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January 24, 2003

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VIA COURIER

Mr. William Maher
Bureau Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte*
CC Docket Nos. 01-338, 96-98, 98-147

Dear Mr. Maher:

On behalf of SNiP LiNK LLC ("SNiP LiNK"), Broadview Networks, Inc. ("Broadview"), Eschelon Telecom, Inc. ("Eschelon"), KMC Telecom, Inc. ("KMC"), NuVox Inc. ("NuVox") and Xspedius Management Co. LLC ("Xspedius"), I am writing to provide further explanation of a framework for the Commission's impairment analysis as it relates to ILEC dedicated transport. Specifically, this letter explains why transport alternatives must be analyzed on a route by route basis, and proposes a modified version of the granularity test submitted by ALTS and CompTel on October 8, 2002. This letter also explains why non-route specific triggers such as special access pricing flexibility or the number of collocated carriers in a single wire center may not be the basis of an impairment analysis for unbundled interoffice transport.

1. The Availability of Unbundled Transport Encourages Facilities Deployment.

All of the carriers listed above offer facilities-based local services to their customers. All of the carriers listed above utilize unbundled interoffice transport, on a stand-alone basis or in EEL arrangements, to connect end user customers with the carrier's switching

and other facilities.' Although all of the carriers listed above utilize competitive transport (and in some cases, self-provisioned SONET rings) when alternatives are reasonably available, the overwhelming majority of transport purchased by the carriers comes from the ILECs. For example, Broadview is able to purchase alternative transport for only 20 percent of its interoffice transport needs.[2] Other providers, such as Xspedius (whose local service areas include smaller cities like Mobile, AL and Columbus, **GA),** find that competitive transport is available to address only about 10 percent of its needs.

Unbundled transport is critical to any facilities-deployment strategy. If the experiences of the last two years demonstrate anything, it is that sound economics and today's capital markets will not support a model where facilities are deployed everywhere, without regard to actual customers already obtained by the carrier. The "build it and they will come" strategy has yielded to a "prove it first" demand from capital investors.

With the availability of unbundled transport, CLECs can respond to the market's "prove it" demand. Unbundled transport is particularly important to the widespread availability of integrated T-I products, which the camers submitting this **ex** parte provide to small and medium size business customers. For example, as is detailed in the attached affidavit,[3] NuVox offers its integrated T-1 products throughout a given market and must rely on leased loop/transport combinations to reach customers at an economically efficient cost.[4] Transport (often provided as part of an EEL combination) adds to the carrier's facilities footprint, allowing a CLEC to significantly broaden the geographic scope of its service offering. With the availability of transport as a UNE, CLECs are able to offer their services to smaller customers (*i.e.*, those with lower revenues) and to more geographically dispersed customers, rather than those within a certain distance from an end office where the CLEC has deployed facilities.

The impairment analysis the Commission uses should mirror the business judgments made by carriers in a competitive environment. This means that the Commission's impairment analysis should frame the question at a level of granularity that a CLEC faces when confronting the problem of transporting traffic on a cost effective basis among its collocations, its switch and other networks. The analysis should reflect real-world options available to CLECs, not theoretically available options or alternatives inconsistent with a wireline business model. In addition, the impairment analysis should yield results that replicate the incremental expansion of CLEC networks, not flash-cut, be-everywhere-at-once strategies that have failed in the marketplace. ***An*** impairment analysis that reflects these considerations will encourage the deployment of competitive facilities where such deployment is likely to be sustainable over the

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1 Some of the carriers offer local services using additional UNE configurations, including UNE-P based services. This letter relates solely to the carriers' use of dedicated transport as a UNE.

2 Broadview exparte August 1,2002.

3 Affidavit of Edward J. Cadieux, VP, Regulatory and Public Affairs, **NuVox,** Inc. (attached as Exhibit I)

4 Cadieux **Aff.,** ¶¶ 4-6.

long term and will preserve cost-based access to ILEC facilities where such access is needed to support competition as envisioned in the 1996 Act.

2. Any Impairment Test Must Analyze Transport Alternatives **on a** Route-Specific Basis.

Interoffice transport is a point-to-point service. It provides dedicated transmission capability between wire centers owned by incumbent LECs or requesting telecommunications carriers or between switches owned by incumbent LECs or requesting telecommunications carriers.' Dedicated transport inherently serves a route-specific need: it moves traffic from a pre-designated point "A" to a predesignated point "B." Any impairment analysis, therefore, must consider whether a CLEC is impaired on the specific route for which it seeks to utilize unbundled ILEC transport.

