

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Review of the Section 251 Unbundling |) | |
| Obligations of Incumbent Local Exchange |) | CC Docket No. 01-338 |
| Carriers |) | |
| |) | |
| Implementation of the Local Competition |) | |
| Provisions of the Telecommunications Act |) | CC Docket No. 96-98 |
| of 1996 |) | |
| |) | |
| Deployment of Wireline Services Offering |) | CC Docket No. 98-147 |
| Advanced Telecommunications |) | |
| Capability |) | |

**PETITION FOR RECONSIDERATION
OF T-MOBILE USA, INC.**

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Table of Contents

| | |
|---|-----------|
| I. INTRODUCTION AND SUMMARY | 1 |
| II. BACKGROUND | 3 |
| III. DISCUSSION | 7 |
| A. The Links Connecting CMRS Carriers' Base Stations to Incumbent LEC Central Offices Should Be Included in the Definition of Unbundled Loops. . . | 7 |
| B. The FCC Should Revise its Service Eligibility Rules to Accommodate Differences Between Wireless and Wireline Networks. | 13 |
| IV. CONCLUSION | 17 |

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**PETITION FOR RECONSIDERATION
OF T-MOBILE USA, INC.**

T-Mobile USA, Inc. (“T-Mobile”) hereby petitions the Federal Communications Commission (“FCC” or “Commission”) to reconsider certain rules the agency recently adopted in the above-captioned proceeding.

I. INTRODUCTION AND SUMMARY

T-Mobile, formerly known as VoiceStream Wireless Corporation, is the sixth largest national wireless carrier in the United States, with over eleven million customers. T-Mobile competes directly with incumbent local exchange carriers (“LECs”) for customers by offering a wide variety of telecommunications services, including local voice service.

As the recently adopted *Triennial Review Order* makes clear, commercial mobile radio service (“CMRS”) carriers such as T-Mobile have played a leading role in fostering

the development of facilities-based, intermodal competition, a cornerstone of the “new competitive paradigm” envisaged by the Commission.¹ Wireless subscribership has increased dramatically since 1996, and wireless carriers have begun to mount an intermodal challenge to the local service monopolies of incumbent LECs throughout much of the nation. CMRS carriers, however, have not had the same type of access to the incumbent LECs’ bottleneck facilities at cost-based rates as wireline competitors in order to offer consumers a competitive alternative to the incumbent LECs’ local voice services.

CMRS carriers such as T-Mobile are heavily dependent on incumbent LEC facilities to provide the connections linking their cell sites or base stations (“base stations”) and mobile switching centers (“MSCs”). Prior to the *Triennial Review Order*, incumbent LECs had refused to provide any of these connections to CMRS carriers as unbundled network elements (“UNEs”). However, in that order, the Commission confirmed that transport within an incumbent LEC’s network must be made available to CMRS carriers as unbundled transport.² In redefining transport, however, the Commission created a set of unbundling obligations that have the effect of discriminating against wireless carriers; the link between the base station and the incumbent LEC’s central office remains unavailable as a UNE, even though analogous connections are available to wireline carriers as UNEs. T-Mobile depends primarily on incumbent LEC special access services to provide this critical “last mile” of connectivity within the

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶¶ 1, 5-6 (2003) (FCC 03-36) (“*Triennial Review Order*”), quoting *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, ¶ 2 (1999) (“*UNE Remand Order*”).

² *Triennial Review Order* ¶ 368.

wireline portion of T-Mobile's network. For T-Mobile to provide the intermodal alternative that is so vital to the Commission's view of local competition,³ it must have nondiscriminatory access to these last mile links at cost-based rates. T-Mobile therefore urges the FCC to make these connections available on an unbundled basis by revising its definition of a "loop" to include such links.

The proposed revisions to the loop definition also require changes to the service eligibility rules to account for the differences between wireline and wireless networks and to ensure that CMRS carriers are provided access to unbundled loop and transport combinations. As explained in more detail below, these revisions would promote the FCC's goal of fostering intermodal competition and would be consistent with the FCC's policy of technological neutrality.

