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December 19, 2002

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

Re: Notice of *Ex Parte* Presentation
CC Docket Nos. 01-338, 96-98, 98-147, RM-10593

Dear Ms. Dortch:

T-Mobile USA, Inc. ("T-Mobile") through its undersigned counsel, gives notice of the following *ex parte* meetings on December 18, 2002: with Matthew Brill, Legal Advisor to Commissioner Abernathy; with Daniel Gonzalez, Legal Advisor to Commissioner Martin; and with William Maher, Richard Lerner, Thomas Navin, and Jeremy Miller of the Wireline Competition Bureau. Mr. Harold Salters, Director, Federal Regulatory Affairs, T-Mobile USA, Inc., and I attended these meetings.

The purpose of the meetings was to discuss CMRS carrier access to unbundled network elements, as discussed in the comments filed by T-Mobile (f/k/a VoiceStream Wireless Corporation) in the above-referenced dockets, and in the attached presentation which was distributed in the meetings.

Ms. Marlene H. Dortch
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Pursuant to 47 C.F.R. § 1.1206(b)(2), a copy of this letter and enclosed presentation is being filed electronically with the Office of the Secretary for inclusion in the public record of the above-referenced proceeding.

Sincerely yours,

Douglas G. Bonner
Counsel for T-Mobile USA, Inc.

Enclosure

cc: Matthew Brill (w/o encl.)
Daniel Gonzalez (w/o encl.)
William Maher (w/o encl.)
Richard Lerner (w/o encl.)
Thomas Navin (w/o encl.)
Jeremy Miller (w/o encl.)

T-Mobile USA, Inc.

**FCC Triennial Review –
What is Needed to Promote
Intermodal Competition
From the Wireless Industry**

**Non-Discriminatory Access
to UNES by CMRS Carriers**



December 18, 2002

HAROLD SALTERS

DIRECTOR, FEDERAL REGULATORY AFFAIRS
T-MOBILE USA, INC.

DOUGLAS G. BONNER

LEBOEUF, LAMB, GREENE & MACRAE, L.L.P.
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THE COMMISSION'S EXISTING UNBUNDLING RULES ALREADY APPLY TO CMRS CARRIERS

- **47 U.S.C. § 251(c)(3) and 47 C.F.R. § 251(c)(3) require ILECs to provide to “any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis.”**
- **The Conference Report of Telecommunications Act of 1996 (January 31, 1996, at 114) specifies that the definition of “telecommunications service”:**
 - ▶ **Includes CMRS carriers, and**
 - ▶ **Applies “regardless of the facilities used to transmit the telecommunications service.”**
- **CMRS Carriers are “requesting carriers” that provide “telecommunications service (CC Docket No. 96-98 (rel. Aug. 8, 1996, at ¶ 993)).**

CMRS CARRIERS ALREADY ARE COVERED BY THE COMMISSION'S IMPAIRMENT ANALYSIS

- **Initial impairment analysis re: access to interoffice dedicated transport was not limited to CLECs alone, but extended to all requesting telecommunications carriers.**
 - ▶ See **UNE Remand Order**, 15 FCC Rcd at 3842, ¶ 321
- **“[T]he Act is designed to create a regulatory framework that requires incumbent LECs to make network elements subject to the unbundling obligations of section 251 available to all requesting carriers, subject to the requirements of section 251(d)(2), and allows the marketplace to determine ultimately which competitors thrive or survive.” (UNE Remand Order, discussing impairment standard, CC Docket No. 96-98, 15 FCC Rcd 3696 (1999) at ¶ 53, emphasis in original)**

- **Drawing technological distinctions between types of requesting telecommunications carriers is prohibited discrimination under the Act and prior Commission precedent. (It would also severely discourage intermodal competition). For example:**
 - ▶ **(1) Commission has recognized paging terminals as “switches” for purposes of making them eligible for reciprocal compensation. TSR Wireless, LLC v. U.S. West Communications, Inc., 15 FCC Rcd 11166 (2000)**
 - ▶ **(2) Commission has ordered incumbent LECs to make available 911 databases to CMRS carriers as UNEs. *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Second Memorandum Opinion and Order, 14 FCC Rcd 20850, 20889-90, ¶ 100 (1999).**

