Attachment 1

ADVANCED TELCOM
UNE v. Special Access
Pricing Comparison

3-Month Billing History

			June		July		Aug					
State	Svc Type	Circuit Type	$	Count	$	Count	$	Count	Avg $	Avg Count	Avg/Ckt	% Increase if UBL Priced at SA Rate
CA	SA	HiCap DS1	$ 6,698.06	26	$ 6,683.63	26	$ 6,682.63	26	$ 6,688.11	26	**$ 257.23**	**208%**
	UBL	HiCap DS1	$ 108,656.23	879	$ 108,319.40	875	$ 110,146.02	885	$ 109,040.55	880	**$ 123.96**	
NV	SA	HiCap DS1	$ 1,698.37	6	$ 1,698.37	6	$ 1,698.37	6	$ 1,698.37	6	**$ 283.06**	**1001%**
	UBL	HiCap DS1	$ 18,661.34	659	$ 19,132.64	677	$ 19,201.90	679	$ 18,998.63	672	**$ 28.29**	
OR	SA	HiCap DS1	$ 16,293.04	70	$ 16,167.04	69	$ 15,741.87	68	$ 16,067.32	69	**$ 232.86**	**243%**
	UBL	HiCap DS1	$ 87,464.86	912	$ 89,435.79	932	$ 90,806.40	946	$ 89,235.68	930	**$ 95.95**	
WA	SA	HiCap DS1	$ 22,041.67	79	$ 21,769.33	74	$ 23,155.55	77	$ 22,322.18	77	**$ 291.16**	**335%**
	UBL	HiCap DS1	$ 110,820.83	1,283	$ 113,671.28	1,306	$ 116,313.46	1,329	$ 113,601.86	1,306	**$ 86.98**	
Total			$ 372,334.40	3,914	$ 376,877.48	3,965	$ 383,746.20					

SA = Special Access

UBL = T1 Level UNE and EEL

Records Source = Actual Billing Invoices from ILECs (SBC-PacBell, SBC-Nevada Bell, Qwest-WA, Qwest-OR, Verizon-Northwest)

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

SUPPLEMENTAL DECLARATION OF REBECCA H. SOMMI
ON BEHALF OF BROADVIEW NETWORKS, INC.

I, Rebecca H. Sommi, hereby declare under penalty of perjury that the following is true and correct:

1. I adopt and incorporate the Declaration that I submitted in connection with the comments of The Loop and Transport CLEC Coalition filed in this docket on October 4, 2004.

2. The purpose of this Supplemental Declaration is to discuss Broadview's experience with orders that are rejected for "no facilities." These order rejects have had a significant impact on Broadview's ability to obtain facilities as UNEs.

3. As I explained in my initial Declaration, Broadview operates in several markets in the Verizon territory. Since we began tracking our high-capacity DS-1 UNE/EEL orders with Verizon, 161 out of 341 orders have been rejected for "no facilities" — that is **47.2% of Broadview's orders**.

4. When an order is rejected for "no facilities," at a minimum Broadview is subjected to longer non-standard intervals. In the event that there is no build pending,

Broadview must agree to have the circuit provisioned as Special Access or cancel the order. Canceling the order essentially means losing the customer, and so Broadview generally converts the circuit to Special Access. Accordingly, we agreed to accept 97 of the 341 orders as Special Access — **28.4% of our DS-1 orders** ended up as Special Access.

5. When Broadview initially places an order for a UNE DS-1 or EEL DS-1, it has the option to indicate on the Access Service Request ("ASR") if it agrees to convert the circuit to Special Access where a "no facilities" condition exists. As part of Verizon's standard process, it responds within a three-business day interval confirming a due date or notifying of "no facilities." When a "no facility" condition exists, Verizon provides a brief description of the work required, and informs Broadview that the order has been converted to a Special Access order (See **Attachment 1**). The process begins again and Broadview must wait another three business days to receive a Firm Order Commitment due date from Verizon. A "no facilities" condition can be due to a network modification requirement or lack of physical facilities; thus the due date is a non-standard interval. The non-standard interval can range from 9 to 89 business days. Broadview has experienced an average non-standard interval of 26 business days — almost three times greater than the 9 business day standard interval.

