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Public Service Commission

December 6, 2002

VIA ELECTRONIC FILING

Honorable Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW - Portals II, TW-A325
Washington, DC 20554

Re: *Ex Parte* Letter in CC Docket No. 01-338, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; and
CC Docket No. 96-98, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996

Dear Ms. Dortch:

Forwarded herewith is a copy of a letter from Florida Public Service Commission Chairman Lila A. Jaber to Commissioner Kevin Martin. This is in response to questions raised by Commissioner Martin at the October 28, 2002, NARUC meeting.

Should you have additional questions, you may contact Greg Shafer, the primary staff person in this matter, at (850) 413-6958.

Sincerely,

/ s /

Cynthia B. Miller, Esquire
Office of Federal and Legislative Liaison

CBM:tys

LILA A. JABER
CHAIRMAN

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Public Service Commission

December 6, 2002

VIA ELECTRONIC FILING

The Honorable Kevin J. Martin
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Questions Raised by Commissioner Martin at the October 28, 2002 NARUC Hearing in Detroit, Michigan

Dear Commissioner Martin:

On October 28, 2002, you and Commissioner Kathleen Abernathy attended the National Association of Regulatory Utility Commissioners (NARUC) public hearing in Detroit, Michigan where state utility Commissioners testified to the efforts of states around the country relating to the establishment and pricing of Unbundled Network Elements (UNEs). The hearing was a platform for state Commissioners to express their positions regarding the Triennial Review of Unbundled Network Elements currently pending before the Federal Communications Commission (FCC). Commissioner Abernathy and you provided an opportunity for dialog that was greatly appreciated by the states. Unfortunately no representatives from the Florida Public Service Commission (FPSC) were able to attend. However, I would like to take this opportunity to address two questions that you raised at the hearing. The responses to those questions appearing below are based on data recently compiled for the FPSC's annual report on Competition in the Telecommunications Markets in Florida. This report is required by our legislature. Much of the data compiled for the report is provided confidentially and we are unable to provide certain details. However, our staff has been able to draw some inferences from the data that give us insight on the questions that you asked in Detroit.

Q1. Should the FCC adopt a policy that when CLECs install their own switches and other facilities to serve their business customers, they should be required to phase out UNE-P and migrate their residential customers to their own facilities?

A1. In reviewing recent data for Florida, the following items are of particular interest as they relate to the UNE-P debate:

- The top ten CLEC users of UNE-P account for 93 percent of all UNE-P access lines.

- The top ten facilities-based CLECs as measured by access lines account for 85 percent of all facilities-based access lines.

- Only four of the top ten facilities-based CLECs serve end-users via UNE-P and only six of the top twenty.

- The top ten facilities-based CLECs as measured by access lines account for 15.9 percent of all UNE-P access lines. (Figure 1)

- The top ten CLEC users of UNE-P account for 30.6 percent of all facilities-based access lines. (Figure 2)

Our staff believes and I agree, that this information suggests that end-users served via UNE-P and end-users served by facilities-based provisioning may, in fact, constitute two different markets. One further piece of information that would tend to support that inference is clearly demonstrated by the attached Figures 3 and 4. Figures 3 and 4 demonstrate that for the twelve-month period from July 2001 to June 2002 access lines in Florida served via UNE-P increased from 12.2 percent to 28 percent. In the same period, facilities-based access lines grew from 39.4 percent to 50 percent. What is striking about these numbers, in the context of the debate over UNE-P, is that the number of facilities-based access lines actually increased along with UNE-P based access lines. The gain in UNE-P and facilities-based resulted in a decline in percents of resale access lines and UNE-L.

As already noted, I believe a strong case can be made that UNE-P and facilities-based access lines are really two distinct markets with very limited crossover. A plausible explanation for this is that migration costs from UNE-P to facilities-based are too high to make it a logical and economic progression under the current cost/price relationships. Given that conclusion, it would not be appropriate to require a migration plan for UNE-P contingent upon the ownership of switching facilities unless and until a more cost effective end-user migration procedure for moving UNE-P access lines to CLEC owned facilities can be implemented. It may be an appropriate incentive for ILECs and CLECs alike, to condition a time limited transition on the provision of a more mechanized, cost effective migration procedure.