The analogy to airline flights is apt. It does no good to determine how many airlines have flights at Dulles Airport; this question does not elicit any useful information. The real question is whether Dulles has sufficient flights *to a specific destination that the passenger needs to reach.* A dozen flights to Chicago do not help the passenger that needs to get to Raleigh-Durham.

This is the problem CLECs face every day in their network provisioning departments. CLECs who have built out (or leased) a network must establish various points of interconnection (POIs) with the ILEC network. In order to serve a specific customer, a CLEC must get from that POI to the customer's serving wire center. The two end points are pre-determined, leading to a specific route-based need that must be met in order to provide competing service. Even when a CLEC establishes a POI in a "carrier hotel" or at a tandem, its dedicated transport needs remain point to point. For example, SNiP LiNK has established a POI in center city Philadelphia, giving it access to Verizon's Market Street and Arch Street end offices. SNiP LiNK selected this POI because it is a popular interconnection point, providing SNiP LiNK with access to over 20 carriers from that location. However, none of these carriers have facilities to Plymouth Meeting, PA (a wire center in the Philadelphia suburban zone), let alone to Middletown, DE, which is within the Philadelphia LATA.[6] As a result, SNiP LiNK does not have a non-ILEC alternative source of transport to Plymouth Meeting or Middletown.

Similarly, transport needs are route-specific for CLECs that seek to connect end offices where they have collocated to the CLEC's switching facilities. NuVox has established 20 collocations in the St. Louis market, giving it 20 route-specific needs for DS3 or higher transport between the end office and NuVox's switching platform. *An* alternative provider is

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[5] **47C.F.R.** § 51.319(d)(1)(i).

[6] ***See*** SNiP LiNK ex parte, September 25,2002.

available on only about half of these routes, and in many of those cases, only a single provider is available on the route.' For the remainder of NuVox's routes, the ILEC is the only transport provider serving the route.

A common problem in obtaining dedicated transport from non-ILEC providers is the lack of such providers that are capable of using their own facilities on the entire route. An entirely facilities-based circuit – one which does not utilize any ILEC-supplied elements – is commonly referred to as a "Type 1" circuit. The existence of Type 1 circuits on a given route is extremely rare. Instead, it is common for competitive transport providers to offer service between two wire centers even though they lack facilities for all or a portion of the route. These "Type 2" circuits are simply hybrids of a competitive carrier's service and incumbent LEC special access service. Type 2 circuits mask the true extent of competitive alternatives by making it appear that non-ILEC sources are available when they are not. Moreover, Type 2 circuits typically are not cost-based, as their prices typically are based upon incumbent LEC special access service prices, not TELRIC cost models. Most CLECs do not consider Type 2 circuits to be viable alternative transport options, and order a competitive service only when it is a truly separate alternative to ILEC facilities, *i.e.*, when a Type 1 circuit is present.

In order for a CLEC to consider purchasing dedicated transport from a competitive transport provider three criteria must be met. (1) the CLEC's need for transport must overlap the availability of transport being offered by the competitive transport provider; (2) the CLEC's POI needs to be in close proximity to the competitive transport providers network; and (3) it cannot be cost prohibitive for the competitive transport to extend its facilities to the CLEC's POI. If these three *(3)* criteria are met, the CLEC generally must commit to a minimum monthly revenue, *e.g.*, $15,000 to $50,000 to the competitive transport provider for a three (3) to five (5) year term. The interval to complete the build ranges from ninety (90) to one-hundred eighty (180) days. Factors influencing this time-frame include but are not limited to access to rights of way, availability of riser and/or conduit, building management requirements, etc.

Only after the build is complete can the CLEC place an order for transport from its POI to the competitive transport providers collocation cage. In turn, once the circuit has been designed, the CLEC can then order the cross-connect from the ILEC to connect its collocation cage to the competitive transport provider collocation cage. If the distance between the companies' termination frames is in excess of three-hundred (300) feet additional engineering is required. In some instances the circuit cannot be provisioned. In short, this process involves substantial delay and may entail significant up front costs.

Any impairment test must take these realities into account. A transport test based on the number of collocated carriers in an end office does not accurately reflect whether a CLEC

[7] *Cadieux* **Aff.,** ¶ 8

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is impaired on a given route. There is no "magic number" of collocated carriers that ensures competitively provided transport is available as a practical, economic or operational matter.' Moreover, even if transport is available for some routes from that end office, transport will not be available for every route from that office. As a result, like the Raleigh-Durham passenger at Dulles airport, a CLEC may find itself in a busy airport but with no available flights to its destination.