6. Under Verizon's previous policy, "no facilities" circuits were eligible for conversion to UNEs after 90 days upon submission by Broadview of a spreadsheet listing all circuits initially ordered as UNEs. Of course, Broadview had to pay the substantially higher Special Access rates — as explained in my initial Declaration — for those 90 days. Now Verizon has instituted a policy that makes conversions much more difficult and time-consuming. We must place an order with Verizon to "disconnect" and then a subsequent order to "reconnect" the circuit, introducing additional operational procedures and incurring additional charges.

These charges are to be contained in either a tariff or an amendment to our interconnection agreement, neither of which are in place. In any event, they will increase our cost of service. In addition, this process carries the risk that a live customer may be disconnected. Thus, in order to get the circuit as a UNE, as we had requested, Broadview risks its quality of service.

7. Verizon's "no facilities" policy has greatly increased Broadview's use of Special Access. We must take approximately one-quarter of high-capacity circuits as a DS-1 UNE or EEL, at substantially higher rates. Due to Verizon's new conversion policy, "no facilities" orders can potentially endanger our ability to provide reliable service at competitive prices. Broadview urges the Commission to recognize the impact of "no facilities" orders on our business, and on the question of CLEC impairment in general.

Dated: October 19, 2004

Rebecca H. Sommi
Vice President-Operations Support
Broadview Networks, Inc.

CSG Main Menu Links

go to CSG Homepage.

Create, view, update and sup an Access Service Request, create or update a User Profile, and view an existing CSG ASR by user or group list.

Retrieve current status of an ASR, view Confirmation Notice, view Design Layout Record, and retrieve Date Due and Plant Test Date statuses.

Retrieve DLR information by Circuit Type.

Search by Service Address, AHN (Assigned House Number), and Telephone Number.

Retrieve CFA List (A-Z Locations), CFA Detail (Facility/System) and CFA Channel Details.

Retrieve Sonet Ring Details, Bank Node Details.

Search by Circuit or TSC to retrieve the critical data for a SPUNE/SWUNE ASR from the Customer Service Record.

Sign up here to receive an E-mail when a Confirmation Notice is issued, or a Query is opened for an ASR.

Retrieve current status for multiple ASRs.

restricted to authorized internal users for the administration and monitoring of access and functionality of the CSG.

Clarification/Notification Request

Status as of Monday, October 18, 2004 09:35:20 AM EDT

Access Service Request									
CCNA	**PON**	**VER**	**REQTYP**	**ACT**	**RTR**	**ICSC**	**ASRID**	**ASR STATUS**	**C/NR STATUS**
SCE	716667AAAA	1	SE	N	S	NY01		Confirmed	Informational Notes

C/NR Version: 01

CNT: D **Clarification Date/Time Sent:** 10/08/2004 08:04 AM

Contact Section

AP REP	**AP REP TEL**	**AP REP EMAIL**
STATUS DESK	617-342-2025	

Clarification/Notification Request Detail Section

SUP R:	**CRDD:**	**CD:**
SUP I	**RCODE**	**RDET**

Remarks

This ASR is denied for no facilities. SUPP 4 created and ASR sent to Special Access CATC. No action is required by the CLEC.Reason for No Facilities is No Apparatus/Doubler case

Error Detail Section

SUP I	**REFNUM**	**VC NUM**	**ERROR TAG**	**ERROR MESSAGES**

Previous

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	)	CC Docket No. 01-338
Carriers	)	

DECLARATION OF LAURIE A. LARSON
ESCHELON TELECOM, INC.

I, Laurie A. Larson, hereby declare under penalty of perjury that the following is my true testimony:

1. My name is Laurie A. Larson. I am the Senior Director, Service Delivery, of Eschelon Telecom, Inc. ("Eschelon"). My business address is 730 Second Avenue South Suite 900, Minneapolis, MN 55402. I have been employed by Eschelon since April 1, 2002. My primary responsibilities include management of all Service Delivery activities, including customer contact, order processing/provisioning, and implementation of telecom services for Eschelon's small to medium-sized business customers.

2. The purpose of this Declaration is to describe Eschelon's experience with orders that Qwest places "on hold" because facilities are allegedly not available. Other carriers term this a "no facilities" reject. I will also explain how Eschelon deals with such orders, and their overall impact on our ability to serve customers.