In addition, it must be recognized that the ability of any CLEC to achieve a core facilities-based clientele is currently driven by population density. The CLEC must be able to get enough customers in a given geographic area to justify the expense of a switch. Until transport costs and UNE-P migration costs fall to a certain level it is not cost effective to own facilities. Thus, any transition plan to phase out UNE-P will run the risk of abandoning the hope of competition in small and medium size markets, i.e., rural. This will continue to be true until transport and migration costs are reduced to a level that will provide an economic incentive for CLECs to add customers outside the more densely populated wire centers.

In conclusion, a UNE-P transition plan based solely on a CLEC having its own switch does not appear to be appropriate at this time. There are other considerations, such as UNE-P migration costs and population density, that must be overcome in order to provide an economic incentive for carriers

to transition from UNE-P to facilities-based. An incentive plan to encourage a more mechanized, cost effective UNE-P migration would be a step in the right direction.

Q2. How would competitors compete if some element or elements go away?

A2. Based on the previous analysis, I believe that access lines provided via UNE-P and those provisioned by CLEC facilities really constitute two different markets. The result is that there is little or no crossover ability from UNE-P to facilities-based. This conclusion is reinforced by the fact that there are so few carriers, even amongst the largest CLECs, that actually pursue customers in both markets. As noted in the previous response, a possible explanation for this is that migration costs from UNE-P to facilities-based are such that they effectively discourage crossover between these two markets. When you factor in the issue of density, facilities-based carriers are likely to focus on densely populated wire centers and the likelihood of a facilities-based CLEC serving a medium to low density wire center is nearly zero. UNE-P provides a reasonable competitive alternative for those areas. Even considering other platforms, such as wireless and cable telephony, population density is also an issue for those technologies, albeit to a lesser extent.

What this means in relation to your question is that if a UNE, such as switching, is removed from the table and in so doing seriously changes the nature of UNE-P, the likely consequence is that an otherwise viable competitive option will be eliminated. This will, in all likelihood, force a significant number of UNE-P served end-users to return to the ILEC and may well result in a decline in the overall number of CLECs, many of whom have established their business models solely on the availability of UNEs, and UNE-P in particular.

I would like to thank you again for attending the NARUC hearing in Detroit and for making yourself available for dialog on this important issue.

Sincerely,

/ s /

Lila A. Jaber
Chairman

LAJ
Attachment
cc: The Honorable Michael K. Powell, Chairman
The Honorable Kathleen Q. Abernathy
The Honorable Michael J. Copps
The Honorable Jonathan S. Adelstein