The proper level of granularity with respect to dedicated transport must consider the availability of dedicated transport alternatives on a route-specific basis. Only when alternatives are available on the specific routes that a CLEC needs (and only when practical and operational considerations justify use of the competitor (as discussed below)) can a lack of impairment be rationally determined. Under this approach, the Commission must analyze impairment as it exists on specific routes, between the two specific wire centers (or between two switch pairs or a switch and a wire center) that constitute the end points of a transport route. If viable competitive alternatives exist from collocation facilities located at Market Street to a wire center elsewhere in Philadelphia, for example, then no impairment exists for that route. However, the carrier should still be able to obtain ILEC transport from Market Street to Plymouth Meeting (or Middletown), where no alternative facilities exist.

Critically, a route-specific analysis must be based on the end points of the route, regardless of the physical routing the ILEC may use to design the circuit. In most instances, a transport request between wire center "A" and wire center " B can be provided over any number of physical routes. The circuit could, for example, be routed through a tandem at wire center "C" or perhaps through available capacity connecting "A to D", "D to E" and "E to B." To the CLEC, these differences are immaterial; the CLEC specifies an "A to B" route and the ILEC determines the optimal way to provision the circuit in its network.

A corollary to this principle is the principle that the ILEC may not avoid transport unbundling obligations by breaking a route into multiple transport segments. Transport from "A to B" may not be broken into a "A to C" and "C to B transport segments for purposes of the impairment analysis. Even if "A to C" is determined to be competitive under an impairment test, the CLEC needs to get from "A to B." *An* ILEC should not be able to game the system and raise its competitors' costs by forcing a different network architecture on CLECs. Otherwise, an ILEC would be able to defeat all transport unbundling obligations from a given end office by demonstrating a lack of impairment on just one route. For example, if it were determined that there was no impairment on a single route from the Market Street, Philadelphia end office, the incumbent could essentially free itself from all transport unbundling obligations to or from that

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[8] ***See.*** *e.g.*, Cadieux Aff., ¶ 9 (there are a significant number of central offices with multiple collocators but no alternative transport provider for routes to NuVox's switching platform).

end office merely by requiring all CLECs to incorporate the "competitive" route into their networks.'

3. Pricing Flexibility **is** Not a Substitute for **a** Granular Impairment Test.

Some ILECs contend that the Commission may eliminate transport as a UNE across broad regions, based on blanket determinations such as meeting the triggers for special access pricing flexibility or the availability of ILEC special access services." These proposals do not provide a sufficient level of specificity to inform the question of whether a CLEC is impaired as a practical, economic or operational matter."

At its most basic level, the problem with the use of a pricing flexibility test is that the analysis does not match the geographic consequences the ILECs seek to ascribe to it. If the Commission is to make an "all or nothing" impairment determination that applies to an entire MSA, then the analysis supporting it must similarly question whether impairment exists on an MSA-wide basis. The existence of alternatives in a few areas of an MSA will not suffice. Rather, a CLEC would be impaired unless it had sufficient practical, economic and operational alternatives throughout the MSA. In short, a lack of impairment could be found only if alternatives existed that could completely replace the need for ILEC transport ***throughout the*** *entire MSA*.

On this score, the record is perfectly clear. No single provider – ***in*** *any* ***market*** - can offer ubiquitous alternatives to ILEC UNE transport. Indeed, Verizon implicitly concedes this point, arguing not that any markets are actually contested, but only that they are *contestable*.[12]

Such **a** strategy, *if permitted*, could be used to undermine the availability of EELs or to eliminate them entirely from certain end offices. CLECs would face the possibility (perhaps likelihood, given the ILECs' history of thwarting EELs) that EEL orders suddenly would be rejected because a single physical segment of the transport component of an EEL is competitive.

10 See, e.g., Verizon **ex** parte December 17,2002.

11 Moreover, the Commission twice has rejected the reliance on ILEC tariffed services in its impairment analysis. ***UNE Remand Order,*** 15 FCC Rcd 3696, ¶¶ 67-69; *Local* ***Competirion Order,*** 11 ***FCC*** Rcd 15499, ¶¶ 286-87. Throughout the lengthy litigation surrounding these orders, no court has found fault with this FCC determination. The Commission's prior decisions are sound and nothing in the record suggests that it should now reach a contrary conclusion.