Number of Held Orders

3. Eschelon experienced "held orders" to a significant extent in 2003. For example, in Arizona, Qwest held 13 Eschelon orders for DS-1 circuits for "lack of qualified facilities" during the period June 20, 2003, through July 15, 2003. Interestingly, Qwest had obtained Section 271 approval from the FCC on June 26, 2003.

4. This problem continues to occur throughout the Qwest region through the present. To illustrate, I have compiled the numbers of held orders for the months of July, August, and September 2004. They are as follows:

5. In July, out of 208 DS-1 orders (both loops and EELs) that Qwest provisioned, 20 were held for lack of facilities. That represents almost 10% of orders region-wide. These 20 orders count only those that we saw through to provisioning. They do not include orders that we cancelled.

6. In August, out of 234 DS-1 orders (both loops and EELs) that Qwest provisioned, 34 were held for lack of facilities. That represents 14.5% of Qwest orders that month. Again, this number does not include cancelled orders.

7. In September, out of 236 DS-1 orders (both loops and EELS) that Qwest provisioned, 19 were held for lack of facilities — 8% of orders. This number does not include cancelled orders.

Held Orders Consume Considerable Additional Resources

8. When Eschelon orders are held, they require a considerable amount of extra work. This work is primarily in coordinating the held order with the other orders associated with that prospective customer, for example a Local Number Portability order. In addition, Eschelon must re-schedule the technical dispatches to avoid paying for futile truck-rolls.

We also must take additional time with the prospective customer to explain to them why service is delayed and what Eschelon is doing to get them turned up. Held orders also require us to kept in more close contact with Qwest to shepherd the order through the process. See attached memo "Held Order Overview."

9. In all, we calculate that management of held orders takes 2.5 full-time equivalent workers per year. At the rate of $50,000 per affected employee per year, this translates to $125,000 per year spent on labor costs for held orders.

Impact of Held Orders on Service

10. Orders that are held for lack of facilities cost significantly more to provision. Under Qwest's CLEC Requested Unbundled Network Elements Construction ("CRUNEC") policy, the carrier will provision a circuit where no facilities purportedly exist only on payment of a up-front "quote preparation fee" ("QPF"). Thus, where Eschelon gets a "lack of facilities" notice on an order, Qwest will provide a QPF stating the amount it will charge Eschelon to construct the requested facility. The QPF in Arizona, for example, average $1,600 per circuit in Eschelon's experience.

11. These orders also take 60 to 90 extra days just to get Qwest's QPF estimate and the approximate service-ready date. The time to get the circuit is even longer. As a result, approximately one customer ***per month*** cancels Eschelon service due to held orders.

12. In addition, "no facilities" orders, if provisioned, are filled only as Special Access. We calculate that Special Access in Qwest territory costs, for a DS-1, $193 more per month than UNEs, plus a $315 non-recurring charge.

13. Due to the significant QPF and Special Access charges associated with held orders, our Marketing Department rarely authorizes them. Thus, upon receipt of a "lack of facilities"

notice, Eschelon typically contacts the customer and explains that Eschelon cannot serve them. It would cost Eschelon a tremendous amount of resources to follow up with a field technician in response to each "no facilities" notice.

Two Examples of False "No Facility" Notices

14. Two Eschelon orders in 2003 received "no facilities" notices that apparently were not correct. The circumstances surrounding these orders raises serious concerns about the general accuracy of Qwest reporting facilities as not available when Eschelon places an order for unbundled loops and transport.

15. In June 2003, Eschelon ordered a DS-1 loop to serve a customer. After an initial order confirmation on June 6, Qwest provided a FOC of July 21, 2003. On July 22, however, Qwest sent a "no facility" notice to Eschelon. By that time, however, it was too late for Eschelon to cancel the dispatch of its own technician to the site. When he arrived on July 23, he found a perfectly operational and "lit" DS-1. Further research revealed that the circuit ID number for that DS-1 was the very same ID number provided on the July 21, 2003, FOC. Yet Qwest told Eschelon on July 22, the day following the initial FOC, that they had "no facilities" there.

