competition to be greatest in price flex MSAs – is the rate element where BellSouth has most increased it rates. The following table compares month-to-month and discounted rates as set forth in the general rates section of BellSouth special access tariff (Section 7) and in the pricing flexibility section of BellSouth's tariff (Section 23).[34/] All pricing is based on Zone 1 pricing. Discounted rates are those rates available under BellSouth's ACP Plan B, described in the next section.[35/] As the table shows, the per-mile discounted rate is more than twice as high in price flex areas as in non-price flex areas.

COMPARISON OF PRICE FLEX AND NON-PRICE FLEX RATES

	MONTH-TO-MONTH NON-PRICE		DISCOUNTED NON-PRICE	
	FLEX	PRICE FLEX	FLEX	PRICE FLEX
LOCAL CHANNEL	$168.00	$168.00	$120.00	$123.00
INTEROFFICE PER MILE	$16.00	$18.00	$3.90	$8.00
INTEROFFICE FIXED	$75.00	$85.00	$65.00	$65.00

The *USTA II* Court recognized that Bell companies have an incentive to raise rates, an incentive they have acted on with virtual impunity under the pricing flexibility regime. The Bell companies' ability to raise price is unchecked by competition or regulation. Indeed, the table demonstrates the lack of effective competition facing ILECs. One would have expected rates in price flex areas to have dropped below

34/ Section 23 of BellSouth's tariff "provides the regulations, rates and terms and conditions that apply to telecommunications services provided by [BellSouth] in the Metropolitan Statistical Areas (MSAs) in which [BellSouth] has received Phase II pricing flexibility. . . " BellSouth Tariff FCC No. 1 § 23.1(A).

35/ Compare FCC Tariff No. 1 § 7.5.9(A)(1)(local channel) with § 23.5.2.9(A)(1) (local channel price flex MSAs); § 7.5.9(B)(2)(interoffice mileage and fixed) with § 23.5.2.9(B)(2)(interoffice mileage and fixed, price flex MSAs).

regulated rates due to the competition the Commission expected. To the contrary, rates in price flex areas are equal to or greater than regulated rates with, as noted above, the greatest differential in the interoffice mileage rate. Virtually the only check on special access pricing has been the availability of UNEs, which the Bell companies now seek to dismantle. With the absence of UNEs, the Bell Companies will have every incentive, and the ability to act on that incentive, to raise special access rates and squeeze carriers out of the market.

2. Special Access Tariff Structures Undermine Facilities-Based Competition

Special access tariffs are structured to ensure that carriers stay on the BOCs' network. They do so by offering discounts in exchange for commitments to maintain traffic on BOC networks, and imposing penalties for failing to live up to those commitments. Because the month-to-month rates are so onerous, carriers have little choice but to agree to these long-term commitments.[36/] Even if carriers could afford to compete utilizing those rates, the result would be that carriers are locked onto the BOC network, eliminating demand that might otherwise be served by competitive transport providers, and impeding the ability of carriers to self-deploy.

SBC's basic discount plan, called the Optional Payment Plan ("OPP"), is an example. The OPP requires carriers to establish a minimum monthly revenue commitment ("MMRC"), which is set by the customer upon entering the plan. *See, e.g.,*

36/ This tables set forth above in Section IV(B) demonstrate the substantial difference between month-to-month and discount plan rates that require a long-term commitment to stay on the Bell Company's network.

SWBT Tariff FCC No. 73, § 7.2.19(C)(1). The carrier commits to maintaining this level of revenue – that is, special access payments to SBC – throughout the term of the plan, which is three or five years at the carrier's election. If in any month the carrier fails to meet the MMRC, SBC will charge the carrier the full MMRC. SWBT Tariff FCC No. 73 § 7.2.19(H)(1) ("When the customer's actual billed revenues fall below the MMRC, the customer will be billed the MMRC."). Thus, if a carrier commits to $1 million per month but only purchases special access services worth $900,000.00, the carrier will be charged $1 million.

