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November 1, 2004

**Via ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

**Re: Ex Parte Presentation in *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338**

Dear Ms. Dortch:

On October 29, 2004, undersigned counsel and Jake E. Jennings, Vice President for Regulatory and Industry Affairs for NuVox Communications ("NuVox") met with John Stanley, Christopher Killion and Paula Silberthau of the Office of General Counsel and Jeremy Miller of the Wireline Competition Bureau, Policy Division. The purpose of the meeting was to discuss the FCC's consideration of new unbundling rules in the above-captioned proceedings, and the positions asserted were consistent with NuVox's prior filings in these proceedings. During the meeting, a confidential version of the attached presentation, which has been redacted for public review, was provided for discussion.

Pursuant to Sections 1.1206(b)(1) and (2) of the Commission's rules, NuVox requests that this notice be included in the public record of the above-referenced proceedings. If you have any questions relating to this filing, please contact the undersigned.

Very truly yours,

\_\_\_\_\_/s/\_\_\_\_\_  
Michael H. Pryor  
Counsel to NuVox, Inc.



# *TRO* Remand Presentation

October, 2004

# National Finding of Impairment for DS1 Loops

- CLECs cannot overcome entry barriers to self deploy local loops to serve customers at the DS1 capacity level; the revenue opportunity is too limited.
- Opportunities to obtain wholesale DS1 loops are extremely limited – non-existent in most places.
- Attempting to ferret out those isolated instances where DS1 wholesale loops may be available is administratively burdensome and unnecessary, especially given *USTA IP*'s acknowledgement that there will inevitably be some over or under inclusiveness in any rule.
- There are no economic criteria by which one could extrapolate when it is possible to self deploy DS1 loops or obtain wholesale DS1 loops.

# National Finding of Impairment for DS1 Loops (cont.)

- The presence of fiber does not usefully inform the question of impairment for DS1 loops.
  - ✚ The BOC's channelization argument does not reflect market realities; as amply demonstrated by the sworn testimony of both fiber carriers in a position to provide access and by facilities-based carriers seeking such access.
  - ✚ Fiber will not be deployed in the first instance to serve a customer just with a DS1.
  - ✚ At most, carriers that have already deployed fiber to a location may find it economical in some instances to also provide DS1 capacity to their customers at that location.
  - ✚ No evidence in the record demonstrates that carriers that have constructed fiber to a building make wholesale DS1 circuits available over that fiber, except for – at most -- very isolated exceptions. *See QSI Study at 15 (36 Buildings in 12 states met DS1 loop wholesale trigger).*

# **Impairment Analysis for DS1 Loops Applies to DS1 EELs**

- A DS1 EEL is a combination of a DS1 loop and a DS1 transport.
- The ability to overcome entry barriers is the same with a DS1 EEL as with a DS1 loop.
  - ✚ A DS1 EEL does not aggregate traffic from multiple carriers.
  - ✚ Revenue opportunity is limited to that generated from a single, typically small business customer.
    - NuVox average revenue is \$500 to \$700/per month.
    - Cbeyond is \$500/per month.

# **Impairment Analysis for DS1 Loops Applies to DS1 EELs (cont.)**

- **DS1 Transport is not available to replace the EEL transport component.**
  - ✚ The record demonstrates that DS1 wholesale transport is virtually non-existent. The QSI Study found that only 49 routes met DS1 wholesale transport triggers in 14 states.
  - ✚ Unique difficulties exist with EELs, which are end-to-end circuits with limited revenue with which to pay for transport.
    - Carriers require a substantial revenue commitment to build to NuVox's collocation or switch.
    - Even if a carrier is collocated at the wire center where the loop terminates and at the wire center where NuVox is collocated, use of such a carrier increases costs and points of failure.
    - Bell Companies must have processes to cross connect a NuVox-ordered DS1 loop with third-party transport providers.

# **CLECs Are Impaired without Access to ILEC Loops Used To Serve Small Business Customers**

- Impairment determinations may be based on customer class as well as capacity.
  - ✦ Customer distinctions have previously informed the Commission's impairment analysis.
    - The Commission made distinctions between mass market and enterprise customers; and
    - Between large enterprise customers that can be served economically over self deployed highest capacity loops (OCn and multiple DS3s) and small business customers that cannot economically be served over self deployed DS1 loops.

# CLECs Are Impaired without Access to ILEC Loops Used To Serve Small Business Customers (cont.)

- ✚ Characteristics of small business market indicate impairment.
  - Limited revenue, short-term contracts, high churn.
  - Require sophisticated, high quality services.
  - Marketed through one-on-one visits.
  - Lack of intermodal alternatives.
- ✚ Intramodal competition is critical for maintaining competition for small businesses, which are significant drivers of the overall economy.
  - MICRA study showed \$5 billion impact on small business if UNEs are eliminated.
- ✚ CLECs should have access to ILEC loops for small business, regardless of loop technology (*see TRO n.956*).
- ✚ The small business customer class is effectively defined as those receiving capacity between the DS1 and 2 DS2 level of bandwidth.

# Special Access Is Not a Substitute

- EELs are not concentrated in Wire Centers with high Special Access revenue.
  - ✦ NuVox evidence of wire centers in price flex MSAs demonstrates EELs are widely dispersed. (See tables on following two slides).
  - ✦ Use of the MSA-wide market definition would eliminate unbundling in many areas where there are no alternative providers.

