

**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 Wireline Services Offering Advanced Telecommunications Capability)	CC Docket No. 98-147

REPLY OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”) submits this reply with respect to its Petition for Reconsideration.¹ As T-Mobile explained in its *Petition*, commercial mobile radio service (“CMRS”) carriers are heavily dependent on the facilities of incumbent local exchange carriers (“LECs”) to provide the “last mile” connection between the CMRS base station and the incumbent LEC’s central office.² Despite this dependence, CMRS carriers currently cannot purchase this bottleneck facility as an unbundled network element (“UNE”) – even though analogous connections are available to wireline carriers as unbundled loops. If the Federal Communications Commission (“FCC” or “Commission”) is to realize the potential benefits of intermodal competition in the local market,³ it must ensure that T-Mobile and other CMRS

¹ Petition for Reconsideration of T-Mobile USA, Inc., CC Dkts. 01-338, 96-98, & 98-147 (Oct. 2, 2003) (“*Petition*”).

² For instance, 96 percent of T-Mobile’s wireline circuits are provided by incumbent LECs. *Petition* at 3, n.4.

³ See *Petition* at 4-7; see also, e.g., *Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Dkt. 95-116, FCC 03-284, ¶¶ 27, 36 (rel. Nov. 10,

carriers have nondiscriminatory access to the base station-to-central office link at cost-based rates. This relief is particularly warranted because CMRS providers are competitive carriers that provide service largely over their own facilities but, in order to complete their networks, depend critically on piece parts obtained from the incumbent LECs. These are precisely the types of carriers the unbundling requirements of the Telecommunications Act of 1996 and the FCC's implementing rules are primarily designed to assist. The FCC therefore should require incumbent LECs to provide the links between CMRS carriers' base stations and incumbent LEC central offices as cost-based UNEs.

I. DISCUSSION

The oppositions filed in response to T-Mobile's *Petition* raise three major issues:

(i) whether the base station-to-central office link is a "loop";⁴ (ii) whether CMRS carriers are impaired without unbundled access to base station-to-central office links;⁵ and (iii) whether CMRS carriers should be subject to the same service eligibility requirements as wireline carriers.⁶ As explained below, (i) the Commission should classify the base station-to-central office link as a UNE; (ii) the record fully supports the conclusion that CMRS carriers are impaired without access to this link on an unbundled basis; and (iii) assuming the Commission classifies the base station-to-central office link as a loop, the service eligibility requirements must be modified to accommodate wireless networks.

2003) (emphasizing the importance of reducing barriers to intermodal competition from wireless carriers); *id.*, Separate Statement of Chairman Powell.

⁴ Opposition and Comments of BellSouth at 15-19 ("BellSouth Opposition"); Opposition of Qwest Communications International Inc. at 4-5 ("Qwest Opposition"); Comments of SBC on Petitions for Reconsideration at 20-21 ("SBC Opposition"); Response of Verizon to Petitions for Reconsideration at 34-35 ("Verizon Opposition"). (Unless otherwise indicated, all Oppositions, Comments and *ex parte* filings referenced herein were filed in CC Dkt. 01-338 on Nov. 6, 2003.)

⁵ BellSouth Opposition at 6-11; Qwest Opposition at 2-3; Verizon Opposition at 30-31.

⁶ BellSouth Opposition at 19; SBC Opposition at 21-23; Verizon Opposition at 36-39.