II. BACKGROUND

T-Mobile currently leases special access circuits, primarily DS1s and DS3s, from incumbent LECs to provide the vast majority of the wireline connections T-Mobile requires to link its own facilities in an integrated network.⁴ As illustrated by the attached schematic diagram,⁵ these wireline connections consist of three main components. First, T-Mobile relies on entrance facilities to provide the link between the MSC and the incumbent LEC's serving wire center. Because the Commission in the *Triennial Review Order* redefined transport to exclude entrance facilities, incumbent LECs are not required to offer these links as UNEs at cost-based rates.⁶ Second, T-Mobile uses interoffice

³ See *Triennial Review Order* ¶¶ 5-6, 97.

⁴ Although T-Mobile in some cases leases circuits from competitive providers, today 96% of T-Mobile's wireline circuits are provided by incumbent LECs.

⁵ "Schematic View of CMRS Network," attached hereto as Attachment A.

⁶ *Triennial Review Order* ¶ 366, n.1116.

transport facilities to provide the necessary wireline links within the incumbent LEC's network. Today, these links are typically purchased from the incumbent LECs as DS1 or DS3 special access "channel mileage" services. Under the Commission's rules, T-Mobile is now entitled to obtain these links as unbundled transport.⁷ The third component is the last mile link between the base station and the incumbent LEC central office serving the base station. Today, T-Mobile usually purchases these links as DS1 "channel terminations" from an incumbent LEC's special access tariff at rates well above cost. The Commission in the *Triennial Review Order* excluded these links from the definition of transport, and therefore they will not be available as UNEs at cost-based rates.

This Petition is focused on the proper treatment of this third component of the dedicated facilities T-Mobile purchases from the incumbent LECs, *i.e.*, the links connecting T-Mobile's base stations with the incumbent LECs' central offices. The inability of T-Mobile and other CMRS carriers to purchase these last mile links at cost-based rates thwarts the Commission's policy of promoting intermodal competition.⁸ In the *Triennial Review Order*, the Commission repeatedly emphasized the importance of intermodal competition between wireline and wireless providers and the need to promote

⁷ *Id.* ¶¶ 386, 390. The Commission provided for state review of the routes on which unbundled transport must be made available. Pending state review, however, incumbent LECs must make these links available as unbundled transport nationwide.

⁸ As the FCC must recognize, it cannot rely on the availability of special access services to foster intermodal competition. *Id.* ¶ 102 (finding that incumbent LECs cannot avoid their unbundling obligations simply by making a network element available as a tariffed special access service).

intermodal competition from wireless and cable service providers.⁹ In fact, the FCC made a finding that CMRS providers offer services in competition with “telecommunications services that have been traditionally within the exclusive or primary domain of incumbent LECs.”¹⁰

As the *Triennial Review Order* makes clear, wireless carriers have succeeded in mounting an intermodal challenge to the local service monopolies of incumbent LECs “to a far greater extent than could have been reasonably predicted in 1996.”¹¹ Initially, wireless service was more of a complement than a competitor to wireline telephone service. That situation has changed, however, as wireless rates have fallen dramatically in recent years, innovative service packages (e.g., big “buckets” of minutes; free long distance) have been developed, and technical quality and coverage have improved. Consequently, many consumers now view their wireless phone as their “primary phone”¹² Indeed, a growing number of CMRS customers are “cutting the cord” and replacing their landline phones entirely with wireless phones,¹³ while others are using

⁹ *Id.* ¶¶ 5-6, 97 (explaining the important role that intermodal alternatives – including wireless technologies – play in the FCC’s impairment analysis); *see also* 47 C.F.R. § 51.5 (defining “qualifying services” and “intermodal”).

¹⁰ *Triennial Review Order* ¶ 140.

¹¹ *Id.* ¶ 6.

¹² Kevin Maney, *Future Not So Bright for Telecoms*, USA TODAY, July 15, 2002, at 1B (citing poll results showing that about 18% of cellphone owners use cellphones as their primary phones); Christine Nuzum, *Cellphone Users Are Hanging Up Their Landlines*, THE WALL STREET JOURNAL, Oct. 1, 2003, at B13B (“*Nuzum WSJ Article*”) (noting that even consumers who keep their landline connections are spending more time talking on wireless phones).

