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June 11, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Ex Parte: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers – CC Docket No. 01-338

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 - CC Docket No. 96-98

Deployment of Wireline Services Offering Advanced Telecommunications Capability – CC Docket No. 98-147

Dear Ms. Dortch:

On June 10, 2002, Don Evans of Verizon provided the attached document to Dorothy Attwood and Michelle Carey of the Wireline Competition Bureau. The attachment outlines the reasons why the terms of the *Supplemental Order Clarification* (15 FCC Rcd 9587(2000)) and its reasoning make clear that the limitation on ILEC's obligation to provide loop/transport combinations applies to new combinations as well.

Pursuant to Section 1.1206(a)(1) of the Commission's rules, an original and one copy of this letter are being submitted to the Office of the Secretary. Please associate this notification with the record in the proceedings indicated above. If you have any questions regarding this matter, please call me at (202) 515-2530.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. Scott Randolph".

W. Scott Randolph

Attachment

cc: Dorothy Attwood
Michelle Carey

Restrictions on Special Access Bypass Apply to New Combinations

In the *Supplemental Order Clarification*,¹ the Commission confirmed its determination that ILECs are not required to provide combinations of unbundled loops and dedicated interoffice transport unless the requesting carrier uses those elements to provide a substantial amount of local-exchange service. See 15 FCC Rcd at 9591-92, ¶ 7. To date, the principal application of the *Supplemental Order Clarification* necessarily has been to conversion of existing special access circuits, because ILECs have been under no obligation to provide new combinations under existing law.² Nonetheless, both the terms of the *Supplemental Order Clarification* and its reasoning make clear that the limitation on ILECs' obligation to provide loop/transport combinations applies to new combinations as well.

- The *Supplemental Order Clarification* by its terms squarely applies to use of all loop/transport combinations – not just existing combinations – to provide special access service.
 - “[A]llowing requesting carriers to use loop-transport combinations solely to provide exchange access service to a customer, without providing local exchange service, could have significant policy ramifications.” *Supplemental Order Clarification*, 15 FCC Rcd at 9588, ¶ 2.
 - “[P]ermitting the use of combinations of unbundled network elements in lieu of special access services could cause substantial market dislocations and would threaten an important source of funding for universal service.” *Id.*, 15 FCC Rcd at 9592, ¶ 7.
 - “IXCs may not substitute an incumbent LEC’s unbundled loop-transport combinations for special access services unless they provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer.” *Id.* ¶ 8.
- The Commission correctly concluded that the “exchange access market occupies a different legal category from the market for telephone exchange service,” and that the Commission had not determined that the “impair” standard of section 252(d)(2) was satisfied with respect to provision of UNE combinations “solely or primarily for use in the exchange access market.” *Id.*, 15 FCC Rcd at 9594-95, ¶ 14.
 - On the record before it, the Commission was unpersuaded that denial of access to UNE combinations for the provision of access would “impair” carriers’ ability to provide special-access services. *Id.* at 9596, ¶ 16.

¹ Supplemental Order Clarification, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 15 FCC Rcd 9587 (2000).

² The Supreme Court’s recently reinstated the Commission’s “new combinations” rules. See *Verizon Communications Inc. v. FCC*, 122 S. Ct. 1646 (2002).

- The Commission correctly concluded that it had to complete its “impair” analysis *before* requiring access to loop/transport combinations to provide special access. *See id.* (“[W]e must gather evidence on the development of the marketplace for exchange access . . . *before* we can determine the extent to which denial of access to network elements would impair a carrier’s ability to provide special access services.”) (emphasis added).
- The Commission’s conclusions jibe with the D.C. Circuit’s statutory analysis in *United States Telecom Association v. FCC*, Nos. 00-1012, *et al.*, slip op. at 18 (D.C. Cir. May 24, 2002) (holding that the 1996 Act requires “a more nuanced concept of impairment” that takes into account “specific markets or market categories.”).
- The Commission found that permitting special access bypass would undermine both special and switched access revenues, and by doing so interfere with universal-service and access-charge reform efforts. *Id.* at 9592, ¶ 7.
 - The Commission correctly recognized that the availability of loop/transport combinations to provide special access would undermine both special and switched access. *See id.* (“[A]llowing the use of combinations of unbundled network elements for special access could undercut universal service by inducing IXCs to abandon switched access for unbundled network element-based special access on an enormous scale.”).
 - That conclusion applies to all loop-transport combinations to provide special access, not just existing combinations. New loop/transport combinations could be substituted for both special and switched access services just as existing ones could.
- The Commission found that providing access to such combinations at UNE rates would undermine existing facilities-based competition in the market for special access services. *Id.* ¶ 18.
 - That conclusion applies to all loop/transport combinations to provide special access, not just existing arrangements. *Id.* (“An immediate transition to unbundled network element-based special access could undercut the market position of many facilities-based competitive access providers.”).