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

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

REPLY COMMENTS OF T-MOBILE USA, INC.

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

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

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T-Mobile USA, Inc. ("T-Mobile") submits these reply comments in response to the Notice of Proposed Rulemaking issued by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceedings.[1]

I. INTRODUCTION

As T-Mobile explained in its initial comments, its commercial mobile radio service ("CMRS") offerings do not currently compete as substitutes for the primary wireline services that incumbent local exchange carriers ("LECs") provide to their residential subscribers. T-Mobile, however, is poised to become an important alternative to wireline residential service. T-Mobile further demonstrated that it is, and will continue to be, impaired in its ability to compete for primary wireline customers if incumbent LECs are not required to offer CMRS carriers unbundled access to the transmission links that connect a cell site to a central office and a central office to the wire center serving the mobile switching center ("MSC"). As T-Mobile

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[1] *Unbundled Access to Network Elements*, Order and Notice of Proposed Rulemaking, 19 FCC Rcd 16783 (2004) (FCC 04-179) ("*2004 UNE NPRM*").

showed, because it currently must obtain almost all of these links from incumbent LEC special access tariffs, the prices it must pay for these key inputs to its wireless service are well above cost-based levels and, consequently, inflate the prices of T-Mobile's CMRS products. These inflated rates impair T-Mobile's ability to compete against the incumbent LECs, which are able to obtain the same inputs at a much lower cost. Removing this significant impediment to T-Mobile's ability to compete to provide primary line service would contribute importantly to the realization of the Commission's vision of robustly competitive residential markets where all consumers enjoy the benefits of lower prices and improved offerings. Conversely, requiring CMRS providers to continue to rely on inflated special access rates provides a disincentive to CMRS carriers to expand capacity and improve service quality to compete successfully for the incumbent LECs' core business.

Providing T-Mobile access to these transmission links as unbundled network elements would remove a substantial barrier to its ability to offer a competitive alternative to the primary line services provided by the incumbent LECs. Indeed, as an independent CMRS provider that is not affiliated with an incumbent LEC, T-Mobile does not have any conflicting interest that might dampen its enthusiasm to compete to provide primary line service to consumers.

T-Mobile's ability to compete successfully to provide primary line service also is likely to advance in other ways the Commission's objective of a communications marketplace in which all CMRS and wireline carriers compete effectively with one another across a broad array of services, bringing consumers increased choices, lower prices and more innovative products. If T-Mobile were able to overcome the pricing and service quality barriers that currently prevent it from competing effectively with wireline LECs, it would be able to compete with the incumbent LECs for primary line customers, making it difficult for other CMRS providers to retain and attract wireless customers if they do not offer services at competitive prices and comparable service quality. The rapid and widespread adoption of nationwide service plans with "buckets of minutes" and no separate roaming or long distance charges after their initial introduction[2] demonstrates the responsiveness of the highly competitive CMRS industry to service and product improvements. Thus, if T-Mobile improved its service offerings to compete with incumbent LECs in providing primary line service to residential customers, other CMRS providers, including those affiliated with incumbent LECs, would be under competitive pressure to offer services that, like T-Mobile's, can attract and retain existing incumbent LEC wireline consumers. In short, removing barriers to T-Mobile's ability to compete with the incumbent LECs' primary wireline services will advance the FCC's goal of promoting intermodal competition more generally among wireline and CMRS providers and bring consumers the benefits of a competitive market.

Although several of the commenting parties concurred in T-Mobile's position that CMRS providers and wireline carriers do not currently compete in the same relevant market, several incumbent LECs erroneously allege that CMRS today is a substitute for wireline service. We address those arguments below. We also explain that, contrary to the claims of some commenters, *USTA II* does not preclude the FCC from finding that CMRS carriers are eligible to obtain access to UNEs. Finally, we respond to claims that reliance on special access does not have a significant impact on CMRS carriers' ability to compete with the incumbent LECs and

2 *See, e.g.*, "Sprint PCS' First Quarter Growth Rate Prompts AT&T Reaction," Sprint News Release (May 7, 1998), *available at*: <http://www3.sprint.com/PR/CDA/PR_CDA_Press_Releases_Detail_PF/0,3680,1196,00.html> (calling AT&T Wireless' May 1998 introduction of its Digital One Rate pricing plan "an obvious response" to Sprint PCS' Home-Rate USA and Toll-Free USA calling plans introduced in January 1998).

demonstrate that CMRS carriers' incentives and ability to compete with the incumbent LECs are undermined by the incumbent LECs' unilateral discretion under the FCC's pricing flexibility rules to hike special access rates.