¹³ *Triennial Review Order* ¶ 53 (noting that “3 to 5 percent of wireless customers use their wireless phone as their only phone.”); *Nuzum WSJ Article* (citing estimates that “6.1% of consumers in the top 35 markets have canceled a landline at some point, up from 3.4% a year earlier” and that eight million households now have wireless phones but not wireline phones); News Release, Yankee Group, *Twelve Percent of U.S. Young*

wireless phones instead of purchasing second or third lines from the incumbent LECs.¹⁴ There also are indications that many young adults use wireless phones as their primary communications devices,¹⁵ and may not order wireline service at all.¹⁶

This intermodal success story is “remarkable,”¹⁷ not only because wireless mass market subscribership has roughly tripled since 1996,¹⁸ but also because this growth has been accompanied by substantial facilities deployment by wireless carriers.¹⁹ Moreover, as the Commission has found, facilities-based competition best serves the goals of the Communications Act – including deregulation, innovation, implementation of efficient technologies, and creation of network redundancy.²⁰ Indeed, as Chairman Powell has observed, CMRS may offer the “best hope” for bringing local exchange competition to residential consumers.²¹

Adults are Totally Wireless According to Yankee Group (Aug. 5, 2003), available at: <http://www.yankeegroup.com/public/news_releases/news_release_detail.jsp?ID=PressReleases/quote_08052003_WMS.htm> (“*Yankee Group Release*”) (predicting that a growing number of young adults will “cut the cord over the next 5 years.”)

¹⁴ See Reinhardt Krause, *Local Bells Losing Second Lines as Users Go Broadband, Wireless; Phone Companies Keep Those Who Opt for DSL, Unfurl Bundling Offers*, INVESTOR’S BUSINESS DAILY, Feb. 11, 2003, at A01.

¹⁵ See *Yankee Group Release* (“there are indications that wireless will become the dominant means of communications for 18- to 24-year-olds . . . over the next 5 years.”).

¹⁶ See *Nuzum WSJ Article* (discussing concerns about recent college graduates “coming out of the box” not using wireline phones).

¹⁷ *Triennial Review Order* ¶ 53.

¹⁸ *Id.*

¹⁹ See Cellular Telecommunications & Internet Association, *CTIA’s Semi-Annual Wireless Industry Survey* at 3, available at: <http://www.wow-com.com/pdf/CTIA_Survey_Yearend_2002.pdf> (showing that domestic U.S. CMRS providers have made over \$126 billion in capital investments – including over \$90 billion since 1996 – and built nearly 140,000 cell sites, including 109,000 since 1996).

²⁰ *Triennial Review Order* ¶ 70 & n.233.

²¹ Speech by Chairman Powell, “Digital Broadband Migration” Part II, 2001 FCC LEXIS 5730 (Oct. 23, 2001).

The fulfillment of this hope, however, depends on CMRS carriers' ability to gain access to the incumbent LECs' bottleneck facilities at cost-based rates. As facilities-based competitors to the incumbent LECs, CMRS providers are precisely the types of carriers the FCC's unbundling rules are designed to assist. And CMRS providers are likely to use UNEs in a way that best effectuates the Commission's pro-competition goals: UNEs will allow CMRS carriers to strengthen their position as intermodal alternatives to the incumbent LECs' historical local voice monopoly. The Commission's clarification that incumbent LECs must provide unbundled transport to CMRS providers is a helpful first step in fostering the intermodal competition the FCC seeks to promote. As explained more fully below, treating base station-to-central office connections as loops is the next logical step in eliminating the discriminatory treatment of wireless carriers and allowing CMRS to realize its full potential as an alternative to the incumbent LECs' local wireline services.

III. DISCUSSION

A. The Links Connecting CMRS Carriers' Base Stations to Incumbent LEC Central Offices Should Be Included in the Definition of Unbundled Loops.

During the *Triennial Review* proceeding, T-Mobile and other carriers argued that CMRS carriers are impaired under Section 251 of the Act without access to the incumbent LEC's high capacity wireline facilities.²² The proponents of this argument

²² See, e.g., T-Mobile Comments at 5-15 (April 5, 2002) (filed as Comments of VoiceStream Wireless Corporation) ("T-Mobile Comments"); Letter from Douglas Bonner, Counsel for T-Mobile, to Marlene Dortch, FCC, at 1, attached to Letter from Douglas Bonner to Marlene Dortch, FCC (Jan. 6, 2003); Letter from Patrick Donovan and Joshua Bobeck, Counsel for El Paso Networks, LLC, to Marlene Dortch, FCC, at 1-3 (Dec. 20, 2002) ("El Paso Dec. 20 Letter"). (Unless otherwise indicated, all comments and *ex parte* presentations cited herein were filed in CC Docket No. 01-338.) See also

recognized, however, that such facilities did not fit neatly into the definition of either loops or transport because these definitions were developed primarily with competitive wireline networks in mind, and did not account for differences between wireline and wireless networks.²³ Based on the FCC's definitions in place in 2002, T-Mobile argued that last mile links should be classified as transport.²⁴ In the *Triennial Review Order*, however, the Commission narrowed the definition of transport, finding that “the dedicated transport network element includes only those transmission facilities *within* an incumbent LEC's transport network, that is, the transmission facilities between incumbent LEC switches.”²⁵ The Commission made clear that the link between a base station and the central office serving that base station does not fall under this new definition of transport.²⁶