12 This advantage for the ILEC stems directly from its previous monopoly position. Not only did the ILEC enjoy **a** century of ratepayer-supported funding to deploy its network, but the ILEC even today can expect to serve 90 percent of the retail customers in any area (and a higher percentage of the total traffic, counting wholesale service provided through UNEs). This legacy from its monopoly makes deployment – new or old .-justifiable from an economic perspective, while no competitive entrant can expect such a high acceptance rate from its deployment.

In addition, the ILECs know that pricing flexibility cannot bear the weight that they assign to it. The *Pricing Flexibility Orders* permit ILECs, under certain circumstances to enter into contract tariffs and to file tariffs outside of the price cap regime. **As** a result, the *Pricing Flexibility* determination was a narrow one, reflecting only the level of FCC scrutiny appropriate for ILEC special access tariff filings. The Commission expressly disclaimed any finding that ILECs were non-dominant in the provisioning of special access services.[13] Similarly, in defending the order on appeal, the Commission emphasized that its determination did not mean that actual competition existed in the market.[14] Any attempt to expand its implications beyond the question of tariff review is misplaced.

In any event, experience under the pricing flexibility regime demonstrates that the flexibility triggers are not working as intended. The LEC special access gravy train has been moving in high gear for the last few years. Despite the purported price pressures on ILEC special access rates in areas with pricing flexibility, all of the RBOCs are earning rates of return of 20% or more on special access services.[15] The RBOCs earned literally billions of dollars more than they would have at an 11.25% rate of return."

These problems are confirmed by the persistence of inflated mileage charges embedded in ILEC tariffed special access rates. For example, in the Philadelphia **MSA** (an MSA where Verizon received pricing flexibility in 2001), Verizon charges $14 per mile for the transport mileage rate element of special access; the comparable cost-based UNE mileage charge is $0.60 in Pennsylvania and Delaware, and $0.47 in New Jersey.[17]

4. A Modification of the ALTS/CompTel Granularity Test for Unbundled Transport.

The submitting CLECs propose that the ALTS/CompTel test be modified to accommodate the concerns discussed above. These modifications balance objective and

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13 *In the Mutter of Access* Charge *Reform*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, ¶ 90 ('We will not require incumbent LECs to demonstrate that they no longer possess market power in the provision of any access services to receive pricing flexibility") and ¶ 151 ("Phase II relief is not tantamount to non-dominant treatment").

14 *WorldCom v. FCC, 238* F3d 449 (DC Cir. 2001) (noting that "the FCC acknowledged that its rule may allow Phase II relief before the manifestation of actual competitive alternatives for interstate access customer").

15 ***See*** AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, RM 10593, at 8 (tiled Oct. 15, 2002). As calculated by AT&T, rates of return for special access services in 2001 were as follows: SBC 54.6%; BellSouth 49.26%; Qwest 46.58%; Verizon 21.72%.

16 *Id.*

17 *See* SNiP LiNK ex parte, September 25,2002 (comparing EEL and special access costs for three sample customers).

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practical considerations affecting impairment and provides for unbundling determinations that follow the pattern of facilities deployment and the availability of competitive alternatives in a market. In addition, the test provides for an orderly transition from UNE transport when non-impairment is shown

> Unbundled interoffice transport shall be made available between any two wire centers or switches, *unless* a state commission has determined, upon petition by an ILEC and receipt of record evidence, that the following criteria are satisfied for a given route (e.g., central office A to central office B):
>
> 1. A minimum of 4 CLECs are collocated in both central office A and central office B;
>
> 2. A minimum of 3 of these CLECs offer wholesale transport on the route to other carriers using non-ILEC facilities. One CLEC providing solely self-provisioned transport may count toward the 4 collocated CLEC requirement; and
>
> 3. There are no legal, practical, economic or operational barriers to a CLEC utilizing competitive transport in conjunction with other unbundled network elements (including loops), tariffed services or a CLEC's own facilities.
>
> If a state commission determines that a particular interoffice transport route meets the above criteria, the state shall mandate a reasonable transition plan for existing transport arrangements in place at the time of the state determination. At a minimum, such a transition plan should require the continuation of TELRIC pricing for existing arrangements for at least two years, in order to allow sufficient time for the arrangement to be converted to alternative, non-UNE arrangements.

The rationale for each element of the proposal is discussed briefly below:

<u>4 CLECs/3 Actual Wholesale Alternatives.</u> These requirements work in tandem to serve several purposes. First, the existence of at least *four* CLECs with collocations on both ends of a route indicates that there is a minimum level of demand for customers and services

between the two end points, such that wholesale supply or self-provisioning is economically feasible.''