II. DISCUSSION

A. CMRS Is Not Currently a Substitute for Wireline Service

In its initial comments, T-Mobile explained that differences in price and service quality are the main reasons that CMRS is not currently viewed by most consumers as a close substitute for wireline services, especially with respect to primary lines.[3] The BOCs vainly attempt to challenge this point by presenting a variety of inaccurate, misleading and irrelevant "facts," the majority of which are contained in the "Fact" Report compiled by their lawyers. For example, as explained below, the BOCs make misleading comparisons between the rates charged by wireless and wireline carriers, overstate both the current level and future rate of wireless substitution and mischaracterize consumers' comments regarding the quality of wireless service. Despite the BOCs' assertions, the fact remains that CMRS and wireline services currently are in separate markets.[4]

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[3] *See* T-Mobile Comments at 18-19. *See also* ALTS Comments at 41-42. (Unless otherwise indicated, all comments cited herein were filed in WC Docket No. 04-313 on October 4, 2004.)

[4] As the FCC has explained, "[t]he basic economic principle for defining the scope of the relevant product market is to include . . . services in the same product market if they are essentially interchangeable from the perspective of most consumers – that is, if consumers view them as close substitutes." *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 04-111, Ninth Report, ¶ 31 (rel. Sept. 28, 2004) (FCC 04-216) ("*Ninth Report*").

1. Pricing

In their report, the BOCs' claim that wireline and wireless providers "offer comparable packages, at directly comparable prices."[5] In support of this claim, the BOCs provide a table comparing various wireline bundled service offerings to wireless bundled service offerings.[6] The comparison is misleading, however, because although the wireline offerings listed by the BOCs all include unlimited local, local toll and long distance calling, the wireless offerings used for the comparison are capped at 500 or 600 "anytime" minutes.[7] To obtain a more accurate picture of wireless prices relative to wireline prices, T-Mobile compared the unlimited calling plans offered by the BOCs to the wireless plans that provide the most "anytime" or "peak" calling minutes. As the results in Table 1 demonstrate, wireless prices are significantly higher than wireline for comparable packages of service.

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5 Huber & Leo, "UNE Fact Report 2004" at I-3 (Oct. 2004) ("BOC Report").

6 *Id.* at I-3, Table 2.

7 *Id.*

Table 1

Comparison of BOC Unlimited Calling Plans and Wireless High-Usage Plans

	BOCs[8]	AWS[9]	Cingular[10]	Nextel[11]	Sprint PCS[12]	T-Mobile[13]	Verizon Wireless[14]
Price per month	$46-65	$299.99	$249.99	$149.99	$115	$129.99	$99.99
Number of Peak Minutes Included[15]	Unlimited	6300	6000 (With rollover)	3000	2500	5000	2500

2. Substitution

The BOCs claim that the percentage of users giving up their landline phones has grown from 3-5 % at the time of the FCC's *UNE Triennial Review Order* to 7-8% in 2004.[16] The BOCs also claim that wireless has replaced approximately 11 million access lines and will replace 11

8 BOC Report at I-3, Table 2.

9 AT&T Wireless, "Learn About Plans," *available at*: <http://www.attwireless.com/> (using Washington, DC zip code).

10 Cingular Wireless, "Rate Plans," *available at*: <http://www.cingular.com> (using Washington, DC zip code).

11 Prudential Equity Group, LLC, Equity Research Report, "Telecom Services: The Lowest Rates Were Unchanged In October, But Wireless Carriers Were More Active Than In Recent Months," at 4 (Oct. 6, 2004).

12 *Id.* at 5.

13 *Id.*

14 *Id.*

15 Wireless rates do not include the cost of purchasing a phone, roaming charges or "overage" charges that subscribers may incur if they exceed their allotted budget of peak minutes.

16 *See, e.g.,* Verizon Comments at 99; BOC Report at I-5, II-28-II-29.

million more by 2008.[17] None of these estimates can be considered reliable, however, and they should not form the basis for a decision denying CMRS providers access to UNEs.