16. In another instance, Eschelon ordered a DS-1 loop on July 8, 2003 for a new customer. Qwest initially provided a FOC for the order, but then sent a "no facility" notice on July 21. On July 23, 2003, the customer phoned Eschelon and stated that Qwest retail personnel told him that indeed there was a DS-1 available for him, and that if he stayed with Qwest his service would be turned up in three days. The customer checked the circuit ID himself, and again the ID matched the circuit ID on Qwest's initial FOC to Eschelon. Somehow that ID became listed for Eschelon as "no facilities," but for Qwest

retail personnel came up as available. These instances demonstrate that "no facilities" orders are extremely suspect.

Conclusion

17. "No facilities" orders should be closely examined by the Commission. First, they appear to be a ploy by Qwest to get CLECs to pay Special Access rates instead of cost-based rates for the facilities that the Commission requires to be unbundled. Secondly, they seem to be a delay tactic by which Qwest retail buys time to attempt to win back a CLEC customer. The Commission should be aware of this problem when it reviews Qwest's data on the number of facilities that CLECs take as Special Access as opposed to UNEs.

18. In addition, "no facilities" orders cost Eschelon customers. They cause significant delay that customers understandably will not accept. They also increase cost of service to the point that Eschelon must give customers up. Thus, if the Commission accepts Qwest's argument that CLECs rely on Special Access and incur no impairment, what it will have done is reward Qwest for unlawful, anticompetitive conduct. The Commission instead should reject Qwest's alleged Special Access data, and moreover investigate its "no facilities" practices to find whether they are simply a way for Qwest to retain customers unfairly.

This concludes my Declaration.

/s/ Laurie A. Larson
Laurie A. Larson
Senior Director, Service Delivery
Eschelon Telecom, Inc.

October 19, 2004

Held Order Overview – Eschelon Telecom, Inc.

Extra Coordination Time

Held Orders cause Eschelon extra work and re-work. Eschelon needs to do extra coordination with many different parties within the company, Qwest, vendors, and the customer for orders that become held for lack of facilities.

- If other associated orders (Local Number Portability orders) are not updated with new due dates, the customer's service will most likely go down. Sometimes we even cancel this order and re-submit the order when we have the actual due date instead of continuing to update (a.k.a. supplement) the order.
- Eschelon technician dispatches need to be canceled and re-established so Eschelon does not pay for extra truck rolls.
- Eschelon needs to spend extra time with the customer, explaining the delay, and sometimes arranging for alternate service until orders are released from the held for facilities status. Two examples of when this would happen:
    1. a customer that is moving to a new location
    2. a customer that is opening a new location
- Eschelon Switch Operations group needs to be alerted of the new timing of the loop drop date and that Qwest will not be dropping the loop on the expected date.
- Eschelon follows up with Qwest regularly on held orders in order to speed up the progress and find out when the order will be released from held for facilities status. This is partially due to Qwest's lack of compliance of it's documented Jeopardy process. Eschelon also needs to follow-up with Qwest so in order to be able to status customers as appropriate.

Approximately **2.5 people's time** is spent with all of this **extra coordination** needed for orders held for lack of facilities. With the fully loaded rate of $50k/year per employee, that is **approximately $125,000/year spent** on human resources to coordinate these orders that are held for facilities.

Contingency Plans

Eschelon does not have many issues with Analog being held for long periods of time due to lack of facilities. In this situation it is usually a new customer building a new site that does not have their conduit ready. Otherwise, we occasionally have a held for facilities order where some of the lines can be installed, but not all (i.e. 6 of 8 lines can be delivered). Eschelon then tries to submit an order in a month or two for the remaining lines.

When a DS1 loop is going to be held for a long period of time, often times Eschelon's Service Delivery Department will request ordering a Private Line from Eschelon's Marketing Department.

- Due to the extra costs of this alternate method of service, these requests are seldom granted.
- It costs Eschelon approximately $315 non-recurring charge and $193/month more for this alternate method of service than the DS1 loop.
- Another alternate method of service is a couple of analog loops, which gives the customer some service, but not the service they ordered and want.

When an analog Verizon order goes held, Eschelon usually has to cancel the order and turn away the customer because the situation is often hopeless for providing service in the near future. Approximately one analog Verizon held order does not get released right away per month and results in cancellation. This does not happen often on T1 Verizon orders (maybe 1 or 2 per year).

Cancellations and impact on realization

- Approximately one customer cancels per month due to lack of facilities.

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

SUPPLEMENTAL DECLARATION OF MIKE DUKE
ON BEHALF OF KMC TELECOM HOLDINGS, INC.