A termination penalty applies if the carrier wishes to lower the monthly revenue commitment, for example in order to shift services to a third-party provider or self-deploy facilities. The termination penalty equals the decrease in the amount of revenue commitment multiplied by the number of months remaining in the plan multiplied by a termination factor of 50 percent for the 3-year OPP or 40 percent for the 5-year OPP. SWBT FCC Tariff No. 73 § 7.2.19(C)(1)(c). Thus, for example, a carrier in the 5-year OPP with a monthly revenue commitment of $2 million that wishes to decrease the commitment (for example to use a third-party provider) to $1 million after two years would incur the following penalty: .4 x $1,000,000 x 36 months = $14.4 million.

BellSouth's Area Commitment Plan (ACP) works similarly. Under this plan, carriers make a commitment to purchase a specified number of special access rate elements from BellSouth. For interoffice transport facilities, the commitment is expressed as a number of total interoffice miles that the carrier will purchase on a region-

wide basis.[37/] BellSouth FCC No. 1 § 2.4.8(B). The ACP has two commitment levels, ACP Plan A from 24 months to 48 months and ACP Plan B from 49 months to 72 months.

Each month, BellSouth determines whether the commitment has been met. If so, the carrier obtains, as a credit, the difference between the month-to-month rate and the applicable ACP Plan price for each rate element, up to the commitment level. Examples in the difference in rates are shown in the tables above. If the carrier falls short of the commitment level, BellSouth imposes a shortfall charge. The shortfall charge is the difference between the Commitment level and the actual amount of in-service rate elements, multiplied by 50 percent of the ACP rate. BellSouth FCC No. § 2.4.8(B). For example, if a carrier committed to 1000 DS1 Local Channels, but only 900 DS1 Local Channels were in service during the month, the shortfall charge would 100 x $120 x .5, assuming the ACP Plan B rate for DS1 service in zone 1.

In addition to shortfall penalties, the ACP Plan also imposes a termination liability on carriers that seek to decrease their commitment level during the commitment period or to shorten their commitment period. The penalty, imposed on each rate element subject to the decrease, equals the ACP rate multiplied by the difference in months between the time the ACP agreement has been in effect and the minimal months of the existing plan times a factor. The factor is 40 percent for agreements in effect twelve

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37/ The example given in the tariff is a customer with 12 DS1 Local Channels (the special access equivalent to a loop) and 6 DS1 Interoffice Channels totaling 90 miles. The carrier would make a commitment of 12 DS Local Channel rate elements and 90 interoffice miles.

months or less, or 20 percent for agreements than have been in effect for longer than 12 months. As an example, assume a carrier in price flex MSAs made a commitment to purchase 1000 interoffice channels, each of 10 miles – a commitment of 10,000 channel miles under the ACP. If that carrier wished to move those channels to a third party transport provider 19 months after entering into a 49-month commitment under ACP Plan B, the termination liability would be as follows: 10,000 miles x 30 months (49 months – 19 months) x $80.00 (ACP Plan B mileage rate in Price Flex MSAs for 10 mile interoffice channel) x .2 (termination liability factor) = $4,800,000.00. To obtain this carrier's business, third-party providers must be able to price their transport at a low enough level to overcome this $4.8 million termination penalty.

With price flex authority, the Bell companies have promulgated contract tariffs that not only require carries to make commitments to keep traffic on the network, but also provide incentives to move traffic from other carriers onto the Bell companies' network or that are designed to ensure that incremental demand generated by future growth is placed on the Bells' networks. BellSouth's contract tariff number 12, for example, provides a credit of $400.00 for each net local DS1 channel as long as net local channels increase by 10 percent over the previous month's. BellSouth FCC Tariff No. 1 § 25.14.1(F). Net local channels are new connections in excess of disconnects.

BellSouth's contract tariff number 12 is a narrowly plan targeted specifically at DS1 services. BellSouth's general price flex contract tariffs work on a similar principle, however. They provide discounts on incremental growth above specified revenue targets.