In deciding to exclude the last mile link from the definition of dedicated transport, the Commission did not consider whether this connection might more properly fall under

Petition for Declaratory Ruling filed by AT&T Wireless and VoiceStream Wireless at 5-14 (CC Docket No. 96-98, Nov. 19, 2001) (“ATTWS/ VoiceStream Petition”).

²³ See T-Mobile Comments at 8-9 (definition of transport incorporates “traditional landline terminology, rather than . . . more technology-neutral language”); El Paso Dec. 20 Letter at 5-7; Letter from Stephen Crawford, El Paso Networks, LLC, to Marlene Dortch, FCC, at 2 (Nov. 26, 2002) (“El Paso Nov. 26 Letter”) (arguing that last mile links between base stations and central offices should be made available as UNEs, but recognizing that it was unclear whether these links were better classified as “loops” or “transport”).

²⁴ T-Mobile Comments at 8-11; T-Mobile *Ex Parte* Presentation, *FCC Triennial Review – What is Needed to Promote Intermodal Competition from the Wireless Industry*, at 10-11 (Dec. 18, 2002), attached to Letter from Douglas Bonner, Counsel for T-Mobile, to Marlene Dortch, FCC (Dec. 19, 2002). See also ATTWS/VoiceStream Petition at 23-26 (dedicated transport definition should be broadly construed to include base station-to-central office links).

²⁵ *Triennial Review Order* ¶ 366 (emphasis in original).

²⁶ *Id.* ¶ 368.

the definition of a “loop.”²⁷ T-Mobile respectfully urges the Commission to address this issue on reconsideration. Specifically, the FCC should expand its loop definition to include the base station-to-central office link on which CMRS providers rely to provide “last mile” connectivity.

A loop definition that includes the central office-to-base station link would advance the FCC’s goal of greater intermodal competition and its closely related policy of technological neutrality. The market-opening provisions of the 1996 Act should not be interpreted in a manner that is biased against any particular technology that carriers might choose to use to compete with the incumbent LECs.²⁸ As a historical matter, however, the FCC has traditionally crafted its UNE rules in a manner that focused primarily on the way network elements are used in a competitive wireline network without regard to alternative networks, such as wireless. While this wireline-centric focus may have made sense in 1996, when mass market wireless service was still in its relative infancy, it can no longer be justified now that wireless subscribership has grown to over 140 million

²⁷ The Commission’s decision not to address this question is understandable in view of the fact that although the issue was raised in the *UNE Triennial Review* proceeding, see El Paso Nov. 26 Letter at 2, it was not the focus of the debate regarding CMRS carriers’ access to UNEs.

²⁸ *Triennial Review Order* ¶ 97 (noting that “the Act expresses no preference for the technology that carriers should use to compete with the incumbent LECs”); see also *id.* ¶ 369 (finding that a “technology-neutral approach best comports with the statute [and] suits the development of intermodal competition); *id.* ¶ 368 (permitting “all telecommunications carriers, including CMRS carriers,” to access transport facilities within the incumbent LEC’s network and to interconnect for the transmission and routing of telephone exchange service and exchange access). This view is consistent with the Commission’s prior decisions. For example, in the *UNE Remand Order*, the FCC modified the definition of a network interface device (“NID”) to be more technology-neutral. See *Triennial Review Order* ¶ 343, n.1008 (citing *UNE Remand Order* ¶ 207); see also *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, ¶ 993 (1996) (“*Local*

customers²⁹ – a subscriber base that firmly establishes wireless carriers as a major source of potential intermodal competition throughout the nation. Moreover, because it is difficult to draw precise analogies between the individual elements of wireless and wireline networks,³⁰ the rules’ wireline bias has led to disputes over the facilities that incumbent LECs are required to provide to requesting CMRS carriers, making it difficult for wireless carriers to gain access to the UNEs they need to compete against the incumbent LECs.

