



July 1, 2004

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**EX PARTE – VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, D.C. 20554

Re: CC Docket No. 01-338  
Notice of Oral Ex Parte Presentation

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this will provide notice that on June 30, 2004, John Nakahata and Maureen Flood of Harris, Wiltshire and Grannis and I met with Michelle Carey, Tom Navin, Ian Dillner, and Russell Hanser of the Competition Policy Division, Wireline Competition Bureau. In separate meetings, on June 29, 2004, I met with Dan Gonzalez, Senior Legal Advisor to Commissioner Martin, and on July 1, 2004, I met with Matt Brill, Senior Legal Advisor to Commissioner Abernathy. The purpose of these meetings was to discuss possible clarification of portions of the *Triennial Review Order* and its implementing rules concerning the loop unbundling obligations of incumbent local exchange carriers ("ILECs").<sup>1</sup>

In paragraph 297 of the *Triennial Review Order*, the Commission made clear that ILECs must "present requesting carriers a technically feasible method of unbundled access" to a voice-grade loop.<sup>2</sup> GCI now asks the Commission to clarify two aspects of that obligation. First, the Commission should clarify that ILECs must provide a competitive local exchange carrier ("CLEC") unbundled access to a voice-grade loop *in the ILEC central office* to comply with paragraph 297 (*i.e., access to the whole loop, rather than a subloop*). Second, where an ILEC cannot provide a CLEC with unbundled access to a voice-grade loop in the central office, the Commission should specify that among the alternative "technically feasible method[s] of unbundled access" is the provision of access to the loop in combination with local switching and

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<sup>1</sup> See *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order, Order on Remand, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (rel. Aug. 21, 2003) ("*Triennial Review Order*").

<sup>2</sup> *Id.* at ¶ 297.

related signaling, and common transport. GCI emphasizes that it seeks this combination of UNEs rather than a stand-alone loop *only* when the ILEC is unable to provide unbundled access to a voice-grade loop at the central office and has not equipped its network to do so via other means.

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GCI offers competitive local telephone service to both residential and business customers in Anchorage, Fairbanks, and Juneau, Alaska, competing with Alaska Communications Systems, Inc. (“ACS”), the ILEC. Utilizing its substantial investment in switches and fiber, GCI provides local service through all of the modes of entry available under the Telecommunications Act of 1996 (the “1996 Act”): a growing number customers are served entirely with GCI’s own facilities; many customers are served using a combination of unbundled loops procured from the ILEC and GCI’s own multiplexing, switching, and transport facilities; and, when necessary, some customers are served through a combination of the loop, local switching, and common transport UNEs (*i.e.*, the “UNE Platform”) or total service resale. GCI uses its own facilities whenever possible, and generally serves customers via the UNE Platform only when it cannot obtain unbundled access to loops.

When GCI cannot use its own loops, it prefers access to ILEC loops *without* unbundled local switching, so that GCI can use its own self-deployed switching and transport facilities to define the services it provides its end user customers. As a general matter, CLECs like GCI generally gain access to ILEC loops by cross-connecting their transport facilities so that they can backhaul traffic from the ILEC loop to the CLEC switch. Often, this cross-connection occurs at a collocation arrangement in the ILEC central office. However, some ILECs have designed their networks and deployed equipment in a manner that makes it impossible for a CLEC to gain access to traffic from the loops serving its customers at the central office, because its customers’ traffic cannot be segregated from the ILEC’s customers’ traffic.

For instance, some ILECs (including ACS) serve a sizeable percentage of loops through some sort of Digital Loop Carrier (“DLC”) system. Under this network configuration, copper subloops from the customer premises are connected to a remote terminal, where a remote concentrator converts the analog signal from each loop to digital format and multiplexes the digital signals from individual loops onto a fiber or copper feeder facility, which then transports this traffic back to the ILEC central office. While some DLC systems permit a CLEC such as GCI to access traffic from its unbundled loops at the ILEC central office, others do not.

