

regulating methods that remove barriers to infrastructure investment.”⁴⁴ In enacting its advanced services rules, the Commission has striven to do just that.

The Commission’s advanced services rules are designed to promote deployment of advanced services by promoting competition, that is, by making it harder for ILECs to use their market power to stifle competition. Thus, as noted in the most recent *Broadband Report*, in 2001 the Commission adopted revised collocation rules.⁴⁵ The revised rules were designed “to advance the statutory goals of promoting investment, competition, and technological innovation in all telecommunications markets, including advanced services, while protecting incumbent LEC property interests against unnecessary takings.”⁴⁶ The Commission found these rules to be necessary in August 2001, and they remain necessary today. Likewise, the goal of the Commission’s line sharing rules, also mentioned in the *Broadband Report* as an effort to promote investment through competition, was to encourage competitive delivery of DSL by allowing competitive LECs to provide DSL-based services over lines already served by ILECs for voice service.⁴⁷ These rules, promulgated in January 2001, were necessary then to promote competition, and remain necessary now.

Deregulation in the absence of rules designed to guard against ILEC market power will not result in increased competition. Rather, if the rules that the Commission so recently recognized were needed are removed, ILECs will be able to exercise unfettered market power against their competitors. Indeed, the Commission has repeatedly recognized that regulatory uncertainty itself harms competition. Proceedings such as this one, which question the importance of rules that have barely had an opportunity to take effect, serve only to divert resources of competitive carriers away from deploying networks and instead focus them on

⁴⁴ 47 USC §157 note (emphasis supplied).

⁴⁵ *Broadband Report* at ¶ 136.

⁴⁶ *Id.*

defending regulatory safeguards – safeguards which resulted from years of litigation before the Commission -- against continual assaults on their validity by the ILECs. In the *Competitive Carrier Proceeding*, the Commission waited until competition was firmly established from multiple providers before declaring AT&T non-dominant. In contrast, the current Commission has begun a series of rulemakings that call into question the very inputs, such as UNEs, that make competition possible for competitive carriers, at the very time that funding sources are drying up and many carriers are going out of business. If the Commission is serious about promoting broadband deployment by all carriers, instead of just helping the ILECs at the expense of everyone else, it should stick to enforcing its current rules and resist the ILECs' constant pleas to change the rules in the middle of the game.

2. SBC reneged on promises to provide out-of-region CLEC service.

As noted above, the list of RBOC failures to live up to promises to deploy competitive services is a long one. SBC has repeatedly refused to rollout its broadband service unless regulators allow it to do so in a way that excludes its competitors. As one state regulator remarked, SBC's unwillingness to deploy broadband service unless regulators meet SBC's terms shows SBC has a monopoly on this service.⁴⁸ That SBC delayed its rollout in the first place shows it has market power. If competition from CLECs existed – as it did prior to Covad, Northpoint, and Rhythms NetConnections having to retrench their operations⁴⁹ – SBC would be not only rolling out service, but lowering prices to meet its competition as well.

⁴⁷ See *Broadband Report* at 136.

⁴⁸ Shawn Young, Yochi J. Dreazen, Rebecca Blumenstein, "Familiar Ring: How Effort to Open Local Phone Markets Helped the Baby Bells, An Aggressive SBC Thrives Under New Regulations; A Trend to Oligopolies, Slowing Rollout of Broadband," *Wall Street Journal*, Feb. 11, 2002 at A14 (quoting Terry Harvill, head of the Illinois Commerce Commission, for SBC to "withhold DSL from that many people is really concrete evidence that you're dealing with a textbook monopolist.") (*Familiar Ring*) (attached hereto as *Exhibit 13*).

⁴⁹ NorthPoint Communications and Rhythms NetConnections have sold substantially all of their assets to AT&T and WorldCom, respectively, under Chapter 11 of the U.S.

Another case in point is SBC's broken promise to provide service as a CLEC outside its region in order to win approval for the SBC-Ameritech merger. As part of its campaign to gain Commission approval for the merger, SBC claimed it would aggressively compete in 30 markets in the heart of the other BOCs' territories. At the time of the SBC-Ameritech merger proceedings, the Commission's paramount goal was to foster local competition, much as the current Commission's main concern appears to be broadband deployment. At the same time it promised the world to regulators, SBC worked behind the scenes to ensure it would not have to deliver on its promise. The merger conditions SBC negotiated require it to serve only three homes in each of the new markets.⁵⁰ SBC's actions in competing as a CLEC in other BOCs' markets belies its words. Despite assurances it made to regulators that it intended to compete, SBC closed its office in Atlanta in 2001 only two weeks after it opened, and made similar retrenchments in Seattle and Tampa.⁵¹ SBC did not deliver on its promise then, and there is no reason to believe it will modify its behavior now.