In redefining transport, the Commission clearly stated that it was excluding “entrance facilities” – the transmission link between the incumbent LEC serving wire center and the competitive carrier’s major aggregation point in the LATA (*e.g.*, Point of Presence or MSC). This exclusion affects both wireless and wireline carriers equally. Similarly, both wireless and wireline carriers will be able to acquire dedicated transport as an unbundled network element between incumbent LEC wire centers that serve wireless and wireline customers.

The effect of the redefinition of transport on the treatment of the transmission link on the loop side of the incumbent LEC wire center serving the end user customers, however, is quite different for wireless and for wireline carriers. Wireline carriers will

Competition Order”) (“all telecommunications carriers that compete with each other should be treated alike regardless of the technology used.”).

²⁹ See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Eighth Report, 18 FCC Rcd 14783, ¶ 17 (2003) (“CMRS Competition Eighth Report”) (mobile telephony subscribership increased to 141.8 million as of Dec. 2002).

³⁰ See, *e.g.*, Letter from Jay Bennett, SBC, to Magalie Salas, FCC (CC Docket 96-98, July 10, 2001) (discussing “the fundamental differences between mobile and landline services”).

continue to be able to acquire that transmission link from incumbent LECs as an unbundled loop. Wireless carriers, however, connect the incumbent LEC central office to their end users by means of a combination of wireline and wireless facilities. Under new Section 51.319(a) of the Commission's rules, a loop is defined as "a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end user's customer premises."³¹ Because the wireline piece of the link between the incumbent LEC central office and the end user connects the central office to a base station, the definition of "loop" does not cover this "last mile link," even though this connection is architecturally and functionally equivalent to the "last mile" loop in a wireline network.³² For example, the base station performs a function similar to that of a traditional private branch exchange ("PBX"), terminating traffic received from the incumbent LEC wireline network and assigning each call to the proper wireless channel.³³ Indeed, incumbent LECs recognize that the link between a base station and central office is functionally the same as a connection to an end user location since they require CMRS carriers to acquire those links as channel terminations under special access tariffs.³⁴

The Commission should adopt a loop definition that recognizes the technical differences between wireless and wireline networks, provides parity in regulatory

³¹ 47 C.F.R. § 51.319(a).

³² See El Paso Dec. 20 Letter at 5-7 ("Both legally and technically, the Central Office to cell site circuit is the proverbial 'last mile' of the CMRS carriers' national wireline network. . . . Thus the CO to cell site circuit is the loop").

³³ See T-Mobile Comments at 11, n.33 (describing the functionality of a base station).

³⁴ See T-Mobile Comments at 9; *Triennial Review Order* ¶ 593, n.1826 (drawing an analogy between a special access channel termination and a UNE loop) (*citing Competitive Telecommunications Ass'n v. FCC*, 309 F.3d 8, 17-18 (D.C. Cir. 2002)).

treatment, and promotes the goal of greater intermodal competition. If CMRS carriers were able to lease last mile links as UNE loops at cost-based rates, they would achieve substantial savings.³⁵ These savings would, in turn, allow CMRS carriers to lower their recurring operating costs and free up cash to offer consumers lower prices or enhanced service packages and to build additional cell sites, thereby expanding wireless service areas and improving service quality. In particular, providing unbundled access to last mile links would create incentives for CMRS carriers to invest in building additional cell sites in suburbs and other residential areas outside of urban centers. In many of these areas the cost of special access connections purchased by CMRS carriers is substantial and the availability of competitive alternatives for these connections is limited. Thus, the adoption of T-Mobile's proposal would allow consumers to benefit from robust intermodal and facilities-based competition between CMRS carriers and incumbent LECs.

