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February 5, 2003

***NOTICE OF EX PARTE
PRESENTATION***

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW B204
Washington, DC 20554

**Re: Section 251 Unbundling Obligations of Incumbent Local
Exchange Carriers; Implementation of the Local Competition
Provisions of the Telecommunications Act of 1996; Deployment of Wireline
Services Offering Advanced Telecommunications Capability
CC Docket Nos. 01-338; 96-98; and 98-147**

Dear Ms. Dortch:

The attached written *Ex Parte* Presentation concerning the above-referenced proceeding was sent to the Honorable Michael K. Powell, the Honorable Kathleen Q. Abernathy, the Honorable Michael Copps, the Honorable Kevin Martin, and the Honorable Jonathan Adelstein, by the undersigned, on February 5, 2003, on behalf of the United States Telecom Association. In accordance with FCC Rule 1.1206(b)(1)¹, this Notice of *Ex Parte* Presentation and a copy of the referenced *Ex Parte* Presentation are being filed with you electronically for inclusion in the public record. Should you have any questions, please contact me at (202) 326-7300.

Sincerely,

Lawrence E. Sarjeant
Vice President – Law
& General Counsel

cc: Honorable Michael K. Powell
Honorable Kathleen Q. Abernathy
Honorable Michael Copps
Honorable Kevin Martin
Honorable Jonathan Adelstein

Matthew Brill
Jordan Goldstein
Daniel Gonzalez
Christopher Libertelli
Lisa Zaina

¹ 47 C.F.R. § 1.1206(b)(1).



William Maher

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February 5, 2003

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW, Room 8 B201
Washington, DC 20554

EX PARTE
PRESENTATION

The Honorable Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, SW, Room 8 B115
Washington, DC 20554

The Honorable Michael Copps
Federal Communications Commission
445 12th Street, SW, Room 8 A302
Washington, DC 20554

The Honorable Kevin Martin
Federal Communications Commission
445 12th Street, SW, Room 8 A204
Washington, DC 20554

The Honorable Jonathan Adelstein
Federal Communications Commission
445 12th Street, SW, Room 8 C302
Washington, DC 20554

**Re: Section 251 Unbundling Obligations of Incumbent Local
Exchange Carriers; Implementation of the Local Competition
Provisions of the Telecommunications Act of 1996; Deployment of Wireline
Services Offering Advanced Telecommunications Capability
CC Docket Nos. 01-338; 96-98; and 98-147**

Dear Commissioners:

WorldCom has suggested that CLECs face “an insurmountable barrier to entry” to using their own switches to serve customers in central offices with fewer than 25,000 residential access lines and therefore the UNE Platform (the “UNE-P”) must continue to be required in those

areas.² The facts do not support such a conclusion. For example, the “UNE Fact Report 2002” demonstrates that over 1,300 competitive voice switches have been deployed in both small and large markets. The Federal Communications Commission (FCC) should reject WorldCom’s proposal and instead remove switching from its list of unbundled network elements (UNEs). To do otherwise would be legally unsustainable and have devastating impacts on facilities-based providers that offer local services, including USTA members that provide service to rural America.

In addition, over the past few weeks, a number of rumors have circulated about the Triennial Review proceeding and various proposals purportedly under consideration by you concerning the future availability of unbundled network elements (UNEs). While some of the rumors can be discounted as uninformed speculation, others, if true, are so troubling that they require an immediate response. One such rumor concerns a proposal to retain switching as a UNE, and thereby continue the availability of UNE-P, in wire centers with 5000 or fewer access lines.

As the FCC heads toward a decision in the Triennial Review proceeding, its conclusions concerning how to look at markets have critical importance. Large companies, like the RBOCs, have diverse, multi-wire center local service markets. Other incumbent local exchange carriers (ILECs) often serve their local service markets out of a single wire center. As to the RBOCs, USTA agrees with the analysis and conclusions reached by SBC in its *Ex Parte* submission dated January 14, 2003, at pages 3 and 4, and filed herein:

While SBC’s analysis shows that CLECs can earn margins when they use their own switches to serve residential customers in wire centers with 5000 or more lines, the fact that CLECs may or may not be able to earn margins in smaller wire centers does not warrant a finding of impairment in those wire centers. The critical issue is not whether CLECs can serve every wire center profitably, but whether they can viably serve a particular market.

Because independent ILECs³ do not have the same broad base of diverse wire centers in their local service markets like RBOCs, it would be inappropriate and contrary to the public interest for the FCC to retain switching as a UNE (and thereby UNE-P) in independent ILEC wire

² Letter from Gil M. Strobel, Lawler, Metzger & Milkman, LLC, to Marlene H. Dortch, Secretary, FCC, January 8, 2003.

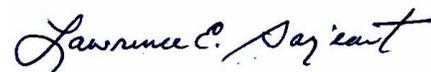
³ An independent ILEC is a nonRBOC ILEC.

centers with less than a specified number of access lines, whether that number be 25,000 or 5,000 access lines, solely on that basis.

Independent ILECs serving low density, high cost service areas already face tremendous challenges in financing the deployment of state of the art telecommunications networks to ensure that rural America has access to advanced telecommunications services. This Commission has gone to extraordinary lengths to facilitate competitive entry in rural telecommunications markets by wireless providers, there is tremendous pressure on the federal high cost universal service program and interstate access minutes are in decline. In the face of this, it would be ill-advised and counter-productive for switching to be retained as a UNE in independent ILEC local service markets solely because an independent ILEC's wire center has fewer than a particular number of access lines. The debilitating impact of UNE-P on network investment is no less in rural service areas than it is in urban and suburban service areas. Competition in rural markets is real, and for voice services it tends to come from wireless service providers that are free from many of the service obligations (that drive costs) imposed on rural ILECs. If you are considering a decision that would retain switching as a UNE in independent ILEC wire centers, and thereby preserve the availability of UNE-P, USTA urges you to reconsider.

As USTA has stated in prior submissions in this proceeding, the FCC should find that local exchange competitors are not impaired anywhere without access to unbundled switching. No ILEC should be required to provide unbundled switching, or UNE-P, going forward.

Sincerely,



Lawrence E. Sarjeant
Vice President – Law
& General Counsel

cc: Matthew Brill
Jordan Goldstein
Daniel Gonzalez
Christopher Libertelli
Lisa Zaina
William Maher