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 MICHAEL PELCOVITS

October 4, 2004

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DECLARATION OF MICHAEL PELCOVITS

I. INTRODUCTION

1. My name is Michael Pelcovits. I am a principal in the consulting firm MiCRA, Inc. My business address is 1155 Connecticut Avenue, N.W. Washington, D.C. I hold a Ph.D. in Economics from the Massachusetts Institute of Technology. I have specialized in the economic analysis of the telecommunications industry for twenty-five years and have submitted several declarations to the Federal Communications Commission (FCC) in recent years. My current resume is attached as Exhibit 1 to this Declaration.

2. In January 2003, I submitted a report to the Commission on the prospects for switch-based CLEC competition, entitled "The Cost of Serving Residential Customers Using UNE Loops."[1] I have also filed testimony with several state

[1] Attachment A to Written Ex Parte by Gil Strobel on behalf of WorldCom, CC Docket 01-338, January 8, 2003.

commissions in the period following the FCC's August 2003 decision in this matter. The analysis and recommendations in this Declaration build upon my earlier work.

3. The purpose of this declaration is to describe the economic considerations relating to whether competitive local exchange carriers ("CLECs") are impaired without access, at cost-based rates, to the unbundled switching and shared transport elements of the local exchange networks operated by the incumbent local exchange carriers ("ILECs").[2] In a separate declaration, sponsored by a coalition of competitive local exchange carriers (LECs), along with my co-author Professor John Mayo, I address impairment with respect to unbundled high capacity loops and dedicated transport.

4. In this Declaration, I address matters raised by the Commission's Notice of Proposed Rulemaking, especially the threshold issue of how the Commission's unbundling framework must change to reflect the *USTA II* court decision. Broadly speaking, I believe that the Commission can adopt the approach and methodology that it asked the states to implement in its August 2003 Order. This will ensure that the rules will "account for market variability and ...conduct the service-specific inquiries to which *USTA II* refers."[3] In the short-run (six months or less), the Commission can use the trigger approach of the August 2003

[2] Throughout this Declaration when I will refer to policy governing the switching UNE, I intend to include shared transport. CLECs require both elements in order to provide local service using the UNE platform.

[3] WC Docket No. 04-413, Order and Notice of Proposed Rulemaking, August 20, 2004, ¶9.

Order to make decisions about impairment in well-defined geographic markets. Over time, however, I believe the Commission must take a more analytical approach to impairment in order to avoid some of the problems that will arise over time from a mechanistic application of triggers to the switching UNE.

5. This Declaration is organized as follows. First, I discuss the meaning of impairment from an economic standpoint. Second, I discuss the steps the Commission should take to conduct an impairment analysis in the immediate aftermath of the *USTA II* Decision. Third, I propose a more analytical approach to impairment based on an entry model that MCI's economic experts relied on in the state proceedings. The entry model provides very powerful evidence on the difficulty of mass-market switch-based entry at the present time. It also provides the Commission with a tool that can be used and refined over time to carry out its continuing analysis of the impairment issue for UNE switching.

II. WHAT IS IMPAIRMENT FROM AN ECONOMIC STANDPOINT?

6. The Commission defined impairment in the *Triennial Review Order* as the inability of the CLEC to enter and compete successfully in the market. This approach is generally correct. The Telecommunications Act of 1996 established many provisions designed to facilitate competition in local telecommunications markets. Certainly if the CLECs cannot enter and compete successfully in these markets, the purpose of these provisions will be thwarted. For the most part, the *USTA II* Court did not object to the FCC's formulation of the impairment standard. The unfinished business of the Commission is to clarify certain aspects