Attachment

Figure 1

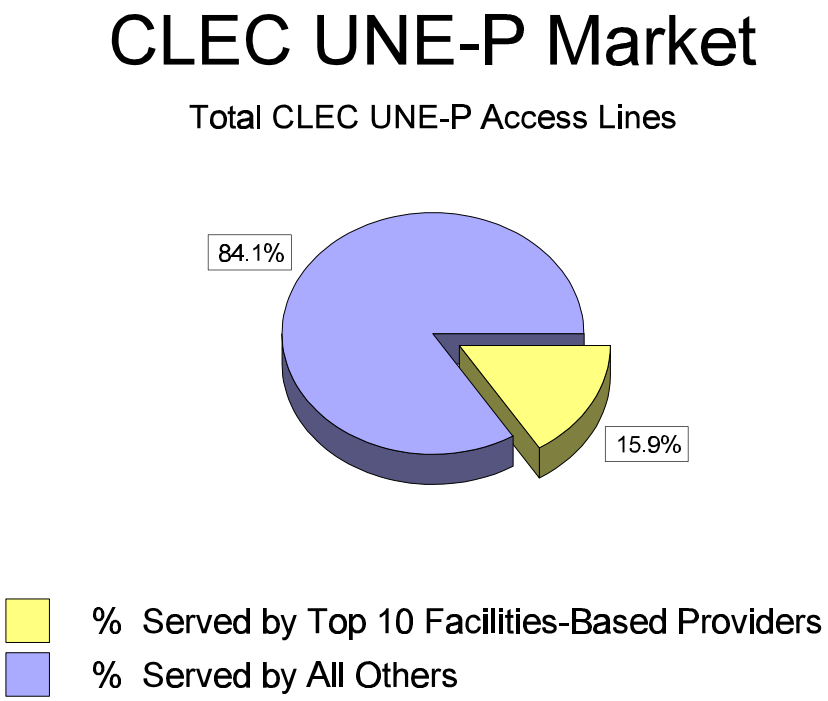

Figure 2

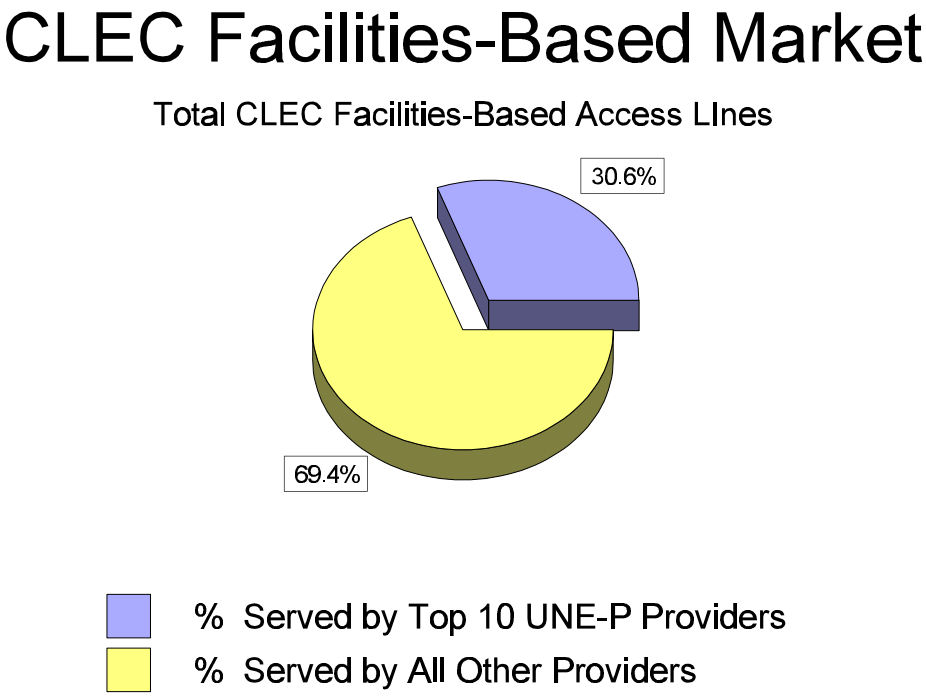