In fact, none of the BOCs have ventured aggressively into other BOCs' markets to compete as CLECs. That this expansion has not occurred despite the absence of any law or regulation underscores the fact that regulation is not a deterrent to entry. Rather, these carriers will deploy broadband facilities only when faced with a competitive threat that forces them to defend their home turf.

Bankruptcy Code. See Amid Layoffs, NorthPoint Ordered to Keep Operating, Telecommunications Reports (Apr. 2, 2001); WorldCom Gets Bankruptcy Court Approval to Buy Most Assets of Rhythms NetConnections, TR Daily (Sept. 26, 2001). Covad has recently emerged from bankruptcy proceeding. Covad's Line Count, Last-Mile Telecom Report (Feb. 1, 2002).

⁵⁰ *Familiar Ring* at A14.

⁵¹ *Id.*

3. Left to their Own Devices, RBOCs Won't Aggressively Deploy Broadband Unless Faced with a Significant Competitive Threat.

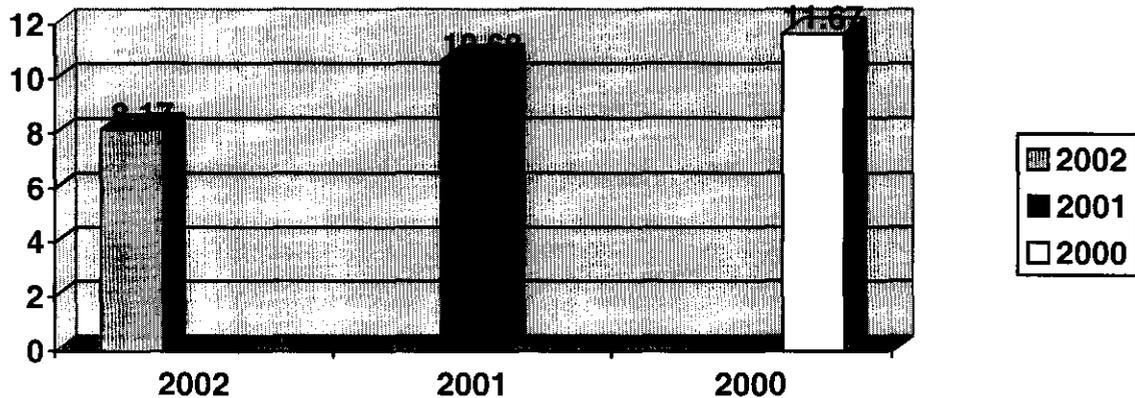
a. The BOCs have Substantially Decreased their Capital Expenditures in Response to Withdrawal of Competitive Threat.

As discussed above, the collapse of the BOCs' principal rivals have allowed the BOCs to decrease their capital expenditures significantly. Because there no longer is a viable threat to their business, the BOCs no longer feel compelled to deploy additional facilities. Indeed, the BOCs' target capital expenditures for 2002 have been dramatically reduced from the 2000 figures:

- BellSouth's target 2002 capital expenditure is \$2.19 billion less than its 2000 capital expenditure.
- Qwest's target 2002 capital expenditure is \$5.29 billion less than its 2000 capital expenditure.
- SBC Ameritech's target 2002 capital expenditure is \$3.9 billion less than its 2000 capital expenditure.
- Verizon's target 2002 capital expenditure is \$2.6 billion less than its 2000 capital expenditure.

In the aggregate, the BOCs' target capital expenditures for 2002 are \$14 billion less than their combined capital expenditures in 2000. The figure below shows the average capital expenditures of the four BOCs in 2000 and 2001, as well as their average targeted capital expenditures for 2002. The input shows a decreasing level of capital expenditures by the four BOCs.

AVERAGE CAPEX OF FOUR BOCS



b. Likewise, ILECs Retrenched when the Wireline Competitive Threat Disappeared.

