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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 27, 2001

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

RE: Ex Parte Presentation, CC Docket 96-98 / (Implementation of the Local
Competition Provisions of the Telecommunications Act of 1996)

Dear Ms. Salas:

On July 27, 2001, Gary Phillips, and the undersigned, representing SBC Communications, Inc. (SBC), met with, John A. Rogovin, Deputy General Counsel, Debra Weiner and Paula Silberthau of the Office of General Counsel and Jeremy Miller, of the Common Carrier Bureau's Policy Division..

The purpose of the meeting was to discuss the conversion of special access circuits to unbundled loop and transport combinations. The attached document was used as a basis for the discussion.

Please contact me at (202) 326-8847 should you have any questions.

Sincerely,

cc: John A. Rogovin
Debra Weiner
Paula Silberthau
Jeremy Miller

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SBC COMMUNICATIONS INC.
EX PARTE PRESENTATION
CC DOCKET NO. 96-98
JULY 23, 2001

- A. **A special access conversion cannot meet the impairment test because it necessarily assumes a pre-existing operational circuit that is being used to serve customers.**
- The Supreme Court has held that carriers are not entitled to UNEs simply because UNEs will improve their profit margin. They are only entitled to UNEs when the lack of access will impair their ability to provide service.
 - But a special access conversion necessarily involves a situation where a carrier is already providing service without UNEs. Because the carrier already is providing service over the facility in question without UNEs, it cannot be said that the lack of access to that facility at UNEs rates impairs its ability to provide service to the customers served by that facility.
 - Special access conversions simply enable carriers to obtain the facilities they already are using to compete at lower prices. In that respect, it flies in the face of the Supreme Court decision.
- B. **The evidence submitted in this proceeding shows that CLECs are not impaired in the special access market without UNEs.**
- Special access competition long preceded the 1996 Act. Competitive access providers began competing in the provision of special access service in 1984. In the ensuing years, aided by the Commission's Expanded Interconnection initiatives, CAPs deployed thousands of miles of fiber and made substantial inroads in the special access market. Indeed, by 1992, the Commission concluded that "competition [for high capacity special access/private line services] is already developing relatively rapidly in the urban markets."
 - By the time of the *UNE Remand Order*, 109 carriers were engaged in the provision of competitive special access service. Today, 349 carriers provide competitive special access service.
 - According to New Paradigm Resources Group – a source frequently cited by ALTS – CLECs have a 36% share of the special access market.
 - That number is consistent with the FCC's recent finding that CLECs have won more than 20% of the medium and large business market.
 - CLECs have deployed fiber throughout the top 150 MSAs.

- In the top 10 MSAs, there are an average of 14 CLEC fiber networks per MSA.
 - In #s 11-25, there are almost 7 fiber networks per MSA.
 - In 26-50, there are 5.6 fiber networks per MSA
 - In 51-100, there are more than 3 per MSA.
 - In 101-150, there are 2.
- The Commission has recognized this competition by putting into place a framework for deregulation of special access pricing, and it has granted BOCs some level of special access pricing flexibility in MSAs accounting for 80% of BOC special access revenues. It has granted more substantial flexibility in MSAs accounting for nearly 2/3 of BOC special access revenues.
 - There are many reasons why competition in special access is more advanced than in any other market:
 - Significant revenue opportunity
 - Special access customers are clustered. SBC does not provide special access service in all of its wire centers, and, even then, 80% of SBC's special access revenues are generated from 25% of the end offices from which SBC does provide special access.
 - Wholesale market. Wholesale providers, such as MFN, recently formed a trade association which claims that its members provide wholesale special access service in "virtually every region of the lower 48 states and the District of Columbia."
 - Competition has more mature than in other markets, since it has been developing for far longer.
 - Give these data, no serious claim can be made that CLECs are impaired without the ability to use UNEs in place of special access circuits.

C. Special Access Conversions Are Contrary to Public Policy

- In the *UNE Remand Order*, the Commission held that 2 of the main policy objectives of the 1996 Act were: (1) the promotion of facilities-based competition; and (2) reduced regulation where conditions warrant. Special access conversions run counter to both of these objectives.
- Why would a CLEC continue to deploy its own facilities if: (1) it can obtain ILEC facilities at TELRIC, and (2) it will have to compete in the marketplace against TELRIC rates?
 - Indeed, one of the ironies here is that for years, the FCC rebuffed ILEC efforts to obtain pricing flexibility for special access service out of concern that the ILECs would strike a blow to competition by reducing their rates – and now the FCC has proposed, in effect, to prescribe a 40% discount on a substantial percentage of ILEC special access circuits.

- Special access conversions make a mockery of the Act's directive to provide a pro-competitive, deregulatory national policy framework. Rather than continuing on its path of reducing regulation of special access services, the Commission would be turning the regulatory ratchet even tighter. Indeed, just a few short months after substantially deregulating a significant portion of the special access market, the Commission would be imposing rate regulation far more stringent than ever was applied when ILECs were the sole suppliers of these services.