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Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, SW – Room TWB-204
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *Ex Parte* - CC Docket Nos. 96-61/and 98-183
1998 Biennial Regulatory Review -
Review of Customer Premises Equipment and Enhanced Services Unbundling
Rules in the Interexchange, Exchange Access, and Local Exchange Markets

Dear Ms. Salas:

At a January 25, 2001 *ex parte* meeting with Messrs. Don Stockdale and William Sharkey of the Office of Policy and Plans, Mr. Stockdale asked whether the independent local exchange carriers (ILECs) are currently subject to any restrictions on the bundling of telecommunications services and information services. Apparently, a number of ILECs have recently claimed that they are not currently subject to any restrictions on the bundling of telecommunications services and information services. As discussed below, these claims are baseless.

The Commission's computer inquiry related orders - which were intended to prevent dominant carriers from abusing their market power -- make clear that facilities-based carriers (whether or not they are subject to the further separation requirements established in *Computer III*) that provide information services must offer the underlying telecommunications service separately and under tariff, and that any "package discount" offered by such carrier to customers who purchase a combination of telecommunications and information services be funded by the non-regulated information service affiliate.

The restriction on the bundling of information ("enhanced") and telecommunications ("basic") services was set forth clearly by the Commission in *Computer II*:

[T]hose carriers that own common carrier transmission facilities and provide enhanced services . . . must acquire transmission capacity pursuant to the same

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prices, terms, and conditions reflected in their tariffs when their own facilities are utilized. Other offerors of enhanced services would likewise be able to use such a carrier's facilities under the same terms and conditions.¹

This obligation applies to all facilities-based carriers. There is thus no question that the obligation to unbundle telecommunications from information services applies to the ILECs.

As the Commission has observed, the requirement that facilities-based carriers "offer transmission capacity to other enhanced service providers under the same tariffed terms and conditions under which they provide such services to their own enhanced service providers," *AT&T Frame Relay Order*, 10 FCC Rcd. at 13719, places an important "restriction[]" on the ability of carriers to "offer[] 'package discounts,' which enable "customers [to] purchase an array of products in a package at a lower price than the individual products could be purchased separately." Further Notice of Proposed Rulemaking, *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 13 FCC Rcd. 21531, 21533 (1998). In particular, because ISP affiliates of facilities-based carriers must impute to themselves the full tariffed cost of the underlying transmission service that the carriers must make separately available to others under tariff, any "package discount" offered by such carrier to customers purchasing both the transmission and the information service component must be funded by the ISP affiliate, and the costs of such discount may not appear on the books of the regulated entity. Thus, if an ILEC offers subscribers a package of local exchange and Internet service at less than the price of the two services when purchased separately, the entire amount of the discount must be reflected in the form of decreased revenues received by the ISP affiliate, and may not be apportioned between that affiliate and the ISP.

Indeed, any action by the Commission to relieve ILECs of this unbundling obligation would be unsound as a matter of policy. Unlike the markets for interexchange and information services, both of which are vigorously competitive, the market for local exchange service is dominated by the ILECs. While allowing IXCs to bundle information service with the underlying transmission component presents no anticompetitive dangers and yields numerous advantages to consumers, permitting ILECs to bundle their monopoly local exchange service with information services would pose significant risks to competition. See Ex Parte Declaration Of Janusz A. Ordovery And Robert D. Willig On Behalf Of AT&T Corp., ¶¶ 58-68, *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61 et al. (filed June 21, 2000) (describing these risks as "unacceptable").

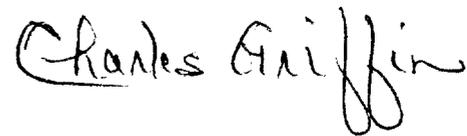
In short, there can be no question that the ILECs face restrictions on the bundling of information ("enhanced") and telecommunications ("basic") services, and

¹ *Computer II Final Decision*, 77 F.C.C.2d 384, 475 (1980).

that those restrictions prohibit the ILECs from offering package discounts of such services that are not fully borne by their information service affiliates.

In accordance with Section 1.1206(a)(1) of the Commission's rules, two copies of this Notice are being submitted to the Secretary of the Commission for inclusion in the public record for the above-captioned proceeding.

Sincerely,

A handwritten signature in black ink that reads "Charles Griffin". The signature is written in a cursive style with a prominent underline under the first letter of the first name.

cc: D. Stockdale
W. Sharkey