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December 6, 2002

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

via electronic submission

Re: ***Ex Parte* presentation in CC Docket No. 01-338, CC Docket No. 96-98, and CC Docket No. 98-147**

Dear Ms. Dortch:

On November 19, 2002, SBC submitted an *ex parte* proposal urging the FCC to implement on a nationwide basis a wholesale offering *equivalent to, and in lieu of*, the unbundled network element platform ("UNE-P").[1] Talk America, Inc. and Broadview Networks, Inc. (collectively, the "Responding CLECs"), hereby respond to this unabashedly anticompetitive proposal, which the Commission should dismiss out of hand. Instead of considering any uniform nationwide transition plan, the Commission should, upon completing its Section 251(d)(2) analysis, conclude that unbundled switching – and UNE-P – should remain available at this time because its absence will "impair" competitors for small business and residential local exchange customers. At most, should the Commission conclude that conditions may emerge in some location before it undertakes its next triennial review whereby the absence of unbundled switching will no longer impair competitors in some markets, the Commission should adopt the UNE-P to UNE-L Migration Plan proposed by Talk America, Broadview, and others.[2] This Migration Plan contemplates geographically granular analyses conducted by State

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[1] *See* Letter from Jay Bennett, SBC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 et al. (dated November 19, 2002), attaching "Development of a Sustainable Wholesale Model." (The attachment will be hereinafter referred to as the "SBC Proposal")

[2] *See* Letter from Rebecca Sommi, Vice President, Broadview Networks, Inc. et al. to Chairman Michael K. Powell, dated October 30, 2002.

commissions pursuant to detailed federal guidelines concerning when and to what extent the availability UNE-P should be curtailed.

SBC's plan belies its claim that it "wants to be in the business of providing viable and sustainable wholesale products to other telecom carriers." *SBC Proposal* at 4. SBC proposes that UNE-P be eliminated for small business and residential customers, the former immediately upon the effectiveness of the *Triennial Review* order. SBC also suggests that, for *existing* residential customers, UNE-P should be replaced within twelve months with a "wholesale offering" that is functionally the same as, but that is *not* from either a regulatory or statutory standpoint, UNE-P. Any new residential customers a CLEC might gain after the effectiveness of the *Triennial Review* order could not be served by UNE-P but only through this "wholesale offering." SBC further proposes that this "wholesale offering" be made available at $26.00 a line on a nationwide, uniform basis, and that it be eliminated entirely in 2 years after the *Triennial Review* order becomes effective. *Id.* at 5. This proposal, as detailed below, is contrary to law, unsupported by the record, and would undermine, not advance, the policy objective of facilities-based competition. Adoption of this proposal would strengthen ILECs' position in the market almost immediately with no countervailing pro-competitive benefits.

The availability of UNE-P competition has created tremendous advantages for consumers *and* sets the stage for facilities-based competition. UNE-P is making it feasible for residential and small business customers (the so called "mass market" consumers) in particular to begin to experience the benefits promised by the Telecommunications Act of 1996 (the "1996 Act"). Indeed, almost 8 million consumers have elected to take their local services from UNE-P CLECs, a number that continues to increase. The *SBC Proposal* would serve – and appears designed – to crush this source of competition, making it virtually impossible for UNE-P CLECs to continue to serve their customers economically, not just two years from now when the SBC-proposed plan would expire, but almost immediately. The *SBC Proposal* presents no opportunity for UNE-P CLECs to reasonably transition to a business model based on services supported by CLEC-owned switching facilities, a purported objective of the SBC plan and a true goal of many UNE-P providers, including Talk America and Broadview.

1. SBC Seeks to Bypass the Requirements of Section 251

As an initial matter, the *SBC Proposal* assumes that unbundled switching (and thus UNE-P) universally no longer meets either the "necessary" or "impair" tests under Section 251(d)(2) of the Communications Act of 1934, as amended by the 1996 Act. 47 U.S.C. § 251(d)(2). *See SBC Proposal* at 6. SBC appears to thus be inviting the Commission to resolve the difficult and contentious issue of the continued availability of UNE-P outside the requirements and duties of Sections 251 and 252, and soften up that determination with a putative transition period, albeit for *existing* UNE-P customers *only*. It is puzzling, however, that SBC proposes any transition under regulatory oversight if SBC truly believed that unbundled switching does not now meet the

impairment requirements of Section 251(d)(2). If SBC could truly make this assertion, which it *cannot* under the existing record in the *Triennial Review*, why does it not simply propose that unbundled switching and any wholesale equivalent simply be made available now at some unspecified "market price"? This is what the *SBC Proposal* would entail only for small business UNE-P services. Nowhere does SBC explain the justification for the uneven application of its plan to existing UNE-P offerings. The Responding CLECs submit that SBC is well aware that CLECs could not, at this time, even where they want to, transition to providing service to any portion of their UNE-P customer base relying upon their own switching platforms. SBC certainly does not claim in its *ex parte* that this obstacle has been overcome.

