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Secretary

April 4, 2001

Hon. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 Twelfth St., S.W.
Washington, D.C. 20554

Re: Comments Of The New York State Public Service Department On The Use Of Unbundled Network Elements To Provide Exchange Access Service in CC Docket No. 96-98

Dear Secretary Salas:

The New York State Department of Public Service ("NYDPS") submits these comments in response to the Federal Communication Commission's ("Commission") Public Notice dated January 24, 2001 in CC Docket No. 96-98. The Commission's Public Notice seeks comment on whether competing carriers ("CLECs") and interexchange carriers ("IXCs") should have access to combinations of unbundled network elements ("UNEs") at cost based prices from incumbent carriers ("ILECs") for the primary purpose of providing exchange access or special access services. The Commission also seeks comment on whether requesting carriers should be permitted to commingle UNEs with tariffed access services purchased from the ILEC.

The NY Commission addressed the methods by which CLECs and IXCs can combine UNEs in New York.¹ On March 24, 1999, the NY Commission issued an order defining the use of expanded extended links ("EELs") containing loops at and above DS1 level to a CLEC's switch handling local exchange traffic.² The EEL, consisting of the local loop, local transport and, where required, multiplexing (transmitting two or more signals over a single channel), was

¹ Case Nos. 98-C-0690, 95-C-0657, 94-C-0095 and 91-C-1174, Order Directing Tariff Revisions, rel. March 24, 1999; Order Concerning EEL Connection Charge, rel. May 28, 1999; and, Order Denying Rehearing and Clarifying Primarily Local Traffic Standard, rel. August 10, 1999 (enclosed are copies of these orders).

² Id. (DS1 and higher loops are "high capacity" local loops that can handle both local and special access, whereas local loop of less than DS1 cannot handle special access and are therefore, not subject to any use restrictions).

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adopted by the NY Commission to allow CLECs to gain access to unbundled local loops in many central offices without the need to collocate.

The NY Commission put limitations on a CLEC's ability to use the EEL as a substitute for special access service exclusively. The EEL pricing may be used for special access service provided the primary use of the loop transport combination is for local exchange service.³ To ensure that the loop transport combination is being used primarily for local exchange service, the NY Commission adopted a "channel count test".⁴

With regard to commingling special access and UNEs, Verizon permits CLECs to use spare capacity on the local loop for special access as well as local exchange service with no additional recurring charges.⁵ Prohibiting commingling forces CLECs to operate two overlapping networks (one for local traffic and one for exchange traffic) which is technically inefficient and therefore should not be encouraged by the Commission.

In sum, the EEL offering approved by the NY Commission to provide CLECs and IXC's access to UNEs is consistent with the universal goal of bringing local competition to residential and small business customers, while avoiding the use of UNEs as a low cost alternative for special access services exclusively.

Respectfully submitted,



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Encl.

³ Case Nos. 98-C-0690, 95-C-0657, 94-C-0095 and 91-C-1174, Order Directing Tariff Revisions at p. 8.

⁴ Case Nos. 98-C-0690, 95-C-0657, 94-C-0095 and 91-C-1174, Order Denying Rehearing and clarifying Primarily Local Traffic Standard at p. 9 (A CLEC will get EEL rates for the loop, under the channel count test, if it carries local traffic on 50% or more of DS-1 level and above loop channels (of which there are 24 channels) that are connected to a transport facility. The transport facility will qualify for EEL rates if more than 50% of the loop circuits (of which there are 24) are receiving EEL rates. If the channel count test is not met for the transport, then the EEL rates would apply only to those loop channels meeting the standard).

⁵ The NY Commission currently has before it a dispute concerning Verizon's obligation to continue permitting commingling based on their interpretation of the Commission's Supplemental Order Clarification (15 FCC Rcd 1760).