First, the BOCs provide no substantive description of the methodology used to prepare the estimates they offer. The difficulties inherent in developing accurate estimates of wireless substitution are well known. As the FCC has explained, "specific data [on substitution] is largely unavailable."[18] Further, even the sources the BOCs cite to support their estimate of wireless substitution admit that it is "difficult to calculate precise figures."[19] For example, the methodology used to determine current substitution levels may lead to inflated estimates of the number of customers that have "cut the cord." Estimates based on the number of people who have a wireless bill and no wireline bill, for example, ignore the fact that members of a household may share a landline phone that is billed to a single household member.[20] It should be no surprise, then, that other analysts not cited in the BOC Report have estimated significantly lower levels of wireless substitution than those presented by the BOCs.[21]

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17 *Id.*

18 *Ninth Report* ¶ 212.

19 Michael Balhoff, Managing Director, Legg Mason, prepared witness testimony before the Subcommittee on Telecommunications and the Internet of the House Energy and Commerce Committee (Feb. 4, 2004) (quoted in BOC Report at II-28, n.136), *available at*: <http://energycommerce.house.gov/108/Hearings/02042004hearing1164/hearing.htm> (estimating that wireless-only customers "may be" 8% of the total consumer market today, but admitting that the analysis is "a bit tricky").

20 *See, e.g.*, *Ninth Report* ¶ 212 n.575 (citing a survey based on people who have a wireless bill and no wireline bill). Family members with separate wireless bills may share a single wireline account. Moreover, roommates and housemates may sign up for a single wireline phone number in the name of one individual even if the phone is shared by several people, each of whom has a separate wireless subscription.

21 *See, e.g.*, Ned P. Zachar, Founding Partner, Weisel Partners, prepared witness testimony before the Subcommittee on Telecommunications and the Internet of the House Energy and Commerce Committee (Feb. 4, 2004), *available at*: <http://energycommerce.house.gov/

Second, even assuming that CMRS service has replaced 11 million wireline access lines, this represents less than 6% of the more than 187 million wireline access lines that were in service in 2002, the last year for which statistics are available.[22] Six percent substitution is consistent with the 5-6% estimate cited by the FCC in its recent report on CMRS,[23] and represents a modest increase from the 3-5% of wireline access lines that the FCC found had been replaced by wireless in 2002.[24] In addition, it is clear that some of the wireless for wireline substitution is for second and third lines and does not constitute "cord cutting."[25]

Third, the sources cited by the BOCs offer no support at all for their predictions of future growth in substitution. Projections of wireless substitution four years in the future are little more than guesses,[26] and cannot justify a refusal to allow CMRS providers access to UNEs today.[27] It

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108/Hearings/02042004hearing1164/hearing.htm> (estimating that roughly 5 million wireless users have "cut the cord" and that it is "reasonable to believe that the number would be 2-3x as high in 2008.")

22 "Trends in Telephone Service," Industry Analysis and Technology Division, Wireline Competition Bureau, at 7-3, Table 7.1 (May 2004), *available at*: <http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend504.pdf>.

23 *Ninth Report* ¶ 212, n.575 (citing Census Bureau estimates that "5 to 6 percent of all households now have wireless phones only.")

24 *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Seventh Report, 17 FCC Rcd 12985, 13017 (2002) ("*Seventh Report*").

25 *See, e.g.*, Merrill Lynch, "The Next Generation VIII," at 39-40 (March 15, 2004) (explaining that the main driver of wireline line losses is the replacement of second lines with DSL and cable).

26 *See* Frank Louthan, Vice President Equity Research, Raymond James Financial, Inc., prepared witness testimony before the Subcommittee on Telecommunications and the Internet of the House Energy and Commerce Committee (Feb. 4, 2004), *available at*: <http://energycommerce.house.gov/108/Hearings/02042004hearing1164/hearing.htm> (admitting that the "actual impact of wireless substitution is difficult to estimate because it is highly dependent on consumer preferences that can change over time").

is clear that wireless is not currently a substitute for wireline local exchange.[28] In fact, although the increasingly intense competition between CMRS providers has been well-documented,[29] it has had no effect on wireline pricing. But it is also clear that wireless is well positioned to enter this market and become a direct and effective competitor for the incumbent LECs' local exchange business. The FCC should help make this possibility a reality by providing wireless carriers access to UNEs.