Regardless of SBC's intentions or knowledge, the record in the Commission's *Triennial Review* proceeding does not support the elimination of unbundled local switching at this time. The absence of unbundled local switching, now and for the foreseeable future (and especially until capital markets improve measurably), would impair entry and customer acquisition by new competitors, not to mention the expansion of service geographically or of market share by existing competitors. A transition to facilities-based competition without the benefit of unbundled local switching would require, *at a minimum*, several circumstances that are not present either in SBC territory or elsewhere in the country – namely, (1) adequate ILEC provisioning of unbundled loops to support large-scale customer conversions[3] and (2) retail rates that are above the aggregate cost of wholesale inputs that a CLEC would incur to provide local service using its own switching platform. The record makes clear that these conditions are not likely to be met *anywhere* any time soon, and thus the Responding Parties contend that competitors of ILECs generally will continue to be impaired without access to local switching as a UNE at least for the time being. The *SBC Proposal* makes no attempt to address these concerns which are central to any consideration of whether unbundled local switching and UNEs meets the "impair" standard under Section 251(d)(2).

Exacerbating SBC's omissions, its nationwide transition proposal ignores the need to make "impairment" analyses on a market-specific basis. This is surprising given that SBC and other ILECs have championed a reading of *USTA v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), which would obligate the Commission to employ a more "granular" geographic approach to the availability of UNEs under Section 251(d)(2).

The Commission may not simply forego, as SBC's *ex parte* proposal implies, completing the requisite statutory analysis under Section 251(d)(2) and adopt an extra-statutory solution in order to promote the policy objectives of the ILECs – namely the elimination of UNE-P as a

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[3] In addition, there is the still very real and significant problem of reaching small volumes of customers in widely dispersed areas. Until something is done that results in a means to cost-effectively aggregate such traffic so that a CLEC can use its own switching platform in those circumstances, impairment will still exist.

competitive threat on the premise that that the continued availability of UNE-P *ipso facto* undermines the emergence of facilities-based competition. The "transition" proposed by SBC (which as explained below is no transition at all), does not cure its proposal of that infirmity. To the contrary, if the FCC cannot determine, as it could not just a few years ago and the Responding Parties submit it cannot today, that competitive carriers would not be impaired if unbundled switching and UNE-P were made unavailable, then there is no place for a proposal of this sort made by SBC under Sections 251 and 252 of the Act.[4] The recent Sixth Circuit Case, *Verizon North, Inc. v. Strand*, No. 01-1013, 2002 FED App. 0388P (6th Cir. Nov. 7, 2002) makes clear that regulators cannot create an alternative regulatory scheme to the one envisioned by Congress. Although that case applied to the impropriety of State-created alternatives to the Section 252 negotiation and arbitration process as a means to achieve interconnection arrangements between ILECs and CLECs, the principle of that decision applies equally here. Specifically, the FCC (and State Commissions) must evaluate the availability of UNEs and combinations of UNEs under Section 251(c), 251(d)(2), 251(d)(3), and 252(d)(1) rather than adopt a substitute for UNEs or UNE combinations outside the context of the Act's provisions. When the Commission completes that analysis, the Responding Parties are confident that the Commission will reach the conclusion that unbundled switching, and thus UNE-P, must still be made available nationwide, subject to certain conditions.

SBC's proposal, by failing to engage in any analysis under the "necessary" and "impair" tests, simply assumes that UNE-P, or its equivalent, need no longer be made available under any circumstances to competitors currently serving small business customers. Yet there is no basis for a split between competitors serving residential versus small business customers. At least one of the main problems plaguing any effort by CLECs to migrate from UNE-P to UNE-L affects attempts to serve small business customers as much as attempts to serve residential customers -- the lack of an adequate hot cut process to migrate UNE-P to UNE-L in monthly volumes equal to UNE-P monthly turn-ups or to migrate single UNE-P to UNE-L orders within existing state intervals and the absence of a mechanism to cost-effectively aggregate small volumes of customers in widely dispersed areas. For the foreseeable future, the ability of CLECs to serve small business customers without UNE-P is equally impaired to the same degree as their ability to serve residential customers, and no such distinctions can be justified. Adoption of the *SBC Proposal*, or any plan like it, would eliminate competition for ILECs' small business customers overnight.

