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July 22, 2004

BY ELECTRONIC FILING

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

Re: *Ex Parte* Presentation, CC Docket No. 01-338

Dear Ms. Dortch:

On July 22, 2004, Thomas Sugrue, Vice President, Government Affairs for T-Mobile USA, Inc., and Ruth Milkman of Lawler, Metzger & Milkman, counsel to T-Mobile, met with Matthew Brill, Senior Legal Advisor to Commissioner Abernathy, to discuss the above-captioned proceeding. During the meeting, T-Mobile explained the importance of ensuring that wireless carriers have nondiscriminatory access to unbundled network elements, which are critical to the ability of wireless carriers to compete with incumbent local exchange carriers. The discussion was consistent with the points made in the attached documents.

In accordance with the Commission's rules, this letter is being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,

Gil M. Strobel

Attachments

cc: Matthew Brill

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July 13, 2004

BY ELECTRONIC FILING

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

Re: *Ex Parte* Presentation, CC Docket No. 01-338

Dear Ms. Dortch:

On July 13, 2004, Ruth Milkman of Lawler, Metzger & Milkman, counsel to T-Mobile, spoke by telephone with David Furth of the FCC's Wireless Telecommunications Bureau to discuss the above-captioned proceeding. T-Mobile suggested that, in order to obtain a record that would be helpful in assessing the circumstances under which incumbent LECs should be required to make non-discriminatory access to unbundled network elements (UNEs) available to CMRS providers, in any Notice of Proposed Rulemaking, the Commission should ask specific questions about the link between the CMRS provider's cell site and the incumbent LEC's central office (CO). Specifically, in addition to seeking comment on the *USTA II* court's discussion of issues relating to entrance facilities and the relevance of special access, the Commission should ask the following questions:

1. To what extent are competitive alternatives (including wholesale offerings and self-provisioning) available for cell site-to-CO links?
2. Assuming that the cell site-to-CO link must be made available as a UNE, is this link best categorized as loop, subloop, or transport?

In accordance with the Commission's rules, this letter is being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,

Gil M. Strobel

cc: David Furth

Access to Unbundled Network Elements for CMRS Providers

T-Mobile USA, Inc.