- ▶ **Discriminatory treatment of CMRS carriers barring them from access to UNEs, will impair future deployment of wireless technology, particularly in residential and non-urban areas.**

- ▶ **CMRS carriers typically represent the only competitive, facilities-based, intermodal alternative for residential, suburban and rural telecommunications users.**
 - ◆ **94% of total U.S. population live in counties “with access to three or more different operators offering mobile telephone service.” Annual Report and Analysis of Competitive Market Conditions With Respect To Commercial Mobile Services, Seventh Report (rel . July 3, 2002) at 5. But more buildout is needed!**

- ◆ **Chairman Powell: Alternative, facilities-based platforms, such as wireless networks, are “the best hope for competition for residential consumers.”**
Digital BroadBand Migration – Part II, FCC
Chairman Michael K. Powell Speech at FCC Press Conference (Oct. 23, 2001)
- ◆ **Continued CMRS network buildout to underserved residential and rural telecommunications users beyond a wireless carrier’s existing footprint is very costly, and will most certainly be impaired without CMRS carriers having access to incumbent LEC facilities at TELRIC rates.**

- + T-Mobile obtains 96% of its high capacity special access circuits from incumbent LECs.**
- + More than 90% of AT&T Wireless transport costs go to incumbent LECs for special access or private line circuits. Petition for Declaratory Ruling at 7.**
- + Incumbent LEC special access rates have been increasing (by 8-15%) in virtually every MSA in which incumbent LECs such as Verizon and Bell South have been granted pricing flexibility. AT&T Petition for Rulemaking To Reform Regulation of Incumbent LEC Rates for Interstate Special Access Services at 12 (Oct. 15, 2002).**

- ◆ **Similarly, the Commission should definitively declare that CLECs can competitively provision dedicated transport service to CMRS carriers cell sites by using dedicated transport or dark fiber UNEs, so that incumbent LECs will not have a monopoly hold on this market, and CMRS carriers will have competitive options to incumbent LEC tariffed special access for their dedicated transport needs. CLECs such as DukeNet and El Paso require access to incumbent LEC UNEs to offer dedicated transport to CMRS cell sites. See, October 16, 2002 DukeNet ex parte letter of Henry C. Campen to Marlene H. Dortch, CC Dockets 01-338, et seq., at 2; see also, Order No. 2, Order Granting Interim Relief, Complaint of Southwestern Bell Telephone L.P. for Post Interconnection Agreement Dispute Resolution With El Paso Networks, LLC, Texas PUC Docket No. 26904 (Nov. 22, 2002) (granting El Paso Networks, LLC request for interim relief and ordering SWBT to continue to provision DS-1 facilities to 83 CMRS carrier cell sites).**

- ◆ **Wireless broadband deployment will be impaired without access to dedicated transport UNEs. Wireless broadband services (including next generation wireless services to existing CMRS voice customers), and “Wi-Fi” services require access to dedicated transport UNE facilities as well.**
 - + **Self-provisioning would be “prohibitively expensive” and would delay broadband entry. UNE Remand Order, 15 FCC Rcd at 3842, ¶ 321.**
 - + **Wireless transport is not an alternative. UNE Remand Order, 15 FCC Rcd at 3855, ¶ 353. T-Mobile utilizes microwave transmission in limited locations, but because of distance and atmospheric disturbances, microwave is not well suited for most interoffice transport used by CMRS providers. T-Mobile Petition for Declaratory Ruling at 8, n. 16.**
 - + **Incumbent LEC special access is not an alternative to incumbent LEC network elements for purposes of an impairment analysis. UNE Remand Order, 15 FCC Rcd at 3702, ¶70.**