If one were to assume, charitably, that SBC was urging the Commission to conclude that UNE-P should still be made available under Section 251(c)(3) for two more years under a

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[4] Nor can the Commission on the current record rationally conclude that competitive carriers nationwide will be impaired, but only for existing residential customers for the next 12 months.

transitional rate of $26.00, the Commission could not adopt the rate proposed.[5] SBC offers no justification whatsoever for the $26.00 rate. It does not comport with the Commission's mandatory TELRIC methodology for pricing UNEs and UNE combinations. SBC freely admits that, since it proposes that UNE-P be replaced with a "functional equivalent" "wholesale offering." UNE-P, as a combination of Section 251(c)(3) elements, must be priced at TELRIC under Section 251(c)(3) and the Commission's regulations. Moreover, *it is the State commissions that alone have the authority, consistent with the FCC's regulations, to set rates for UNEs and UNE combinations*. 47 U.S.C. § 252(d)(1). In other words, even if the Commission wanted to consider the *SBC proposal*, the FCC could not set the rate. For the FCC to adopt the rate for UNE-P would unlawfully upend the procedures clearly set forth by Congress regarding the way the rate for unbundled network elements are to be set. *See Verizon N., Inc., supra.* Indeed, if the Commission found that UNE-P did not have to be provided at all under Section 251(d)(2), the States alone, just as they did before the 1996 Act was passed, would have the authority to consider the provision of SBC's "functional equivalent" of a UNE-P, both its propriety and its price.[6] In other words, no matter how one looks at it, the FCC does not even have the authority, as a general matter, to approve the SBC proposal (or, at a minimum, the price of $26.00).

2. The SBC Proposal Fails the Requirements of Section 271 for RBOCs Seeking or Hold In-Region InterLATA Authority

Even if the absence of unbundled switching was found not to impair local competitors' provision of services, such that unbundled switching and UNE-P were no longer required under Section 251(c)(3), the Responding CLECs submit that most RBOCs would still be required to make unbundled switching available under the Section 271 checklist. 47 U.S.C. § 271(c)(2)(B)(vi). This requirement would apply to RBOCs *seeking* Section 271 authority. It would also apply to those RBOCs that had already received authorization to provide in-region interLATA service by virtue of the "back-sliding" requirements of Section 271(d)(6), which . requires that all of the "conditions required for . . . approval" continue to be satisfied after such

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[5] As discussed below, SBC's blanket two-year window does not reflect or even address the hurdles facing carriers that would intend to migrate customers from UNE-P to their own switching platform.

[6] The States' authority for that exists under Sections 2(b) of the Act , Section 251(d)(3), and Section 261(c). There may be an exception in the case where UNE-P was provided under Section 271 by RBOCs seeking Section 271 authority or RBOCs with such authority. *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, 3767, ¶154 (1999) ("*UNE Remand Order*") (subsequent history omitted).

authorization is granted.[7] Where the existence of facilities-based competition in either residential or business markets — meaning the very threshold predicate for seeking Section 271 Track A relief — was found, even if in part, on the basis of UNE-P competition, RBOCs with Section 271 authority would be obligated to continue to support UNE-P. The *SBC Proposal* does not deal with these issues under Section 271 whatsoever.

The Responding Parties submit that to adhere to the "conditions required for approval" (Section 271(d)(6)), UNE-P must continue to be made available at TELRIC-based pricing, as it was at the time of the Section 271 filing. Alternatively, the Commission in its Section 271 decisions has found that all checklist items, including items 4-6 (loops, switching, and transport), must be available at parity ("substantially the same time and manner") where there is a retail analogue and in a manner that supports a "meaningful opportunity to compete" for an efficient competitor where there is no analogue. *See, e.g., Application of SBC Communications, Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd. 18354, 18373-74, ¶ 44 (2000). The Responding CLECs submit that if the availability of UNE-P was a condition for approval, then it must continue to be provided so as to satisfy one of these two tests. Arguably UNE-P is an analogue of local exchange service. If so, the *SBC Proposal* fails the parity requirement, as SBC would never provide itself the components of local exchange service at a cost that exceeds the retail rate. As explained in more detail in the next section, the $26.00 rate exceeds the residential retail rate throughout the SBC region. For similar reasons, the *SBC Proposal* does not meet the other criterion -- "meaningful opportunity to compete." No competitor, no matter how efficient, can meaningfully compete with a wholesale cost input that exceeds its dominant competitor's retail rate.[8]