Experience shows that the ILECs have deployed broadband facilities under existing rules when faced with competition. Experience also shows that, absent competition or regulatory compulsion, the ILECs did not—and likely will not—deploy them. Indeed, experience shows that the ILECs are so dominant in the provision of broadband services that not only can they withhold deployment of broadband facilities at their pleasure, they can also manipulate the prices for broadband services.

Barely two years ago, several data-centric competitive local exchange carriers—including Covad Communications, NorthPoint Communications, and Rhythms NetConnections—were aggressively targeting consumers with their DSL offerings. These publicly held companies spent several years building out their high-speed DSL networks. Sensing a competitive threat, the ILECs commenced an aggressive roll-out of DSL service, and began a massive direct marketing campaign to beat their competitors. In February 2000, SBC started a DSL “price war,” dropping

its residential DSL price from \$49.95 to \$39.95 per month and waiving its \$200 “startup fee.”⁵² Verizon followed and trimmed the prices for its most popular residential DSL service by about 20 percent in the former GTE territory. It followed through by slashing its residential DSL price from \$49.95 to \$39.95 in its Midwestern, Southeastern, and Western states, and significantly reducing the prices of DSL for small and midsized businesses by as much as \$30 per month.⁵³

A year later, having vanquished many of their competitors in the DSL market, the ILECs have raised their rates with impunity. SBC was first out of the chute, quietly boosting standard residential DSL packages that previously sold for \$40 to \$50.⁵⁴ Then came Verizon—it hiked its rates for residential DSL to \$49.95 from \$39.95.⁵⁵ Several days after, BellSouth raised its DSL rates and reduced the discounts it offered to some customers.⁵⁶ Following the lead of SBC, Verizon, and BellSouth, Qwest announced shortly thereafter that it, too, was raising its DSL rates.⁵⁷

This scenario is neither unfamiliar nor out-of-character, as history shows. When the ILECs perceive competition, they engage in aggressive roll-outs, including slashing their prices. When the competition is gone, they revert to the *status quo ante*, going back to their prior high rates. Significantly, the ILECs’ share of the DSL market has not shrunk despite their price increases. If the broadband market were as competitive as the ILECs claim, one would expect a

⁵² See, e.g., *PacBell Starts Price War to Secure Piece of DSL Market*, Business Journal (Feb. 18, 2001) (attached hereto as *Exhibit 14*).

⁵³ See, e.g., *Verizon Slashes DSL Prices in Some Areas*, CNET News.com (Sept. 5, 2000) (attached hereto as *Exhibit 15*).

⁵⁴ *Regional Bells Ringing Up Higher DSL Rates*, Interactive Week (Feb. 18, 2001) (attached hereto as *Exhibit 16*).

⁵⁵ *Verizon Joins Broadband Price Hike Parade*, PCWorld.com (May 2, 2001) (attached hereto as *Exhibit 17*).

⁵⁶ *BellSouth, Verizon to Raise DSL Rates*, Today’s News (May 7, 2001) (attached hereto as *Exhibit 18*).

⁵⁷ *Qwest to Raise DSL Rates*, Albuquerque Journal (July 17, 2001) (attached hereto as *Exhibit 19*).

price increase to be accompanied by a drop in market share.⁵⁸ Because the ILECs have been able to manipulate the prices for broadband services to their benefit, it is reasonable to conclude that the ILECs wield significant market power in the DSL market. Accordingly, the Commission cannot find that the ILECs are nondominant in the provision of broadband services.

Furthermore, the ILECs have been known to withhold deployment of essential facilities when it pleases them. SBC's Project Pronto is a case in point.

When announced in fall of 1999, Project Pronto's aim was to make DSL available to about 80 percent of SBC's customer base within three years. SBC's plan called for expenditures of \$6 billion to bring DSL service to its 77 million customers. In testimony before the Illinois Commerce Commission (the "Illinois Commission"), Rick Jacobs, an SBC witness, described the benefits of Project Pronto deployment as follows:

Broadband-focused service providers such as Covad, Rhythms, and Northpoint, as well as other more broad-focused CLECs that may choose to add broadband services to their offerings, will benefit from the network investments Ameritech Illinois is making in connection with Project Pronto. Of course, the ultimate beneficiaries of these capabilities are the retail customers who obtain data services (such as Internet access or business LAN connections) that include a broadband access component. With the deployment of additional fiber and Next Generation Digital Loop Carrier ("NGDLC") systems, all providers offering broadband services will be capable of provisioning those distance-limited broadband services to a wider range of locations and customers through their ability to use the Ameritech Illinois network on a non-discriminatory basis.⁵⁹

