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ADVANCING GLOBAL COMMUNICATIONS THROUGH COMPETITION

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February 11, 2003

Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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

Dear Ms. Dortch:

The Competitive Telecommunications Association ("CompTel") writes to support the National Association of Regulatory Commissioners' ("NARUC") February 6, 2003 *ex parte* filing in this docket, which argues that State commissions should have a substantial role in determining ILEC unbundling requirements under Section 251 of the Telecommunications Act of 1996 ("the Act").[1]

As stated in our previous submissions,[2] CompTel believes that the Federal Communications Commission ("FCC") does not have the resources or the expertise to conduct the granular analysis of impairment required by the D.C. Circuit Court of Appeals decision in *U.S.T.A. v. FCC.*[3] Indeed, CompTel agrees with NARUC that "the great degree of variation in markets and submarkets between states and across elements"[4] places State commissions in a superior position to evaluate a competitor's impairment under Section 251(d)(2) of the Act.[5] Without a doubt, State commissions have the best understanding of the inherently local market conditions – including technology, geography, and economics – which determine whether a new entrant is impaired without access to unbundled network elements ("UNEs"). Moreover, State

[1] Letter from David Svanda, President, National Association of Regulatory Utility Commissioners et. al., to Michael Powell, Chairman, Federal Communications Commission, February 6, 2003. ("*NARUC ex parte*")

[2] See Comments of the Competitive Telecommunications Association, (April 15, 2002); Reply Comments of the Competitive Telecommunications Association, (July 17, 2002); and Letter from Access Integrated Networks et. al. to Marlene H. Dortch (October 24, 2002), CC Docket Nos. 01-338, 96-98 and 98-147.

[3] 290 F.3d 415 (D.C. Cir., 2002).

[4] *NARUC ex parte*, "UNE Triennial Review: Principles and Standards for State Commissions," footnote 2.

[5] 47 U.S.C. § 251(d)(2).

commissions routinely utilize the processes and procedures – including discovery, sworn testimony and cross-examination on the record – that are essential to reasoned decision making on complicated economic and technological matters. The FCC has relied extensively on the State commissions to perform such detailed fact-finding in the Section 271 context; there is no reason why the FCC should not continue to depend on the state commissions' expertise in interpreting and implementing the incumbents' general unbundling obligations under the Act.

Consistent with CompTel's prior submissions in this docket, CompTel renews its request that the FCC establish a process by which State commissions can ultimately determine when a competitor will no longer be impaired without access to a UNE, subject to broad guidelines established by the FCC.[6] Tellingly, NARUC also urges the FCC to maintain the current national list of UNEs in the FCC's forthcoming order, supporting CompTel's assertion that competitors will be impaired without access to these network elements at reasonable, TELRIC-based rates.[7] For the foregoing reasons, CompTel fully supports NARUC's six "Elements State Regulators Urge as Components of any FCC Order,"[8] described below, which are wholly consistent with CompTel's advocacy in this proceeding:

1. Any FCC Order should make clear that no preemption is intended or should be implied - particularly with respect to additions to the National list imposed by States.

2. Any FCC list should, at a minimum, include all existing items.

3. Carriers that want to remove an item from the list must make a factual case before the State commission.

4. Any challenged UNE stays on the required list until the State commission makes a contrary finding.

5. FCC should caucus with State commissions extensively before promulgating the "necessary and impair" standard used to evaluate if a UNE should be available.

6. FCC should confirm its previous ruling that States retain the right to add to the national list after a hearing based on State and Federal law.

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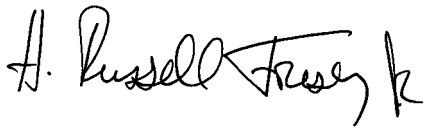
[6] To the extent that a State commission determines that a competitor will not be impaired without access to a specific UNE under Section 251(d)(2), the FCC should clarify that the ILEC must still provide that network element to a competitor, upon request, at a just and reasonable rate pursuant to Title II of the Communications Act of 1934.

[7] *NARUC ex parte*, appendix A.

[8] *Id*.

CompTel applauds NARUC for developing principles which, if incorporated into the FCC's forthcoming order, will ensure that consumers retain access to the benefits of local competition envisioned by the Act. More importantly, adopting NARUC's principles will cement a federal-state partnership that will allow the FCC to comply with the granularity requirements of *U.S.T.A. v. FCC.* All parties – industry, state and federal government, and consumers – will benefit from the certainty and stability that will result from the FCC's adoption of rules capable of passing judicial review.

Sincerely,



H. Russell Frisby, Jr.
President

cc: Chairman Powell
Commissioner Abernathy
Commissioner Copps
Commissioner Martin
Commissioner Adelstein
C. Libertelli
M. Brill
J. Goldstein
D. Gonzalez
L. Zaina