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July 23, 2001

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Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
TW-A325-Lobby  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

RE: Ex Parte Presentation, CC Docket No. 96-98/*Implementation of the  
Local Competition Provisions of the Telecommunications Act of 1996*)

Dear Ms. Salas:

On July 23, 2001, Gary Phillips, Jay Bennett and the undersigned, representing SBC Communications, Inc. (SBC), met with Jonathan Reel, Attorney Advisor, and Jeffrey Carlisle, Senior Deputy Chief, of the Common Carrier Bureau.

The purpose of the meeting was to discuss issues associated with unbundled local switching. The attached outline was used as a basis for the discussion. Please contact me at (202) 326-8847 should you have any questions.

Sincerely,

Two handwritten signatures in black ink. The first signature is on the left and the second is on the right.

cc: Jeffrey Carlisle  
Jonathan Reel

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**UNE REMAND RECONSIDERATION PROCEEDING  
UNBUNDLED LOCAL SWITCHING  
EX PARTE PRESENTATION OF SBC COMMUNICATIONS INC.  
JULY 20, 2001**

**I. Background**

**A. Supreme Court Opinion**

- § 251(d)(2) imposes “clear limits” on the Commission’s authority to order unbundling and “requires the Commission to determine on a rational basis *which* network elements must be made available, taking into account the objectives of the Act and giving some substance to the “necessary” and “impair” requirements.”
- FCC not only failed to give sufficient weight to § 251(d)(2) (viewing it as grant of discretionary authority) but also misconstrued that provision in 2 key respects:
  - It blinded itself to availability of elements outside the incumbent’s network.
  - It erroneously assumed that any increase in cost or decrease in quality results in impairment – without focusing on whether that increase in cost or decrease in quality affects the entrant’s ability to provide service.
    - Court noted by way of analogy that if one could change a light bulb by standing on a ladder *with arms fully extended*, one would not be impaired by the absence of a taller ladder that would obviate the need for full arm extension.(n. 11)

**B. The UNE Remand Proceeding**

- ILECs submit uncontroverted evidence that CLECs – both large and small – had deployed and were continuing to deploy large numbers of switches in both large and small markets. ILECs showed, for example, that:
  - 167 different CLECs had deployed 724 switches in 320 cities as of 3/99.
  - While CLECs had deployed a dozen or even two dozen switches in larger cities, they had also deployed switches in smaller cities, such as Decatur, Illinois; Marquette, Michigan, and many others.
  - Overall, more than 1/3 of all BOC and GTE rate centers (accounting for substantially more than 1/3 of all lines) were served by at least one CLEC circuit switch. In the top 50 MSAs, CLEC switches serve 75% of all BOC and GTE rate centers.
- The majority of CLECs that filed comments in the *UNE Remand* proceeding did not ask the Commission to require unbundled circuit switching. ALTS made no mention

of circuit switching in its comments. A number of CLECs flat-out opposed a ULS requirement.

**C. *UNE Remand Order***

- FCC conceded that “the record indicates that a significant number of competitive switches have been deployed.” ¶ 254.
- Nevertheless, while acknowledging that CLECs were deploying large numbers of switches, the Commission concluded that these switches generally could not be used to serve customers. In particular, the Commission held that CLECs were impaired in their ability to use their own switches because of two constraints: (1) the need to collocate in order to access unbundled loops and the costs and delays associated with collocation; and (2) the costs and unreliability of hot cuts.
- The FCC established a limited exception to the unbundled switching requirement, ruling that ULS need not be required in zone 1 wire centers in the top 50 MSAs for use in serving customers with 4 or more lines, provided the ILEC offers nondiscriminatory access to the EEL in those wire centers.

**D. *Separate Statement of then-Commissioner Powell***

- “I am disappointed, however, that we cannot admit that evidence of CLEC switch deployment strongly suggests that CLECs are not significantly impaired without access to unbundled switching, both in areas in which CLECs have deployed switches and areas in which they have not done so.”
- “I am troubled by the extent to which we are importing into the impairment analysis collocation and other problems that do not result directly from denying CLECs access to UNEs.”
- “I would have been prepared to leave switching off the unbundling list for the provision of service to all customers in access Zone 1, regardless of their size or type, and regardless of whether the incumbent is providing the “extended link” or EEL. ... Powell went on to note, however, that extending the carve-out to all customers in Zone 1 would not address all of his concerns about the Commission’s decision: “I still fear that the Commission has failed to pay adequate attention to the Court’s instruction that we assess the availability of elements outside the incumbent’s network, including self-provisioning.”
  - Unfortunately, Chairman Powell did not have complete information regarding the scope of the Zone 1 carve-out. He wrongly assumed that most CLEC switches were in zone 1 areas. That may have been true for BellSouth, but it certainly was not true for other ILECs, including SBC, Ameritech, and US West.

