

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	

REPLY COMMENTS OF MOUNTAIN TELECOMMUNICATIONS, INC.

Mountain Telecommunications, Inc. (MTI), by its attorneys, hereby submits its reply comments in response to the Order and Notice of Proposed Rulemaking issued in this proceeding.¹

On October 4, 2004, MTI submitted initial comments in this proceeding in which it demonstrated that in the State of Arizona (the only state in which it operates), MTI's ability to provide telecommunications services is impaired without access to unbundled transport and high capacity loops provided by Qwest Corporation – the incumbent local exchange carrier which serves much of the State of Arizona where MTI operates. MTI further explained why the availability of special access at virtually unregulated prices does not provide local service competitors, including MTI, with the necessary inputs at prices which “allow competition not only to survive but to flourish,” as required by the U.S. Court of Appeals for the District of Columbia Circuit in United States Telecom Association v. FCC.² MTI also explained that

¹ Unbundled Access to Network Elements, et al (Order and Notice of Proposed Rulemaking), FCC 04-179, released August 20, 2004 (“Notice” or “NPRM”).

² 359 F.3d 554, at 576 (D.C. Cir. 2004) (“USTA II”). Significantly, even BellSouth has acknowledged the Court’s clear holding that necessary inputs must be available at prices which enable competition not only to survive but to flourish. Comments of BellSouth at 11.

alternative, non-ILEC sources, of dedicated transport and high capacity loops simply are not available to it.

The comments of other competitive local exchange carriers corroborate these factual assertions of MTI.³ The initial comments reflect an overwhelming record of *de facto* impairment under any reasonable interpretation of Section 251(d) of the Communications Act, including the standard articulated by the Court in USTA II. Those comments demonstrate that virtually all CLECs are materially impaired without access to those necessary inputs. Those commenters, like MTI, provided in stunning detail documentation that alternative facilities from non-ILEC providers simply do not exist in most locations where they are needed to enable competitors to offer service. Dedicated transport between ILEC switch locations, including Qwest switches in Arizona, is not available from other providers at any price. Indeed, without dedicated transport, the statutory entitlement to collocate at ILEC switches⁴ is rendered an illusory right.

Specifically, those commenters demonstrated why ILEC special access does not undermine the continuing need for access to dedicated transport and high capacity loops on an unbundled basis. Indeed, Time Warner Telecom – the CLEC most often cited by ILECs as the “poster child” for CLEC use of special access, explained articulately why the need for unbundled transport remains. Paetec Communications, Inc. – another CLEC which utilizes ILEC special access – noted correctly that while special access may be appropriate for certain CLEC business models, such as those which are focused only on large customers in the most populous urban areas, ILEC special access is not an efficient means to extend service to smaller business

³ See, for example, comments of the Loop and Transport CLEC Coalition, Time Warner Telecom, the Association for Local Telecommunications Services, and others.

⁴ 47 U.S.C. § 251(c)(6).

customers and to less densely-populated, rural, areas.⁵ MTI concurs with that observation. MTI's service is not limited to major urban centers. In addition to serving Phoenix and Tucson, Arizona – neither of which have the density characteristics of other cities with comparable populations, MTI's service extends to many secondary and tertiary markets in Arizona. In short, special access is not an economically viable alternative to provide connectivity in such MTI-served communities as Cottonwood, Yuma, and Flagstaff, Arizona.

Against this overwhelming record of continued reliance on unbundled transport and high capacity loops, all that was offered to refute that record compiled by MTI and other CLECs were lengthy discussions of intermodal alternatives which may be available to certain consumers in certain locations.⁶ For example, USTA states in its comments that “[a] rapidly growing number of customers are substituting wireless service, cable telephony and Internet telephony for traditional wireline service.”⁷ Whether and to what degree such alternative modes of telecommunications service may be available to consumers is not relevant to what the Commission is statutorily obligated to do in this proceeding. Pursuant to Section 251(d)(2), the Commission must determine “whether the failure to provide access to such network element would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.”⁸

The question which must be resolved by the Commission in fulfilling its responsibilities under Section 251(d)(2) is whether a requesting carrier's ability to provide the services it seeks to offer would be impaired without the sought network element. Contrary to USTA's suggestion

⁵ Comments of Paetec Communications, Inc. at 5-6.

⁶ See, e.g., comments of the United States Telecom Association, BellSouth, and a document entitled, “UNE Fact Report 2004,” submitted on behalf of BellSouth, SBC, Qwest and Verizon.

⁷ USTA Comments at 9.

⁸ 47 U.S.C. § 251(d)(2).

and the reams of data and anecdotal examples of intermodal alternatives to ILEC services mentioned throughout the UNE Fact Report 2004, Section 251(d)(2) does not require the Commission to determine – or even to address – whether certain consumers may have access to service modes other than those of the ILEC. Whether MTI’s ability to provide the telecommunications services it seeks to offer is impaired by the unavailability of ILEC network elements has nothing to do with whether customers may use services of wireless providers, cable television companies, Internet service providers or anyone else. The voluminous submissions about intermodal alternatives are totally irrelevant to what Section 251(d)(2) is about and what the Commission is obligated to do in implementing that section of the Act.

Neither do the isolated statements taken from various investment firm reports and financial statements of carriers listed throughout the UNE Fact Report 2004 offer any meaningful contribution to the record as to whether requesting carriers are impaired without access to ILEC network elements. Many of the companies identified in that report as being sources of alternative capacity either are in or have been through bankruptcy proceedings. The failure rate among companies who have attempted to duplicate large portions of ILEC networks demonstrates the economic folly of attempting to re-create networks which were built over many years using monopoly rate payer-funded resources. Congress wisely recognized that economic reality in mandating the availability of ILEC network elements in circumstances where competing carriers would be impaired without them. Neither the existence of cable television networks or wireless carriers, nor anecdotal statements taken from investment reports describing companies which have been through bankruptcy proceedings support a conclusion that competing carriers are not impaired without access to such unbundled network elements as dedicated transport and high capacity loops.

Accordingly, for the reasons set forth herein as well as in MTI's initial comments, MTI urges the Commission to follow the guidance of the Court in USTA II and to mandate the continuing availability of dedicated transport and high capacity loops where such inputs are not otherwise available at prices which enable competition to survive and to flourish.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Michelle D. Diedrick, an Executive Assistant with the law firm of Greenberg Traurig, LLP, hereby certify that on October 19, 2004, a true and correct copy of the foregoing Reply Comments of Mountain Telecommunications, Inc. was filed via electronic mail to the FCC's **Electronic Comment File Submission** with the following:

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