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January 29, 2003

**VIA ELECTRONIC SUBMISSION**

Ms. Marlene H. Dortch  
Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: **Memorandum of Ex Parte Presentation**  
**CC Docket No. 01-338, Review of the Section 251 Unbundling**  
**Obligations of Incumbent Local Exchange Carriers;**  
**CC Docket No. 96-98, Implementation of the Local Competition**  
**Provisions in the Telecommunications Act of 1996; and**  
**CC Docket No. 98-147, Deployment of Wireline Services Offering**  
**Advanced Telecommunications Capability**

Dear Ms. Dortch:

On January 29th, James C. Smith, Senior Vice President, Christopher Rice, Senior Vice President – Network Planning and Engineering, and Gary Phillips, General Attorney and Assistant General Counsel representing SBC Telecommunications, Inc. (SBC) met with Commissioner Kevin Martin, and Dan Gonzalez his senior legal advisor. SBC discussed transport issues and enhanced extended loops consistent with its materials filed in the record of these proceedings.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter and attachment are being electronically filed. I ask that this letter be placed in the files for the proceedings identified above.

Please call me should you have any questions.

Sincerely,

/s/ Brian J. Benison

CC: Kevin Martin  
Dan Gonzalez



# TRANSPORT AND EELS

January 29, 2003

# Transport Issues

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- Contestability standards, based on alternative provider(s) in defined areas, determines impairment
- Contestability standard should be applicable to DS1s as well as DS3s

# UNE EELs Restrictions



## ➤ Principles

- UNEs, and therefore EELs, should not be made available to serve markets that have become competitive without UNEs
  - Competition in interexchange & wireless has developed without access to UNEs, providers of such services thus are in no sense impaired without access to EELs
- UNEs, and therefore EELs, also should not be made available as an input where the market for that input is contestable --that is, where alternatives are available or profitably could be deployed
  - In the limited areas where CLECs face impairment, EELs should be available for the provision of local exchange traffic

# The Goal



- Establish rules that would allow CLECs quickly and efficiently to obtain EELs for the provision of local service
- Establish rules that ensure that UNEs, and therefore EELs, are not made available for the provision of competitive -- e.g. interexchange and wireless -- services

# Cbeyond Bright Line Test?



- Cbeyond test will not distinguish between facilities used to provide local vs interexchange services
  - Local Tariff filings
  - Certificate of Authority
  - Local Number Assignment and Porting Capabilities
  - E911 certifications
- Other aspects of the test provide evidence that a circuit is capable of providing local services, but do not demonstrate whether a particular circuit is being used for anything more than a token amount of local services
  - Customer Contracts
  - Call Detail Records
  - Circuit facility assignment
  - Local interconnection trunks
  - Termination into a collocation arrangement

# Arbitrage of Special Access to UNEs is Poor Public Policy

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- Harms existing and future facilities-based competition -- and in particular, undermines competition in the telecommunications market where it is most advanced (special access)
- Devalues CLEC and ILEC facilities investment

# Requiring EELs for Competitive Services is Unlawful



- The FCC could not reasonably conclude that CLECs are impaired in their ability to provide interexchange and wireless services without access to EELs
  - Nothing in the Act is “a license . . . to inflict on the economy” the costs of unbundling in competitive markets where there is “no reason to think doing so would bring on a significant enhancement of competition.” These costs include “spreading the disincentive to invest” and “creating complex issues of managing shared facilities.” *USTA v. FCC*.
  - “[I]t is far from obvious...that the FCC has the power, without an impairment finding as to non-local services, to require that ILECs provide EELs for such services on an unbundled basis. Here, there is no finding by the Commission that lack of access to EELs would ‘impair’ CLECs’ ability to provide long distance or exchange access” *Comptel v. FCC*

# Proposal



- Triennial Review order should adopt as principles that:
  - UNEs are intended for use in providing local service
  - Special access is to be used in providing interexchange service
  
- The FCC should address transport and EELs issues concurrently and any rule changes should be implemented at the same time