**II. The Existing Carve-Out is Extremely Narrow**

- *Geographic Scope:* Applies to only 64 out of more than 3000 SBC wire centers – fewer than 2% of SBC’s wire centers.
  - These wire centers serve about 3% of SBC’s lines. They serve only 1/6 of SBC’s business lines in the top 50 MSAs.
- *4-Line Threshold Further Limits the Scope of the Carve-out:* Virtually no residential customers use 4 lines or more and 2/3 of SBC’s lines are residential. Moreover, 70% of SBC’s business customers use 3 lines or fewer.

**III. The Narrow Scope of the Carve-Out Cannot be Reconciled with the Number of Circuit Switches CLECs Actually Have Deployed**

- According to ALTS, almost 1000 CLEC voice switches were operational as of the end of the 3<sup>rd</sup> Q 2000, with an additional 204 planned. (ALTS, The State of Local Competition 2001, Feb. 2001)
- ALTS further boasts that CLECs had installed over 2000 data switches by the end of the 3<sup>rd</sup> Q 2000, with an additional 380 planned.
- At least 4 different CLECs have deployed their own switches in each of the 20 MSAs in SBC territory that are in the top 50 nationally. At least 9 CLECs have deployed switches in 19 of these 20 MSAs.
- At least 4 different CLECs have deployed their own switches in 35 of the 40 MSAs in SBC territory that are in the top 100 nationally. At least 3 different CLECs have deployed their own switches in 38 of the 40.
- At least 9 CLECs have deployed switches in several MSAs outside the top 100.

**IV. The FCC’s Holding That CLECs are Nevertheless Impaired in Their Ability to Use Their Own Switches Cannot Be Squared with Common Sense.**

- Plainly, CLECs would not be deploying so many switches in so many different places if their switches had the limited utility the FCC attributes to them.
- The *UNE Remand Order* purports to look at what’s happening in the market as the best evidence of impairment but discards this evidence of widespread switch deployment in favor of purely theoretical and illogical assumptions that the switches being deployed can be used in only the most narrow of circumstances.

**V. The FCC’s Assumption That Collocation Creates Impairment Cannot be Squared with the Facts.**

- As of February, 2001, SBC alone had delivered nearly 13,000 collocation arrangements. Given that SBC has just under 3200 wire centers in its entire region, that translates into an average of more than 4 collocation arrangements per SBC wire center.
- The number of CLEC collocation arrangements has grown exponentially. In January through March 1999, SBC and Ameritech, together, delivered an average of about 100 collocation arrangements per month. By October 2000, the number had grown to more than 700 per month.
- As of October 2000, more than half of SWBT and PacBell wire centers in the top 50 MSAs had 10 or more collocation arrangements. (Data was not compiled for Ameritech.)
- Three quarters of all SBC wire centers in the top 50 MSAs had 3 or more collocating CLECs.
- Collocation is not limited to wire centers in the top 50 MSAs. There are 10 or more collocation arrangements in many wire centers outside the top 50 MSAs.

**VI. Arguments that ILECs Cannot Perform Hot Cuts for Customers with 4 or More Lines Also are Belied by the Facts**

- Three quarters of the hot cuts performed by SBC involve 3 or fewer lines.
- Fewer than 1 in 10 hot cuts involve more than 6 lines.
- The FCC has found in New York, Texas, Oklahoma, and Kansas that the ILEC can perform hot cuts in ways that provide CLECs with a meaningful opportunity to compete using their own loops. The FCC cannot base its ULS rules on an assumption that ILECs cannot meet this standard.
  - *E.g., Texas 271 Order*: “Although some commenters maintain that SWBT cannot handle high volumes of CHC orders, they offer little or no current evidence to demonstrate that this continues to be true.” ¶ 260
  - *New York 271 Order*: “[W]e conclude that Bell Atlantic demonstrates that it provisions hot cuts in sufficient quantities, at an acceptable level of quality, and with a minimum of service disruption, thereby offering competitors a meaningful opportunity to compete in the local exchange market.” ¶ 291

**VII. The Cost of a Hot Cut is a Red Herring**

- The average per-line cost of a hot cut in SBC territory ranges from \$37 for one-line orders (assuming FDT hot cut where available) to \$26 per line for 8-line orders. Even when CLECs opt to use the CHC process, the average per-line cost is significantly less than some CLECs (*i.e.* Pace) claims.

- The Supreme Court has cautioned the FCC that the mere fact that it might cost a CLEC more to use its own facilities than UNEs is not, in itself, a basis for impairment. Simply pointing to one or two isolated cost components of using self-provisioned switching is inconsistent with this holding.

**VIII. The Commission Should Significantly Broaden the Switching Carve-Out**

- Data submitted by SBC supports eliminating the unbundled switching requirement throughout the top 100 MSAs.
  - Indeed, a strong argument could be made that unbundled switching should not be required in some MSAs outside the top 100.
- SBC would also support a wire center-based approach pursuant to which unbundled switching would not be required in wire centers serving customers that CLECs are serving with their own switches.
  - Possible tests could be based on wire centers in which CLECs either purchase unbundled loops or have ported numbers – both of which indicate use of a CLEC switch. The FCC also could look at NXX assignments and collocation data.