3. Service quality

As the BOCs correctly note, wireless service quality has been improving as T-Mobile and other CMRS providers have invested in upgrading and expanding their networks.[30] Despite these improvements, however, wireless service quality still falls short of the service level

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27 Indeed, even one of the reports cited by the BOCs estimates that only seven million primary access lines will have been displaced by wireless by the end of 2004, and that no more than eleven million will have been displaced by the end of 2007. Scott Ellison, IDC, "U.S. Wireless Displacement of Wireline Access Lines: Forecast and Analysis, 2003-2007" at 15-16, Tables 8 and 9 (Aug. 2003) ("IDC Report") (cited in BOC Report at II-35, n.172).

28 *See* T-Mobile Comments, Attachment C, Williams Declaration, ¶¶ 18, 21 ("Williams Declaration"); ALTS Comments at 40-41; Declaration of Professor Richard Gilbert at 14-19 and ¶ 44, Attachment 1 to Public Interest Statement of AT&T Wireless and Cingular Wireless, WT Docket No. 04-70 (Mar. 17, 2004) ("Gilbert Declaration"); "Fixed-Mobile 'Intermodal' Competition in Telecommunications: Fact or Fiction?," Phoenix Center Policy Bulletin No. 10 at 10 (2004), *available at*: <http://www. phoenix-center.org/ pbulletin.html> ("Phoenix Bulletin No. 10") (concluding that wireless and wireline currently are not effective intermodal competitors and that "mobile telephony does not, today, offer an effective constraint on market power in the wireline industry").

29 *See, e.g., Ninth Report* ¶¶ 2-4, 20, 27.

30 *See, e.g.,* BOC Report at II-33 – II-37; *see also* "J.D. Power and Associates Reports: Satisfaction with Wireless Service Providers Increases Significantly as Customers Report Higher Ratings in Call Quality and Cost-Related Attributes," News Release (Sept. 9, 2004) (ranking T-Mobile the highest in customer satisfaction in all six regions).

available over a traditional wireline phone.[31] For example, a survey conducted by the National Regulatory Research Institute (and funded by the National Association of Regulatory Utility Commissioners) found that consumers are more satisfied with their wireline local phone service than with their wireless service.[32] Another study, cited by the BOCs in their report, found that more than 40% of survey respondents would not consider replacing their landline phone with a wireless phone because they do not think wireless phones are as reliable or work as well as landline phones.[33]

ALTS and other parties also have noted several ways in which CMRS "continues to fall short" of wireline.[34] For example, ALTS claims that CMRS phones are "inherently less reliable than wireline phones" and "often have poor reception or are entirely unavailable inside of buildings."[35] According to ALTS, "even a 'good quality' cellular call has poorer quality than a typical landline call."[36]

T-Mobile continues to work to expand the coverage, capacity and quality of its service, but the economic incentives to build out its cell site infrastructure are reduced, and its ability to compete in the local telephony market is impaired, as the result of having to pay inflated special

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31 *See, e.g.,* IDC Report at 10 (stating that "there is a widespread perception that wireless is simply not as reliable as wireline").

32 Vivian Witkind Davis, The National Regulatory Research Institute, "Consumer Utility Benchmark Survey: Consumer Satisfaction and Effective Choice for Cellular Customers," at 6 (Nov. 2003) ("CUBS Study").

33 Clint Wheelock, In-Stat/MDR, "Cutting the Cord: Consumer Profiles and Carrier Strategies for Wireless Substitution," at 11 (Feb. 2004) ("In-Stat/MDR Report") (cited in BOC Report at II-34 n.168). Another 10.5% responded that they "don't like wireless phones as much as [they] like landline phones." *Id.*

34 ALTS Comments at 41; *see also* CompTel/ASCENT Comments at 12-13.

35 ALTS Comments at 41.

36 *Id.*

access rates for critical transmission facilities. To compete effectively with the wireline incumbent LECs, T-Mobile must have access to unbundled network elements at cost-based rates.[37]