Discounts are only applied to purchases of special access services above the target. Discounts range from, 36.5 percent for very large customers (requiring minimum annual revenue of $305,859,000.00 the first year increasing to $413,767,000.00 in year three of the plan)[38/] to 2.5 percent for small customers (requiring minimum annual revenue commitment of $1,696,000.00 in the first year and $2,687,000.00 the third year).[39/] In addition to keeping future growth on the BellSouth network, the plans reward BellSouth affiliated companies, such as the long distance affiliate, that are experiencing significant growth. Carriers with declining special access demand cannot obtain the additional discounts.

The point of describing these tariff provisions is not to suggest that they necessarily are unlawful or illegal. The point is to demonstrate that Bell companies design their special access tariffs specifically to keep as much traffic on their networks as possible, particularly new growth. The natural and predictable result of eliminating access to BOC facilities as UNEs, therefore, will be to lock up current and future demand for transport services as carriers are forced to enter special discount plans. This will starve competitors seeking to provide alternative facilities and further discourage new entrants from constructing such facilities, undermining the Commission's chief goal of promoting facilities-based competition. Access to UNEs, on the other hand, promotes facilities-based competition because UNEs are made available on month-to-month basis without having to commit to maintain traffic on the ILECs' network. As a result, carriers

38/ *See e.g.*, BellSouth FCC Tariff No. 1 § 25.1.2(A).

39/ *See e.g.*, BellSouth FCC Tariff No. 1 § 25.10.2 (A).

can shift to other providers or self-deploy once traffic volumes and economic efficiencies justify such a move.

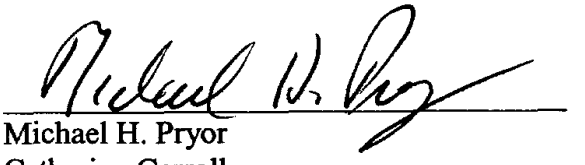
3. Stranding Collocation Investment

The elimination of all high capacity UNEs and replacing them with special access, as advocated by the Bell companies, potentially would strand hundreds of millions of dollars in collocation investments. Section 251(c)(6) imposes a duty on ILECs to provide physical collocation "of equipment necessary for interconnection or access to unbundled network elements." 47 U.S.C. § 251(c)(6). Pursuant to section 251(c)(6), CLECs throughout the country have established physical collocation of equipment used to connect to unbundled local loops and transport. As noted above, NuVox has established more than 280 such collocation arrangements. If high capacity UNEs are eliminated, however, and carriers forced to use special access services, the legal basis for the physical collocation – access to UNEs – may have been eliminated. Unless the collocated equipment is also used for interconnection, the Bell company may have the right to demand that the CLEC abandon the physical collocation. Although some limited collocation rights exist under Commission's expanded interconnection rules, 47 CFR § 64.1401, those rules do not require physical collocation.

Conclusion

For the reasons set forth above, the Commission should find that competitive carriers are impaired without access to DS1 loops and DS1 EELs on a nationwide basis.

Respectfully submitted,



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WDC 355588v1

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I, Michelle C. Gardner, hereby certify that on this 4th day of October 2004, the foregoing Comments of NuVox Communications were filed with the Federal Communications Commission's Washington D.C. location via hand delivery and copies were sent to the following as indicated:

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WDC 355553v1

Exhibit A

REDACTED – FOR PUBLIC INSPECTION

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

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

DECLARATION OF JAKE E. JENNINGS ON BEHALF OF NUVOX, INC.

1. I am currently Vice President of Regulatory and Industry Affairs of NuVox Inc., the parent of several operating companies, including NewSouth Communications Corp.[1/] and NuVox Communications ("NuVox"). I was employed by NewSouth from October of 2000 and was responsible for its regulatory and industry affairs until the merger of its parent with NuVox on May 21, 2004, after which I assumed my current position with NuVox. Among my responsibilities at both NewSouth and NuVox, I have had an integral role in preparing, developing, and implementing NewSouth's and now NuVox's business plan, negotiating and implementing interconnection agreements with incumbent local exchange carriers ("ILECs"), and managing intercarrier relations. I have information and knowledge of the data used to conduct the analysis of special access versus unbundled network element ("UNE") pricing and the financial impact of using special access services discussed herein.

