July 15, 2002

Office of the Secretary
Federal Communications Commission
455 12th Street, SW Portals II Building
Washington, DC 20544

RE: CC Docket Nos. 01-338, 96-98, and 98-147
Reply Comments

The Oregon Public Utility Commission respectfully submits these comments in reply to April 5, 2002 pleadings filed in response to the Notice of Proposed Rulemaking ("*Notice*" or "*Triennial Review*") issued by the Federal Communications Commission ("Commission" or "FCC") in the above-captioned proceedings.[1] Because of the critical impact action in this proceeding will have on existing State commission policy initiatives, we are filing these reply comments to endorse NARUC's April 5, 2002 initial comments requesting that the FCC

- Immediately convene a §410(b) Federal-State Joint Conference to facilitate, inform and coordinate its implementation of the three-year UNE review; and
- Assure that States retain the authority to impose additional unbundling "obligations upon incumbent LECs beyond those imposed by the national list, as long as they meet the requirements of [§] 251." Specifically, we endorse the following NARUC positions:

(1) *A Joint Conference is in the Public Interest:* Given the critical role played by State regulators in implementing the statutory UNE regime, as well as the intensive data- and State-specific nature of the three-year review, *at a minimum*, the FCC should establish a formal mechanism to secure the State participation necessary for an informed application of the statutory "necessary" and "impair" standards.

(2) *State Authority To Add New UNEs/Obligations:* We agree with the FCC findings that § 251(d)(3) of the 1996 Act "grants State commissions the authority to impose additional obligations upon incumbent LECs beyond those imposed by the national list, as long as they meet the requirements of [§] 251." We believe Congressional intent as outlined in

[1] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-92, 96-98 and 98-147, Notice of Proposed Rulemaking, FCC 01-361 (rel. Dec. 20, 2001) ("*Notice*").

the 1996 federal statute, existing State enabling statutes, and the FCC rules and prior findings in this and related dockets support this approach.[2]

(3) *Impact of Federal Minimum List:* As recognized implicitly in the *UNE Remand Order's* specific State authority findings, the States are better positioned to conduct a detailed review of additional unbundling that is appropriate for local market conditions. Consequently, the FCC should defer to State determinations of whether unbundling requirements in any State should collapse to the existing or new federal minimums. Assuming any new federal minimum removes one or more UNEs from the national list or restricts availability of any UNE, such limitations should apply in any State only after that State has determined that a competitor's access is not "necessary" or that lack of access would not "impair" a competitor's ability to offer services, and that the UNE is not required as a matter of State rule or statute.[3]

(4) *Impact of Federal Action on UNE-P:* The FCC " . . .should support the implementation of universal availability of the UNE-P, on the basis that one form of entry should not be favored over another." Specifically, the FCC should assure that its implementation of §251 "does not favor one method of entry at the expense of other methods of entry."[4]

We appreciate the opportunity to make our views known.

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[2] See, *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, 3766-7 at ¶¶ 153-154 (rel Nov. 5, 1999) ("*Remand Order*"). See also NARUC's February 2002 *Resolution Concerning the States' Ability to Add to the National Minimum List of Network Elements* ("[NARUC] urges the FCC to recognize that States may continue to require additional unbundling beyond that required by the FCC's national minimum.")

[3] See, *NARUC December Letter* at 2 ("[A] party seeking to remove or scale back a UNE bears the burden of proof to show, by a preponderance of [] evidence, that the requested relief is justified.")

[4] See, *NARUC November 13, 2001 Resolution on the UNE-P Platform.*("[A]ny party seeking to remove or scale back a UNE bears the burden of proof to show, by a preponderance of record evidence, that the requested relief is justified.")