FEDERAL COMMUNICATIONS COMMISSION
LOCAL AND STATE GOVERNMENT ADVISORY COMMITTEE

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January 28, 2003

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW, TW-B204
Washington, D.C. 20554

Re: LSGAC Ex Parte Filing
Advisory Recommendation No. 29
CC Docket Nos. 01-338, 96-98 and 98-147

Dear Ms. Dortch:

On behalf of the Commission's Local and State Government Advisory Committee, I am hereby submitting the LSGAC's Ex Parte Filing of Advisory Recommendation Number 29 with respect to CC Docket Nos. 01-338, 96-98 and 98-147; In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers.

Very truly yours,

Kenneth S. Fellman
Chairman, LSGAC

KSF/eaj
Enclosure
cc: Hon. Michael K. Powell, Chairman (w/encl.; via email)
Hon. Kathleen Q. Abernathy, Commissioner (w/encl.; via email)
Hon. Michael J. Copps, Commissioner (w/encl.; via email)
Hon. Kevin J. Martin, Commissioner (w/encl.; via email)
Hon. Jonathan S. Adelstein, Commissioner (w/encl.; via email)
LSGAC Members and Staff (w/encl.; via email)
Kris Monteith (w/encl.; via email)

FCC Local and State Government Advisory Committee
Advisory Recommendation No. 29

In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers
CC Docket Nos. 01-338, 96-98 and 98-147

1. **Introduction**: The Local and State Government Advisory Committee (LSGAC) submits this Recommendation in regard to the Federal Communication Commission's review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers as expressed in the Commission's pending Notice of Proposed Rulemaking.

2. **Background**: The Commission is planning to act in the unbundled network elements ("UNE") Triennial Review proceeding. Currently, there is no question that many of the competitive carriers have based their entry strategies on use of the so-called "UNE Platform." Whatever the Commission does in this proceeding will undoubtedly significantly impact the level and course of local phone competition in the United States.

3. In this environment, we believe the country will benefit from State-level experimentation. The FCC should follow the clear implications of the recent D.C. Circuit decision *United States Telecom Association v. FCC*, 290 F. 3d 415 (D.C. Cir. 2002) and allow State commissions to make the granular analysis needed to see which UNEs are required in their respective markets. Just as the markets, demographics, and regulatory overlay for telecommunications differ from City to City, there are similar significant differences from State to State.

4. From our perspective, State flexibility to maintain UNE-P as well as the ability to add to any national list is critical to keeping Congress's vision of local competition "on track" and assuring overall economic benefits to both individual consumers and the nation as a whole.

Recommendations:

The LSGAC recommends as a necessary prerequisite to keeping the local telephone competition initiative on track, continued State flexibility to maintain the UNE-P as an entry strategy, as well as the ability to add to any national list of UNEs. Any restriction on the States' flexibility on this option will negatively impact the growth of local competition. Specifically, we believe that any FCC order should, at a minimum, include the following two key components:

(1) Language making clear that no preemption of State authority to add to (or subtract from) the list is intended or should be implied. Indeed, the FCC should confirm its previous ruling that States RETAIN the right to add to the national list after hearing based on State and Federal law; and

(2) A presumptive national list that includes all existing UNEs and requires any party wishing to remove a UNE to make an appropriate evidentiary showing before a State commission before the item will come off the list.

Further, the LSGAC urges the Commission to give deference to the recommendations of the States actually involved on the standard to be applied to evaluate if a UNE should be available.

Adopted by the LSGAC on January 24, 2003.

Kenneth S. Fellman
Chairman