When the Illinois Commission required SBC to allow its competitors meaningful access to components of Project Pronto, SBC abandoned its commitment to deploy Project Pronto in Illinois, even though it had agreed to provide the service as part of its merger agreement with

⁵⁸ See, e.g., *Market Power and Price Increases in the DSL Market*, School of Information Management and Systems, University of California, Berkeley (July 2001) (attached hereto as *Exhibit 20*).

⁵⁹ Rebuttal Testimony of Rick Jacobs in ICC Docket No. 98-0252, at 6 (attached hereto as *Exhibit 21*).

Ameritech in 1999.⁶⁰ While this audacious display of arrogance shows that SBC will roll out broadband service when—and where—it wants to, it also underscores its dominance in the broadband market. As Terry S. Harvill, a commissioner on the Illinois Commission, wrote in a recent commentary:

As we all know, the competitiveness of a market easily can be measured by one player's ability to control the supply of a good. [SBC Chairman and CEO] Whitacre's statement is clear: SBC Ameritech controls the market so completely that it can determine if more than a million consumers in Illinois will have access to broadband services. If the market were competitive, SBC Ameritech would not be able to unilaterally halt the deployment of DSL infrastructure and deny Illinois customers advanced telephone services.⁶¹

Indeed, SBC's abandonment of Project Pronto in Illinois was a complete abdication of its deployment obligations and flies in the face of SBC's testimony in Illinois:

Project Pronto adds capacity to the network that is beneficial for consumers. The overall investment in the various components described in my earlier testimony helps "ensure a modern, high-quality network providing exceptional service to all of Ameritech Illinois' customers" by expanding the availability of high-demanded broadband services such as DSL to include additional consumers and businesses that cannot be reached today directly from certain central office ("CO") Digital Subscriber Line Access Multiplexers ("DSLAMS") over all-copper loops, and the Project Pronto architecture does so at the lowest possible cost. In addition, while the focus of Project Pronto is the deployment of Central Office Terminal and Remote Terminals that will extend the loop reach for current and future broadband services, the fiber transmission facilities that are being deployed will also satisfy the goals of the Merger Order by providing additional capacity (and free up existing copper capacity as customers that purchase broadband services are moved to the Pronto network) that can be used to support the growth of other non-data related retail services such as POTS.⁶²

This recent experience demonstrates that the ILECs' dominance in the broadband services market gives them unfettered rights to manipulate the prices for broadband services, as well as to make unilateral decisions to withhold facilities deployment – the classic hallmarks of a

⁶⁰ *Sorry, CLECs, but it's Over*, The Net Economy (June 4, 2001) (attached hereto as *Exhibit 22*).

⁶¹ *ICC Commissioner Blasts SBC*, Chicago Sun – Times (Apr. 23, 2001) (attached hereto as *Exhibit 23*).

⁶² Rebuttal Testimony of Rick Jacobs in ICC Docket No. 98-0252, at 5-6.

monopoly provider. It is this very ability to raise prices at will that has dampened the take rate of broadband, not the Commission's regulations.

According to a study by the Yankee Group, 57 percent of consumers expressed interest in broadband when price was not mentioned, but only 23 percent said they would purchase such a service if the price point were \$45.⁶³ Now that competition has departed, the BOCs have raised their prices above this threshold. Having had the audacity to raise prices, and thereby, dampen broadband demand, the BOCs are now using the lower demand that they created as an excuse for deregulation. The Commission's regulation must continue to recognize and protect consumers against the market power that enables ILECs to engage in these tactics. The growth and further deployment of broadband depends on it. Now is not the time to consider abandoning the Commission's existing rules that are designed to hold this dominance in check.

c. Twenty Years' History Shows ILECs Break Their Promises to Provide Innovative Services Unless Forced to Do So by Competitors.

Past experience demonstrates that BOCs break promises of infrastructure deployment just as easily as they make them. Without competitive and regulatory pressure, BOCs have been known to renege on their deployment promises.