1/ NuVox recently concluded a merger of equals between NewSouth Communications and NuVox Communications.

2. I am submitting this declaration to explain the effect that requiring NuVox to utilize ILEC special access services instead of DS1 loops and EELs will have on NuVox and the customers it serves.

3. As more fully explained in the Declaration of Keith Coker, NuVox is a facilities-based competitive carrier in that it has purchased and deployed its own switching and multiplexing equipment. Utilizing such equipment, NuVox provides service in 48 markets in 16 states in the Southeast and Midwest. NuVox's markets include both major metropolitan areas such as Atlanta and small cities such as Hickory, North Carolina.

4. NuVox serves approximately 38,000 customers, which overwhelmingly are small to medium-size businesses, such as those in the health care and hospitality industries, insurance and real estate agents, car dealerships, and small law firms, which can be served with one or more DS1 local loops. Over 18,000 of NuVox's customers purchase 12 lines or fewer over a single DS1 loop. NuVox's offerings include local voice and data services, domestic and international long distance services, dedicated high speed internet access services, unified voice, e-mail and fax messaging and other advanced services, including local and wide area network management, virtual private networks, and web-based business applications. The revenue from these customers is approximately $500 to $700 per month including revenue from ancillary services such as broadband internet access and data services. NuVox offers high-speed broadband access that, prior to the entry by carriers like NuVox, the incumbent carrier did not appear to aggressively market to these types of customers. In fact, over 90 percent of NuVox's customers are upgraded from the analog services they received from the incumbent carrier to NuVox's high-speed digital services. Through its investment in technology, NuVox provides not only integrated voice and data

services over a single DS1 facility, but also continues to develop and deploy new and innovative features such as dynamic bandwidth services and enterprise VOIP services such as click-to-talk and unified messaging.

5. Although NuVox has deployed much of its own equipment, NuVox requires access to incumbent LEC last-mile facilities in order to reach its customers. NuVox thus is critically dependent upon ILEC local loops, and loop transport combinations called enhanced extended loops or EELs.

6. NuVox is wholly reliant on these incumbent LEC last mile facilities to reach its customers. Carriers other than the incumbent typically do not provide DS1 level loops to buildings on a wholesale basis because, as the FCC itself has found, it is "economically infeasible" for carriers to build their own DS1-level loops. As the Commission noted, the revenue generated from the small and medium-sized business customers served by DS1 loops is "not sufficient to make self-deploying DS1 loops economically feasible from a cost recovery perspective." *Triennial Review Order* ¶ 326. This is certainly true for NuVox, which on average receives $500 to $700 per month from its customers.

7. NuVox also relies extensively on EELs. The availability of DS1 EELs allows NuVox to expand its geographic footprint in a cost-effective way. Without the use of EELs, NuVox would be limited to serving customers that can be reached directly from the more than 280 wire centers in which NuVox is collocated. With EELs, however, NuVox is able to serve small business customers from more than 1500 ILEC wire centers. Approximately 45 percent of NuVox's customers are served using EELs.

8. It is because of the availability of UNE DS1 loops and EELs that NuVox has been able to enter the local market and provide competitive service to small and medium-size

business customers. Indeed, as NuVox has been able to shift its purchase of ILEC facilities from special access to UNEs, NuVox has also shifted the primary source of its revenues from intercarrier compensation to end user, retail revenue. In 1999, only slightly more than 20 percent of NuVox's revenues were derived from end user or retail charges, and all of NuVox's circuits were purchased as special access. As NuVox built out its network, which was completed in the fourth quarter of 2001, NuVox began to shift a greater percentage of its circuits from special access to UNE DS1 loops and EELs. This allowed NuVox to aggressively expand into the small and medium-size business market. By 2003, the revenue picture had completely reversed and more than 80 percent of NuVox's revenues came from retail end user revenues, and nearly 90 percent of ILEC facilities were purchased as UNEs. Today, more than 90 percent of NuVox's revenue comes from end users. The trend of NuVox revenue and UNE use is depicted at page 30 of the attached comments.