SBC may argue, as it and other RBOCs recently have,[9] the unbundled elements required by individual Section 271 checklist items need only be set at some "market-based" price when the elements are no longer required to be unbundled under Section 251.[10] However, in the *UNE Remand Order*, where the FCC stated the applicability of marker-based pricing, it made clear in its explanation of when market-based pricing would be appropriate that the presupposition is that

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[7] *See* Attachment hereto citing examples of the existence of UNE-P competition as the predicate for several Section 271 applications under Track A.

[8] Indeed, wholesale pricing by a vertically integrated competitor in excess of retail prices is a classic or *per se* example of an unlawful price squeeze where the competitor has market power.

[9] *See* Letter of Herschel L. Abbott, Jr., BellSouth, et al. to Michael K. Powell, Chairman, dated November 19, 2002, at 9-10, *citing UNE Remand Order*, 15 FCC Rcd. 3696, 3905-06 (1999) (subsequent history omitted).

[10] SBC's proposal, when viewed from a Section 271 perspective, also has the fatal flaw that RBOCs with Section 271 authority would be obligated to provide the "wholesale unbundled offering" only for two years, whereas Section 271(d)(6) does not have such a sunset provision.

a competitive marketplace would set the price. If the wholesale market is such that an above-retail rate is what the dominant provider in the marketplace can dictate, then there is a very serious question about whether there is a competitive wholesale market at all justifying removing unbundled switching from the list. If $26.00 per month is the rate for a UNE-P equivalent that SBC submits the current local switching marketplace will bear – where loops and transport are still available from ILECs as UNEs at TELRIC-based prices – the *SBC Proposal* merely underscores the fact that removing unbundled local switching from the nationwide UNE list at this time for residential or small business customers would be a serious mistake. Indeed, the *SBC Proposal* should serve to give the Commission serious pause about the manner in which unbundled loops, switching, transport and OSS will be made available under Section 271 checklist items 4-6 and 10 in the event the Commission removes any of those items from the list of Section 251 UNEs.

3. The Rate and Transition Period in the *SBC Proposal* Have No Basis in the Record or Reality and Would Not Further SBC's Purported Objectives of a Sustainable Wholesale Market

Apart from its infirmities under the procedural and substantive requirements of the Act, *SBC's Proposal* for a nationwide price for UNE-Ps or their equivalent has no basis in the record. Many local factors affect price for UNE-P (or a "functional equivalent"). These include existing local TELRIC-based rates for unbundled loops and transport, local non-recurring and recurring rates for collocation in ILEC central offices and other geographic variations (*e.g.*, average inter-office transport distances, average central office line densities, deployment of IDLC technology). These factors suggest that pricing for UNE-P (or equivalent), whether cost-based or market-based, is likely to vary from market to market. Certainly within SBC's own territory, the rates for UNE-P established by state PUCs under TELRIC vary substantially from one state to the next. SBC does not even begin to address any of these factors to justify its proposal for a single, nationwide rate.

Setting aside the lack of support for a nationwide rate, *SBC's Proposal* suffers from several other infirmities. First, the rate grossly exceeds that for residential retail services in each of the SBC states and would not further local exchange competition. To the contrary, it would eliminate in the near term any source of competition for residential customers, the group that has least benefited to date from the pro-competitive goals of the 1996 Act. Second, as a result of the proposed $26.00 rate exceeding local residential retail rates, the rate would ensure UNE-P carriers do not have a positive margin for local services and would force every UNE-P customer to provide other services, including long distance, in an effort — by no means guaranteed —[11] to

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[11] The SBC Proposal offers no support for the total revenues and costs associated with the combined long distance/local packages in its submission as being representative of CLECs experience.

achieve a positive profit margin.[12] While some, or even most, UNE-P competitors may choose to offer local/long-distance packages, they should not be forced to do so.

