

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers)	CC Docket No. 01-338
)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996)	CC Docket No. 96-98
)	

**COMMENTS OF THE CELLULAR TELECOMMUNICATIONS & INTERNET
ASSOCIATION**

The Cellular Telecommunications & Internet Association (“CTIA”)¹ hereby submits its Comments in response to the Commission’s *Notice of Proposed Rulemaking* (“*Triennial Review NPRM*”) to review the unbundling obligations of incumbent Local Exchange Carriers (“LEC”) pursuant to Section 251 of the Telecommunications Act of 1996 (“Telecom Act” or “Act”).²

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² See *Comments Sought on Commission’s Triennial Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Public Notice (rel. Jan. 15, 2002) (“Public Notice”).

I. INTRODUCTION

The Commission's *Triennial Review NPRM* seeks comment on its policies on unbundled network elements ("UNE") and whether its regulations "implement the provisions of the 1996 Act in order to achieve its goals of bringing the benefits of competition and expanding broadband availability to consumers."³ Section 251(c)(3) requires incumbent LECs to provide nondiscriminatory access to network elements on an unbundled basis to "any requesting telecommunications carrier for the provision of a telecommunications service." The Commission has found that CMRS carriers are "requesting telecommunications carriers" who provide "telecommunications service," and thus CMRS providers are "entitled to the benefits" of Section 251(c).⁴

As the Commission acknowledges, the Communications Act requires it to implement a competition policy that provides incentives for the deployment of advanced telecommunications capability without regard to transmission technology.⁵ For intermodal competition to fully develop, CMRS providers are entitled to obtain reasonable and timely service from incumbent LECs, and more importantly, they are entitled to convert interoffice special access transmission facilities to unbundled dedicated transport. Furthermore, CMRS providers should be able to obtain Section 251(c)(3) dedicated transport to CMRS base stations.

³ See *Triennial Review NPRM* at ¶4.

⁴ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No 96-98, *First Report and Order*, 11 FCC Rcd 15499, at 15989-16016, ¶¶ 993, 1012, 1041 ("*Local Competition Order*").

⁵ See *Triennial Review NPRM* at ¶27.

The Commission also has initiated a related proceeding on performance measurements and standards for evaluating incumbent LEC performance in the provisioning of UNEs and interconnection facilities.⁶ In the *Performance Measurements* proceeding, CLECs, state commissions, and wireless service providers unanimously urged the Commission to ensure that *all* competitive carriers have access to necessary high quality transport facilities on a timely basis and at cost-based rates.⁷ Nothing less will deliver the benefits of a truly competitive market for telecommunications services.

II. CMRS PROVIDERS ARE ENTITLED TO NONDISCRIMINATORY ACCESS TO UNE ELEMENTS

Section 251(c)(3) requires incumbent LECs to provide nondiscriminatory access to network elements on an unbundled basis to “any requesting telecommunications carrier for the provision of a telecommunications service.” The Commission has found that CMRS carriers are “requesting telecommunications carriers” who provide “telecommunications service,” and thus CMRS providers are entitled to the same access to unbundled incumbent LEC facilities as other telecommunications carriers, and the

⁶ *In the Matter of Performance Measurements and Standards for Interstate Special Access Services, et al.*, CC Docket No. 01-321, *Notice of Proposed Rulemaking*, FCC 01-339 (rel. Nov. 19, 2001) (“*Notice*”).

⁷ *See* Comments of AT&T Wireless 2-3, 8 (stating that the provision of interconnection trunks and collocation to CMRS providers should be subject to the same performance metrics available to CLECs and that such policies that promote nondiscriminatory interconnection will continue to spur the development of competition). *See e.g.*, Comments of Competitive Telecommunications Association at 10 (urging the Commission to adopt performance measures and standards to “encourage the more rapid introduction of local service competition in a greater number of markets, thereby making the benefits of competition more widely available to U.S. consumers.”); Comments of the California Public Utilities Commission at 6 (incumbent LECs “are the carriers with bottleneck control of essential facilities and services necessary for competitors to access on a nondiscriminatory basis if truly competitive markets are to develop”).

statutory obligation of incumbent LECs to unbundle their networks extends to CMRS providers.⁸

A. DENYING CMRS PROVIDERS ACCESS TO UNES WILL IMPAIR THE DEVELOPMENT OF INTERMODAL COMPETITION

In its triennial review of the UNE rules and regulations, the Commission has sought comment on a “service-specific” approach for purposes of the Section 251 unbundling analysis and asks whether such an approach will “stifle innovation and creativity as carriers decline to expand the services they offer for fear of losing access to UNEs.”⁹ Neither the technology deployed by a particular telecommunications carrier, nor the telecommunications service being offered, should affect a carrier’s right to obtain UNEs. CTIA supports the Commission’s efforts to promote intermodal competition. The Commission should continue to base the applicability of Section 251 on the regulatory classification of the carrier rather than the particular services offered over the network.¹⁰

Section 251(c)(3) is clear. It requires ILECs “to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, *nondiscriminatory access* to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and

⁸ In the *Local Competition Order*, the Commission determined that the services offered by CMRS providers falls within the statutory definition of “telephone exchange service.” See n.4, *supra*.

