BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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| In the Matter of | ) | |
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| Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers | ) ) | CC Docket No. 01-338 |
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| Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 | ) ) ) | CC Docket No. 96-98 |
| | ) | |
| Deployment of Wireline Services Offering Advanced Telecommunications Capability | ) ) | CC Docket No. 98-147 |

**COMMENTS OF THE**
**OKLAHOMA CORPORATION COMMISSION**
**REGARDING UNBUNDLED NETWORK ELEMENTS (UNEs)**

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## I. INTRODUCTION

Pursuant to the Notice of Proposed Rulemaking (NPRM) released December 20, 2001, in the above-captioned proceeding, the Oklahoma Corporation Commission ("OCC") respectfully submits comments. In the NPRM, the Federal Communications Commission ("FCC" or "Commission"), *inter alia*, seeks comment on whether or not to establish national standards that the states would apply to incumbent local exchange carriers' ("ILECs) networks.

Of utmost important from the OCC's vantage point, is the FCC's request for comment on the proper role of the state commissions in the creation, removal and implementation of unbundling requirements for ILECs. The OCC applauds and supports the FCC's efforts in initiating the first triennial review of the Commission's policies on UNEs. Specifically, the OCC supports the establishment of a minimum set of national standards and the preservation of state commissions' ability to establish and enforce adequate unbundling rules or standards in their respective states.

## II. DISCUSSION

### A. The role of state commissions.

Prior to the passage of the Telecommunications Act of 1996 ("Act"), monopolists ruled the telecommunications industry. In February 1996, the Act was passed to require all states to allow competition as well as mandate unbundling agreements nationwide. It has been six (6) years since the passage of the Act; and the role of the OCC during the transition period has been to facilitate intrastate wireline local exchange service competition by creating the conditions necessary for competitive local exchange carriers ("CLECs") to compete equitably with the incumbent local exchange carriers ("ILECs"). While adhering to the national policy framework established by Congress and the FCC, the OCC has played a major role in creating an even playing field for competition.

The OCC, pursuant to Art. 9, §18 of the Constitution of the State of Oklahoma, is vested with the obligation and responsibility to oversee and regulate all telecommunications carriers who operate within the State of Oklahoma. The Telecommunications Act of 1996, 47 U.S.C. §253(a), established that "no state or local statute or regulation, or other state or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or

intrastate telecommunications service." States retain the authority, pursuant to §253(b), "to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumer." In keeping with the authority granted to state commissions and the Constitutional responsibilities with which it is charged, the OCC has adopted rules to satisfy and fulfill its obligation.

47 U.S.C. §251(d)(3) permits state commissions to enforce any regulation, order, or policy that establishes access and interconnection obligations of local exchange carriers, so long as the State's actions are consistent with implementation of the Act and do not substantially prevent the requirements and purposes of implementing the act.[1] The FCC, in the UNE Remand Order, interpreted §251(d)(3) to grant authority to state commissions to impose additional obligations upon incumbent LECs so long as they met the requirements of §251 and national policy framework of that order.[2] The OCC asserts that state commissions are more familiar than the FCC with the characteristics of markets and incumbent carriers within their jurisdictions. Therefore, the OCC should be limited in its actions by only a de minimus standard in creating, removing and implementing unbundling requirements, consistent with applicable limitations on delegation of authority to the states. So long as the minimum federal requirements developed by the FCC concerning creating, removing and implementing unbundling requirements are met, the state should have complete autonomy to establish additional requirements, subject only to review by the FCC and the courts. The OCC supports establishment of specific minimum national standards by the FCC, which each state must apply to its incumbent's networks. Additionally, the OCC asserts that states should not have the authority to de-list an element at the state level that has not been de-listed at the federal level.

The FCC further requested comments as to the development of federal unbundling standards and their application to UNE elements and state role. The OCC also supports the development of a minimum set of unbundling standards. The FCC's reliance on performance standards established in the *UNE Measurements and Standards Notice and Special Access Measurements and Standards Notice* seems appropriate. However, OCC reiterates these standards should be the minimum requirements of the state's incumbent LECs, and therefore,

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[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C.§§251 *et seq*; *see* 47 U.S.C. §251(d)(3). We refer to the Communications Act of 1934, as amended, as the Act.

[2] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*UNE Remand Order*).

should not be the sole basis of de-listing a particular element for the state if the state has implemented a higher standard. On the other hand, if the states standard is substantially the same or less burdensome, then it would not be objectionable to OCC to de-list the element, at the federal level, predicated upon a finding by the FCC that the incumbent LEC has consistently met the standard set forth for a particular UNE. However, the de-listing at the federal level should not automatically de-list at the state level. Rather, the effect of the federal de-listing should be to provide strong evidence supporting de-listing of the element at the state level. Again, states are in a better position to consider the unique characteristics of markets and incumbent carriers within their jurisdiction. Conversely, states should not have the authority to de-list a requirement at the state level that has not been de-listed at the federal level.

### B. Federal-State Joint Conference

In order to foster and/or promote the purposes of the Act, the OCC supports the proposal to convene, no more often than every three years, a Federal-State Joint Conference on UNEs to inform and coordinate the FCC's review. The Federal-State Joint Conference would provide a forum and an opportunity for the FCC and the state commissions to harmonize their efforts regarding UNEs. The three-year period allows adequate time to identify and assess items that should become additional UNEs, and to address problems that arise from items previously identified as UNEs.

## III. CONCLUSION

The OCC applauds the FCC's efforts in initiating the first triennial review of the Commission's policies on UNEs, and urges the FCC to focus its efforts on developing well-defined, measurable national standards. However, since state commissions have played a leadership role in addressing the requirements and needs that are unique to their respective states, the FCC must preserve the autonomy of state commissions to establish additional elements and enforce adequate unbundling rules or standards in their respective states.