A BROAD READING OF DEDICATED TRANSPORT IS NECESSARY TO COMPLY WITH CONGRESS' INTENT

- **47 C.F.R. § 51.319(d)(1)(i) defines dedicated transport as “incumbent LEC transmission facilities . . . including, but not limited to DS1, DS3 and OCn levels, dedicated to a particular customer or carrier, that provide telecommunications between wire centers . . . between switches owned by incumbent LECs or requesting telecommunications carriers.”**

- **It is time for the Commission to put an end to incumbent LEC stonewalling (T-Mobile's first request for UNEs, through its predecessor, Omnipoint, was made nearly three years ago), and clarify that CMRS carriers are entitled to UNEs. A CMRS base station performs more switching functions than paging terminals, and the Commission has already found that paging terminals perform switching functions akin to an end office switch. (See, TSR Wireless v. US West, 15 FCC Rcd 11166 (2000) at ¶¶ 22-23)**

- **The Commission describes the base station switching functionality in its Commission’s First Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services (FCC 95-317, 10 FCC Rcd 8844 (1995) at ¶ 18):**
- **“The base station broadcasts information to the subscriber's telephone about which channel the telephone call will be placed on, and ultimately connects the call through the PSTN.”**

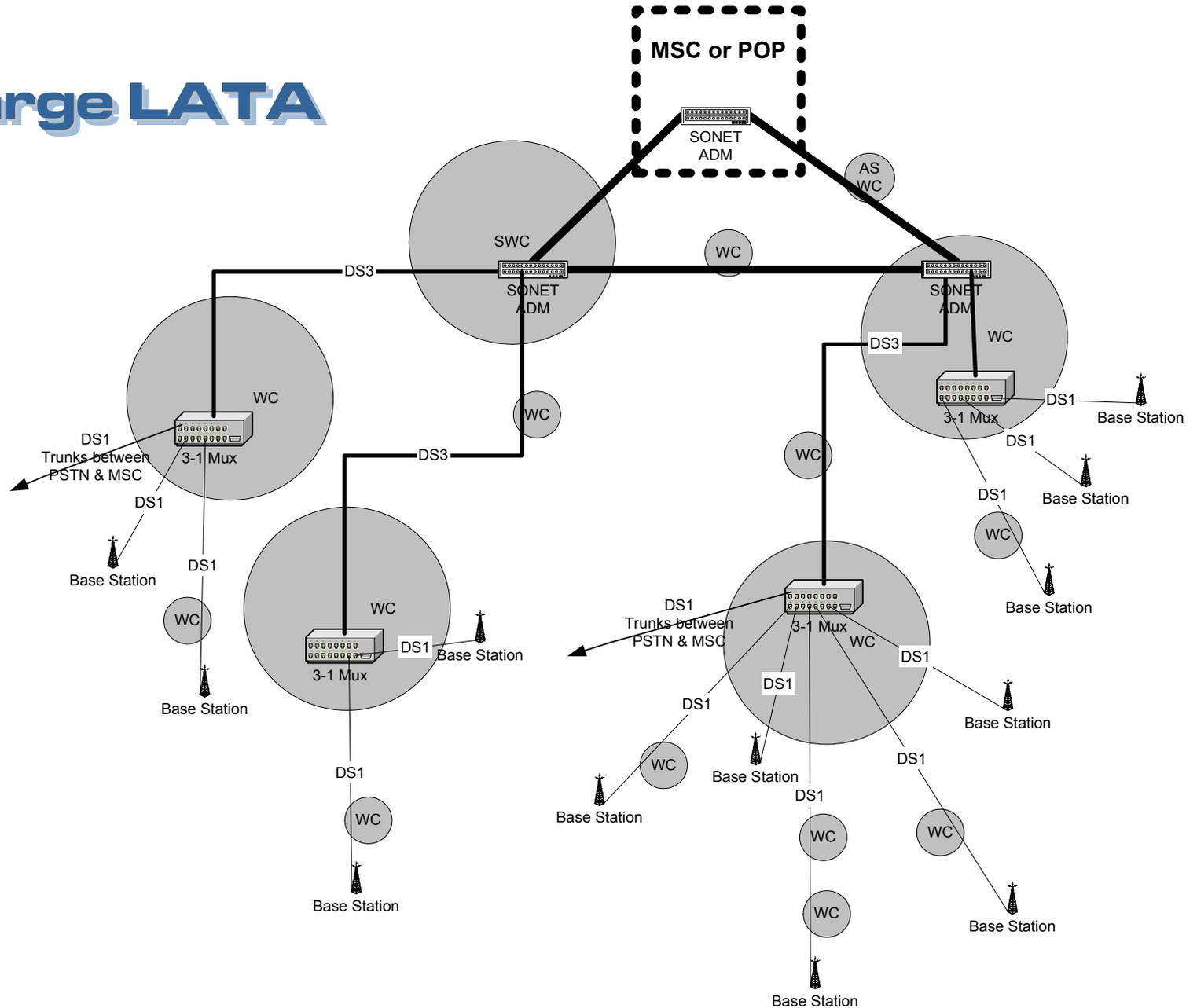
CMRS CARRIERS OFFER CONSUMERS EXISTING ALTERNATIVES TO ILECS

- **Often CMRS is only other option in rural areas and for residential service.**
- **Restriction of UNEs thwarts deployment of CMRS service geographically, and frustrates expanded intermodal competition.**
- **Deployment of 3G technology requires equivalent access to UNEs.**

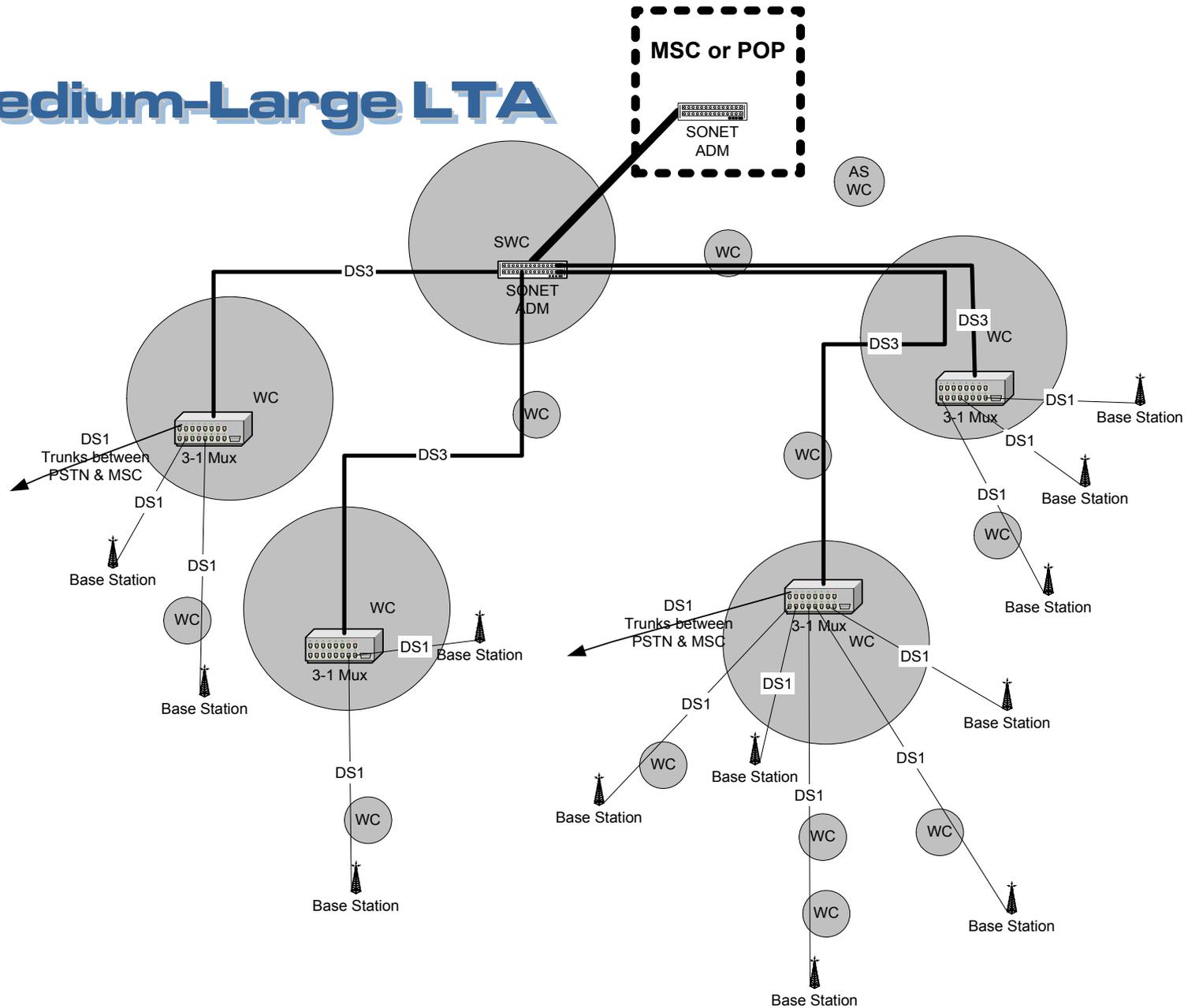
AN IMMEDIATE PROCEDURAL VEHICLE EXISTS FOR THE COMMISSION TO ENSURE NON-DISCRIMINATORY ACCESS TO UNEs BY ALL TELECOMMUNICATIONS CARRIERS, AND TO PROMOTE INTERMODAL COMPETITION.