CC Docket No. 01-338

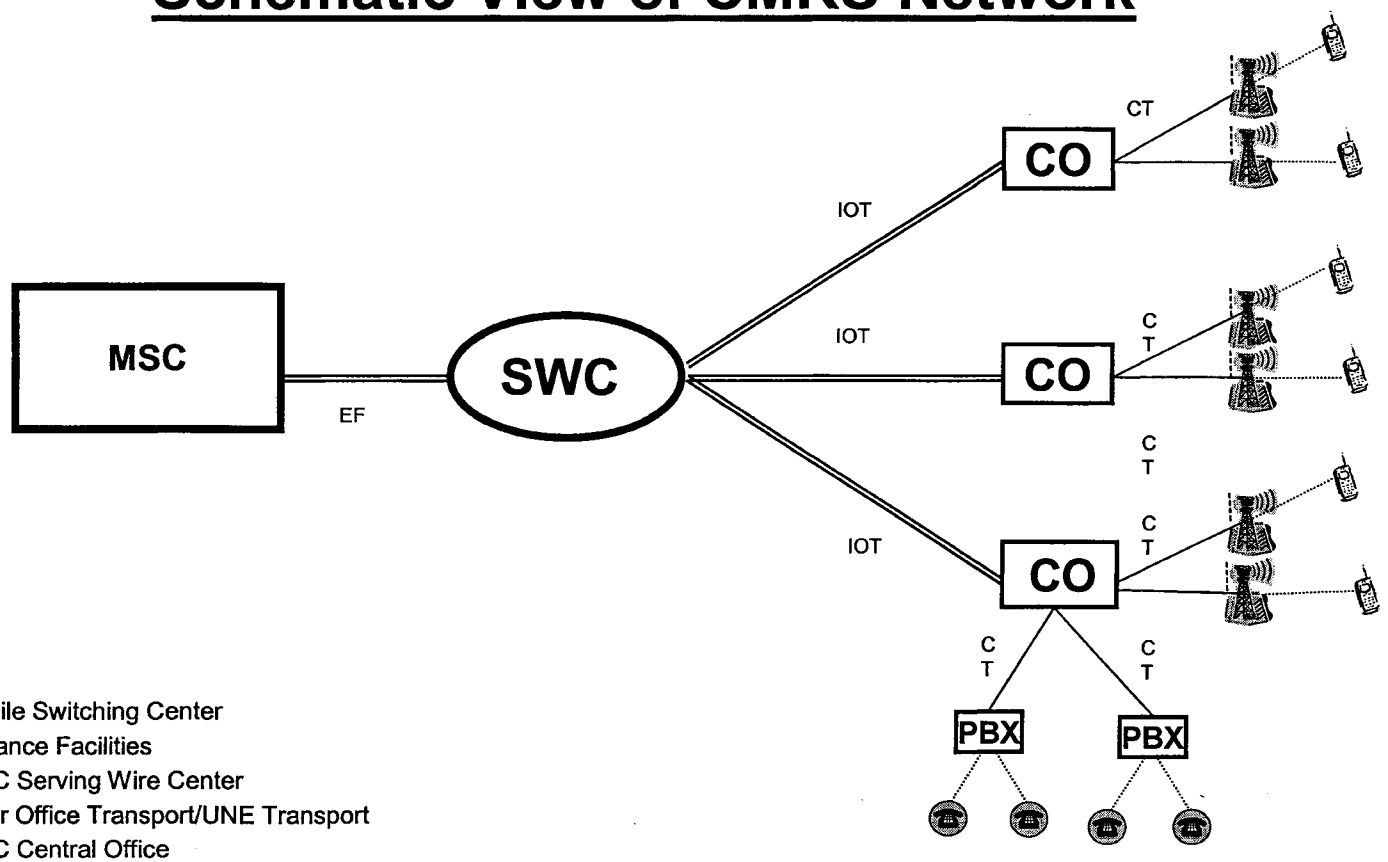
July 2004

CMRS Is Critical To Residential Competition

- Chairman Powell long ago recognized that CMRS may offer the best hope of bringing local exchange competition to residential customers. ("Digital Broadband Migration" Part II, Oct. 2001)
  - FCC has found that CMRS providers offer services in competition with telecom services that traditionally have been within the exclusive domain of the ILECs. *TRO* ¶ 140
  - Intermodal competition plays an important role in the FCC's impairment analysis. (TRO ¶¶ 5-6, 97; 140; *USTA*)
- CMRS will become an even more important alternative if UNE-P is not available

CMRS Providers Depend on ILEC Facilities to Reach End-User Customers

Schematic View of CMRS Network



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

Remand Issue: Links Connecting ILEC Networks To CMRS Facilities

- Court remanded FCC's decision on entrance facilities
  - Idea that network elements are limited to facilities within an ILEC's network has "little or no footing in the statutory definition." (*USTA II*)
- FCC should find that connections between carriers' networks are network elements and conduct an impairment analysis for all links, including:
  - MSC-to-SWC
  - SWC-to-CO
  - CO-to-base-station
- There are virtually no alternatives for the critical CO-to-base-station connections and CMRS providers cannot offer service without these vital connections

Remand Issue: Relevance of Special Access

- Availability of special access should be given little weight
- Statutory standard is impairment, not whether company would otherwise be driven out of all business segments in which it operates
- To compete against ILECs, CMRS providers need access to key inputs at economic costs
  - All evidence shows that current special access rates far exceed economic costs
    - Average BOC rates of return have climbed from less than 8% in 1996 to more than 40% in 2003, with some BOCs reaching close to 70%
- FCC should focus on actual deployment of competitive facilities

Any Architectural Safeguards for EELs Must Be Compatible With CMRS Networks

- Goal of EELs service eligibility rules was to encourage the provision of local voice service "in direct competition to incumbent LEC service." (*TRO* at ¶ 595)
- CMRS providers serve this goal, but may not meet wireline-centric eligibility rules
  - *E.g.,* CMRS providers often do not have "collocation arrangements" in every LATA
- A CMRS provider should be eligible for EELs if it
  - Is licensed to offer service in the relevant area; and
  - Has a point of interconnection in the LATA in which service is being offered