Since the mid-1980s, the BOCs have promised massive deployment of advanced telecommunications capabilities. Ultimately, these promises were forgotten. The industry's Integrated Services Digital Network ("ISDN") experience is a notable example of the BOCs' unfilled promises. In the mid-1980s, the BOCs promised to promote and deploy ISDN, but the promised widespread deployment of ISDN service never materialized. Rather than encouraging

⁶³ Garry Betty, "Taking Broadband to the Next Stage," CBS MarketWatch.com, Feb. 20, 2002, at 1 (attached hereto as *Exhibit 24*).

its use, the BOCs made no effort to promote the use of ISDN. In fact, they actively discouraged their use by imposing high installation costs and time- and distance-sensitive pricing.

Even with some regulatory pressure, the BOCs have attempted in the past to escape from their obligations to deploy facilities. "Opportunity Indiana" is a case in point.

In 1994, the Indiana Utility Regulatory Commission (the "Indiana Commission") allowed Ameritech to operate under reduced regulation pursuant to a settlement agreement under which, among other things, Ameritech promised to make certain network investments in Indiana ("Opportunity Indiana"). Specifically, Opportunity Indiana required Ameritech to invest "\$20 million per year for each year 1994 through 1999 to provide digital switches and transport facilities, including, where appropriate, fiber optic facilities." Ameritech never did so even though it continued to receive the benefits of decreased regulation. In fact, despite its unconditional commitment, Ameritech acknowledged that it provided only \$15.6 million of the infrastructure investments required by Opportunity Indiana. The Indiana Commission ordered Ameritech to make the required infrastructure investments, which Ameritech challenged before the Court of Appeals of Indiana. The Court of Appeals ultimately found that Ameritech breached its promise:

It is clear from the language of the Opportunity Indiana settlement agreement that Ameritech undertook an unconditional commitment to make certain infrastructure investments that would be in effect for the six-year period of 1994 through 1999. Ameritech has not fulfilled that commitment."⁶⁴

Experience suggests that, unless competitive and regulatory pressure is exerted upon the BOCs, the BOCs will only deploy network facilities whenever it suits their needs. Moreover, the regulators, consumers, and competitive providers cannot rely on BOC representations and

⁶⁴ *Indiana Bell Telephone Co., Inc. v. Office of Utility Consumer Counselor*, 717 N.E.2d 613 (Ind. App. 1999) attached hereto as *Exhibit 25*).

promises of facilities deployment, even where the BOCs themselves had received a significant *quid pro quo* from the regulators.

V. **INTERMODAL COMPETITION IS INSUFFICIENT TO COUNTER ILEC DOMINANCE; COMPETITION FROM TERRESTRIAL WIRELESS, SATELLITE, AND CABLE BROADBAND PROVIDERS IS NON-EXISTENT IN THE SMALL-TO-MEDIUM-SIZED BUSINESS MARKET SERVICED BY THE JOINT COMMENTERS**⁶⁵

A. **Satellite, terrestrial wireless, and cable providers do not serve the small- to-medium-sized business market targeted by CLECs.**

Market deployment data indicate that terrestrial wireless, cable, and satellite providers principally provide service to residential customers. More specifically, in its *Broadband Report*, the Commission found that “most cable systems are currently deployed in primarily residential areas.”⁶⁶ With respect to terrestrial wireless, data reported by carriers indicate that an overwhelming number of wireless high-speed lines serve residential customers.⁶⁷ Finally, deployment data show that the provision of high-speed services over satellite technology is still in the early stages of deployment, and that these services are generally marketed to residential customers.⁶⁸

It is clear that, at the moment, terrestrial wireless, satellite, and cable providers do not compete against the ILECs and the Joint Commenters in the provision of broadband services to non-residential markets. Consequently, the absence of intermodal competition in the non-residential markets advises against relaxation of Commission oversight.

⁶⁵ This section of the comments responds to paragraphs 30-31 of the Commission’s NPRM.

⁶⁶ *Broadband Report*, at 44, ¶ 96.

⁶⁷ *Broadband Report*, at 49, ¶ 107.

⁶⁸ *Broadband Report*, at 52, ¶ 111.