Second, by requiring that at least three CLECs offer wholesale service (while allowing for no more than one self-provisioned provider to count toward the four carrier requirement), the test ensures that carrier diversity exists among transport alternatives. **An** abundance of self-provisioned transport may result from one or a few specialized customers in an area, but may not indicate that facilities-based service is feasible for the small and medium-sized businesses that utilize integrated T-1s and other CLEC products. Wholesale transport, on the other hand, indicates that the route supports facilities-based services to smaller customers. It also provides the redundancy and route-diversity that many customers are requiring from carrier networks.

Third, the presence of wholesale providers indicates that an actual alternative exists, rather than an alternative that may some day develop under economic theory. The transport market is one of the more mature local service markets. **As** a result, wholesale services are more likely already to he offered in areas where market conditions justify competitive deployment, The lack of an existing alternative suggests that deployment may not be supportable on the particular route.

Fourth, this requirement reasonably takes self-provisioned transport into account. Many CLECs may have facilities, but lack excess capacity to provide wholesale service to others. For example, although KMC has deployed its own facilities in many markets, it is not a wholesale provider of transport. KMC's facilities are scaled for its own anticipated use, so it does not have capacity to provide transport for others." While such deployment indicates that self-provisioning may make sense for one provider, it does not necessarily follow that *all* ***providers*** utilizing the route could self-supply transport. Other providers may not have the volume of traffic between the end points to justify self-provisioning, and no one has the resources to build everywhere at once. Self-provisioning is a difficult, costly and time consuming process, often requiring years to obtain necessary permits and rights of way and to complete necessary construction. Under the test discussed above, the Commission may give weight to such deployment, but self-provisioning alone may not be used to defeat the availability of transport for all providers. Instead, one such provider may count toward the four carrier requirement, but there must be multiple actual competitive providers before the Commission can conclude that all providers are not impaired with respect to a transport route

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18 It bears emphasis that the same four CLECs must be collocated at both end offices and that the CLECs must actually use transport between the two end offices. The presence of CLECs 1-4 in wire center **A** and CLECs 5-8 in wire center B does not indicate any need for transport between the two wire centers.

19 Duke (KMC) Aff. at ¶¶ 12-14, attached to Initial Comments of NuVox et al. (April 5, 2002). Moreover, KMC does not have the interfaces or back office systems necessary to support wholesale service to others. *Id.*

Finally, requiring three non-ILEC alternatives ensures that a viable competitive market actually exists. The presence of fewer non-ILEC wholesale competitors can result in either a de facto monopoly or in duopoly behavior, neither of which is sufficient to enable facilities-based local services.[20] In many instances, when only one competitive provider exists on a route, that provider's prices are roughly equal to (and sometimes higher than) the ILEC's special access prices, not the TELRIC price.

Lack of legal. practical. economic or operational barriers. This requirement is both an application of the impairment test and a recognition that the transport alternative must be able to function seamlessly in a CLEC network that includes ILEC loops and other UNEs, tariffed services, third party services and CLEC-supplied switching and other equipment. Relevant considerations would include the terms and conditions on which alternative facilities are available, such as whether a competitive provider will sell capacity at levels as low as DS-1,[21] and the feasibility of cross-connects.[22] For example, additional engineering is needed if the distance between termination frames is longer than three hundred (300) feet, and in some instances a circuit cannot be provisioned due to excessive distance. In addition, the impairment analysis must determine whether the pricing of cross connects renders a multi-vendor approach uneconomic.[23] An impairment analysis must also determine whether multi-vendor provisioning and maintenance are feasible. This requires determination of whether adequate end to end testing is in place,[24] and whether repair and troubleshooting can be conducted in a multi-vendor environment. Only if an alternative is available in practical, economic and operational terms can a CLEC utilize the alternative without impairment.

Transition Plan after a Finding of Non-Impairment. The transition plan requirement is a recognition that network planning is a time-consuming process. It is not possible to re-configure a local transport network over night. **A** minimum of two years would be necessary to make suitable alternative arrangements and to transition customers and facilities in an orderly manner.

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20 ***See.*** *e.g.,* ***Application of Echostar*** Communications ***Corporation, General Motors Corporation, and Hughes*** *Electronics* ***Corporation*** *(Transferors)* ***and*** *Echostar* ***Communications Corporation (Transferee).*** Hearing Designation Order, FCC 02-284 (Oct. 18, 2002) (designating proposed merger for a hearing due in part to concerns that merger would produce a duopoly).