⁹ *Triennial Review NPRM* at ¶36. The Commission also seeks comment on whether it should limit the availability of UNEs to services that already enjoy unbundled elements. See *id.* at ¶38.

¹⁰ The 1996 Act considers CMRS providers to be telecommunications carriers. See 47 U.S.C. §153(44), (49).

nondiscriminatory.”¹¹ Not only does the statute fail to exempt wireless carriers from the benefits of the Section 251 obligations, to the contrary, it clearly states that incumbent LECs have a duty to provide unbundled access to network elements “on a non-discriminatory basis” to “any” requesting telecommunications carrier. Creating exceptions to the Section 251 unbundling obligations on a service-specific basis would exclude a class of telecommunications carriers, including CMRS providers, from the statutory protections intended to foster competition.

B. MARKETPLACE CONDITIONS CONTINUE TO JUSTIFY THE APPLICABILITY OF THE COMMISSION’S UNBUNDLING RULES TO CMRS PROVIDERS

In the six years that have passed since the Telecommunications Act of 1996 was signed into law, there have been promising competitive developments in the telecommunications market, including the emergence of CMRS carriers as intermodal competitors to incumbent LEC providers of telecommunications services. But even with these promising developments, the fact remains that the provision of local telecommunications services continues to be largely dominated by the incumbent LECs.

In 1999, the Commission concluded that its UNE rules and regulations would continue to promote facilities-based competition.¹² Three years later, as wireless service providers are just emerging as intermodal competitors, CMRS carriers still need access to unbundled network elements of incumbent LECs because they have no alternatives to the special access facilities that the incumbent LECs have refused to provide on an

¹¹ 47 U.S.C. §251(c)(3) (*emphasis added*).

unbundled basis to wireless carriers.¹³ The widespread failure of CLEC entry, including the loss of three hundred million dollars in revenue during the last quarter of 2001,¹⁴ further reduces the availability of competitive alternatives for CMRS providers who must purchase special access from ILECs. According to the Commission's most recent data, CLECs account for only three percent of total access lines.¹⁵

While the incumbent LECs allege that changed circumstances warrant the elimination of high-capacity loops and dedicated transport from the Commission's list of UNEs,¹⁶ the Commission previously has determined that the availability of special access

¹² See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd 3696 (1999) (“UNE Remand Order”), ¶151.

¹³ See VoiceStream and AT&T Wireless Petition for Declaratory Ruling, CC Docket No. 96-98 (Nov. 19, 2001), Exhibit 1, 2 (“Voice Stream and AT&T Wireless Petition”) (documenting numerous, unsuccessful requests for the conversion of special access facilities to UNEs since the beginning of 2000).

¹⁴ See Telecommunications Industry Revenues: 2000, Industry Analysis Division, Common Carrier Bureau (rel. Jan. 2002), available at <http://www.fcc.gov.ccb/stats>, at Table 13, 14 (Second Quarter 2001 CLEC revenue was \$1,047 million, Third Quarter 2001, CLEC revenue dropped to \$746 million).

¹⁵ In its February 2002 *Local Telephone Competition Report*, the Commission reported that CLECs provided service for nine percent (17.3 million out of 192 million lines nationwide) of the switched access lines in service at the end of June 30, 2001. However, only 33.4 percent of CLECs owned their access lines as of June 2001, declined from December of 2001 (35.1 percent). See *Local Telephone Competition Report: Status as of June 20, 2001*, Industry Analysis Division, Common Carrier Bureau (rel. Feb. 2002), available at <http://www.fcc.gov.ccb/stats>, (“Competition Report”), at Table 3, 7.

¹⁶ See Joint Petition of BellSouth, SBC, and the Verizon Companies or Elimination of Mandatory Unbundling of High-Capacity Loops and Dedicated Transport, CC Docket No. 96-98 (April 5, 2001) (“Joint Petition”) (petitioning the Commission to eliminate UNEs from the national list and change the impairment test to a rebuttable presumption of no impairment), incorporated into the *Triennial Review NPRM* at ¶12.

services from incumbent LECs does not amount to an alternative for purposes of satisfying the Commission's impairment analysis.¹⁷ Failure to maintain the unbundling rights of CMRS providers will adversely affect competition in the retail market and impair the ability of wireless carriers to compete with ILEC services.