By contrast, if the Commission continues to force CMRS carriers to purchase last mile links at above-cost rates, it will perpetuate a bias against wireless technology and undermine its goal of achieving greater intermodal competition. Unless the FCC revises the definition of a loop as requested by T-Mobile, the incumbent LECs will continue to enjoy a two-fold competitive advantage: by charging CMRS carriers supra-competitive

³⁵ See T-Mobile Comments at 2-5; *Complaint of Southwestern Bell Telephone L.P. for Post Interconnection Agreement Dispute Resolution with El Paso Networks, LLC*, Order Granting Interim Relief and Setting Entry for the Procedural Schedule and Protective Order, Docket No. 26904, at 5 (Texas P.U.C., Nov. 22, 2002) (granting El Paso Networks the interim right to obtain access to base station-to-central office DS1 links at the UNE loop rate, and citing evidence that “indicated a significant increase in price for a special access line compared to the UNE loop price” for such a connection); ATTWS/VoiceStream Petition at 4 (“CMRS carriers . . . are saddled with enormous expenditures for incumbent LEC special access interoffice transmission facilities”).

special access rates the incumbent LECs are able to increase their own revenues while simultaneously raising the costs of their potentially most significant intermodal competitors. The FCC must put a stop to this anticompetitive practice if it is to unleash CMRS carriers' full potential as facilities-based competitors to the incumbent LECs in the local market.

The Commission therefore should amend its existing loop definition to include transmission facilities between a distribution frame in an incumbent LEC central office and a wireless carrier's cell site or base station. Specifically, the Commission should revise the second sentence of Section 51.319(a) of its rules to read as follows:

The local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and (1) a loop demarcation point at an end-user customer premise, or (2) a CMRS carrier's base station or cell site.”

This change in the definition would recognize the technical differences between wireline and wireless networks, and avoid the discrimination caused by the current definition.³⁶

B. The FCC Should Revise its Service Eligibility Rules to Accommodate Differences Between Wireless and Wireline Networks.

The proposed revisions to the loop definition require revising the service eligibility rules to permit CMRS providers to obtain access to unbundled loop-transport combinations. As explained below, this revision would be consistent with the policy

³⁶ The effect of the proposed rule change would be to require incumbent LECs to provide CMRS carriers access to unbundled loops wherever competitive wireline carriers would be entitled to UNE loops. The availability of UNE loops would still be subject to state review and CMRS carriers would not be entitled to unbundled access to last mile links if the state finds that an applicable trigger has been met. *See Triennial Review Order* ¶¶ 329, 334.

underlying the Commission’s service eligibility rules.³⁷ Moreover, the proposed revision is necessary to prevent incumbent LECs from effectively eliminating CMRS providers’ ability to convert certain special access circuits to UNEs as the FCC intended.

The service eligibility rules restrict access to unbundled high capacity loop-transport combinations (also known as “enhanced extended links” or “EELs”),³⁸ to carriers that certify that they are authorized to provide local voice service and meet certain other criteria.³⁹ The purpose of the service eligibility rules is to ensure that carriers are using the requested EELs to provide local voice service.⁴⁰ The eligibility criteria promulgated by the FCC include certain “architectural safeguards” that are intended to prevent carriers that provide non-qualifying services exclusively from obtaining access to EELs.⁴¹ Because these architectural safeguards were designed with wireline networks in mind, however, they may preclude CMRS carriers from obtaining access to EELs even in circumstances where it is indisputable that the CMRS carrier is using the requested EELs to provide local voice service. This result clearly is at odds with the policy underlying the FCC’s rules.

In establishing service eligibility rules, the FCC’s objective was to encourage the provision of local voice service “in direct competition to incumbent LEC service.”⁴²

³⁷ Compare *Triennial Review Order* at ¶ 591 (explaining that the purpose of the service eligibility criteria is to prevent providers of “exclusively non-qualifying service” from obtaining access to UNEs) with *id.* at ¶ 140 (clarifying that CMRS is a qualifying service).

³⁸ See, e.g., *Triennial Review Order* ¶ 593 (discussing high-capacity and “commingled” EELs).

³⁹ 47 C.F.R. § 51.318(b).

⁴⁰ *Triennial Review Order* ¶¶ 595, 598.

⁴¹ See, e.g., *id.* ¶ 606.

⁴² *Id.* ¶ 595.

T-Mobile and other CMRS providers clearly satisfy this objective.⁴³ Indeed, as the FCC has noted, a fair number of consumers have used or plan to use CMRS to replace their incumbent LEC-provided POTS lines entirely.⁴⁴ Thus, denying CMRS carriers access to unbundled loop-transport combinations would be contrary to the policy underlying the FCC's service eligibility rules.