21 ***See,*** *e.g.,* Cadieux (NuVox) Aff. at ¶ 9 (DS-I competitive transport is not available; third party providers do not offer transport below a DS-3) attached to Initial Comments of NuVox et al. (April 5, 2002); Broadview ex parte August 1,2002 (guaranteed revenue commitments and "double cost" of multiple vendors may make alternative sources uneconomic).

22 Broadview ex parte August 1,2002 (distance between CLECs within a wire center may exceed standards for a cross connect).

23 ***See.*** *e.g.,* SWBT FCC No. 73, Section 20.5.3(M) (supporting $762.06 monthly cross-connect charge). Such charges may make it economically infeasible to utilize an alternative provider's network, regardless of the price at which it offers transport links.

24 ALTS/CompTel ex parte October 8,2002.

In accordance with Section 1.1206(b), an original and one copy of this letter is being provided for inclusion in the docket.

Sincerely,

Steven A. Augustino

SAA/pab

cc: (via email)
Christopher Libertelli
Dan Gonzalez
Jordan Goldstein
Matt Brill
Lisa Zaina
Michelle Carey
Tom Navin
Jeremy Miller
Julie Veach

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Local Competition Provisions of the Telecommunications Act Of 1996	)	CC Docket No. 96-98
	)	
Joint Petition of BellSouth, SBC, and Verizon For Elimination of Mandatory Unbundling of High Capacity Loops and Dedicated Transport	)	

AFFIDAVIT OF EDWARD J. CADIEUX

I, Edward J. Cadieux, pursuant to 28 U.S.C. Sec. 1746, do hereby declare, under penalty of Perjury, that the following is true and correct:

1. I am employed as Vice President of Regulatory and Public Affairs by NuVox, Inc. ("NuVox"). I have more than 20 years of regulatory, legal and public policy experience in the telecommunications industry. I *am* a licensed attorney in the State of Missouri.

2. My business address is 16090 Swingley Ridge Road, Suite 500, Chesterfield. Missouri 63017.

3. My purpose in providing this Declaration is to provide the Commission additional information regarding: (a) The benefits to small and medium-sized business customers from the bundled voice/broadband internet access product via integrated T-1 being offered by CLECs like NuVox; and (b) The devastating impact that will result for this serving strategy if the Commission fails to implement a meaningful, route-by-route transport impairment analysis

4. NuVox is a facilities-based integrated communications and applications services provider, offering a full menu of voice, data and ancillary advanced services to small and medium-sized business customers across thirty cities across the Southeast and Midwest. NuVox is one of a small group of CLECs that pioneered the offering of bundled facilities-based local voice and broadband internet access (along with resold long distance services) via an integrated T-1. NuVox has invested more than $300 million in integrated access devices (deployed on customer premises), collocations, digital circuit switches and ATM switches and supporting equipment and systems. Along with these NuVox-owned facilities we lease DS1 loops and DS1 and higher dedicated transport to connect customers to NuVox's switching platform.

5. The small/medium-sized segment of the business customer market has historically been underserved by the Bell companies. Traditionally, the Bells have been satisfied with offering their smaller business customers less than efficient alternatives, forcing them to add separate, parallel DS1 facilities to obtain voice and T-1-based broadband internet access. NuVox and a few other CLECs came into being for the express purpose of serving this market segment. NuVox now serves almost 20,000 customers with nearly a quarter of a million total facility-based access lines (voice lines and DSO equivalents of broadband internet access) in service. Only very recently – in response to competitive inroads from CLEC integrated T-1 services – have SBC, Verizon and BellSouth belatedly rolled-out there own versions of the integrated T-1/bundled voice and broadband internet access products.