For instance, the number of markets where cable and DSL providers are in direct competition with each other is relatively small.⁶⁹ Given the paucity of markets where intermodal providers overlap, reliance on intermodal competition will likely create a duopoly at best, and even that result is years away, given the nascent state of cable, terrestrial wireless, and satellite broadband competition. At worst, this reliance will result in a monopoly where no competing provider exists, and a duopoly where there exists only cable and ILEC-provided DSL. Monopoly is the worst possible result; duopoly, where the alternative is robust competition among multiple providers, is little better than monopoly. It is axiomatic that competition works best where multiple providers exists, and several works much better than merely two or three. The Commission must continue to enforce its existing rules implementing the Act, which contemplates *multiple* wireline providers.⁷⁰ Only then will the Commission fulfill the mandate of sections 251-252, and section 706 of the Act.

B. The Joint Commenter's Real World Experience Demonstrates That There is No Intermodal Competition in the Small-to-Medium-Sized Business Market

In NuVox's experience, intermodal competition does not exist in the small-to-medium sized business market to any significant degree. For broadband access, ILEC-provided DSL is NuVox's primary competitor. This is particularly true now that many DLECs, such as NorthPoint and RhythmsNet have exited the market. By making significant but smart investments in advanced switching equipment and collocations, NuVox and other CLECs with similar business plans are bringing broadband service at competitive prices to a segment of the market that is critical to the nation's economy. Although many carriers in the CLEC industry are

⁶⁹ Garry Betty, "Taking broadband to the next stage," CBS MarketWatch, <http://cbs.marketwatch.com/news>, visited Feb. 20, 2002 ("Although a lot of people would like to believe that cable and DSL are direct competitors, the number of markets where the two actually go head to head is relatively small. It's more likely that a consumer has a choice of one or the other or neither. Cable is only now starting to open up its infrastructure to alternative ISPs, and the local Bell companies have virtually no remaining competition.")

experiencing hard times, some will survive this shakeout, provided that the Commission does not fundamentally change the regulatory framework in a way that dismisses the promise of intramodal competitors such as the Joint Commenters.

VI. ILECS POSSESS THE INCENTIVE AND THE MARKET POWER TO HARM RIVALS, AND ARE USING THAT POWER TO DISADVANTAGE THEIR COMPETITORS⁷¹

In the Notice, the Commission asks whether, within each relevant product and geographic market, ILECs possess individual market power and are likely to be able to exercise that power. The Joint Commenters' experience demonstrates that ILECs possess such power and they routinely exercise it.

As detailed in the Notice, the Commission traditionally has recognized two ways by which a firm may exercise market power: 1) by restricting its own output, and 2) by increasing its rivals' costs or by restricting rivals' output through control of an essential input, such as access to bottleneck facilities needed to offer services. The facts demonstrate that both types of market power exist in the market for broadband. For instance, as shown above, SBC restricted its output when it refused to deploy Project Pronto in large parts of its region to exert pressure on, and win concessions from, regulators. The facts also show that ILECs exercised market power by attempting to raise their rivals' costs.

The Commission seeks comment on whether ILECs possess the incentive and the power to harm rivals by charging higher prices to rivals for essential inputs, providing rivals with poorer quality interconnection, by imposing unnecessary delays, or by discriminating against rivals inappropriately in other ways, such as by discriminating against them with regard to special access arrangements. As detailed below, ILECs have engaged in all of these tactics at NuVox's expense.

⁷⁰ See *Advanced Services Order*, 13 FCC Rcd at 24023.

For instance, NuVox's core product is a bundled voice/advanced services (Internet access) product offered primarily to small and medium-sized businesses. These businesses typically have between 5 and 20 voice lines. NuVox offers this service in 30 markets throughout the Southeast and Midwest. NuVox primarily serves second and third tier markets, but also serves some tier one markets such as Miami, Atlanta, and St. Louis.

NuVox provides service principally by combining some of its own facilities (digital circuit switches and ATM switches, and equipped collocations) with ILEC-provided loops and transport facilities. To provide its service, NuVox orders DS1 UNE loops from the ILEC to connect end-users to NuVox's collocation facilities, and then uses either ILEC or fiber-CLEC DS1s or DS3s to connect the collocation sites to NuVox's switching hub. To a lesser extent, NuVox also serves customers who are located in end-offices where NuVox does not have collocation arrangements. In those situations, NuVox orders combined loop/transport facilities from the ILEC to connect the end-user to a different central office where it does have a collocation arrangement, which in turn is connected to NuVox's switching platform via dedicated transport facilities. In most of NuVox's markets, it cannot obtain these loop/transport combinations directly as UNEs, and instead must first establish the circuits as special access and then convert to UNE combinations (otherwise known as Enhanced, Extended Loops, or EELs).