I, Mike Duke, hereby declare under penalty of perjury that the following is true and correct:

1. I hereby incorporate the statements made in my initial Declaration to the Commission that was included in the comments of The Loop and Transport CLEC Coalition filed October 4, 2004, in this proceeding.

2. The purpose of this Supplemental Declaration is to demonstrate that KMC does not use Special Access for the majority of high-capacity circuits — DS-1 and higher — that it leases from Verizon, BellSouth, Qwest, SBC-Ameritech, and SBC-Southwestern Bell (the "RBOCs"), as well as Sprint (collectively, the "ILECs").

3. Attached is a spreadsheet, entitled "Comparison of Special Access versus UNE DS-1 Facilities Leased from the ILECs."

4. This spreadsheet lists the number of DS-1 facilities that KMC leases as Special Access, and the number of DS-1s leased on an unbundled basis. It then expresses these figures as a percentage of total leased DS-1 facilities. The information is disaggregated for each

ILEC on a state-by-state basis and also summarized for each ILEC. The spreadsheet then presents the KMC nationwide averages, for all ILECs, for all RBOCs, and then by excluding specific RBOC states for reasons explained below.

Methodology

5. The spreadsheet analyzes the actual number of circuits that KMC leased as of July 1, 2004. It includes DS-1 stand-alone loops as well as DS-1s that are part of enhanced extended links ("EELs").

6. A few of the formulas require further explanation. First, the Commission will note that I have calculated the Verizon regional average first with all Verizon states, and then all Verizon states except Florida. The reason that I have made this separate calculation is to account for an anomaly in KMC's former interconnection agreement ("ICA") with Verizon-Florida, by which KMC was not able to obtain, as UNEs, 4-wire DS-1 loops with "smart jacks." A smart jack is a type of electronics necessary to make a DS-1 operational. Because our ICA did not allow for these facilities to be ordered as UNEs, KMC had to order these facilities as Special Access. These facilities are now "locked in" under long-term contracts, as explained below. I have therefore provided calculations that exclude Verizon-Florida figures — both Special Access and UNEs — to account for these unique circumstances.

7. For similar reasons, I have provided calculations that exclude our numbers for Qwest-Minnesota. As the chart indicates, KMC leases 100% of its DS-1s as Special Access in Minnesota. The reason is that UNE rates for DS-1s are actually higher than the Special Access rates, and are more difficult to obtain. Accordingly, in this situation, it was more

economically rational for KMC to purchase the cheaper Special Access facilities. This situation again being anomalous, I have provided calculations that exclude Qwest.

KMC Usage Figures

8. As the spreadsheet states, KMC leases only a small proportion of facilities as Special Access. For SBC-Southwestern Bell, only **6%** of total DS-1 facilities are Special Access. BellSouth is only **8%**, and in Sprint territory we have only **10%** of DS-1s as Special Access. Verizon has the highest percentage with 48%, but excluding the Florida "smart jack" problem, the percentage is more accurately shown as **36%**.

9. KMC's nationwide average for all ILECs for DS-1 Special Access is only **20%**. Taking only the RBOCs into consideration (excluding Sprint), the number is **22%**. Excluding the Florida and Minnesota anomalies, the nationwide average for ILEC Special Access is **14%**, and for the RBOCs (excluding Sprint) only **15%**.

10. KMC's numbers are nearly the opposite of the figures that the RBOCs claim apply to CLECs in general. They claim 80% to 90% Special Access usage, whereas I have shown that KMC's figures are 15% to 20%.

Long-Term Contracts

11. One final point regarding Special Access is necessary, and that is the effect of long-term contracts. KMC has hundreds of high-capacity Special Access circuits "locked in" through long-term contracts. These contracts carry high termination penalties. Thus, for example, KMC has not been able to convert the Verizon-Florida DS-1s to UNEs, even though we now are able to obtain unbundled DS-1s with smart jacks. KMC must continue to pay the Special Access rates until the contract expires.

This concludes my Declaration.

Mike Duke
Director of Government Affairs
KMC Telecom Holdings, Inc.