A. The Base Station-to-Central Office Link Should Be Classified as a UNE

Loop. In their oppositions, the Bell Operating Companies (“BOCs”) emphasize that the current definition of a “loop” does not include the link between a base station and an incumbent LEC’s central office.⁷ This point is correct but irrelevant. The germane issue, which the BOCs largely ignore, is whether the Commission should revise the current loop definition. As T-Mobile has explained, this connection is architecturally and functionally equivalent to the loop in a wireline network, and should be provided to CMRS carriers as a UNE.⁸

The BOCs present no compelling arguments contradicting T-Mobile’s explanation that the base station-to-central office link is analogous to a loop.⁹ Contrary to their claims,¹⁰ for instance, the base station performs functions similar to that of a traditional private branch exchange (“PBX”). Specifically, the base station aggregates traffic from wireless end users served by that base station and sends that traffic to the nearest central office, similar to the aggregation performed by the PBX for outgoing calls from end users served by the PBX. In addition, for incoming calls to wireless end users, the base station receives the calls and distributes them to the end users, similar to the distribution function performed by a PBX. It is true, as the BOCs state, that PBXs and base stations are not identical. Nevertheless, base stations and PBXs share certain key similarities, as discussed above. While the analogy is not perfect (and it rarely is when comparing wireless and wireline networks), the similarities are more relevant than the differences in the context of the FCC’s unbundling policies, and support

⁷ BellSouth Opposition at 16-17; Qwest Opposition at 4-5; Verizon Opposition at 34-35.

⁸ *Petition* at 11.

⁹ *Id.* at 9-13.

¹⁰ SBC Opposition at 20; Verizon Opposition at 34-35, n.29.

parallel treatment for central office-to-base station and central office-to-PBX links – particularly given the FCC’s overriding interest in fostering local competition from CMRS providers.

Subloop. Qwest suggests that the base station-to-central office link may be better characterized as a subloop.¹¹ In certain respects, as Qwest points out, the base station-to-central office link resembles the feeder portion (or subloop) of an end-to-end wireline loop, with the wireless link from the base station to the end user resembling the distribution portion (or subloop) of the end-to-end wireline loop.¹² T-Mobile would not object to a Commission determination that the base station-to-central office link is a “subloop” that must be unbundled pursuant to section 251(c)(3).¹³ Whether classified as a loop or a subloop, it is clear that the link is a “network element” as that term is defined in the Act,¹⁴ and that it can be provided on an unbundled basis.¹⁵

Contrary to Qwest’s claims, it would be perfectly consistent with the Commission’s decision in the *UNE Triennial Review Order* to require the incumbent LECs to provide unbundled access to this subloop pursuant to section 251(c)(3). In the *UNE Triennial Review*

¹¹ Qwest Opposition at 5, n.15.

¹² *Id.* 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, 18 FCC Rcd 16978, ¶ 216, *as modified by* Errata, 18 FCC Rcd 19020 (2003) (“*UNE Triennial Review Order*”) (describing differences between feeder and distribution portions of loops). This view is supported by the similarities between base stations and remote terminals, both of which perform the aggregation and distribution functions described above.

¹³ 47 U.S.C. § 251(c)(3).

¹⁴ 47 U.S.C. § 153(29) (defining “network element” as “a facility or equipment used in the provision of a telecommunications service.”). Tellingly, no BOC argues that the base station-to-central office link does not fall under this definition.

¹⁵ See *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, ¶¶ 206, 207, 209 (adopting a “broad definition of the subloop,” and requiring access at any “technically feasible points throughout the incumbent’s loop plant,” including “the main distribution frame in the incumbent’s central office”).

Order, the Commission discussed subloops in the context of hybrid copper-fiber loops. In that context, the Commission decided to limit unbundling of hybrid loops, because of policy considerations with respect to broadband services.¹⁶ Those broadband policy considerations, however, are not relevant to the question of whether section 251(c)(3) requires that unbundled access be provided to a base station-to-central office “subloop.” First, many base station-to-central office links used by CMRS carriers are provided solely over copper; for instance, the majority of T-Mobile’s base station-to-central office links are copper facilities.¹⁷ Under the FCC’s rules, copper loops (as well as subloops) must be provided on an unbundled basis. Second, the restrictions on unbundling for hybrid fiber-copper loops relate primarily to broadband services; competing carriers are entitled to obtain unbundled access to TDM-capable DS1 links, subject to state review.¹⁸ T-Mobile is not seeking access to the packet-switched capabilities of the incumbent LECs’ feeder plant, only to the DS1 circuits needed to provide voice channels. Consequently, the Commission could redefine subloops to include base station-to-central office links, without undermining its previous decisions in any respect.