B. *USTA II* Did Not Hold that CMRS Providers Must Be Denied Access to UNEs

The BOCs wrongly contend that the court's decision in *USTA II* precludes a finding that CMRS providers are impaired without access to UNEs.[38] As T-Mobile showed in its initial comments, however, that is not the case.[39] In fact, the *USTA II* court faulted the FCC for not considering special access as part of its impairment analysis, but did not prejudge the outcome of an impairment analysis that took special access into account.[40] Rather, as CompTel noted, the

37 *See, e.g.*, In-Stat/MDR Report at 10 (among respondents who are likely to consider wireless substitution, over 56% said that lower prices would cause them to replace their landline phones with a wireless phone and over 25% said better connectivity/coverage/fewer call drops would cause them to consider replacing their landline phone); *see also* IDC Report at 10 (noting that issues related to coverage, availability and voice quality have a "braking effect" on primary line substitution). Although access to UNEs alone is not sufficient to allow T-Mobile to make all of the changes needed to improve its service quality and network coverage, access to UNEs is a necessary part of T-Mobile's plan to make the required improvements.

38 *See, e.g.*, BellSouth Comments at 62.

39 *See* T-Mobile Comments at 16-22; Williams Declaration ¶¶ 4, 16-37.

40 *See United States Telecom Ass'n v. FCC*, 359 F.3d 554, 577 ("on an appropriate record the Commission might find impairment even when services were available from ILECs outside § 251(c)(3)") ("*USTA II*"); *see also id.* at 594 (vacating the FCC's decision not to take into account the availability of special access services when conducting the impairment analysis and "therefore vacat[ing] and remand[ing] the decision that wireless carriers are impaired without unbundled access to ILEC dedicated transport.") If the court's intent was to preclude a finding that CMRS carriers are impaired without access to UNEs, it could have simply vacated the FCC's rules granting such access. By remanding the decision, the court clearly left open the possibility that the FCC could find that, taking special access into account, CMRS carriers are impaired without access to UNEs.

court simply "raised a number of specific issues in the context of CMRS providers which the TRO did not analyze in sufficient detail."[41]

Moreover, as T-Mobile explained in its initial comments, the *USTA II* court's observations concerning the service offerings and commercial success of CMRS providers appear to be based on an unstated and flawed assumption that those services currently are effective substitutes for most of the incumbent LECs' offerings. That error may not be surprising in light of the limited record concerning this issue that was before the court.[42] In remanding the case, however, the *USTA II* court plainly assigned to the Commission the responsibility, in the first instance, to determine if CMRS providers today compete in the same relevant market with incumbent LECs to serve most of their consumers.

The evidence submitted by T-Mobile in this proceeding and evidence filed in other pending proceedings shows that CMRS and incumbent LECs currently do not compete with one another to provide primary line service to residential costomers.[43] T-Mobile has also demonstrated that because pricing and service quality differences are the principal existing barriers to that form of intermodal competition,[44] its continued reliance on excessively priced incumbent LEC special access services for the links needed to make its wireless infrastructure into a telecommunications network would reinforce those obstacles. In the terms of the statute, T-Mobile and other CMRS providers would be impaired in their ability to compete with

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41 CompTel /ASCENT at 22.

42 *See, e.g.*, *id.* (noting that "the Court was not privy to the wealth of record evidence developed in numerous proceedings" regarding the impact of special access rates on competition).

43 *See* T-Mobile Comments at 18-19; Williams Declaration ¶¶ 4, 18, 21; ALTS Comments at 40-41; Gilbert Declaration ¶ 44.

44 *See* T-Mobile Comments at 19; Williams Declaration ¶¶ 16, 18-22.

incumbent LECs if CMRS carriers continued to be denied access to those transmission links as unbundled network elements.

The *USTA II* court also may not have considered the longer term significance of removing substantial barriers to T-Mobile's ability to compete with incumbent LEC offerings. By improving the quality and reducing the cost of its offerings, T-Mobile would be able to offer CMRS products that are attractive not only to current consumers of incumbent LEC services, but also to existing CMRS customers who are served by other carriers, such as Cingular and Verizon Wireless. As the industry's experience in the wake of the introduction of "buckets of minutes" offering shows, CMRS carriers quickly react to the appearance of a better "mousetrap."[45] In doing so in this case, other CMRS carriers would begin deploying products that, like T-Mobile's services, also were effective substitutes for incumbent LEC offerings. As a result, over time, existing distinctions between CMRS and wireline services would be eroded. Instead, each carrier would have a realistic and fair opportunity to compete for virtually all customer segments, resulting in the full-blown intermodal competition that the Commission repeatedly has stressed is one of it primary objectives.

