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March 13, 2000

The Honorable William E. Kennard  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8B-201  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: *CC Docket No. 96-98 -- Joint Ex Parte Proposal to Limit the Use  
of the Enhanced Extended Link ("EEL") filed February 28, 2000*

Dear Chairman Kennard:

The Competitive Telecommunications Association ("CompTel"), together with the undersigned CLECs, oppose the above-referenced *ex parte* letter filed by Bell Atlantic, BellSouth, GTE, SBC, U.S. West, Allegiance, Intermedia, Time Warner Telecom, Focal Communications, and Winstar ("*ILEC-CLEC ex parte*"). The *ILEC-CLEC ex parte* defines three very specific scenarios in which the EEL would be available, all three of which are subject to audit by the provisioning ILEC.

CompTel has long maintained that any restrictions on the use of UNEs or combinations of UNEs are contrary to Section 251(c)(3) and the Commission's UNE rules. CompTel thus believes that the *ILEC-CLEC ex parte*, if adopted by the Commission, would far exceed in scope the limited inquiry on which the 4<sup>th</sup> FNPRM seeks comment – namely, the issue of restricting the availability of entrance facilities as UNEs, or parts of UNE combinations, in order to prevent "arbitrage" of existing special access revenues.

To the contrary, the usage restrictions advanced in this proposal would be detrimental to many CLECs, particularly those carriers serving customers whose needs require a service provider that can carry a significant portion of data and Internet traffic. Many of those CLEC customers represent small and medium-sized businesses, the very companies that are fueling the new information-based economy, and a market that traditionally the ILECs have ignored. The fact that the *ILEC-CLEC ex parte* proposal would restrict UNE combinations used to carry "data" traffic clearly limits the use of the EEL combination based on a CLEC's choice of local service technology and customers, and is not based on any ILEC access revenue concerns.

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The proposed restrictions significantly impede efficient use of EELs. For example, two of the three “scenarios” require that the EEL terminate in a collocation facility. However, requiring collocation in order for a CLEC to obtain an EEL undermines the CLEC’s ability to incorporate EELs as a critical component of an efficient network deployment plan. The requirement increases competitors’ costs and unnecessarily promotes wasteful use of central office space. Additionally, the proposal’s prohibition on EELs unless the CLEC is the “exclusive provider” of a customer’s local exchange service is administratively infeasible. Placing the responsibility on CLEC sales personnel to ascertain this information is burdensome and unrealistic. Additionally, the requirement ignores the fact that a number of consumers initially may take a conservative approach in testing a competitor’s service and consequently will place only part of their local service with a CLEC.

Furthermore, CompTel and the undersigned CLECs oppose the proposed audit scheme, which would leave CLECs subject to the caprice of their largest competitors, the ILECs. This proposal goes beyond the “self-certification process” ordered by the FCC in its *Supplemental Order*. Under the proposal, the CLECs would be required to divulge an unacceptable amount of sensitive, competitive information in order to obtain UNE combinations to which they are legally entitled. The ILEC audit feature also gives the ILEC the unilateral, unrestricted right to seek greater detail as to the CLECs’ traffic patterns and customer characteristics. Regardless of whether or not the ILEC pays for the audit, the ILEC who retains the ability to audit at will has a powerful tool with which to increase select competitors’ costs at will.

While any restriction on the use of UNEs must, as the Commission has recognized, be limited, transitional, and tailored “to address the public policy concerns raised by the bypass of access charges via unbundled elements,” (par. 492, citing *CompTel v. FCC*), the restrictions proposed in the *ILEC-CLEC ex parte* are none of these. Moreover, if the FCC does believe such a transitional plan is necessary, CompTel believes the plan should be simple to understand and interpret, operate for a limited time, and have a dynamic, transitioning, feature. Finally, enforcement of any Commission order should remain with the Commission, and not the ILEC. If an ILEC claims that a CLEC is not providing a “significant amount” of local service within the meaning of the November 24, 1999 *Supplemental Order*, the ILEC can avail itself of the Section 208 complaint process.

In sum, CompTel and the undersigned CLECs strongly urge the Commission to reject the *ILEC-CLEC ex parte* proposal, which is not representative of the broader CLEC industry. CompTel further urges that the Commission, should it determine that public policy would be served by a transition from access charges to UNEs, require that the plan be transitional, temporary, and fairly tailored to its public policy purpose. CompTel continues to examine this matter with its members, and hopes to submit its own proposal to the Commission in the very near future.



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Sincerely,

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Carol Ann Bischoff  
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Executive Vice President  
& General Counsel  
CompTel

Kathleen Marshall  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY  
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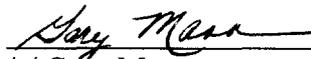
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Director, Regulatory Affairs  
RCN Telecommunications Services



/s/ Gary Mann  
VP, Regulatory Affairs  
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