- **CMRS right to access UNEs should be clarified in the Commission's Triennial Review under CC Docket No. 96-98, so that CMRS carriers have an alternative to incumbent LEC tariffed special access service, with much higher, and steadily rising, rates, for the provision of an identical transport functionality.**
 - ▶ ***Petition for Declaratory Ruling of AT&T Wireless and VoiceStream Wireless Corporation, CC Docket No. 96-98 (filed Nov. 19, 2001); Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Notice of Proposed Rulemaking, CC Docket No. 01-338 (rel. Dec. 20, 2001), ¶ 61.***

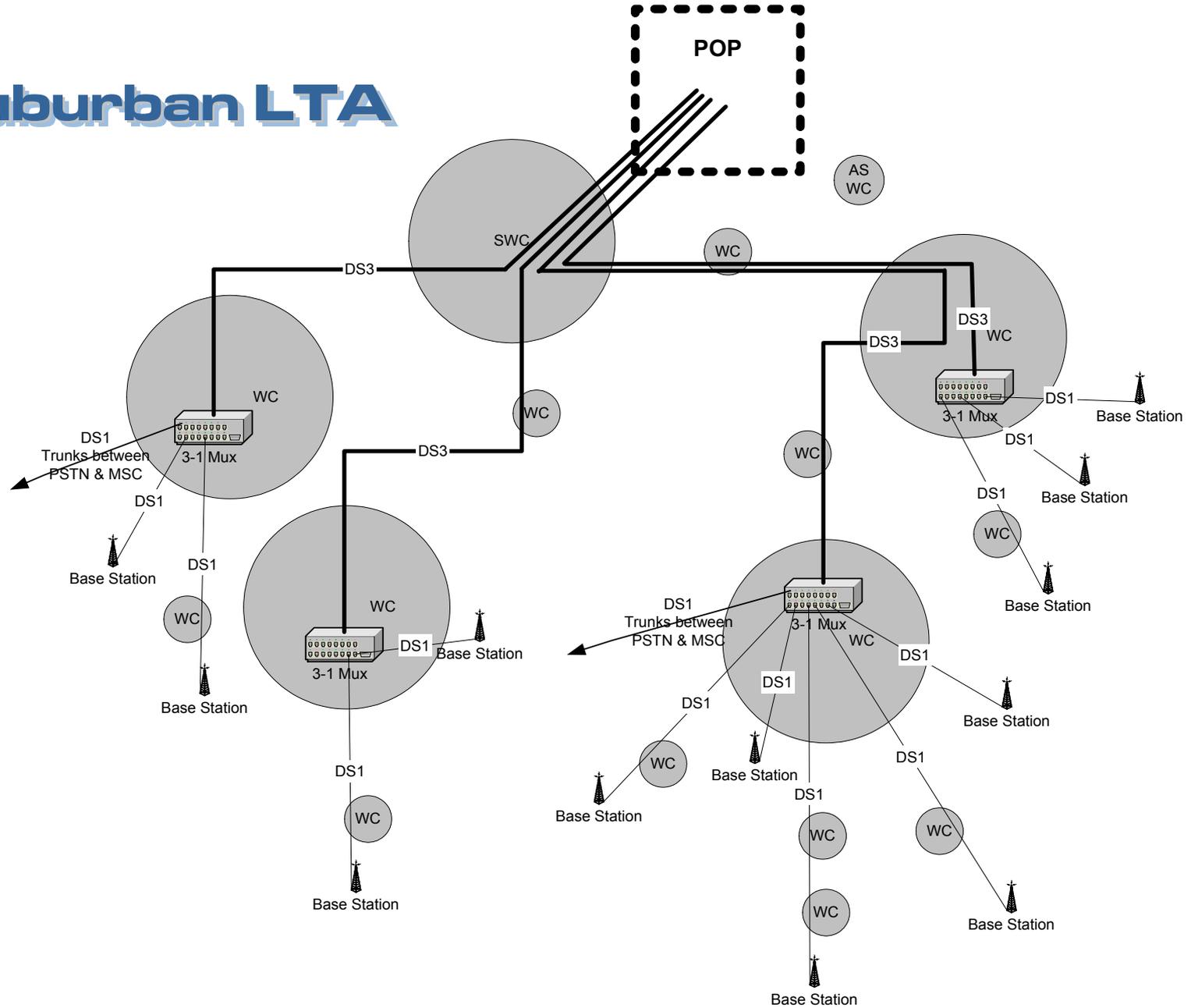
Large LATA

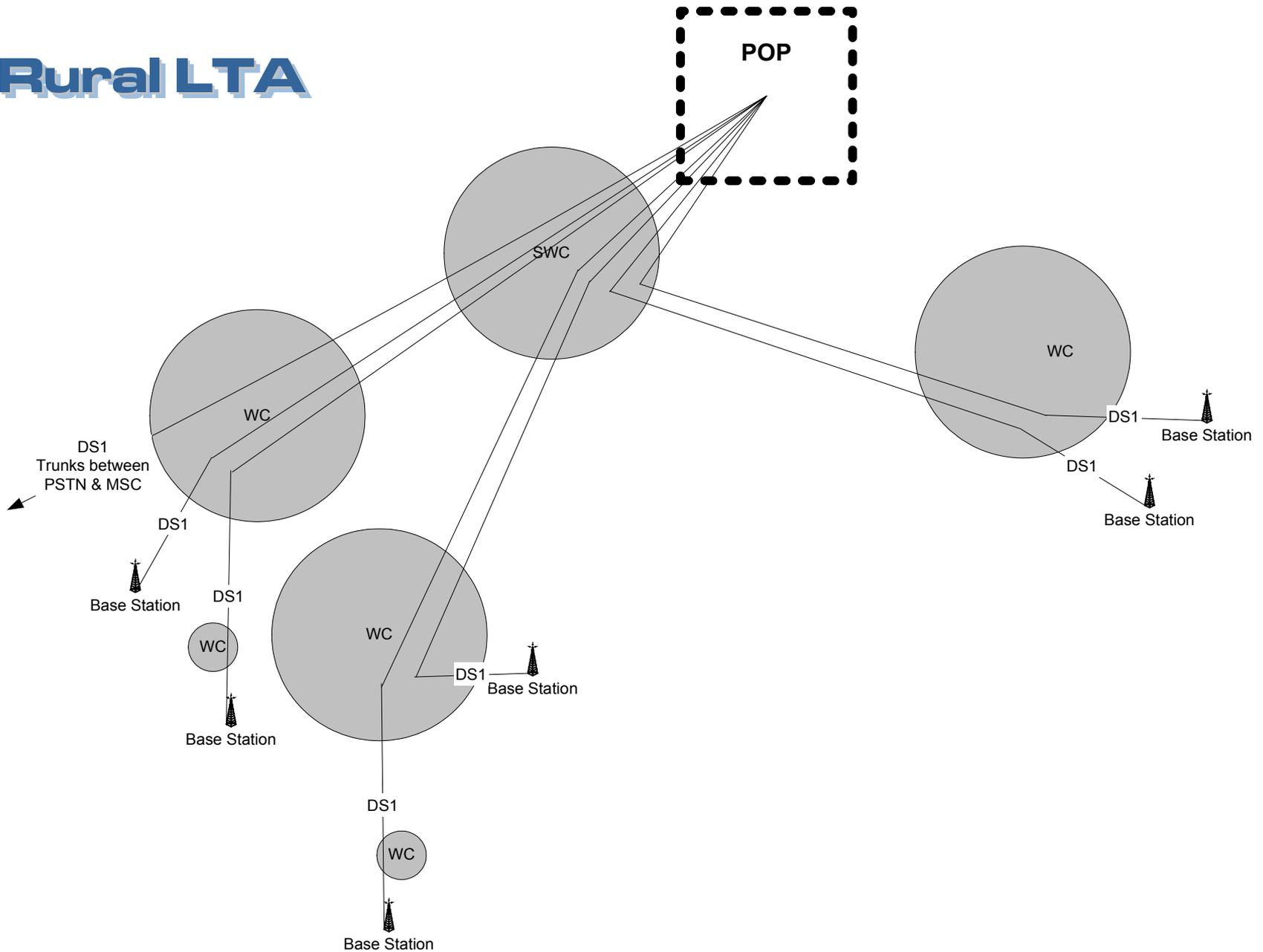


Medium-Large LTA



Suburban LTA





Notes

- Drawing Titles are illustrative only.
