Before the
Federal Communications Commission
Washington, DC 20554

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

Comments of the State Corporation Commission of the State of Kansas

In the Notice of Proposed Rulemaking (NPRM), issued in this docket on December 20, 2001, the Federal Communications Commission (FCC) initiated its first triennial review of its policies on unbundled network elements (UNEs). The FCC undertakes a comprehensive evaluation of its unbundling rules by considering the circumstances under which incumbent local exchange carriers (LECs) must make their network available to requesting carriers on an unbundled basis under 47 U.S.C. §§ 251(c)(3) and 251(d)(2).[1]

I. Questions Posed in the NPRM

The NPRM raises numerous questions about the unbundling of network elements. The FCC seeks input on how to apply the "necessary" and "impair" standards of 47

[1] *In the Matter of Review of the Section 215 Unbudling obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *Implementation of Local Competition provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications*

U.S.C. § 251(d)(2).[2] In prior orders, the FCC set forth definitions of network elements and then determined whether requesting carriers were impaired; in the NPRM, the FCC questions whether instead it should define the impairment and then define the network elements that address that impairment.[3]

In the UNE Remand Order the FCC interpreted the impair standard to require a consideration of whether alternative elements are available outside the incumbent's network, through self-provisioning or a third-party provider, and whether lack of access to the elements will, as a practical, economic, and operational matter, preclude the requesting carrier from providing services it seeks to offer. In making this decision, factors that must be considered include cost, timeliness, quality, ubiquity, and operational issues.[4] The FCC identified five additional factors that further the goals of the Act, including the rapid introduction of competition in all markets; promotion of facilities-based competition, investment, and innovation; reduced regulation; market certainty; and administrative practicality.[5]

In this proceeding, the FCC questions whether more or less weight should be assigned to the five factors that define the impair standard or to the five additional factors that further the goals of the Act.[6] Also, the FCC states that it will focus on the facilities used to provide broadband services and explore the role wireless and cable companies

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Capability, CC Docket No. 98-147, Notice of Proposed Rulemaking, released December 20, 2001 (NPRM), ¶ 1.
[2] NPRM, ¶ 19.
[3] NPRM, ¶ 20.
[4] *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, released November 5, 1999 (UNE Remand Order), ¶¶107-16.
[5] UNE Remand Order, ¶ 21.
[6] NPRM, ¶ 19, 21.

will play in the broadband and telephony markets.[7] The FCC questions whether it should adopt "a more sophisticated, refined unbundling analysis."[8] It seeks comments on 1) applying the unbundling analysis to specific services and to specific geographic locations; 2) applying the unbundling analysis to different facilities; and 3) crafting unbundling rules that take into account customer and business consideration.[9]

II. Comments of the Kansas Corporation Commission

In these comments, the State Corporation Commission of the State of Kansas (Kansas Corporation Commission or KCC) is particularly interested in addressing the FCC's request for comment "on the proper roles of state commissions in the implementation of unbundling requirements for incumbent LECs." The Kansas Corporation Commission is concerned about the limited participation of the competitive LECs in the local market of this state and believes its continuing involvement in carrying out the Telecommunications Act of 1996 is critical to development of a competitive market.

The incumbent LEC for most of Kansas is Southwestern Bell Telephone Company (SWBT), which is the operating company for SBC Communications, Inc. (SBC). SWBT and SBC gained approval from the FCC to begin offering long distance service in Kansas, pursuant to 47 U.S.C. § 271, on March 7, 2001.[10] Since then competition in Kansas has been slow to develop, particularly for residential customers, although the KCC recognizes this is due in part to the overall downturn in the economy,

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[7] NPRM, ¶ 3.
[8] NPRM, ¶ 34.
[9] NPRM, ¶ 35.
[10] *In the Matter of Joint Application by SBC Communications Inc., southwestern Bell Telephone company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision*

particularly in the telecommunications industry. One important tool the KCC has available in promoting competition is its ability to establish access obligations under 47 U.S.C. § 251(d)(3). The KCC urges the FCC not to restrict the ability of state commissions to designate additional UNEs based upon the competitive environment present in the local market.

Currently the KCC is actively involved in using the factors identified by the FCC in its efforts to determine whether new UNEs should be designated in Kansas relating to provisioning of Digital Subscriber Line (DSL) services.[11] Soon this Commission will issue an order in a generic docket that will address the availability of DSL services throughout the state. In deciding this docket, the Kansas Corporation Commission will apply those factors the FCC required be considered to determine whether particular equipment or functions are network elements that must be unbundled. The KCC urges the FCC to further define how these factors should be applied. However, the KCC also urges the FCC to allow the state decision-maker to balance these factors, rather than assign weights to individual factors.

Through balancing, the decision-maker can apply those factors that are most appropriate to the circumstances before it. For example, Kansas is a predominantly rural state. Geographic distance is a constant consideration when evaluating the deployment of telecommunications services in this state. The KCC must always be mindful of the state's geography regardless of whether the particular factor being considered is cost, timeliness, quality, ubiquity, operational issues, rapid introduction of competition,

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of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, released January 22, 2001, ¶ 288.

promotion of facilities-based competition, reduction of regulation, market certainty, or administrative practicality. Geographic distance presents problems and challenges not prevalent in a highly condensed metropolitan area. Furthermore, even the metropolitan areas of Kansas do not have highly condensed populations. Instead of utilizing FCC-weighted factors, the decision-maker in a particular telecommunications market should have flexibility to balance all the factors identified by the FCC. Using its experience and knowledge, the KCC will appropriately weigh the relevant factors in reaching its decision.

III. Conclusion

The Kansas Corporation Commission applauds the FCC for undertaking this analysis. The KCC urges the FCC to collaborate fully with state regulatory agencies in evaluating and addressing the questions set forth in its NPRM. This collaboration is mandated by Congress and will benefit from the experience of regulators at the state and federal levels. Both state and federal regulators will be active participants in promoting local competition and in encouraging further deployment of advances services. Federal and state cooperation is necessary to be sure that all end users fully participate in and benefit from competition.

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[11] *In the Matter of the General Investigation to Determine Conditions, Terms and Rates for Digital Subscriber Line Unbundled Network Elements, Loop Conditions, and Line Sharing*, Docket No. 01-GIMT-032-GIT, Order 1: Opening Docket, Establishing procedural Schedule and Assessing Costs (Order 1).

Respectfully Submitted,

Kansas Corporation Commission
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April 5, 2002

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CERTIFICATE OF SERVICE

I, Bret Lawson, hereby certify that a true and correct copy of the foregoing was sent electronically or by United States Mail, on this **5th** day of April 2002, to the following:

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