The Commission's *Triennial Review NPRM* seeks comment on whether CMRS providers have fewer transport alternatives than other requesting carriers.¹⁸ CMRS providers continue to obtain nearly all of their special access facilities through tariffed incumbent LEC services. AT&T Wireless reports that over ninety percent of its transport costs go to paying incumbent LECs for special access or private line facilities;¹⁹ while VoiceStream reports that it obtains approximately ninety-six percent of its high capacity special access circuits from incumbent LECs.²⁰

III. INTEROFFICE TRANSPORT TO A CMRS BASE STATION SHOULD QUALIFY AS UNBUNDLED DEDICATED TRANSPORT

In response to the petition filed by AT&T Wireless and VoiceStream asking the Commission to confirm the right of CMRS carriers to purchase unbundled dedicated transport facilities, the Commission seeks comment on whether it should modify its definition of dedicated interoffice transport to include facilities requested by CMRS carriers.²¹ While the Commission's rules do not expressly include CMRS components of

¹⁷ See *UNE Remand Order* at ¶70.

¹⁸ See *Triennial Review NPRM* at ¶62.

¹⁹ VoiceStream and AT&T Wireless Petition for Declaratory Ruling, CC Docket No. 96-98 (Nov. 19, 2001), at 7.

²⁰ *Id.*

²¹ *Triennial Review NPRM* at ¶61 (pg. 30).

the unbundled switching that must be made available to requesting carriers for purposes of defining dedicated transport,²² the unbundling rules do require incumbent LECs to unbundled dedicated transport for transmission facilities “that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.”²³ Notwithstanding the unambiguous unbundling obligation imposed on incumbent LECs, some ILECs have refused to unbundle their networks, claiming that the transport from CMRS base stations to MSCs does not fall within the definition of a switch or a wire center.²⁴ By refusing to unbundle the transport between the MSC and the base station, incumbent LECs have forced CMRS providers to purchase dedicated transport as tariffed special access.

AT&T Wireless and Voicestream explain in great detail why the functionality of the base station (*i.e.*, the CMRS cell site) is equivalent to a switch or wire center.²⁵ CTIA agrees that the transport between the LEC wire center and the CMRS base station should qualify as unbundled dedicated transport since the CMRS base station performs the

²² While it is not disputed that the transport that CMRS providers purchase from incumbent LECs qualifies as dedicated transport; disputes have arisen between CMRS providers and incumbent LECs regarding the transport between the base station and the incumbent LEC wire center.

²³ *Id.* at ¶60 (citing 47 C.F.R. §51.319(d)(1)(i)).

²⁴ *See* AT&T Wireless & VoiceStream Petition for Declaratory Ruling at 19.

²⁵ *See* AT&T Wireless & VoiceStream Petition for Declaratory Ruling at 14-26. *See id.* at 20 (explaining that CMRS base stations perform many but not all of the functions necessary to switch calls between cell sites: transmit signaling information to the MSC and monitor the quality and strength of the call to hand off calls from one cell site to another).

functions that are the equivalent of a wireline end office – for example, both wireline end offices and CMRS base stations are the first point of concentration of customer traffic, both provide call termination and origination, and both connect “lines to lines [or] lines to trunks.”²⁶ Indeed, the trend in wireless network design is to migrate additional processing functions to the base station. While wireless networks differ from wireline carrier networks, this was true in 1996 when Congress enacted Section 251 and chose to include CMRS carriers in the definition of “telecommunications carriers” who are entitled to nondiscriminatory access to network elements on an unbundled basis. The Commission already has rejected these arguments in the context of paging networks,²⁷ and it should take this opportunity to clarify that all CMRS carriers are entitled to purchase these transport facilities on an unbundled basis.

IV. CONCLUSION

For these reasons, CTIA respectfully requests that the Commission affirm the rights of CMRS providers to obtain nondiscriminatory access to unbundled network elements and confirm that the unbundling obligations of incumbent LECs extend to the transport facilities used to connect CMRS base stations to a wireless carrier’s MSC.

²⁶ See AT&T Wireless & VoiceStream Petition for Declaratory Ruling at 22 (citing Section 51.319c(1)(iii)(A) of the Commission’s rules).

²⁷ TSR Wireless, LLC v. U.S. West Comm., Inc., FCC 00-194, Memorandum Opinion and Order, 15 FCC Rcd 11166 (2000).

Respectfully submitted,

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