Nevertheless, differences between CMRS networks and wireline networks make the service eligibility criteria adopted for wireline networks unworkable for CMRS carriers. While CMRS carriers certainly meet the spirit of the FCC's service eligibility requirements,⁴⁵ they may not be able to satisfy the specific wireline-centric eligibility criteria delineated in the FCC's rules. For example, although CMRS carriers all have points of interconnection in every LATA in which they provide service, they most often do not have "collocation arrangements" – as that term is defined in the FCC's rules – in

⁴³ See, e.g., *Local Competition Order* ¶ 1013 (explaining that CMRS carriers "provide local, two-way switched voice service as a principal part of their business"); *Federal-State Joint Board on Universal Service, Report and Order and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd 24952, ¶¶ 21-22 (2002) ("*CMRS Safe Harbor Order*") (finding that the overwhelming majority of CMRS traffic is intrastate).

⁴⁴ *Triennial Review Order* ¶ 53. While only modest numbers of customers have canceled their wireline telephone service to-date, analyst reports indicate that the "threat posed to fixed line service providers is substantial," with large numbers of households willing to "drop their fixed line service" in favor of appropriately priced wireless alternatives. Ernst & Young, *Mobile Wireless-Primary Fixed Line Substitution*, Executive Summary at vii-viii (2003), available at: <http://www.primetrica.com/products/wireline_wireless/pdf/wwss_exec_sum.pdf>; see also Sarah Z. Sleeper, *Who Needs Home Telephones? More Users Going All Wireless and That's Cutting Into Revenue for Local Bells and Long-Distance Firms*, INVESTOR'S BUSINESS DAILY, Aug. 8, 2002, at A1 (citing report that "13.8% of U.S. wireless users are 'interested' or 'very interested' in replacing home phones with wireless.") Even those consumers that keep their landline connections are using wireless service as a significant substitute for wireline services. *CMRS Competition Eighth Report*, ¶¶ 102-103; *Nuzum WSJ Article*.

⁴⁵ The FCC clearly intended for facilities-based competitive providers of local voice services such as CMRS carriers to be eligible for UNE combinations. See, e.g., *Triennial*

every LATA.⁴⁶ It would contravene the FCC’s policy goals if the incumbent LECs were able to deny CMRS carriers access to UNEs and UNE combinations the FCC has found they are entitled to by invoking service eligibility rules that were designed to address a wholly different situation.

The FCC therefore should modify its definition of eligible services to include wireless services provided by a CMRS carrier that (1) is licensed to offer service in the relevant area; and (2) has a point of interconnection in the LATA in which service is being offered. Specifically, the FCC should revise Rule 51.318 to include a new subparagraph (e) that reads as follows:

Notwithstanding paragraph (b) of this section, an incumbent LEC shall provide nondiscriminatory access to (1) an unbundled DS1 loop in combination, or commingled, with a dedicated DS1 transport or dedicated DS3 transport facility or service, or to an unbundled DS3 loop in combination, or commingled, with a dedicated DS3 transport facility or service, or (2) an unbundled dedicated DS1 transport facility in combination, or commingled, with an unbundled DS1 loop or a DS1 channel termination service, or to an unbundled dedicated DS3 transport facility in combination, or commingled, with an unbundled DS1 loop or a DS1 channel termination service, or to an unbundled DS3 loop or a DS3 channel termination service, if the requesting telecommunications carrier certifies that it:

- (1) is licensed to offer commercial mobile radio service in the LATA in which the loop or channel termination is located;
- (2) has a point of interconnection in the LATA in which service is being offered; and

Review Order ¶ 600 (noting that the service eligibility criteria are designed to restrict availability of the relevant UNEs to “legitimate providers of local voice service.”).

⁴⁶ See 47 C.F.R. § 51.318(b)(iv) (requiring that each circuit provided to each customer terminate in a collocation arrangement within the same LATA as the customer’s premises).

(3) is offering or plans to offer commercial mobile radio service over the requested facilities.

This change will ensure that the FCC's rules are consistent with its policy goals.

IV. CONCLUSION

T-Mobile respectfully requests that the Commission revise its definition of a loop and its service eligibility rules for the reasons stated herein. These revisions would promote the Commission's goal of fostering intermodal competition and would be consistent with its policy of technological neutrality.