C. *USTA II* Permits the FCC Not to Consider Special Access for Impairment Purposes Based on "Risk of ILEC Abuse" and "Adminstrability" Concerns, Both of Which Apply to CMRS Carriers' Access to UNEs

As explained above and in T-Mobile's initial comments, without access to UNEs, T-Mobile and other CMRS providers are impaired in their ability to compete for primary wireline services.[46] The availability of tariffed special access services does not diminish this

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45 *See supra* note 2.

46 Contrary to the claims made by some commenters, T-Mobile showed in its initial comments that it, like other CMRS carriers, depends heavily on incumbent LEC special access

impairment.[47] As demonstrated below, a finding that CMRS providers are impaired even in light of the availability of special access is consistent with the court's decision in *USTA II.* As the court noted, the FCC is free to find that the availability of special access does not affect impairment where, as here, consideration of the availability of special access would lead to an unacceptable "risk of ILEC abuse" or would create "administrability issues."[48]

The *USTA II* court expressly recognized that the incumbent LECs' "incentive to set the tariff [special access] price as high as possible" and their ability "drastically to hike" special access prices should be considered by the Commission in determining whether the availability of special access should be included in making impairment determinations.[49] Further, the court noted that those incentives together with the "vagaries of determining when the price gets so high that the 'impairment' threshold has been crossed" might justify a "blanket" decision to exclude consideration of special access from impairment determinations.[50] In the case of CMRS providers, all of these considerations should lead the Commission to conclude that the availability of special access service should not be a factor in its impairment analysis for CMRS carriers.

As T-Mobile demonstrated in its comments, the incumbent LECs' incentive and ability to set prices for special access at inflated levels are reflected in both their excessive rates of returns

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services to offer its retail services. T-Mobile Comments, Attachment A, Wong Declaration, ¶ 8 ("Wong Declaration"); *see also* Sprint Comments at 55 (stating that the "single largest network operating cost of Sprint's mobile wireless division is the purchase of dedicated transport facilities.").

47 *See* T-Mobile Comments at 2; Wong Declaration ¶ 8; Williams Declaration ¶¶ 4, 23-37.

48 *USTA II*, 359 F.3d at 576-77.

49 *Id.* at 576.

50 *Id.*

for those services as well as the comparisons between special access rates and those produced by competitive markets or set by TELRIC principles.[51] Consequently, whereas CMRS carriers' economic costs of these links are the excessive special access rates they must pay, the incumbent LECs' costs are the much lower actual economic cost of the same transmission links. This "ILEC abuse" of its dominance in the provision of local service is precisely the circumstance to which the court alluded in suggesting that the availability of special access may have no impact in the impairment determination.[52]

Unlike the incumbent LECs, which, because of the historical legacy of rate-of-return regulation and lack of competition, may well be inefficient,[53] CMRS carriers, particularly independent carriers such as T-Mobile, have faced fierce competition in an unregulated retail market. Accepted economic theory holds that in such a market the CMRS firms will be economically efficient, *i.e.,* they will minimize their costs given the technology and input prices they face. Therefore, basic economics dictate that there is no opportunity for further reduction in consumer prices for CMRS unless there is a technological breakthrough or other input prices fall.[54] Furthermore, even assuming, *arguendo*, that T-Mobile were able to reduce other input costs to offset inflated special access prices, the fact is that incumbent LECs have almost no formal constraints on their ability to raise prices unilaterally from existing levels. Under the

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[51] Williams Declaration ¶¶ 23-37.

[52] *USTA II*, 359 F.3d at 577.

[53] One potential cause of inefficiency is the "Averch-Johnson Effect." See W. Kip Viscusi, John Vernon and Joseph Harrington, "Economics of Regulation and Antitrust," 2nd Edition, 1996, MIT Press at 387-391.

[54] *See, e.g.,* Andreu Mas-Colell, Michael Whinston and Jerry Green, "Microeconomic Theory," 1995 Oxford University Press at Section 5.C, pp. 136-143.