A Universal Digital Loop Carrier (“UDLC”), for example, incorporates a Central Office Terminal (“COT”) that “reverses the [remote terminal] functions, *i.e.*, it “demultiplexes from multiplexed [] formats to individual DS-0s, converts these DS-0s to analog formats, and transmits the analog signals on copper pairs connected to the switch

via the Main Distribution Frame.”<sup>3</sup> So long as the COT is located in the ILEC central office, and signals are not otherwise re-concentrated prior to reaching the MDF, a CLEC can access these loops in the central office, just like a traditional “home run” loop that is not provisioned through a DLC.

Another type of arrangement that allows a CLEC to gain access to its customers’ traffic at the ILEC central office is an Integrated Digital Loop Carrier (“IDLC”) or other remote device that supports “multi-hosting” at the remote terminal under the GR-303 standard.<sup>4</sup> In this type of arrangement, the COT is “built, or integrated into the switch, and there is no conversion from DS-0 to analog format (as occurs in an UDLC system).”<sup>5</sup> But when multi-hosting capability is present, the remote terminal places traffic from the CLEC’s unbundled loops onto feeder trunks separate from those used to handle traffic from the ILEC’s customers. The CLEC can then cross-connect to these dedicated feeder trunks at the central office, and transport the traffic to its own switch for processing.

Significantly, however, other types of DLC systems do not permit a CLEC to gain access to its unbundled loop traffic at the ILEC central office. Older IDLCs, for example, do not support the multi-hosting arrangement described above. Traffic on loops served by those IDLCs cannot be segregated onto separate feeders, and thus can only be separated from the ILEC’s traffic after the traffic has been processed by the ILEC’s switch. The same is true of any Next Generation Digital Loop Carrier (“NGDLC”) system for which the ILEC has not chosen to incorporate GR-303 capability.

GCI’s commercial experience in Alaska illustrates the obstacles to loop unbundling that DLC systems can erect. For example, ACS provides service across a significant percentage of loops provisioned through IDLC systems that lack multi-hosting capability. As a result, GCI cannot access approximately 9 percent of the loops in Anchorage, 29 percent of the loops in Fairbanks, and 50 percent of the loops in Juneau, via its own switching deployed in each market. GCI also believes that a significant number of loops served by the Matanuska Telephone Authority, to which GCI has a pending request for interconnection, are served by DLCs or remotes, raising this same issue. And this situation is not unique to Alaska. Numerous commenters in the *Triennial*

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<sup>3</sup> *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, Forfeiture Order, 18 FCC Rcd 17722, ¶ 305, n.786 (Wireline Competition Bureau) (rel. Aug. 28, 2003) (“*Virginia Arbitration Pricing Order*”) affirmed in relevant part by Memorandum Opinion and Order, 19 FCC Rcd 1259 (Wireline Competition Bureau) (rel. Jan. 29, 2004).

<sup>4</sup> This is also known as “GR-303 capability.” GR-303 is a set of technical specifications from Telcordia for next generation IDLC systems. Among other attributes, GR-303 provides “multiple interface groups (IGs), so that the remote equipment can simultaneously interface to multiple switches.” See NEWTON’S TELECOM DICTIONARY, 360, 361 (19<sup>th</sup> ed. 2003).

<sup>5</sup> *Virginia Arbitration Pricing Order* at ¶ 305, n.786.

*Review* proceeding described how growing deployment of DLC systems, and IDLC systems in particular, forecloses their access to unbundled loops.<sup>6</sup>

