



January 31, 2003

BY ELECTRONIC DELIVERY

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: *Ex Parte Presentation*, Review of the Section 251  
Unbundling Obligations of Incumbent Local Exchange  
Carriers, CC Docket Nos. 01-338, 96-98, 98-147

Dear Ms. Dortch:

The Bell Operating Companies (“BOCs”) claim that competitive local exchange carriers (“CLECs”) have deployed 1,300 local circuit switches in rate centers that account for 86% of the BOCs’ access lines.<sup>1</sup> As discussed below, this statistic is at best misleading and at worst grossly inflated. Even if the estimate were correct (which it is not), it is not dispositive of the impairment issue. As the FCC has recognized, the key question is whether CLECs are in fact able to use their switches to serve customers efficiently.<sup>2</sup> Almost no CLECs are using their switches to serve the mass market, and the record demonstrates the operational and economic barriers that prevent CLECs from doing so. The evidence overwhelmingly shows that CLECs are impaired in serving residential and small business customers without access to unbundled switching.

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<sup>1</sup> See Report attached to Verizon Comments and Contingent Petition for Forbearance at II-6 and Appendix B (April 5, 2002) (“BOC Report”). (All comments and *ex parte* filings referenced herein were filed in CC Docket No. 01-338.)

<sup>2</sup> See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, ¶¶ 254-255 (1999) (“*UNE Remand Order*”).

*The BOC Report is Riddled with Errors and Substantially Overstates the Number of Viable CLEC Switches.* The record demonstrates that the 1,300 switches cited in the BOC Report are overstated by at least 33% once various inaccuracies are corrected. First, the BOCs' estimate of CLEC switches includes "hundreds of switches" that can only be used to serve customers with high capacity connections or PBXs.<sup>3</sup> Excluding only those switches identified by a single competitor lowers the estimate by 100 switches, or about 8%. Second, the record demonstrates that the BOC Report overstates the number of switches deployed by 4 (out of over 200) CLECs by 105 switches (another 8%).<sup>4</sup> An exhaustive comparison would no doubt reveal additional inaccuracies. Third, the BOC Report itself flags other potential discrepancies, including the fact that the LERG database, upon which the switch estimate is based, does not distinguish between remote and full central office switches for some (unidentified) number of carriers, and the fact that excluding switches for carriers in bankruptcy would lower the estimate another 17%.<sup>5</sup>

*The BOCs Overstate the Percentage of Access Lines Being Served by Reporting Lines on the Basis of Wire Centers.* Relying on their (inaccurate) estimate that there are 1,300 CLEC switches serving BOC rate centers, the BOCs next attempt to extrapolate the percentage of access lines being served by those switches. In so doing, the BOCs assume that, if a single number has been ported in a BOC wire center, then the CLEC switch deployed in the BOC wire center is capable of serving all the local customers in that wire

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<sup>3</sup> AT&T Reply Comments at 351-52 (July 17, 2002) ("AT&T Reply") (at least 100 switches for AT&T); Declaration of Ellyce Brenner ¶ 28, Attachment A to AT&T Comments (April 5, 2002); Declaration of C. Michael Pfau ¶ 8, Attachment G to AT&T Reply ("Pfau Reply Decl.").

<sup>4</sup> See Report attached to Letter from Dee May, Verizon, to Marlene H. Dortch, FCC, at 38 (Oct. 23, 2002) ("BOC Rebuttal Report"); Pfau Reply Decl. ¶ 13 n.4.