By combining ILEC loops and ILEC transport facilities with its own switching equipment, NuVox can offer combined voice and advance services to small/medium-sized business customers on a broad geographic basis within each of the markets it enters. Because its customers are not tied to fiber rings covering only the densest business districts of these cities, NuVox can offer service to businesses throughout these metro areas. As a result, NuVox can provide bundled voice and advanced services to a segment of the business market

⁷¹ This section responds to paragraphs 28 and 29 of the *NPRM*.

(small/medium) and to geographic portions of metropolitan areas that have historically been neglected by the ILECs.

The problem for carriers such as NuVox, however, is that the ILECs continue to maintain a monopoly position with respect to these loop and loop/transport combination facilities that NuVox and other competitive broadband providers use to provide their service. And they have exercised this power to the detriment of NuVox and other CLECs. The following contains some significant examples of ways ILECs have exercised their market power over these inputs to NuVox's detriment:

- ◆ **Improper Discrimination and Imposition of Unnecessary Delays.** In February, 2001 when NuVox began discussions with Ameritech regarding converting in-place special access circuits to EELs under the Commission's "safe harbor" criteria, NuVox found that Ameritech had not established an internal ordering processes to accept conversion orders. It took nearly a month and substantial time and effort on NuVox's part before Ameritech put these processes in place. Ameritech's process required NuVox to submit access service requests ("ASRs"). Ameritech finally gave NuVox the go ahead to begin submitting ASRs in March, and NuVox did so consistent with Ameritech's instructions. Yet, even though this conversion process did not require any physical disconnection, reconnection or rearrangement of facilities, as explained below, during several weeks in April and May of 2001, many of NuVox's customers were inexplicably disconnected from service during this process.

- ◆ **Unexplained Disconnection of Customers, Four Separate Outages Involving 70 Business Customers in Two States.** Once the circuits were provisioned, several unexplained disconnections occurred. Over several weeks in April-May, 2001, NuVox experienced three separate outage occurrences in which Ameritech disconnected a cumulative total of 50 NuVox Ohio business customers during the conversion process. This process does not involve any physical disconnection/reconnection or rearrangement of facilities, nor was any requested by NuVox. Rather, the conversions required only a billing/records change in order to change the status of certain special access facilities to UNEs. After each incident, NuVox was assured that the Ameritech administrative problem that resulted in the disconnections had been fixed. Nonetheless, the disconnections continued to occur. After the third incident, NuVox was forced to put on hold processing of further EEL conversions until it could receive further assurances from Ameritech that it truly had fixed the problem. It was not until August, 2001 that NuVox restarted the submission of conversion orders. NuVox experienced a fourth outage incident in September, 2001, affecting about 20 NuVox business customers in Indianapolis. These ILEC-caused outages affected how NuVox's customers perceived the reliability of its service.

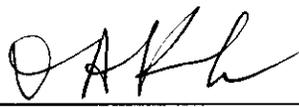
ILEC bad acts have effectively blocked CLEC/DLEC DSL service. As a result, DS1-based CLEC broadband (bundled voice/data) is, in fact, the primary vehicle that is offering small/medium-sized business customers a choice of broadband providers and is putting pressure on ILECs to roll out advance services and compete on price. Within the last few weeks, NuVox grandfathered its DSL service to existing customers at existing locations to focus exclusively on

its DS-1 serving strategy. The reason is because ILEC anticompetitive practices, such as Project Pronto, which effectively blocks competitors from providing their own broadband over DSL where Project Pronto is in place, and other ILEC tactics, such as providing incorrect line conditioning information, have made it difficult for competitors to deploy DSL. These ILEC tactics show that they possess market power and should not be declared nondominant.

VII. CONCLUSION

For the reasons discussed above, Cbeyond and NuVox urge the Commission to enforce rigorously its existing rules to enable competitive carriers to build on the start they have made and allow broadband competition to flourish.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Alice R. Burruss, hereby certify that on this 1st day of March, 2002, I served copies of Joint Comments of Cbeyond Communications and NuVox Communications in CC Docket No. 01-337 by hand delivery on the following:

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