October 19, 2004

KMC Telecom

Comparison of Special Access versus UNE DS-1 Facilities Leased from the ILECs

ILEC	STATE	Monthly DS1 Leased Facilities			% of DS1 Facilities	
		SPECIAL ACCESS	UNEs	TOTAL	SPECIAL ACCESS	UNEs
BellSouth	AL	30	898	928	3%	97%
BellSouth	FL	34	891	925	4%	96%
BellSouth	GA	31	328	359	9%	91%
BellSouth	LA	34	353	387	9%	91%
BellSouth	MS	14	76	90	16%	84%
BellSouth	NC	42	168	210	20%	80%
BellSouth	SC	62	179	241	26%	74%
BellSouth	TN	11	110	121	9%	91%
BellSouth TOTAL		**258**	**3,003**	**3,261**	**8%**	**92%**
Sprint	FL	50	703	753	7%	93%
Sprint	IN	1	0	1	100%	0%
Sprint	MN	2	36	38	5%	95%
Sprint	NC	48	137	185	26%	74%
Sprint	OH	5	0	5	100%	0%
Sprint	TN	12	204	216	6%	94%
Sprint	VA	3	0	3	100%	0%
Sprint TOTAL		**121**	**1,080**	**1,201**	**10%**	**90%**
Verizon	FL	307	123	430	71%	29%
Verizon	IN	49	90	139	35%	65%
Verizon	MD	125	76	201	62%	38%
Verizon	MI	3	0	3	100%	0%
Verizon	OH	9	0	9	100%	0%
Verizon	TX	5	0	5	100%	0%
Verizon	VA	86	349	435	20%	80%
Verizon	WI	16	0	16	100%	0%
Verizon TOTAL		**600**	**638**	**1,238**	**48%**	**52%**
Verizon TOTAL Less FL *		**293**	**515**	**808**	**36%**	**64%**
SBC - Ameritech	IN	1	0	1	100%	0%
SBC - Ameritech	MI	115	348	463	25%	75%
SBC - Ameritech	OH	61	202	263	23%	77%
SBC - Ameritech	WI	77	176	253	30%	70%
SBC - Ameritech TOTAL		**254**	**726**	**980**	**26%**	**74%**
SBC - SWBT	KS	10	170	180	6%	94%
SBC - SWBT	MO	1	0	1	100%	0%
SBC - SWBT	TX	35	525	560	6%	94%
SBC - SWBT TOTAL		**46**	**695**	**741**	**6%**	**94%**
Qwest	MN	289	0	289	**100%**	**0%**
Qwest TOTAL		**289**	**0**	**289**	**100%**	**0%**
ILEC Grand TOTAL		**1,568**	**6,142**	**7,710**	**20%**	**80%**
Grand Tot. Less VZ-FL		1,261	6,019	7,280	17%	83%
Grand Tot. Less QST**		1,279	6,142	7,421	17%	83%
ILEC Grand TOTAL Less Both		**972**	**6,019**	**6,991**	**14%**	**86%**
RBOC Grand TOTAL		**1,447**	**5,062**	**6,509**	**22%**	**78%**
RBOC Tot. Less VZ-FL		1,140	4,939	6,079	19%	81%
RBOC Tot. Less QST		1,158	5,062	6,220	19%	81%
RBOC Grand TOTAL Less Both		**851**	**4,939**	**5,790**	**15%**	**85%**

* Removed due to "smart jack" issue

** Removed because UNE rates are higher than SPA

Before the
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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

DECLARATION OF LAURA D. INNISS
ON BEHALF OF XO COMMUNICATIONS, INC.

I, Laura D. Inniss, hereby declare under penalty of perjury, that the following is true and correct:

1. I am employed by XO Communications, Inc. ("XO") as its Vice President, Telco Cost Management. My business address is 11111 Sunset Hills Road, Reston, Virginia 20190. My primary job responsibilities are providing cost and feasibility analysis for, and management of, XO's ability to access off-net customers. This role includes purchasing unbundled network elements ("UNEs") and Special Access circuits from incumbent local exchange carriers ("ILECs") and other vendors.

2. The purpose of this Declaration is to summarize for the Commission the degree to which XO leases transmission facilities as UNEs, versus Special Access, from Verizon. My summary includes both historical XO facilities as well as those leased by Allegiance, which XO acquired in 2004.