Apart from highly suspect revenue and cost estimates, the *SBC Proposal* is based on arbitrary time frames for implementation. *The SBC proposal* would establish a series of strictly applied and interpreted time frames for migration from UNE-P. In fact, it appears that the transition to the "wholesale offering" "functionally equivalent" to UNE-P would be immediate after the FCC's adoption. Consequently, today's UNE-P carriers would begin suffering almost immediately from the lack of an adequate transition period. UNE-P carriers serving small business carriers would get no reprieve whatsoever. There would be no time to transition to a switching platform for *new* residential customers. Only where carriers serve *existing* residential customers would there be any transition under the *SBC Proposal.* They would have 12 months to transition to the wholesale offering to services based on their own switching platform for existing customers.

The *SBC Proposal* has no basis in the record and is totally disconnected from any consideration of whether and how today's existing customers would be able to migrate to services based on their own switching facilities. There is no basis for SBC's 12-month and 2-year deadlines. Such a proposal merely sets a timetable for the virtual demise of today's UNE-P carriers. It does not at all take into account, for example, the current unavailability of mechanisms to ensure that existing UNE-P customers could transition to unbundled loops supported by a competitor's switching platform[13] or when such mechanism might be reasonably available. By ignoring these facts, SBC's plan by definition does not take into account the economic sustainability of carriers operating under its proposal after the two years are up, let alone during the 12 months prior to that when *all* customers must either migrate to an alternate switching platform or be served through the $26 dollar a month rate. SBC does not consider, as it should, when residential and business local retail rates might be rebalanced such that a UNE-P or equivalent rate of $26.00 might support competitive offerings to retail customers. The

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[12] *See* Letter from Joan Marsh, AT&T, to Marlene Dortch, Secretary, FCC, CC Docket No. 01-338, Attachment (November 21, 2002) (estimating average net margin for local residential customers served under SBC proposal at *negative* 31% over the SBC 13-state region).

[13] In November 21, 2002, *ex parte,* Talk America, Broadview Networks, and Eschelon Communications explained that 18 months represented a *best-case* period for the transition even *after* an adequate cut-over mechanism was in place (a threshold further ignored by the *SBC Proposal*). *See* Letter of Rebecca M. Sommi, Broadview Networks, et al. to Marlene Dortch, Secretary, FCC, dated November 21, 2002. Numerous high level and time-consuming tasks await the carrier seeking to migrate from UNE-P to its own switching platform, including building a switch site, negotiating contracts with equipment vendors, obtaining NXX codes, establishing collocation and interconnection arrangements, among quite a few others.

Commission should not simply adopt arbitrary sunset provisions in this proceeding (assuming it should adopt any such provisions at all). The *SBC Proposal* should be rejected.

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At bottom, the *SBC Proposal* would frustrate facilities-based competition, not aid it. (At best it will promote service by one facilities-based carrier in SBC's territory -- SBC.) The Responding Carriers and other UNE-P providers have shown in this docket that UNE-P serves as an important vehicle to the transition to facilities-based services. UNE-P can continue to serve that objective only if it is priced appropriately, under statutory and regulatory TELRIC standards applicable to unbundled network elements. Decisions as to whether UNE-P should be made available, and under what conditions, must be made on a granular level, reflecting individual marketplace realities. Any migration from existing UNE-P requirements must be triggered by appropriate criteria (such as the right relationship between wholesale input costs and the ILECs' retail service rates, as well as the availability of adequate cutover systems and appropriate ordering processes at both high levels of lines in individual central offices and for small groups of customers that are widely dispersed in a LATA). Such criteria are discussed in the October 30, 2002, UNE-P to UNE-L Migration Plan of Talk America, Broadview, and others. Talk America and Broadview submit that these criteria should be implemented by the States based on their local expertise. These criteria cannot be set on a nationwide basis, at a rate and with a sunset provision simply pulled out of a hat, as the *SBC Proposal* would. A transition based on arbitrary prices and timing provisions like those SBC proposes will substantially increase the danger that UNE-P carriers will not be able to successfully make the transition to facilities-based service, leading to a lessening of competition. The FCC should not adopt SBC's proposal or any like it.

Pursuant to Section 1.1206(b)(1) of the Commission's rules, an original and one copy of this written *ex parte* presentation are being submitted to the office of the Secretary. Please associate this notification with the record in the proceedings indicated above.