9. If DS1 loops and EELs were no longer available as UNEs, NuVox would have no alternative other than to use special access services to continue to serve its customers. This would result in a significant increase in NuVox's network costs. Special access rates, even when discounted, are substantially higher than TELRIC rates in virtually every area of the country where NuVox competes. NuVox would have no choice but to pay these higher rates for its customer connections because there are virtually no alternative providers of DS1 level transport or loops, and it simply is not economically feasible for NuVox to build its own loops and transport to serve its current customer base. If NuVox has to pay for the same loop and transport facilities (*i.e.*, EELs) it currently uses at special access rates instead of at state-established, cost-based rates, NuVox's monthly network costs would increase by more than [REDACTED] To put those cost increases in perspective,

NuVox's total monthly revenue is currently approximately [REDACTED]. NuVox cannot pass price increases of this magnitude through to its customers. Cost increases of this magnitude would force NuVox to consider withdrawing from certain markets altogether.

10. To demonstrate the effect of having to use special access services, NuVox compared its current UNE rates with special access pricing using both month-to-month rates and discounted rates reasonably available to NuVox under the FCC special access tariffs filed by BellSouth Telecommunications, Inc. ("BellSouth"), Southwestern Bell Telephone Company ("SWBT") and the Ameritech Operating Companies ("Ameritech"). The results of this analysis are contained in the tables set forth at page 30-34 in the attached comments. NuVox utilized the currently available UNE rates for DS1 loops and DS1 transport under its interconnection agreements with these companies. NuVox then identified special access rates for analogous network elements, including mileage. The totals in the Summary of Special Access versus UNE Rates at page32 of the attached comments reflect actual increases for NuVox's existing circuits currently in the identified MSAs. The tables at pages 33-34 provide a detailed comparison of special access rates and UNE rates by rate element. For discounted rates, NuVox utilized BellSouth's Area Commitment Plan (ACP), SWBT's High Capacity Term Payment Plan, and Ameritech's Optional Payment Plan. Some of the MSAs reviewed are ones in which the Bell Company has received pricing flexibility, as indicated on the tables. For these tables, NuVox assumed an interoffice mileage of 10 miles, which near the average length of NuVox's EELs. The tables identify the relevant Bell company tariff provisions from which the rates were obtained.

11. NuVox also analyzed the financial effect of these cost increases. With cost-based UNE pricing, ILEC last-mile facilities account for approximately [REDACTED] of the network costs of serving a customer. Using special access increases network costs per customer by [REDACTED] on average. The realities of the market prevent NuVox from being able to pass through such cost increases to its customers. Thus, the result of this increase in costs is that NuVox earnings ("EBIDTA") goes from positive to negative. This is reflected on the table of the EBITDA Effect of Special Access Pricing on page 33 of the attached comments.

12. This concludes my declaration.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 1, 2004.

Jake E. Jennings

WDC 355286v3

Exhibit B

REDACTED – FOR PUBLIC INSPECTION

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

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

DECLARATION OF KEITH COKER ON BEHALF OF NUVOX, INC.

1. I am currently Vice President of Network Planning of NuVox Inc., which provides services through several operating subsidiaries. I have been employed by NuVox since 1999 when I was hired by one of NuVox's predecessor companies TriVergent Communications and have served in various positions relating to network deployment and planning during my tenure. In my current capacity as Vice President, I have established the general network architecture and network deployment strategy for the company's delivery of telecommunications services, including its broadband services.