3. Of the DS-1 circuits that XO leases in Verizon territory that are eligible for purchase as UNEs to directly serve end user customers pursuant to our Interconnection Agreement with Verizon ("UNE-eligible"), approximately 62% are UNEs. In addition, XO has identified at least 53% of the existing Special Access circuits that are also UNE-eligible and are locked into term and volume discount plans. (This represents the facilities that we have been able to identify thus far as UNE-eligible; there likely are many more.) These circuits were purchased as Special Access due to Verizon's refusal to install UNE/EEL orders due to lack of facilities and other types of restrictions. See Declaration of Wil Tirado ¶¶ 45-46 (Oct. 1, 2004). In addition, XO has a number of existing access circuits that are UNE-eligible but that are subject to term and volume discount plans.

4. Had Verizon provisioned all UNE-eligible DS-1s on an unbundled, cost-based basis, that are not currently subject to term and volume discount plans, XO would now be leasing, at a minimum, at least **82% of its DS-1 loops and EELs** as UNEs.

5. Our DS-3 combinations present a similar situation, and approximately 72% of the Verizon DS-3 loop and loop/transport combinations that are UNE-eligible are actually leased by XO as UNEs. The remaining DS-3s are Special Access. Additionally, XO has identified approximately 25% of these Special Access DS3s that are eligible for conversion and are not subject to term and volume discount plans. Had these circuits been provisioned as UNEs as XO intended, XO would be leasing approximately **80% of its Verizon DS-3 circuits** as UNEs in Verizon territory.

6. On the whole, as a weighted average, XO leases 38% of its transmission facilities — including those that should be UNEs — as Special Access in Verizon territory. But

excluding the circuits that are UNE-eligible and should be converted to UNEs, XO's weighted average is only **18%**.

7. The Commission should be aware that many CLECs, like XO, are leasing facilities as Special Access to a degree that they had not planned for, which has slowed our ability to provide competitive services. CLECs have been entitled to lease high-capacity transmission facilities since 1996, and have been entitled to EELs since November 1999. But often CLECs were nonetheless denied these unbundled facilities, and were presented with the "choice" of paying for Special Access, or losing customers. See Tirado Decl. ¶ 45. Special Access then became a required method of entry, and greatly increased CLEC cost of service.

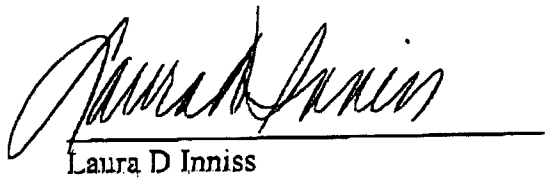
8. The level of use of Special Access is therefore not evidence that CLECs are not impaired without access to UNEs, and is certainly not a demonstration that there can be robust competition solely through reliance on Special Access. It is more a statement of the eagerness of CLECs to enter markets and serve customers when opportunities present themselves in the hopes of maintaining the customer in the long run by evolving to a fair lease price. The increased costs that Special Access imposed made expansion difficult, however, and often it was not possible to reach sufficient economies of scale. Attachment B to the Tirado Declaration provides an analysis of the relative prices of UNEs and Special Access, demonstrating that Special Access costs as much as 606% more than UNEs. CLECs accepted Special Access in hopes that the ILECs would eventually comply with their unbundling obligations.

9. The current usage of Special Access is a symptom of the ILECs' disregard of the FCC's unbundling regulations in the past, not an indicium that persistent competition is possible at the present time using Special Access alone. If the Commission now decides based

on the modest levels of Special Access usage that CLECs can enter and sustain their presence in markets without UNEs, it will reward the ILECs for flouting the law. Special Access usage is present — but not as common as the ILECs' flawed statistics try to suggest.

10. CLECs cannot economically do business on Special Access in the long run, and any suggestion to the contrary is unsupportable. Abolishing loop and transport UNEs on the ILECs' flawed analyses would be an experiment that the Commission should not attempt. The proper response to the record regarding Special Access usage by CLECs is retention or reinstatement of rules for high-capacity loops and transport unbundling and the enforcement of those regulations.

This concludes my Declaration.



Laura D Inniss
Vice President, Telco Cost Management
XO Communications, Inc.