6. NuVox has deployed collocations aggressively, with 200 collocations across its 30 markets. This substantial facilities deployment supports the offering of the integrated T-1 product via DS1 loops leased from the serving ILEC, which NuVox combines at the customer's serving end office (i.e., at our collocations) with leased dedicated transport connecting to our switching platform. This is one essential piece-part of NuVox's business plan. However, NuVox has never been satisfied with restricting the geographic scope of its service offering to its collocation footprint. From "day one" we have always offered our integrated T-1 product to customers in all ILEC end-offices throughout the cities we serve. In order to reach customers in end-offices where low relative customer density does not support collocation, EELs are essential. This is the second, equally important piece of the NuVox business plan. EELs provide leased loop/transport combinations from the ILEC at economically efficient cost. NuVox utilizes DS1 loop/DS1 transport combinations terminating into nearby collocations, where traffic can be aggregated to DS3 dedicated transport and sent on to our switching platform. NuVox is one of the few CLECs that has made substantial use of EELs, with over 40% of our customers served in this manner. By layering this EEL-based strategy on top of its collocation footprint, NuVox is able to significantly broaden the geographic scope of its operations, such that in each of its 30 cities it is able to offer its bundled voice/broadband internet access services throughout the entirety of the ILECs' corresponding service areas.

7. NuVox's needs for dedicated transport are route-specific – we need DS3 or above dedicated transport from each of our collocations back to our switching platform

in each of our cities. Additionally, in the context of EELs, we need dedicated DS1 interoffice transport from the customer's serving end-office to a nearby ILEC central office where NuVox does have a collocation. *So*, again, the transport need is route-specific.

8. It has been NuVox's consistent experience across all of the cities in which it operates that these DS1 interoffice transport links are available only from the ILEC.[1] Regarding DS3 (and higher) dedicated transport routes between our ILEC end-office collocations and our switching platform, NuVox's experience shows that the availability of facilities from alternative providers varies from city-to-city and from route-to-route within each city. NuVox's experience is that even in a Tier 1 city like St. Louis, the availability of even a single alternative transport provider differs from route-to route. NuVox has 20 collocations in the St. Louis area and, therefore, has a need for 20 route-specific DS3 or higher transport links back to its switching platform. Alternative provider transport is available on only about half of these 20 links. Moreover, even on routes where alternative provider transport is available, in many cases only one alternative source is available. **A** similar pattern is found in most of NuVox's other cities. This should not be at all surprising – even in Tier 1 cities the availability of alternative provider transport will depend on in large part on the customer profile and density characteristics of the end-offices to which the transport link would connect – higher density end-offices (particularly those with substantial concentrations of usage-intensive business customers) are more capable ofjustifying the investment

[1] Thus, CLECs would be impaired without ILEC UNE DSI transport across all transport routes, *in* all markets.

required to deploy transport facilities and, thus, more likely to have one or more alternative transport providers in operation. On the hand, lower density end-offices are not likely to be served by alternative provider transport links because the potential revenue will not support the required investment.

9. **A** transport impairment test based on the number of collocated carriers in an end-office would not accurately reflect the true level of transport competition on specific routes. There is no consistent nexus across central offices between the number of collocations present and the number (if any) of alternative wholesale transport providers between that point and NuVox's switching platform. This conclusion is confirmed by a limited sampling of some of NuVox's markets, which discloses a significant number of central offices where we believe there are multiple collocators but no alternative transport provider from that point back to NuVox's switching platform.[2] This confirms that if the Commission were to mandate an impairment test based on the number of collocators in a central office, it will vastly overstate the amount and ubiquity of alternative transport and grossly understate the transport impairment faced by CLECs.

10. Moreover, any capacity limitation regarding the amount of UNE transport a CLEC can obtain on a particular route from an ILEC creates the danger of imposing a static regime that will inhibit competition, either immediately or over

[2] NuVox's limited sampling is based only on immediately available information and, therefore, almost certainly understates the number of central offices in its markets with multiple collocators but no alternative transport providers connecting to NuVox's switching platform. **Based** on that information, we believe at least the following twenty-four **(24)** central offices fit that description: Atlanta: ATLNGAEL and DLTHGAHS; Charleston (SC): CHTNSCLB, CHTNSCWA and MNPLSCES; Cincinnati (OH)/Covingon (KY): CNCNOHPH, CNCNOHNS, CNCNOHHP, CNCNOHHW, CNCNOHMW, CNCNOH, CVTNKYCN; FLRNKYFL, GRHLOHNG, MTHTOHMH and STBROHSB; Columbia (SC): CLMASCSU and CLMASCSW; Greenville (SC): ARSNSCMA, ESLYSCMA, GRERSCMA, and GNVLSCBE; Nashville (TN): GDVLTNMA; and Spartanburg (SC): SPBGSCWV.

time as CLECs continue to grow. This is particularly true for carriers like NuVox that have found significant demand for the bundled voice/broadband internet access product via integrated T-1. When serving customers via the integrated T-1, it does not take a particularly large number of customers "wins" for a CLEC to generate the need for an increasing number of DS3s for transport back to its switching platform. Thus, any move towards this type of capacity constraint risks unintended harmful consequences, particular if set at relatively low levels. The Commission should refrain from imposing any capacity limits on transport availability over a particular route until it has sufficient information to ensure that it can avoid creating a whole new set of competitive barriers.