Respectfully submitted,

Brad E. Mutschelknaus
Counsel for Talk America, Inc.
and Broadview Networks, Inc.

cc: Chris Libertelli (w/attachments)
Daniel Gonzalez (w/attachments)
Matthew Brill (w/attachments)
Jordan Goldstein (w/attachments)
William Maher (w/attachments)
Steve Morris (w/attachments)
Tom Navin (w/attachments)
Rob Tanner (w/attachments)
Richard Lerner (w/attachments)
Michelle Carey (w/attachments)
Scott Bergmann (w/attachments)
Qualex International (w/attachments)
Linda Kinney (w/attachments)
Nick Bourne (w/attachments)
Mary McManus (w/attachments)
Paula Silberthau (w/attachments)
Debra Weiner (w/attachments)

ATTACHMENT

See In the Matter of Verizon New Jersey, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services, Inc., for Authorization to Provide In-Region InterLATA Services in New Jersey, WC Docket 02-67, *Memorandum Opinion and Order*, 17 FCC Rcd. 12274, 12281-82, ¶11 (2002) ("Verizon relies on interconnection agreements with MetTel, eLEC, and Broadview in support of its Track A showing, and we find that each of these carriers serves more than a *de minimis* number of end users predominantly over its own facilities and represents an 'actual commercial alternative' to Verizon in New Jersey. Specifically, MetTel provides telephone exchange service to both residential and business subscribers in New Jersey *primarily through UNE-platforms*. Broadview and eLEC provide service to both residential and business customers in New Jersey through UNE loops, *UNE-Platform,* and resale.") (emphases added and footnotes omitted)

See In the Matter of Application by Verizon Virginia, Inc., Verizon Long Distance Virginia, Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks Inc. and Verizon Select Services of Virginia Inc., for Authorization to Provide In Region InterLATA Services in Virginia, WC Docket No. 02-214, *Memorandum Opinion and Order*, FCC 02-297,¶ 8 (Oct. 30, 2002) ("We conclude, as the Virginia Hearing Examiner did, that Verizon satisfies the requirements of Track A in Virginia. Verizon relies on interconnection agreements with AT&T, Cox, Comcast, and Cavalier in support of its Track A showing, and we find that each of these carriers services more than a *de minimis* number of residential and business end users predominantly over its own facilities and represents an 'actual commercial alternative' to Verizon in Virginia. Specifically, AT&T provides telephone exchange service to both residential and business subscribers in Virginia primarily though UNE loops, *UNE-platforms* and their own cable facilities.") (emphasis added and footnotes omitted).

See In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana, CC Docket 02-35, *Memorandum Opinion and Order*, 17 FCC Rcd. 9018, 9024-27, ¶¶ 12, 15 (2002) ("We conclude that BellSouth satisfies the requirements of Track A in Georgia. We base this decision on the interconnection agreements BellSouth has implemented with competing carriers in Georgia and the number of firms that provide local telephone exchange service, either exclusively or predominantly over their own facilities, to residential and business customers. In support of its Track A showing, BellSouth relies on interconnection agreements with AT&T (MediaOne Telecom, Teleport), MCImetro, and Mpower. We find that each of these carriers serves more than a *de minimis* number of residential and business customers predominantly over its own facilities and represents an "actual commercial alternative" to BellSouth in Georgia. Specifically, the record demonstrates that AT&T provides residential and business service to its customers over its own facilities, *UNE-Platform (UNE-P)* and UNE Loops. MCImetro provides service to residential and business customers over their own facilities and *UNE-P*.

We conclude that BellSouth demonstrates that it satisfies the requirements of Track A based on the interconnection agreements it has implemented with competing carriers in Louisiana and the numerous carriers providing facilities-based service to residential and business customers in this market. In support of its Track A showing, BellSouth relies on interconnection agreements with AccessOne, Cox, and ITC^DeltaCom. The record demonstrates that each of these carriers serves more than a *de minimis* number of residential and business customers via *UNE-P* or full-facilities lines. Thus, we find that there is an "actual commercial alternative" to BellSouth in Louisiana and that BellSouth satisfies the requirements of Track A in Louisiana.") (emphases added and footnotes omitted).

See 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 of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket 00-217, *Memorandum Opinion and Order*, 16 FCC Rcd. 6237, 6256-57, ¶ 41 (2001) ("We conclude, as the Kansas Commission did, that SWBT demonstrates that it satisfies the requirements of Track A based on the interconnection agreements it has implemented with competing carriers in Kansas. In support of its Track A showing, SWBT relies on interconnection agreements with Global Crossing, Sprint, Birch Telecom and Ionex Communications. Specifically, the record demonstrates that both Ionex Communications and Birch Telecom provide service to residential subscribers exclusively over their own facilities using the *UNE platform*. Sprint also provides local exchange service to business and residential subscribers.") (emphasis added and footnotes omitted).