- SONET ring configurations typically have three or more Add/Drop Multiplexers (ADM), one of which is at the CMRS carrier's MSC location or POP. Rings pass through the ILEC Serving Wire Center (SWC) and Alternative Serving Wire Center (ASWC) for the MSC/POP. ADMs may/may not be located at the SWC or ASWC.
- Point to Point SONET configurations typically have two ADMs, one of which is at the CMRS carrier's MSC location or POP. The other ADM may be at the SWC, or another ILEC Wire Center (WC). SONET facility passes through SWC serving the MSC/POP. In some instances, a ring configuration could be established with only two ADMs by routing the "protect" pair of fiber through the ASWC. This type of ring has a single point of failure at the ILEC ADM and is not as robust as a three ADM ring.
- 3-1 Multiplexers (Mux) may be co-located with ADMs or at other WCs where a heavy concentration of DS1s exist.
- DS3s are used to connect the ADMs with the Mux locations.
- Networks for smaller LATAs may not use SONET facilities. Instead DS3s from the CMRS POP (smaller LATAs may not have a physically-located Mobile Switching Center) extend to the Mux locations. Very small networks may not even have DS3s, if only a handful of Base Stations are installed.
- DS1s extend from the Mux locations to Base Stations and to the ILEC PSTN switches (Type 1, 2A, 2B trunks). DS1s may also be used to carry SS7 connections to ILEC STPs.
- DS1s to the PSTN are connected to the trunk side of the MSC, and may share the same high capacity infrastructure as the DS1s to the Base Stations. There are no connections between Base Stations and the PSTN except through the MSC.

T-Mobile USA, Inc.

QUESTIONS?



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