October 19, 2004

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

SUPPLEMENTAL DECLARATION OF JAMES C. FALVEY
ON BEHALF OF XSPEDIUS COMMUNICATIONS, LLC

I, James C. Falvey, hereby declare under penalty of perjury that the following is true and correct:

1. I am the same James C. Falvey that submitted a Declaration in conjunction with the comments of The Loop and Transport CLEC Coalition in this proceeding on October 4, 2004. I adopt the statements of that Declaration as if fully set forth herein.

2. The purpose of this Supplemental Declaration is to address two discrete issues related to Section 251 impairment: (1) Xspedius' experience with "no facilities" orders; and (2) the impact of special access rates on Xspedius' cost of service.

"No Facilities" Orders

3. Xspedius has placed several orders for high-capacity loops and transport over the last few years that were rejected for "no facilities." As I explained in my initial Declaration, SBC has issued "no facilities" rejects on the ground that provisioning the requested circuit would "require more than 'routine network modifications'" and thus could be provided only as special access. Falvey Decl. ¶ 38. The requested circuits, "when ordered as Special

Access, … are provisioned with alacrity." Falvey Decl. ¶ 38. Typically, where more than routine network modifications are required, there is a noticeable delay in the provisioning of special access circuits. However, regularly, when Xspedius resubmitted its orders as special access at much higher, non-cost based rates after receiving a "no facilities" response, these facilities suddenly seemed to become available.

4. Over the last several months, Xspedius has received at least five (5), and as many as ten (10), "no facilities" rejects for loops or EELS from SBC. In those instances, Xspedius had to re-order the facility as special access. This three-step process causes a delay, and more importantly means that the cost of the circuit will increase significantly — the circuit will be provided under special access pricing even though it should be available as a cost-based UNE. In addition, the change to special access is usually very disruptive to the customer. It can often result in the customer deciding not to come to Xspedius. It usually also means that the customer's price increases significantly to a rate they never expected to pay.

Special Access and Xspedius' Cost of Service

5. The RBOCs have argued in this proceeding that CLECs can do business if forced to use only special access. They urge the Commission to abolish unbundling for DS-1 and higher loops and transport, because CLECs already use special access and thus could not be deemed "impaired." This conclusion is false. If Xspedius were forced to use only special access, its cost of service would increase substantially, severely impacting its ability to serve new and existing customers.

6. Xspedius estimates that UNE and special access facilities leased from RBOCs represent approximately **60%** of its cost of service. Of the facilities that Xspedius leases

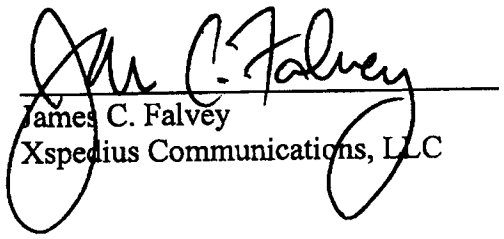
from RBOCs, approximately **77% are UNEs**, and only **23% special access**. *See* Falvey Decl. ¶ 36.

7. I calculate that if Xspedius had to convert all UNE transmission facilities to special access at current tariffed rates, its total cost of service would increase to **150% or more** of the current level. This calculation takes into account the volume and term discounts that Xspedius presently is granted by the RBOCs.

8. An increase of that magnitude would severely impact Xspedius' business. For its existing customers, Xspedius likely could not continue to serve them at the competitive prices they now enjoy. Where Xspedius has long-term contracts with customers, this cost increase would force Xspedius to honor those commitments at a significant loss over the remaining term. As for new customers, Xspedius would have difficulty meeting the RBOCs' ever-decreasing retail rates, which are even lower for customers that the RBOCs try to "win back" with incentive packages and deep discounts. In sum, Xspedius, relying on the RBOCs' for the wholesale inputs that they control, would be caught in a classic price squeeze.

9. For new customers, the costs of reaching and turning up the customer could well be unrecoverable under a pure special access regime. Xspedius' ability to enter new markets and expand would be halted, and even maintaining existing markets would be extremely difficult. I would expect other CLECs to suffer the same consequences. In effect, eliminating UNEs in favor of a special access regime guided by pricing flexibility, which the RBOCs enjoy under current FCC regulations, would stop competition in its tracks. The benefits of increased choice and lower rates that competition brings to the market would be denied to consumers across the country.

This concludes my Declaration.



James C. Falvey
Xspedius Communications, LLC

October 19, 2004