⁷

The Commission has viewed the availability of competitive alternatives to UNEs as a basis for denying efforts by CLECs to require unnecessary network unbundling by ILECs. The Commission rejected various CLEC arguments about “differences in cost and the amount of time required to implement services” regarding the use of operator services and directory assistance (“OS/DA”) provided by competitors and concluded that ILECs need not unbundle

⁵ *Intermedia Comments* at 2 (“Commission does, indeed, possess the statutory authority and the public justification to restrict the use of loop and transport combinations”); *Time Warner Telecom Comments* at 3 (the Commission has the authority to restrict the use of UNEs).

⁶ If these parties prove successful, then Section 251(d)(2) necessary and impair analysis is rendered useless. Congress intended, and the Supreme Court’s decision in *AT&T v. Iowa* affirms, that the Commission is required under Section 251(d)(2) to limit the unbundling obligations of ILECs in Section 251(c)(3) to only that which is necessary for requesting carriers to compete, and where requesting carriers are not impaired from providing competitive services to their customers.

⁷ *Bell Atlantic Comments* at 12, citing joint *ex parte* letter to the Commission from Allegiance, Intermedia, Time Warner and Bell Atlantic dated September 2, 1999.

operator services and directory assistance, except under very limited conditions, because these services were competitively available.⁸ Applying an impairment analysis, the Commission concluded: "Significantly, we find that the existence of multiple alternative providers of OS/DA service in the marketplace, coupled with evidence of competitors' decreasing reliance on incumbent OS/DA services, demonstrates that requesting carriers' ability to provide the services it seeks to offer is not materially diminished without access to the incumbent's OS/DA service on an unbundled basis."⁹ Clearly, the Commission has the authority under Section 251(d)(2) to determine where competitive alternatives exist that ILECs are not required to provide UNEs to facilitate services that are competitively available in the market, and where CLECs have demonstrated a non-reliance on ILEC services. Based upon the data in the *Special Access Fact Report*, and the Commission's findings in the *Pricing Flexibility Order*, the Commission could simply substitute the words special access for OS/DA and the end result would be the same. Special access is competitive, and CLECs would not be impaired in their ability to compete if ILECs were not required to provide UNEs for CLECs to provision special access and toll services. In addition, the Commission created an exception for ILEC unbundling of switching in

⁸ *Third Report and Order and Fourth Notice of Proposed Rulemaking*, CC Docket No. 96-98, released November 5, 1999.

⁹ *Id.* at 203, ¶449.

the top 50 markets.¹⁰ The Commission concluded that the local switching exception was consistent with the goals of the 1996 Act to “reduce regulation when possible” ... and “consistent with our policies of encouraging facilities-based competition and encouraging innovation.”¹¹ These are just a few examples of valid use restrictions on UNEs adopted by the Commission.¹²

The Commission has the authority to ensure that ILEC obligations to provide unbundled network elements to requesting competitive carriers does not adversely impact access arrangements consistent with Section 251(g) of the Act.¹³ As USTA stated in its comments, the Commission has consistently argued that its policy on UNEs should not create adverse impacts on the current access charge regime.¹⁴ Moreover, the Commission’s decision must continue to promote facilities-based local exchange carrier competition consistent with the goals and objectives of Section 251. As Section 251(g) provides, the Commission must maintain the integrity of the existing access charge regime, which supports universal service obligations

¹⁰ *Id.* at 130, ¶279.

¹¹ *Id.* at 138, ¶299.

¹² As USTA stated in its comments, the Commission has consistently argued that it had the authority to impose such restrictions and that CLECs did not have unrestricted rights to “use unbundled elements to originate and terminate interstate calls.” *USTA Comments* at 16.

¹³ *SBC Comments* at 23 (“the Commission has ... relied upon Section 251(g) to protect the access charge regime”).

¹⁴ *USTA Comments* at 15-20.

established in Section 254, until access and universal service reforms are completed. Parties in favor of converting special access to UNEs present no public policy, regulatory, or legal arguments to reverse the Commission's prior position that UNEs may not be used to provision special access or toll services unless requesting carriers are providing significant local exchange carrier services to their customers.

Respectfully submitted.

UNITED STATES TELECOM ASSOCIATION

February 18, 2000

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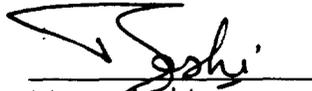
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CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on February 18, 2000, Reply Comments Of The United States Telecom Association was either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.


Meena Joshi