Respectfully submitted,



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October 2, 2003

Certificate of Service

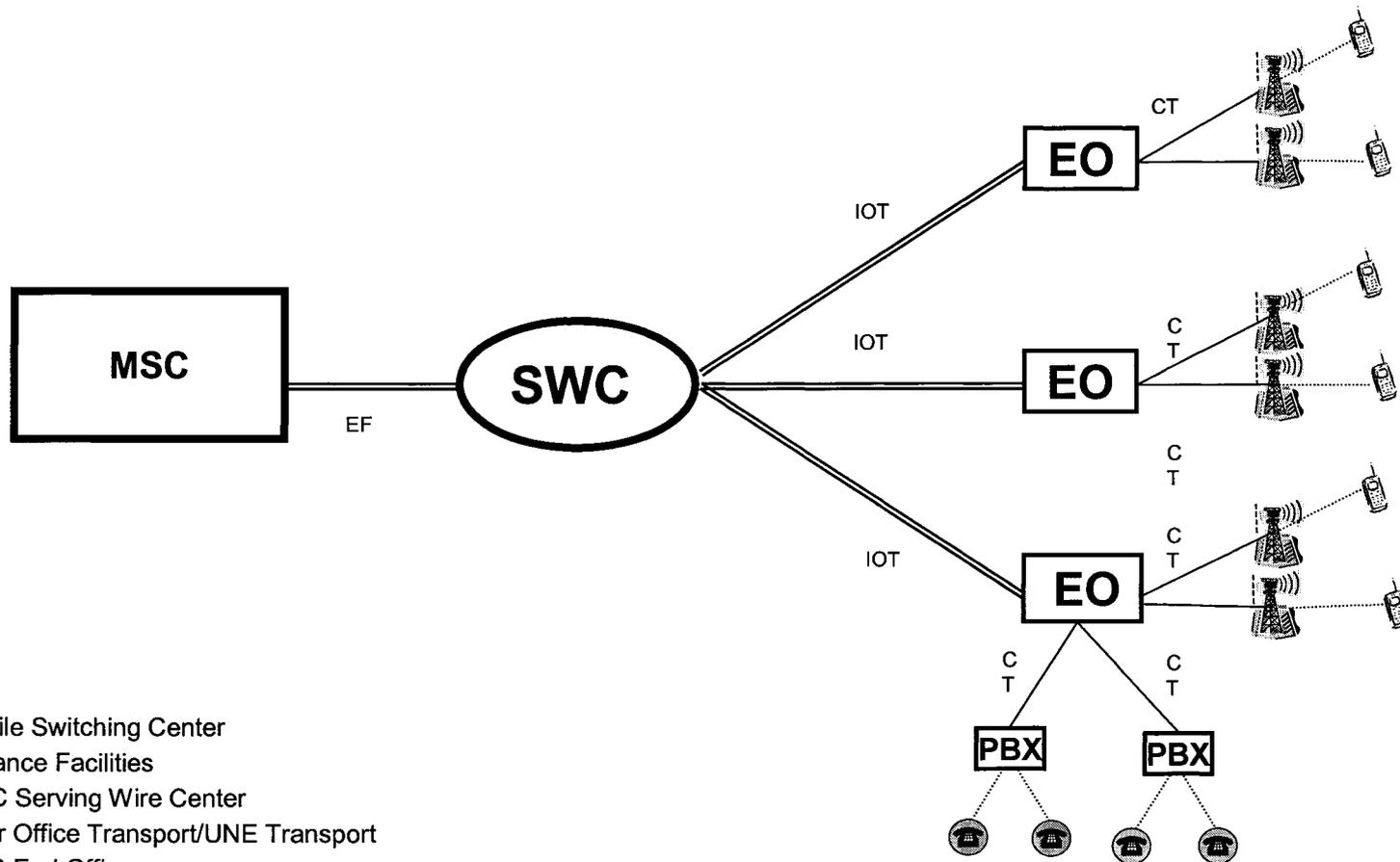
I hereby certify that on this 2nd day of October, 2003, I caused a true and correct copy of the foregoing Petition for Reconsideration of T-Mobile USA, Inc., to be mailed by electronic mail to Qualex International, Inc., qualexint@aol.com.

A handwritten signature in cursive script that reads "Ruth E. Holder". The signature is written in black ink and is positioned above a horizontal line.

Ruth E. Holder

Attachment A

Schematic View of CMRS Network



- MSC - Mobile Switching Center
- EF - Entrance Facilities
- SWC - ILEC Serving Wire Center
- IOT - Inter Office Transport/UNE Transport
- EO - ILEC End Office
- CT - Channel Termination/UNE Loop/subloop