Figure 3

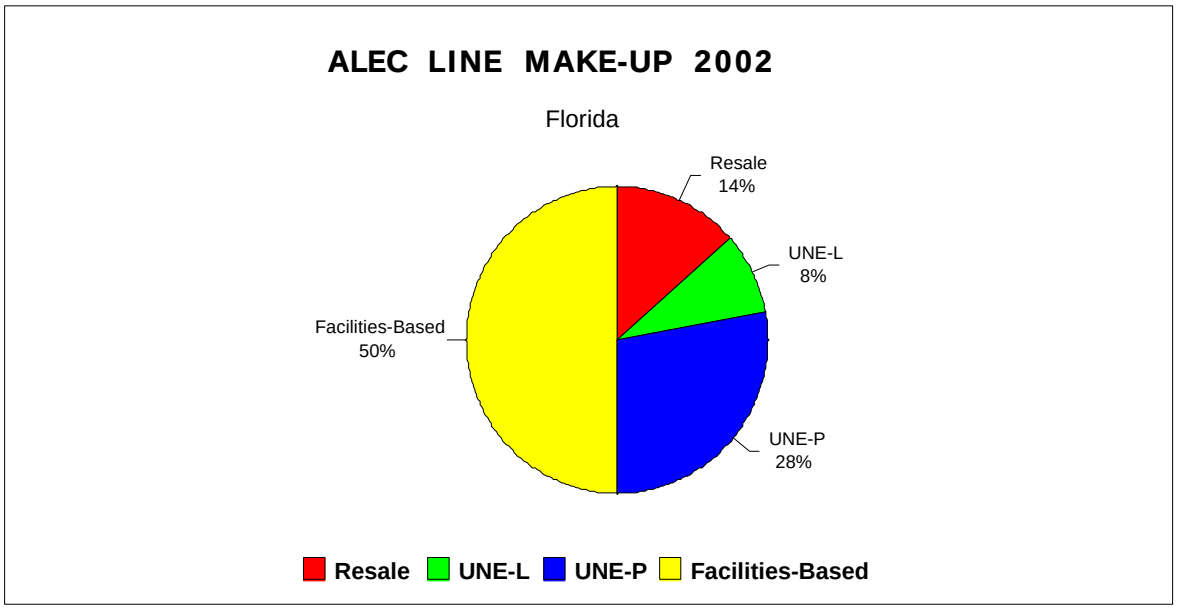
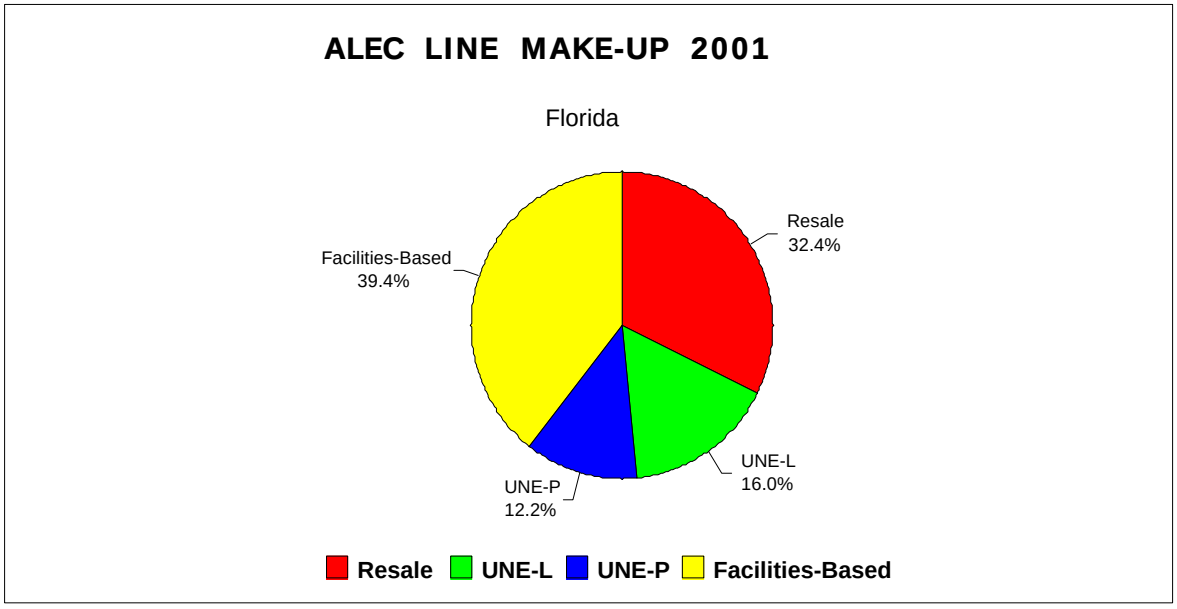
Figure 4