11. It bears emphasis that a sufficient number of alternative providers on a particular transport route is essential to produce competitive transport pricing and to avoid harm to competition and consumers.[3] Certainly a single alternative provider of transport on a route is wholly inadequate. Where only a single alternative provider exists, if the carrier discontinues offering its transport facilities on a wholesale basis on that route (e.g., if the alternative provider determines it needs the wholesale capacity for its own retail operations, or if it exists the market altogether), NuVox will be cast into the arms of an unregulated (i.e., no UNE transport obligation) monopoly. Moreover, even if one assumes the continuing availability of a small number of alternative providers on a particular transport route, a duopoly or oligopoly with the ILEC will also invariably fail to produce competitive market conditions. Instead, it is highly probable that the result will

[3] NuVox supports the ALTS/CompTel proposal that a minimum of four alternative providers be available on a particular transport route in order to justify a finding of no impairment.

be umbrella pricing at or near the ILECs' inflated special access rate levels. The result would be either to force CLECs to abandon service to customers altogether in the sub-tending ILEC end-office or, at a minimum, to abandon small/medium-sized business customers for the higher end of the business customer segment, since anticipated revenues from smaller business customers would no longer cover the substantially increased transport costs. **A** sufficient number of alternative providers on a particular transport route will be essential to producing the competitive pressure necessary to restrain ILEC pricing power where the UNE obligation is removed.

12. The Commission's transport impairment test must also recognize and accommodate the real world effect of current economic and capital market conditions on potential CLEC transport self-provisioning. Slower growth and scarce availability of new capital prevents deployment of new, self-provisioned transport facilities routes for most, if not all, CLECs.[4] Over time, this constraint may ease, but under current circumstances arguments to restrict the availability of ILEC UNE transport in order to (supposedly) provide CLECs incentives to self-provision create the prospect for locking-in an ILEC transport monopoly on the vast majority of transport routes. As growth accelerates and capital markets loosen, CLECs can be expected to examine the economic feasibility of self-provisioning transport on routes where demand characteristics have the potential to support the necessary investment. But an impairment test that ignores these

[4] For example, NuVox raised more than one hundred million dollars in 2002, but those funds do not (and cannot) contemplate adding self-provisioned transport as the company moves towards the benchmarks of becoming EBITDA and cash flow positive.

real world limitations on self-provisioning is a prescription for reducing rather than promoting facilities-based competition.

13. It is critical that the Commission adopt an impairment test that matches these realities – i.e., one that is route-specific in nature. A non-route-specific impairment test would inevitably result in erroneous findings of non-impairment on routes where no alternative providers (or an insufficient number of alternative providers) exist or are likely to deploy facilities for the foreseeable future. This would have seriously pernicious effects for CLECs like NuVox, for competition in the local voice and broadband internet access markets, and for small/medium business customers. If the ILEC's are relieved of their transport unbundling obligation on a route where insufficient alternatives exist, it is pure fiction to believe that the ILECs will do anything other than extract hugely excessive monopoly prices from CLECs like NuVox. That conclusion has been proven by the ILECs long and consistent history of maintaining exorbitant special access rates. Across all 30 of NuVox's cities, ILEC special access prices for loop/transport combinations average 3 times the corresponding price for the same facilities purchased as UNEs. That difference is so large that if the UNE transport obligation is removed in the absence of a sufficient number of alternatives on a specific route, NuVox's ability to serve customers located in the subtending end-office will be destroyed.

14. This will penalize CLECs like NuVox that have deployed collocations in an aggressive manner, because the drastic increase in the cost of transport that will result from unjustified removal of the ILEC's UNE transport obligation on

VERIFICATION

State of Missouri)
) SS
County of St. ~~Louis~~ Charles)

Edward J. Cadieux being duly sworn states that he is the Vice President, Regulatory and Public Affairs of NuVox, Inc., and that the facts set forth above are true and correct to the best of his knowledge and belief.

Edward J. Cadieux

Subscribed and sworn to before me, this 21st day of January, 2003

My commission expires: 6/17/2004

JACQUELINE KUENNEKE
Notary Public - Notary Seal
STATE OF MISSOURI
St. Charles County
My Commission Expires: June 17, 2004

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