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National Association of Regulatory Utility Commissioners

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Commissioner Kevin Martin
Federal Communications Commission
455 12th Street, SW Portals II Building
Washington, DC 20544

RE: November 26, 2001 Petition filed by the Competitive Telecommunications Association in the proceeding captioned *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98

Dear Commissioner Martin:

It has been reported in the trade press that the FCC is expected to soon initiate a three-year review of the national list of unbundled network elements ("UNEs") established in the *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd 3696 (1999) ("*UNE Remand Order*").

In partial anticipation of that proceeding, at our recent November Convention in Philadelphia, Pennsylvania, we passed a resolution that, *inter alia*, notes that "[m]any State commissions have embraced UNE-P as a means to expand customer choice for mass market, residential and small business consumers, by undertaking policies that ensure access to the UNE-P," and states that: "State commissions should support the implementation of universal availability of the UNE-P, on the basis that one form of entry should not be favored over another." A copy of that resolution is attached.

Last week, the Competitive Telecommunications Association filed a petition asking the FCC to establish pro-competitive procedures and standards for the anticipated triennial UNE review.

The CompTel petition proposes, *inter alia*, that (1) the FCC convene a Federal-State Joint Conference on UNEs pursuant to Section 410(b) of the Communications Act and (2) any party seeking to remove or scale back a UNE bears the burden of proof to show, by a preponderance of record evidence, that the requested relief is justified. NARUC is still evaluating the CompTel petition, and it is possible it will be the subject of a resolution at our February meetings in Washington. However, NARUC is already in clear and complete agreement on the two proposals listed above.

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Specifically, we agree that given the critical role played by State regulators in implementing the statutory UNE regime, as well as the intensive data- and State-specific nature of the three-year review, *that at a minimum*, the Commission should establish a formal mechanism to secure the State participation necessary for an informed application of the statutory “impair” standard. Section 410(b) of the Communications Act authorizes the Commission to “confer with any State commission having regulatory jurisdiction with respect to carriers regarding the relationship between rate structures, accounts, charges, practices, classifications, and regulations of carriers subject to the jurisdiction of such State commission and of the Commission.” This grant of authority plainly covers the UNE regime and the forthcoming three-year UNE review. The Commission has convened such conferences in the past, most recently in 1999 with the establishment of a Joint Conference on Advanced Telecommunications Services.

We believe a Joint Conference in connection with the three-year UNE review will promote the public interest. The three-year review will depend critically upon comprehensive empirical information and the industry’s experience with the current UNE regime, both of which will vary, sometimes significantly, from state to state and region to region. As a result, the hands-on participation by State regulators in the three-year UNE review through a Joint Conference is both appropriate and necessary. Moreover, State regulators play a critical role in the implementation of the UNE regime, with functions ranging from arbitrating the UNE provisions in interconnection agreements and establishing UNE prices, on the one hand, to the formal and informal adjudication of UNE disputes between ILECs and competitive carriers, on the other hand. The State regulators’ experiences and perspectives on the UNE regime will be invaluable to any effort to determine which UNEs satisfy the “impair” standard in Section 251(d)(2) of the Act. Convening a Joint Conference will permit the Commission and State regulators to act in a coordinated and cooperative fashion without unduly delaying the completion of the three-year UNE review. Given the intensively fact- and State-specific nature of the issues that will be addressed in the three-year UNE review, it would be useful for the Joint Conference to prepare its own recommendations and to facilitate the independent submission by State regulators of written statements to the FCC on these critical issues.

NARUC members will work hard to assure the JC process proceeds in an expeditious manner.

NARUC also agrees with Comptel’s common sense suggestion that during the three-year review of the federal minimum list of UNEs, parties seeking to modify existing rules and policies bear the burden of proof to show by a preponderance of the record evidence that the requested changes are justified. In the absence of such evidence, the FCC’s current rules and policies, including the mandatory UNE list, must be retained.

As always, if you have any questions about this or any other NARUC positions, please do not hesitate to contact any one of us or NARUC's General Counsel, Brad Ramsay at 202.898.2207.

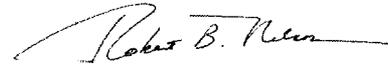
Respectfully Submitted,



Joan Smith, Chair
NARUC Communications Committee
Commissioner, Oregon Public Utility Commission



Thomas Dunleavy, Vice Chair
NARUC Communications Committee
Commissioner, New York Public Service Commission



Robert B. Nelson, Vice Chair
NARUC Communications Committee
Commissioner, Michigan Public Service Commission

cc: *Sam Feder, Legal Advisor*



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R E S O L U T I O N

Resolution Concerning The UNE Platform

WHEREAS, The vast majority of access lines in the United States - approximately 144 million out of 174 million total switched-lines - are provided to mass market residential and small business consumers of analog dial tone service, or "POTS"; *and*

WHEREAS, The 1996 Act provided for three separate methods of entry into local markets - CLEC-provided facilities, unbundled network elements and combinations thereof, and resale; *and*

WHEREAS, The Unbundled Network Element Platform, ("UNE-P") is a combination of unbundled network elements (loop, switching and transport) that entrants can use to provide consumers distinct local services not available via the resale method of entry; *and*

WHEREAS, The 1996 Act did not distinguish or prefer any one method of entry over any other method and recognizes that the construction of new, rival network facilities requires new entrants to incur substantial and risky fixed and sunk costs; *and*

WHEREAS, An environment in which all methods of competitive entry envisioned by the 1996 Act are possible would best and most rapidly provide significant public interest benefits for all types of consumers, including those mass market consumers who desire only access to analog POTS; *and*

WHEREAS, The decrease in the willingness of capital markets and manufacturers to finance the deployment of new and rival equipment, including switches, has led to greater reliance by new entrants on the "UNE-P" as a competitive entry strategy; *and*

WHEREAS, Many State commissions have embraced UNE-P as a means to expand customer choice for mass market, residential and small business consumers, by undertaking policies that ensure access to the UNE-P; *now therefore be it*

RESOLVED, That the National Association of Regulatory Utility Commissioners (NARUC) convened in its November 2001 113th Annual Convention in Philadelphia, Pennsylvania encourages State utility commissions to reassess their implementation of Section 251 of the 1996 Act to ensure that such implementation, including rates, terms and conditions available under interconnection agreements and State access regulations, does not favor one method of entry, at the expense of other methods of entry; *and be it further*

RESOLVED, That State commissions should support the implementation of universal availability of the UNE-P, on the basis that one form of entry should not be favored over another; *and be it further*



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RESOLVED, That State commissions should continue to take an active role in studying and ensuring that mass market, residential and small business consumers enjoy the benefits of the local competition promised to them by the 1996 Act, and that it is the interests of consumers, and not any particular industry participant or sector, that is of paramount concern to the public interest; *and be it further*

RESOLVED, That NARUC General Counsel be directed to provide the FCC comments consistent with this resolution.

Sponsored by the Committee on Telecommunications.

Recommended by the NARUC Board of Directors November 13, 2001.

Adopted in Convention November 14, 2001.