Entrance Facilities. SBC argues that the base station-to-central office link should be considered an entrance facility rather than a loop or subloop.¹⁹ Entrance facilities, however, typically refer to connections that are deeper within the incumbent LEC’s network than the base

¹⁶ See *UNE Triennial Review Order* ¶¶ 286, 288, 290.

¹⁷ Nationwide, 60% of these links are copper and 40% are fiber, although the percentage varies by region.

¹⁸ Specifically, the Commission decided that “incumbent LECs remain obligated . . . to provide unbundled access to the features, functions, and capabilities of hybrid loops that are not used to transmit packetized information,” including TDM-capable DS1 loops. *UNE Triennial Review Order* ¶¶ 288-89.

¹⁹ SBC Opposition at 17-21.

station-to-central office connection.²⁰ By contrast, connections closer to the “edge” of the network typically are treated as loop plant. SBC fails to explain why the latter presumption should not apply to the base station-to-central office link, and there is no reason to believe that the FCC intended to classify, or should have classified, base station-to-central office links as entrance facilities.²¹

B. CMRS Carriers Are Impaired without Access to the Base Station-to-Central Office Link

In the *UNE Triennial Review Order*, the FCC found, on a national basis, that requesting carriers are impaired without unbundled access to DS1 and DS3 loops (as well as DS1 and DS3 transport), subject to state review.²² The FCC also found that CMRS carriers provide a “qualifying service” and therefore are entitled to UNEs.²³ Yet, despite the plain language of the *UNE Triennial Review Order*, the BOCs persist in claiming that there is no record of impairment for CMRS carriers seeking access to base station-to-central office connections. These claims are meritless.

Qwest argues that CMRS carriers are not impaired because they have achieved “success” by using tariffed special access services instead of UNEs.²⁴ This assertion has no bearing on the impairment analysis. Although some CMRS carriers have been “successful,” in the sense that their revenues are growing, CMRS carriers in general have had very limited success in

²⁰ The term “entrance facilities” is commonly used to describe the connection between an interexchange carrier’s point of presence and an incumbent LEC’s central office, or between a CMRS carrier’s mobile switching center and an incumbent LEC’s central office.

²¹ See *UNE Triennial Review Order* ¶ 646, n.1956 (distinguishing base station-to-central office link from entrance facilities).

²² *Id.* ¶¶ 320, 335, 359.

²³ *Id.* ¶ 140.

²⁴ Qwest Opposition at 2-3; see also Verizon Opposition at 31.

competing directly with incumbent LECs in the provision of local services.²⁵ This is the problem the UNE rules are meant to address by “foster[ing] competition between monopolistic carriers providing local telephone service and companies seeking to enter local markets.”²⁶ As to the use of special access services by CMRS providers, the Commission has already stated that it will “afford little weight to evidence that requesting carriers are using incumbent LEC tariffed services as relevant to [the] unbundling determination.”²⁷

Relegating CMRS carriers to special access services, which are priced significantly higher than the comparable UNEs, will perpetuate a significant barrier to the ability of CMRS carriers to make inroads into the local market. As wireless substitution grows, CMRS carriers are likely to experience a significant increase in average usage. In order to accommodate this increase without compromising service quality, CMRS providers will need to add channel capacity and improve coverage. High special access rates limit T-Mobile’s ability to complete the “in-fill” of its footprint and make the other changes that are necessary to make T-Mobile a strong alternative to incumbent LEC landline service. T-Mobile is particularly concerned about its ability to serve customers in suburban areas where there are very few competitive alternatives to the incumbent LECs’ networks.