Importantly, the Commission recognized the unbundling challenges posed by such DLC systems (specifically, IDLC systems) in the *Triennial Review Order*, and as a result, required ILECs to provide CLECs with unbundled access to a voice-grade loop in the ILEC central office through other technically feasible means. In the *Triennial Review Order*, the Commission affirmed the definition of the facilities that constitute the local loop. “Loops in their simplest form are the transmission facilities between a central office and the customer’s premises, *i.e.*, ‘the last mile’ of a carrier’s network that enables the end-user customer to receive, for example, a telephone call or a facsimile, as well as to originate similar communications.”<sup>7</sup> Further, the Commission expressly required ILECs to provide access to the unbundled loop at the ILEC central office: “With respect to providing unbundled access to hybrid loops for a requesting carrier to provide narrowband service, we require incumbent LECs to provide an entire non-packetized transmission path capable of voice-grade service (*i.e.*, a circuit equivalent to a DS0 circuit) *between the [ILEC] central office and the customer’s premises.*”<sup>8</sup> The Commission made clear that access to the distribution subloop is not sufficient to satisfy this obligation: “Pursuant to this requirement, competitive LECs will be able to obtain access to UNE loops comprised of the feeder portion of the incumbent LEC’s loop plant, the distribution portion of the loop plant, the attached DLC system, and any other attached electronics used to provide a voice-grade transmission path between the customer’s premises and the central office.”<sup>9</sup> And as the Commission further noted, “Incumbent LECs may elect instead to provide a homerun copper loop rather than a TDM-based narrowband pathway over their hybrid loop facilities if the incumbent LEC

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<sup>6</sup> *See, e.g.*, Letter from Eric J. Branfman, Counsel for Florida Digital Network, Inc., to Marlene H. Dortch, Federal Communications Commission, CC Docket Nos. 96-98, 98-147, 01-318, 01-321, 01-337, 01-338, 02-33 at 3 (filed Oct. 21, 2002) (explaining that approximately 90 percent of BellSouth’s access lines in the State of Florida pass through a DLC system); Letter from Stephen C. Gray, McLeodUSA, to William Maher, Federal Communications Commission, CC Docket Nos. 01-338, 96-98, 98-147, 02-33 at 9 (filed Dec. 17, 2002) (explaining that Qwest provides approximately 21 percent of its loops in Arizona using IDLC systems); Comments of the New York Department of Public Service, CC Docket Nos. 01-338, 96-98, 98-147 at 6-7 (filed April 5, 2002) (“Our concern has been that while today roughly 20% of New York’s customers are served using [DLC] technology, this proportion is likely to increase, perhaps sharply. Without unbundling requirements that realistically allow CLECs or potential competitors reasonable access to remote terminals, customers ... choice of voice providers may be curtailed.”).

<sup>7</sup> *Triennial Review Order* at ¶ 203 (citing *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Red 15499, ¶ 380 (1996) (“*First Local Competition Order*”)); *see also* 47 C.F.R. § 51.319(a) (“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 the loop demarcation point at an end-user premises.”).

<sup>8</sup> *Id.* at ¶ 296 (emphasis supplied).

<sup>9</sup> *Id.*

has not removed such facilities.”<sup>10</sup> Nothing in *USTA II* undermines these conclusions, which were not even challenged by the ILECs.<sup>11</sup>

Moreover, the Commission stressed that loops served out of IDLC systems were not subject to different unbundling rules. To the contrary, an ILEC that has deployed an IDLC in its network is still required to provide unbundled access in the central office to voice-grade loops provisioned through that IDLC. After observing that in many cases, the ILEC could alternatively provide access by means of a spare copper facility or a UDLC, the Commission then directed, “Nonetheless, even if neither of these options [spare copper or UDLC] is available, incumbent LECs must present requesting carriers a technically feasible method of unbundled access.”<sup>12</sup> Hence, the ILECs’ obligation to provide unbundled access to the loop function at the central office – as defined as the transmission path from the central office to the customer’s premises – could not be more clear.

Despite this express language, the Commission should specify that the provision of access to the loop in combination with local switching and related signaling, and common transport is among the “technically feasible method[s] of unbundled access,” and indeed, must be provided in the absence of any other identifiable means of accessing the loop in the central office. In GCI’s experience, where an ILEC has not made the network modifications necessary to provide unbundled access to voice-grade loops in the central office, or has not reserved or made available spare homerun copper loops, as required by paragraph 297,<sup>13</sup> access via unbundled elements has been the only technically feasible method available for the ILEC to provide the required unbundled access to the loop.