2. I have been asked to discuss issues surrounding the availability and use of third-party wholesale providers for DS1 loops, and DS1 transport when used as the transport component of an enhanced extended loop ("EEL"). I describe below NuVox's network and its use of third party and ILEC high capacity loop and transport facilities. NuVox's network consists of 28 Class 5 voice switches, 13 core data sites with GSR-class routers, over 400 ATM data nodes, a Sonus soft-switch VOIP platform, multiplexing and transport related equipment deployed in more than 280 collocation arrangements, network operations and back office systems, and customer premises

equipment that enables small businesses to obtain integrated services over the DS1 facility. NuVox has employed a "smart build" strategy. NuVox has made substantial investments in technology and equipment, which have been deployed throughout NuVox's 16-state service territory, but has not sought to duplicate the ILECs' ubiquitous local loop and transport networks. NuVox has not deployed any of its own fiber for loops or transport.

3. Instead, NuVox leases loops and transport from incumbent LECs for last-mile access and, where available, uses third-party providers outside of the last mile, primarily for interLATA transport to link NuVox's widely dispersed switches, and to connect those switches to long haul voice and data carriers and internet access points. To a lesser extent, where available, NuVox utilizes third-party providers for backhaul from NuVox collocation arrangements to NuVox switches. (Backhaul is more often provided by the incumbent LEC over SONET rings, typically as tariffed special access services.) All of this third-party transport is provided either at the OC-3 level or higher, or, in some instances, at multiple DS3 capacity levels. NuVox has contracts with a number of third party vendors to provide this transport. At least one third-party provider has built into all but one of NuVox's switching locations, and, at a handful of NuVox switching locations, two or more third-party providers have built into NuVox's switching location. Although NuVox currently utilizes third-party providers that have built into NuVox's location and connected to NuVox's switch, these providers are not utilized to provide DS1 transport for EELs.

4. On the access side – that is, links to customers either directly from a NuVox switch or from a collocation arrangement, NuVox is almost entirely dependent on

incumbent LEC unbundled network elements. More than 90 percent of NuVox's 36,400 last mile connections to customers are over unbundled DS1 facilities, and, of these, roughly 45 percent are EELs. NuVox has found it virtually impossible to obtain DS1 capacity facilities from third-party providers to reach customers. NuVox frequently receives solicitations from third-party providers to provide transport services but never at the DS1 capacity level. NuVox currently obtains no DS1 level transport from third-party providers to reach customers. NuVox has been able to obtain a handful of DS1 loop connections from third-party providers, but the number is minimal. Of NuVox's roughly 36,400 customer connections, NuVox has obtained only 70 DS1 loops from a third party. The provider in this case is a small utility that has existing rights of way and building access and has entered a joint marketing effort with NuVox.

5. A significant limitation on the ability to use third-party transport providers, even if they do provide transport at the DS1 capacity level, is that they do not reach many of the wire centers from which NuVox serves customers. Competitive transport providers typically have limited geographic coverage in urban areas. They typically construct one or more fiber rings along densely populated routes, connecting some, but certainly not all incumbent LEC wires centers in the area.

6. The lack of any third-party alternative in many of the wire centers from which NuVox needs transport is confirmed by the analysis prepared by NewSouth and previously submitted in the *TRO* proceeding. Letter from Michael H. Pryor, Counsel for NewSouth Communications, to Marlene H. Dortch, Secretary of the FCC, CC Docket Nos. 01-338 and 96-98 (Jan. 14, 2003). We have more recently conducted a similar

analysis for certain MSAs in which SBC has obtained pricing flexibility. This analysis is attached as Attachment 1 to my declaration.