BellSouth claims that the record in the *UNE Triennial Review* proceeding demonstrates no impairment for CMRS carriers, and that the BOCs’ evidence regarding such impairment went un rebutted.²⁸ This is simply false. T-Mobile, for instance, demonstrated that CMRS carriers are

²⁵ *UNE Triennial Review Order* ¶ 53 (noting that “3 to 5 percent of wireless customers use their wireless phone as their only phone”).

²⁶ *Verizon Communications Inc. v. FCC*, 535 U.S. 467 (2002).

²⁷ *UNE Triennial Review Order* ¶ 102.

²⁸ BellSouth Opposition at 6.

impaired without unbundled access to incumbent LEC high capacity facilities, and specifically responded to the “Fact Report” supporting the BOCs’ 2001 Joint Petition.²⁹

BellSouth also misreads the D.C. Circuit’s *CompTel* and *USTA* decisions as requiring the FCC to make a separate impairment analysis for each service provided over each element.³⁰ In fact, neither court mandated such a requirement. To be sure, the *USTA* court required the FCC to adopt a more granular impairment analysis,³¹ but the FCC fully complied with this requirement in the *UNE Triennial Review Order*, crafting an impairment standard that focuses on the availability of competitive alternatives for a network element, taking into account the service being offered.³² Specifically, the FCC required a requesting carrier to use a network element to provide a “qualifying service” in order to obtain unbundled access to that network element.³³ As noted, the FCC found that CMRS carriers provide a qualifying service. This finding is sufficient to satisfy the requirements under *USTA*.³⁴

²⁹ See Letter from D. Bonner, Counsel to T-Mobile, to M. Dortch, FCC (Jan. 6, 2003).

³⁰ BellSouth Opposition at 5-6 (discussing *Competitive Telecom. Ass’n v. FCC*, 309 F.3d 8 (D.C. Cir. 2002) (“*CompTel*”) and *United States Telecom. Ass’n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) (“*USTA*”).

³¹ *USTA*, 290 F.3d at 422-26. The *CompTel* court addressed the FCC’s decisions with respect to loop-transport combinations, and did not rule on whether the FCC must adopt a service-specific impairment analysis for individual network elements.

³² *UNE Triennial Review Order* ¶¶ 118-53; see also *id.* ¶¶ 31-34, 68, 132 (discussing *USTA* and *CompTel* decisions with respect to impairment analysis).

³³ *UNE Triennial Review Order* ¶ 133.

³⁴ It would have been highly inefficient for the *USTA* court to mandate, or the FCC to adopt, a service-specific impairment analysis for each network element. If a particular network element is generally available only from the incumbent LECs for one use, that network element will be generally available only from the incumbent LECs for other uses as well. It simply would not make sense for the FCC to expend considerable time, effort, and resources conducting discrete service-specific analyses where these analyses would yield the same finding of impairment for every service.

C. The Service Eligibility Rules Should Be Modified if Applied to CMRS Carriers

The BOCs argue that the service eligibility rules that the FCC adopted for wireline carriers should also apply to CMRS carriers,³⁵ and insinuate that CMRS carriers are seeking “special” treatment.³⁶ In fact, T-Mobile and other CMRS carriers are merely seeking equal treatment. As T-Mobile explained in its *Petition*, if the Commission finds that base station-to-central office links are loops, the current service eligibility rules will have a disproportionately harmful effect on CMRS carriers because of the differences in the network architecture employed by wireless and wireline carriers.³⁷ T-Mobile is simply asking the FCC to alter its rules to better foster the result the Commission is striving to achieve – intermodal competition in the local market. If the Commission classifies the base station-to-central office link as a loop, the current service eligibility requirements will serve as a major impediment toward achieving that goal.

