

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

In the Matter of

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

**PETITION FOR RECONSIDERATION OR CLARIFICATION OF THE
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

The Cellular Telecommunications & Internet Association (“CTIA”),¹ pursuant to Section 1.429 of the Commission’s Rules,² hereby submits this Petition seeking clarification or, in the alternative, reconsideration of two aspects of the Report and Order and Order on Remand in the above-referenced proceeding (“*Triennial Review Order*”).³ Specifically, CTIA requests that the Commission reconsider or clarify that: 1) Commercial Mobile Radio Service (“CMRS”) carriers may obtain access to incumbent local exchange carrier (“ILEC”) transmission facilities between wireless base stations and

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers all Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² 47 C.F.R. § 1.429.

³ See *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*, CC Docket Nos. 01-338, 96-98, 98-147, FCC 03-36 (rel. Aug. 21, 2003) (hereinafter “*Triennial Review Order*”).

ILEC wire centers as an unbundled network element (“UNE”) and 2) that the Commission’s service eligibility criteria for access to enhanced extended links (EELs”) do not apply to CMRS carriers.

I. CMRS CARRIERS PROVIDE CRITICAL INTERMODAL COMPETITION

CMRS carriers have played a critical role in fostering the development of an extremely competitive, facilities-based alternative to traditional wireline offerings. As the Commission noted in its *Eighth Report* on CMRS competition, 95 percent of the United States population lives in counties “with access to three or more different operators (cellular, broadband PCS, and/or digital SMR providers) offering mobile telephone service.”⁴ In addition, 83 percent of the U.S. population lives “in counties with five or more mobile telephone operators competing to offer service.”⁵ This intense competition in the CMRS market has resulted in new innovative products and services for consumers, as well as lower prices for these services.⁶

In order to provide these services, CMRS carriers are dependent on ILEC facilities to provide transport between cell base stations and mobile switching centers (“MSCs”). Although the network architecture of wireless and wireline carriers is not

⁴ *Implementation of Section 602(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*, WT Docket No. 02-379, FCC 03-150, at ¶ 18 (rel. July 14, 2003) (hereinafter “Eighth Report”).

⁵ *Id.*

⁶ In fact, as a result of the intense competition and innovative services offered by CMRS providers, some consumers have decided to exclusively use wireless service for their telecommunications needs. See *Triennial Review Order* at ¶ (stating that “3 to 5 percent of wireless customers use their wireless phone as their only phone”); see also Peter Howe, *Study: More People are Going Cellular*, BOSTON GLOBE, May 5, 2003, at C3 (noting a “growing movement among consumers, especially the young, to make their cellphone their only phone”).

identical, CMRS carriers, like competitive local exchange providers (“CLECs”), are dependent on LEC facilities to provide services to end users. In the *Triennial Review Order*, the Commission confirmed that because “CMRS [is] used to compete against telecommunications services that have been traditionally within the exclusive or primary domain of incumbent LECs services, CMRS providers also qualify for access to UNEs,” subject to certain “limitations” contained in the *Triennial Review Order*.⁷ Unfortunately, these “limitations” on the availability of UNE inter-network transport services have the effect of discriminating against CMRS carriers in favor of wireline providers.

Accordingly, CTIA urges the Commission to make the following two clarifications to its UNE rules to ensure that CMRS carriers have access to those services that Congress intended.

II. THE COMMISSION SHOULD CLARIFY THAT CMRS CARRIERS ARE ENTITLED TO UNE PRICING FOR TRANSPORT BETWEEN BASE STATIONS AND ILEC OFFICES IN ORDER TO ENSURE CMRS PARITY WITH WIRELINE PROVIDERS

As noted above, the *Triennial Review Order* confirms that CMRS carriers are, and always were, entitled to “access to UNEs.”⁸ As part of the overall *Triennial Review Order*, however, the Commission narrowed the definition of the dedicated transport element by concluding that “no requesting carrier shall have access to unbundled inter-network transmission facilities under Section 251(c)(3).”⁹ As a result of that conclusion, the Commission then extrapolated that “CMRS carriers are ineligible for dedicated transport from their base station to the incumbent LEC network” if one assumes

⁷ *Triennial Review Order* at ¶ 140.

⁸ *Id.*

⁹ *Triennial Review Order* at ¶ 368.

“*arguendo*, that a CMRS carrier’s base station is a type of requesting carrier switch.”¹⁰

Unfortunately, this determination is based strictly on an incorrect calculus that equated CMRS transport from a base station to the central office with wireline network architecture. In fact, this critical “last mile” link in a wireless network is more appropriately classified as a “loop” for the purpose of ensuring intermodal parity.

In redefining the definition of transport to exclude “inter-network” facilities, the Commission focused almost exclusively on the ability of competitive local exchange carriers (“CLECs”) to obtain alternate facilities. In fact, the Commission’s overall finding that “the Act does not require incumbent LECs to unbundled transmission facilities connecting incumbent LEC networks to competitive LEC networks for the purpose of backhauling traffic”¹¹ appears to be based on the assumption that “competing carriers have some control over the location of their network facilities that is lacking with regard to transport as we define it here.”¹² While this may be true in the CLEC context – particularly where a CLEC aggregates traffic through one switch in a chosen location– it is not true in the context of CMRS base stations.

Unlike CLECs, CMRS carriers are not able to choose the location of their facilities. Instead, decisions regarding locations of cell base stations are almost always driven by market concentration, geography or zoning issues.¹³ In addition, CMRS

¹⁰ *Id.*

¹¹ *Triennial Review Order* at ¶ 365.