7. The analysis identifies the wire centers in those MSAs from which NuVox obtains DSI loops. The analysis demonstrates that NuVox provides service to customers from many more wire centers than the Bell company has identified as having a third-party transport provider. In other words, the Bell Company is the only company from which NuVox can obtain transport at those centers. That there are many wire centers without any third-party transport providers in an MSA that has met the trigger for pricing flexibility reflects the fact that carriers often obtain pricing flexibility relief based on demand for special access measured by revenue. Such demand is typically concentrated in a relatively few wire centers. NuVox, however, serves customers from many more wire centers in the MSA than those in which special access revenue is concentrated. For this reason, any impairment test that would eliminate unbundling on an MSA-wide basis premised on the level of concentrated special access demand would result in the elimination of UNE access for many locations where no third-party providers are present.

8. There are significant barriers to using third-party providers to reach wire centers in which they are not already located, even if they have a fiber ring in the vicinity. If a third-party provider has not built into an incumbent LEC wire center from which NuVox needs transport, it is NuVox's experience that the third-party provider either will not construct the necessary facility to reach that wire center, or will do so only if NuVox will commit to a certain level of capacity. Third-party providers have informed me that they will not construct a lateral (a relatively short connection, for example, across a street) to a wire center unless NuVox can commit to three to five DS3s worth of capacity.

If a longer spur is required to reach the wire center from the third-party provider's ring, the third-party provider typically requires a minimum of 12 to 15 DS3s or more of capacity.

9. NuVox typically cannot make such a commitment simply for the transport leg of a DS1 EEL that generates $500 to $700 per month of revenue, on average. This is simply an insufficient level of capacity for third party vendors to undertake construction.

10. An additional set of barriers exists for a third-party provider to bring traffic into one of NuVox's switching locations. Even for carriers that have fiber nearby, building into NuVox's switch entails substantial costs. Carriers would have to splice fiber and build a lateral or longer spur into NuVox's switch location. In order to provide needed protection through diverse routing, two entrances into NuVox's switch location must be constructed. NuVox understands these construction costs to be in the range of $100,000 to $150,000. Additionally, permits must be obtained from municipalities, utilities, and other entities whose property may be crossed by the lateral. Because of these costs, carriers typically demand a revenue commitment from NuVox of at least $10,000 to $20,000 per month before they will build into NuVox's switch location. NuVox cannot meet these revenue commitments simply to backhaul DS1 traffic from scattered incumbent LEC wire centers to NuVox collocation arrangements or switching sites, and it certainly cannot make the commitment to the multiple vendors that would be needed to reach the widely dispersed wire centers from which NuVox obtains local loops.

11. The discussion above addresses the barriers that exist for utilizing third-party transport in place of the ILEC interoffice component of an EEL where the third-party is not already located at the requisite wire center. Even if a third-party provider is

already located in the wire centers on both ends of the EEL interoffice transport segment, which as noted above often is not the case, there are barriers to utilizing such a carrier for the DS1 transport piece of the DS1 EEL should the carrier offer that capacity in the market place. Although an EEL is legally defined as a combination of a loop and transport, in reality it is a single end-to-end circuit. This means that, for existing customers, replacing the incumbent LEC transport leg of the EEL with a third-party provider requires breaking a single circuit into two pieces. The loop portion of this former end-to-end circuit would have be replaced with a new loop, requiring the disconnect of the existing loop, potentially resulting in a loss of service for the customer. At a minimum, the process of disconnecting and reordering a loop creates the potential for disruption of service and imposes additional costs in terms of nonrecurring charges in the range of $200 to $400 per circuit.

12. Furthermore, because NuVox is not collocated in the wire center where the DS1 loop is terminated (if NuVox were collocated in the wire center, it would not need an EEL), procedures would have be devised to disconnect existing loops and to order new loops to be cross-connected directly to the third-party providers' collocation or physical point of presence. It is not clear whether ILECs have procedures in place to handle such orders. Additional management difficulties also arise when two or more carriers serve what is effectively a single circuit. Outages or disruptions on the circuit must be reported to multiple vendors and resolving such problems will require coordination between three or more carriers, NuVox, the incumbent LEC and one or more third-party providers, each of which must test its segment of the circuit; a process that must be done seriatum until the problem is located. Additional coordination is