D. Concerns about UNE Rates Should Be Addressed in the FCC’s Pending TELRIC Proceeding

Qwest argues that it would be denied adequate compensation if it were required to provide CMRS carriers access to last mile links as UNEs.³⁸ At bottom, Qwest’s argument is based on a view that TELRIC rates are “non-compensatory.”³⁹ The FCC designed TELRIC to provide

³⁵ See BellSouth Opposition at 19; SBC Opposition at 21-23; Verizon Opposition at 36-39 (discussing service eligibility rules set forth in 47 C.F.R. § 51.318).

³⁶ SBC Opposition at 22.

³⁷ *Petition* at 14-16 (explaining that CMRS carriers may not be able to satisfy the specific wireline-centric eligibility criteria delineated in the current service eligibility rules).

³⁸ Qwest Opposition at 6.

³⁹ Qwest Opposition at 6. This claim seems to underlie many of the arguments in the BOCs’ oppositions. See, e.g., Verizon Opposition at 36-37 (complaining of “artificially depressed UNE prices” and potential elimination of “an important source of [incumbent LEC] revenues”);

incumbent LECs with adequate compensation (including a reasonable profit) in accord with section 252(d)(1) of the Act, and the Supreme Court affirmed the FCC's TELRIC rules in *Verizon*.⁴⁰ To the extent the incumbent LECs object to the current TELRIC rates, they should raise their concerns in the TELRIC rulemaking proceeding that is currently pending before the Commission.⁴¹ Concerns about pricing are not relevant to the unbundling analysis and should not affect the FCC's conclusions in this proceeding.

II. CONCLUSION

As explained above, the BOCs have raised no sound argument in opposition to T-Mobile's *Petition for Reconsideration*. T-Mobile therefore requests that the Commission adopt the relief requested therein.

Respectfully submitted,



Thomas J. Sugrue
Vice President, Government Affairs
Harold Salters, Director
Federal Regulatory Affairs
Daniel Menser
Senior Corporate Counsel
T-MOBILE USA, INC.
401 9th Street, NW, Suite 550
Washington, D.C. 20004
202-654-5900

Ruth Milkman
Gil M. Strobel
Richard D. Mallen
Lawler, Metzger, & Milkman
2001 K Street, NW
Suite 802
Washington, DC 20006
(202) 777-7700
gstrobel@lmm-law.com

November 17, 2003

BellSouth Opposition at 19 (complaining that not applying service eligibility rules to CMRS carriers would allow them to obtain transport links "at TELRIC rates").

⁴⁰ See *UNE Triennial Review Order* ¶ 668; *Verizon v. FCC*, 535 U.S. 467 (2002).

⁴¹ *Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, Notice of Proposed Rulemaking, 18 FCC Rcd 18945 (2003).

Certificate of Service

I hereby certify that on this 17th day of November, 2003, I caused a true and correct copy of the foregoing Reply Comments of T-Mobile USA, Inc., to be served by first class mail on the following parties.

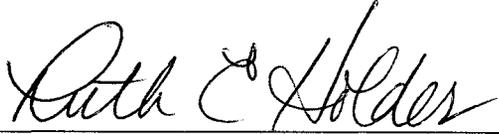
Theodore R. Kingsley
Richard M. Sbaratta
BellSouth Corporation
Suite 4300, 675 West Peachtree Street, N.E.
Atlanta, GA 30375

Sharon J. Devine
Craig J. Brown
Qwest Communications International Inc.
Suite 950, 607 14th Street, N.W.
Washington, DC 20005

Jim Lamoureux
Christopher M. Heimann
Gary Phillips
Paul K. Mancini
SBC Communications, Inc.
1401 I Street, N.W., Suite 400
Washington, DC 20005

Evan T. Leo
J.C. Rozendaal
Scott H. Angstreich
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
Counsel for the Verizon Telephone Companies
1615 M Street, N.W., Suite 400
Washington, DC 20036

Michael E. Glover
Edward H. Shakin
John M. Goodman
Verizon
1515 N. Courthouse Road, Suite 500
Arlington, VA 22201



Ruth E. Holder