GCI anticipates that ILECs may argue, as ACS did in proceedings before the Regulatory Commission of Alaska, that when a customer’s loop is served out of an IDLC system that lacks multi-hosting functionality, CLECs should obtain access to the subloop element through collocation at the remote terminal, or in the alternative, serve the customer using total service resale.<sup>14</sup> This is of particular concern to GCI in connection

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<sup>10</sup> *Id.*

<sup>11</sup> See *United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir., March 2, 2004) (“*USTA II*”), stay denied by 2004 U.S. App. LEXIS 11063 (D.C. Cir. June 4, 2004).

<sup>12</sup> *Triennial Review Order* at ¶ 297.

<sup>13</sup> See, e.g., Letter from Frederick W. Hitz, III, General Communication, Inc., to William Maher, Federal Communications Commission, CC Docket Nos. 01-338, 96-98, and 98-147 at 2-7 (filed Jan. 27, 2003) (“*GCI January 2003 Ex Parte Letter*”); Letter from Frederick W. Hitz, III, General Communication, Inc., to William Maher, Federal Communications Commission, CC Docket Nos. 01-338, 96-98, and 98-147 at 2 (filed Nov. 12, 2002).

<sup>14</sup> See e.g., *In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the FCC Triennial Review Order Interconnection Provisions and Policies*, Comments of ACS of Anchorage, Inc., ACS of Fairbanks, Inc. and ACS of Alaska, Inc. R-03-07 (filed Jan. 12, 2004); see also ACS Reply Comments (filed April 2, 2004). Even if these were lawful alternatives to providing unbundled access to a voice-grade loop in the central office – which, as the *Triennial Review Order* makes clear, they are not – there are significant shortcomings associated with each. For example, as the Commission itself has recognized, remote terminal

with its plans for facilities-based entry in new markets. The Commission's express endorsement now of access to the loop in combination with local switching and related signaling, and common transport as among the "technically feasible method[s] of unbundled access," would foreclose any ILEC incentive to disrupt access to loops via the installation of inhospitable remote devices and/or to stall the deployment of multi-hostable devices that permit such loop access, and foster continued investment in facilities-based competitive entry. Of course, access to the loop in this manner would only be necessary in the event that the ILEC did not elect to provide any other technical means for unbundled access to the loop.

Against this backdrop, GCI therefore respectfully asks the Commission to clarify two aspects of the *Triennial Review Order* and its implementing rules. *First*, the Commission should clarify that, pursuant to paragraph 297, ILECs must "present requesting carriers a technically feasible method of unbundled access" *in the central office*, not at the subloop. *Second*, where an ILEC cannot provide a CLEC with access to an unbundled loop in the central office, the Commission should specify that among the alternative "technically feasible method[s] of unbundled access" is the provision of access to the loop in combination with local switching and related signaling, and common transport. More specifically, when the ILEC network architecture precludes unbundled access to a voice-grade loop, and the ILEC does not implement any alternative means to do so (*i.e.*, via universal DLCs, multi-hostable remotes, or homerun copper loops), the ILEC is required to provide the additional elements of the ILEC network necessary to serve to the customer.

Sincerely,

/s/

Tina M. Pidgeon

Vice President, Federal Regulatory Affairs

cc: Michelle Carey  
Tom Navin  
Ian Dillner  
Russell Hanser

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collocation often is not possible due to space constraints. See *Ameritech Corp., Transferor, and SBC Communications, Inc. Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90 95 and 101 of the Commission's Rules*, Second Memorandum Opinion and Order, 15 FCC Rcd 17521, ¶ 22, n.59 (2000) (discussing SBC's assertions about space limitations that restrict the amount of equipment that can be installed at its remote terminal sites); see also *id.* at ¶ 34, n. 95 (discussing the three types of remote terminals deployed in SBC's network and the space limitations associated with each). Similarly, total service resale is not a substitute for UNE-based entry. As GCI explained in the *Triennial Review* proceeding, total service resale ties both the nature of GCI's retail service offerings and its costs to the ILEC's retail products and prices. See *GCI January 2003 Ex Parte Letter* at 5-6. This puts substantial pressure on GCI to mirror ILEC price increases, reducing the likelihood of price competition or service repackaging. *Id.* UNEs, by contrast, are cost-based inputs that enable GCI to price its services independently from ACS' own retail pricing decisions.