¹² *Triennial Review Order* at ¶ 367.

¹³ In fact, the Commission specifically recognized many of these geographic and siting limitations in its discussion regarding the difficulties of using point-to-point microwave for backhaul transport. *See Triennial Review Order* at ¶ 367, n. 1123 (noting

carriers often are required to build hundreds of base stations within a given area, which substantially reduces opportunities to aggregate traffic in one location. In these respects, base station to ILEC wire center transport is much more analogous to wireline local loops than it is to CLEC “backhaul” transport.

For instance, under the new rules, a CLEC could obtain a local loop from the central office to a business location at UNE prices, where that loop would interconnect with a private branch exchange network (“PBX”) serving hundreds of end users. A CMRS carrier, on the other hand, would be prohibited from obtaining that last mile link to its base station at UNE prices due strictly to the fact that the “final” connection to the end user is provided via spectrum, rather than by copper wire. In an intermodal environment, such a distinction makes absolutely no sense. Instead, the more appropriate analogy is to consider a CMRS base station to be the functional equivalent of a PBX in a wireline network.¹⁴

Furthermore, the Commission’s failure to grant CMRS carriers the right to use UNE pricing for base station transport may also force carriers to delay service upgrades or charge higher prices in rural and suburban areas due to the cost of being forced to obtain what are essentially local loops as special access tariff prices. Again, the

that “carriers cite limitations on microwave including the need for zoning approval for towers, licensing, limited space on cell towers, and reliability concerns”).

¹⁴ CTIA notes that nothing in the Commission’s rules requires the loop termination point be at the actual end user’s premises. *See, e.g. Triennial Review Order* at ¶ 343, n. 1021 (noting that the phrase “customer premises” encompasses “not just the premises of end-user subscribers, but also the premises of the property owner such as ‘a landlord, a condominium, a university and so on,’ i.e. ‘customer premises’ encompassed any premises where the owner of that premises has the right to designate the [minimum point of entry]”).

Commission's new rules neither attempt to explain nor justify this discrimination against CMRS carriers.

Accordingly, CTIA urges the Commission to clarify this issue by amending Section 51.319(a) of its rules to state that transmission facilities between an ILECs central office and CMRS carriers' base stations are included in the definition of the "local loop network element."

III. THE COMMISSION SHOULD REVISE ITS SERVICE ELIGIBILITY RULES TO CLEARLY SPECIFY THAT CMRS CARRIERS HAVE ACCESS TO UNE LOOP-TRANSPORT COMBINATIONS

Under the express terms of the *Triennial Review Order*, CMRS carriers now clearly have the right to obtain interoffice transport on a UNE basis, and to convert interoffice components of any special access circuits to UNEs, so long as those UNEs remain available on a particular route.¹⁵ CTIA is concerned, however, that an ILEC may refuse to allow the combination of the interoffice dedicated transport UNE with either special access termination circuits or the local loop element due to the Commission's requirement that a carrier satisfy the service eligibility criteria prescribed by the Commission for loop-transport combinations or enhanced extended links ("EELs").¹⁶

In establishing the service eligibility criteria, the Commission stated that its goal was to encourage the provision of local voice service "in direct competition to traditional incumbent LEC service."¹⁷ CMRS carriers, through their service offering, clearly satisfy

¹⁵ See, e.g. *Triennial Review Order* at ¶ 140.

¹⁶ See *Triennial Review Order* at ¶ 591 ("With respect to combinations of high-capacity (DS1 and DS3) loops and interoffice transport, we adopt additional eligibility criteria that do not apply to other UNEs.").

¹⁷ *Triennial Review Order* at ¶ 595.

this objective. The service eligibility criteria also provide, however, that certifying carriers must also satisfy “multiple network-specific and circuit-specific criteria”¹⁸ – many of which were primarily designed for the wireline environment. For example, the service eligibility criteria provide that “each requesting carrier must have a state certification of authority to provide local voice service.”¹⁹ CTIA notes, however, that CMRS carriers are licensed and regulated by the Commission and thus do not need to obtain state certification.²⁰ In addition, the service eligibility criteria provide that “each circuit must terminate into a collocation governed by Section 251(c)(6) at an incumbent LEC central office within the same LATA as the customer premises.”²¹ While all CMRS carriers have points of interconnection in LATAs where they provide service, CMRS carriers may not have collocation arrangements that meet the Commission’s specific requirements. Accordingly, even though a CMRS carrier’s provision of service may meet the clear intent of the Commission’s service eligibility criteria – to provide local voice grade service – they may not meet the exact letter of the criteria due to the wireline-specific nature of the requirements.

Therefore, CTIA urges the Commission to clarify that CMRS carriers may combine the transmission link between a base station and ILEC central office with dedicated interoffice UNE transport without having to certify compliance with service eligibility criteria that was not designed to accommodate wireless networks. In the

¹⁸ *Id.*

¹⁹ *Triennial Review Order* at ¶ 597.

²⁰ *See, e.g.*, 47 U.S.C. § 332(c)(3)(A) (stating that “no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service”).

²¹ *Triennial Review Order* at ¶ 597.

alternative, the Commission should modify the criteria to provide a standard that effectuates its competitive policies and recognizes the intermodal voice service competition provided by CMRS carriers.

CONCLUSION

For the foregoing reasons, CTIA urges the Commission to clarify that CMRS carriers may obtain access to the link between base stations and the ILEC central office on a UNE basis and that the Commission's service eligibility criteria for EELs do not apply to CMRS carriers.

Respectfully submitted,

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