<sup>5</sup> See BOC Rebuttal Report at 38 n.196 (discussing LERG issues); BOC Report at II-6 n.12 (estimate of CLEC switches would be 17% lower if bankrupt CLECs were excluded). Moreover, between 20% (approximately 250) and 40% (approximately 500) of the switches listed in the BOC report are operated by bankrupt, near-bankrupt, or recently reorganized (previously bankrupt) CLECs. See Declaration of George S. Ford ¶ 79, Attachment 1 to Z-Tel Reply Comments (July 17, 2002); AT&T Reply at 351; Pfau Reply Decl. ¶¶ 18-19. Excluding those switches in addition to correcting the other inaccuracies would effectively cut the BOCs' estimate of 1,300 switches roughly in half, to 700. That is the same number of switches that the Commission found was insufficient to demonstrate a lack of impairment outside of the highest density zones in 1999. See *UNE Remand Order* ¶ 137.

center.<sup>6</sup> Yet, it is not clear that this is a valid assumption. Indeed, according to the BOC Report, an ILEC wire center “might have one or several class 5 central offices” (or switches). A CLEC switch may be connected to only one of several central offices in a wire center, and it may not be technically or economically feasible to reach customers served by the BOC out of the other offices. As a result, the BOCs unreasonably inflate the percentage of addressable access lines.

*53% of BOC Wire Centers Have No CLEC Switch.* Even taking the BOC Report at face value, it reveals that 53% of wire centers have no alternate provider and another 13% have only one alternative provider.<sup>7</sup> Stated differently, two-thirds of BOC wire centers face limited competition, and over half face no competition at all.

*Even if There is a CLEC Switch, It May be Practical to Use it for Larger Business Customers, but Not for Mass Market Customers.* As WorldCom and other CLECs have demonstrated, the types of circuits provisioned and the equipment used to serve business customers are quite different than those used to serve analog residential and small business customers. Over 90% of the circuits served by WorldCom’s local switches are DS1 circuits. To provision these digital circuits, WorldCom does not need to invest in analog-to-digital conversion equipment (DLC equipment), nor does WorldCom need to pay for additional collocation space to house large racks of this type of equipment. Also, the business customers WorldCom serves sign up for industry-standard two-year contracts with renewal options. This longer customer lifecycle enables WorldCom to amortize its hot cut costs over a longer period of time.<sup>8</sup>

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<sup>6</sup> BOC Report at II-5. The Appendix to the BOC Report refers to CLEC switches “serving BOC rate centers.” See BOC Report, Appendix B, at B-1. In contrast, the BOC Report itself reports on CLEC switches being used to serve BOC wire centers. See BOC Report at II-6. It is not clear whether the BOCs are using these two terms synonymously.

<sup>7</sup> BOC Report at II-6.

<sup>8</sup> See “WorldCom Response to SBC and BellSouth Critique of MiCRA Model,” attached to Letter from Gil M. Strobel to Marlene H. Dortch, FCC, at 15 (Jan. 27, 2003). Other CLECs have documented similar barriers to competition for mass market customers. See, e.g., Pfau Reply Decl. ¶¶ 14-15, 21; Letter from Robert A. Curtis and Thomas M. Koutsky, Z-Tel, to Michael K. Powell, FCC, *et al.*, attached to Letter from Christopher J. Wright to Marlene Dortch (Sept. 23, 2002); Letter from H. Russell Frisby, Jr., The Competitive Telecommunications Association, and Genevieve Morelli, The PACE Coalition, to Marlene Dortch, FCC (Oct. 31, 2002); Letter from Rebecca Sommi, Broadview Networks, Jeff Oxley, Eschelon Communications, and George Vinal, Talk America, to Marlene H. Dortch, FCC (Jan. 15, 2003).

Accordingly, the BOCs' estimate of CLEC switches is highly unreliable and cannot form a reasoned basis for concluding that CLECs are not impaired without access to switching for mass market customers. Absent concrete proof that the operational and economic barriers to serving mass market customers have been removed, the Commission should find that CLECs are impaired without access to unbundled switching and, by extension, UNE-P, for those customers.

Sincerely,

/s/ Kimberly Scardino  
Kimberly Scardino  
Senior Counsel  
(202)736-6478

cc: Scott Bergmann  
Jeffrey Carlisle  
Daniel Gonzalez  
William F. Maher  
Brent Olson

Matthew Brill  
Aaron Goldberger  
Linda Kinney  
Jeremy Miller  
John Rogovin

Michelle Carey  
Jordan Goldstein  
Christopher Libertelli  
Thomas Navin  
Lisa Zaina