FCC's pricing flexibility rules,[55] price cap incumbent LECs have the option of raising their special access rates in any of the over 200 MSAs where they have been granted such flexibility.[56] Consequently, a CMRS carrier could anticipate that in response to actual or imminent entry, an incumbent LEC would have a compelling incentive to increase its special access prices substantially. This risk that a vertically integrated carrier may engage in anticompetitive conduct by "raising rivals' costs" is a standard principle of economics and has been recognized by the FCC in prior proceedings.[57]

Moreover, if the FCC were to attempt to take account of the availability of special access in assessing the impairment of CMRS providers, the administrative burden would be substantial. In effect, this undertaking would require the FCC to compare on an ongoing basis prices for innumerable special access services offered in every jurisdiction and pricing zone with the retail rates for countless different local wireline service offerings to determine whether competition with the incumbent LECs would be feasible without access to UNEs. In these circumstances, the

55 *See* 47 CFR §§ 69.701 – 69.731.

56 *See, e.g., BellSouth Tariff F.C.C. No. 1,* § 23.2; *Pacific Bell Tariff F.C.C. No. 1,* § 31; *Qwest Tariff F.C.C. No. 1,* § 23; *Southern New England Telephone Company Tariff F.C.C. No. 39,* § 24; *Southwestern Bell Telephone Company Tariff F.C.C. No. 73,* § 39; *Verizon Tariff F.C.C. No. 1,* § 14; *Verizon Tariff F.C.C. No. 11,* § 15.

57 *See* Michael H. Riordan and Steven Salop, "Evaluating Vertical Mergers: A PostChicago Approach," 63 ANTITRUST L. J. 513, 523-26 (1995) ("Riordan & Salop"), and Thomas G. Krattenmaker & Steven C. Salop, "Anticompetitive Exclusion: Raising Rivals' Costs to Achieve Power over Price," 96 YALE L. J. 209, 234-38 (1986); *see also General Motors Corp. and Hughes Electronics Corp., Transferors, and The News Corp. Ltd., Transferee, for Authority to Transfer Control*, Memorandum Opinion and Order, 19 FCC Rcd 473, ¶ 78 (2004) (expressing concerns about the ability of a firm with market power to raise rivals' costs).

court acknowledged that "administrability issues" could support a finding that consideration of special access in the impairment analysis was simply not feasible.[58]

In short, the evidence shows that, consistent with the *USTA II* court's mandate, the availability of special access should not be a factor in the FCC's assessment of the need for CMRS carriers to obtain access to UNEs. Incumbent LECs have set prices for those services today at excessive levels and have the incentive and ability to raise them to even higher levels in the future if competitive circumstances warrant. T-Mobile and other CMRS carriers will remain vulnerable to such anticompetitive tactics as long as CMRS carriers do not have access to more reasonably priced alternatives, such as UNEs. In addition, the administrative burden of attempting to take into account the availability of special access and determining whether impairment exists would be unmanageable for the FCC.

The FCC's goal of creating multiple competing communications platforms for serving consumers has yet to be realized. To that end, the FCC should remove barriers that prevent CMRS carriers from competing to provide primary line service to consumers. As we have shown, access to efficiently priced and provided UNE transmission links that will interconnect different parts of the CMRS infrastructure are a critical part of that process. The ultimate beneficiaries of intermodal competition between CMRS and wireline carriers will be consumers, as competition will spur carriers to improve service offerings, lower prices and increase innovation.

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58 *USTA II*, 359 F.3d at 576.

III. CONCLUSION

For the reasons set forth above, as well as in T-Mobile's initial comments, the FCC should revise its rules to ensure that CMRS providers have access to the unbundled network elements they need to connect their base stations and cell sites to central offices and to connect central offices to serving wire centers closest to the CMRS carriers' mobile switching centers.

Respectfully submitted,

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

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

October 19, 2004

CERTIFICATE OF SERVICE

I, Ruth E. Holder, hereby certify that on this 19th day of October, 2004, I caused true and correct copies of the foregoing Reply Comments of T-Mobile USA, Inc. to be delivered by electronic mail to:

Janice M. Myles
Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street SW, Suite 5-C327
Washington, DC 20554
Janice.Myles@fcc.gov

Best Copy and Printing, Inc.
Portals II
445 Twelfth Street SW, Room CY-B402
Washington, DC 20554
fcc@bcpiweb.com

Ruth E. Holder

Ruth E. Holder