# Special Access Is Not a Substitute

## Akron, OH MSA

MSA	Wire Center (WC)	WC Name	Collocated w/ Alternative Transport	NewSouth Leased DS-1 Loops
Akron, OH	AKRNOH25	AKRON BLACKSTON	✓	✓
Akron, OH	AKRNOH72			✓
Akron, OH	AKRNOH78			✓
Akron, OH	AKRNOH86	AKRON UNIVERSITY	✓	✓
Akron, OH	ATWROH94			
Akron, OH	BRTNOH74			✓
Akron, OH	BRTNOH82			✓
Akron, OH	CVTPOH02			✓
Akron, OH	CYFLOH92			✓
Akron, OH	GNBGOH89			✓
Akron, OH	KENTOH67			✓
Akron, OH	MGDROH62			✓
Akron, OH	MNC SOH88			✓
Akron, OH	MNTUOH27			
Akron, OH	RTTWOH32			✓
Akron, OH	RVNNOH02			✓
Akron, OH	STBOOH62			✓
Akron, OH	STOWOH68			✓
Akron, OH	TLMDOH63			✓

# Special Access Is Not a Substitute

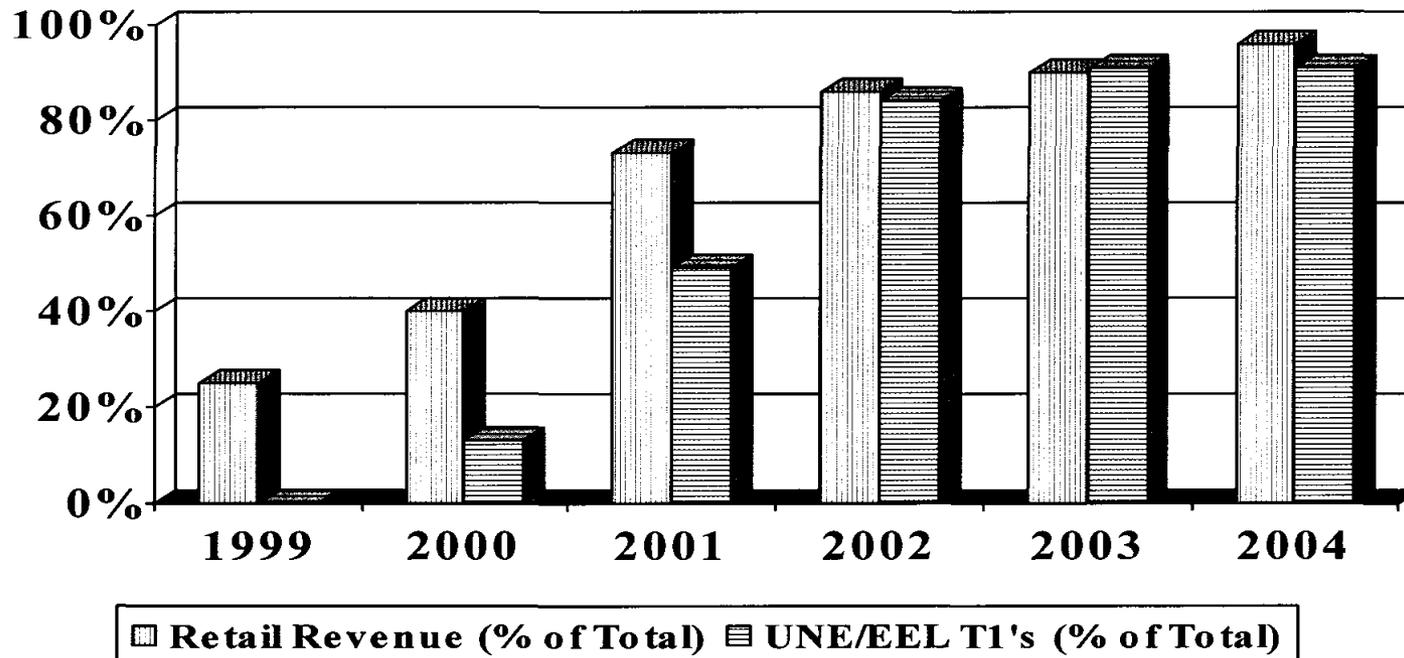
## New Orleans MSA

MSA	Wire Center (WC)	WC Name	Collocated w/ Alternative Transport	NewSouth Leased DS-1 Loops
New Orleans, LA	NWORLAMA	N.O. - MAIN	✓	✓
New Orleans, LA	NWORLAMT	N.O. - METAIRIE	✓	✓
New Orleans, LA	NWORLASW	N.O. - SHREWSBURY	✓	✓
New Orleans, LA	KNNRLAHN	KENNER-HARAHAN	✓	✓
New Orleans, LA	NWORLASC	N.O. - MID CITY		✓
New Orleans, LA	NWORLASC	N.O. - ST. CHARLES	✓	✓
New Orleans, LA	BUSHLAMA	BUSH		
New Orleans, LA	CVTNLAMA	COVINGTON		
New Orleans, LA	DLCXLAMA	DELACROIX		
New Orleans, LA	FLSMLAMA	FOLSOM		
New Orleans, LA	LCMBLAMA	LACOMBE		
New Orleans, LA	LFTTLAMA	LAFITTE		
New Orleans, LA	LKCTLAMA	LAKE CATHERINE		
New Orleans, LA	MDVILAMA	MADISONVILLE		
New Orleans, LA	MNVLLAMA	MANDEVILLE		✓
New Orleans, LA	NWORLAAV	N.O. - AVONDALE		✓
New Orleans, LA	NWORLABM	N.O. - BROADMOOR		✓
New Orleans, LA	NWORLACA	N.O. - CARROLLTON		✓
New Orleans, LA	LWORLACM	N.O. - CHALMETTE		✓
New Orleans, LA	NWORLAFR	N.O. - FRANKLIN		✓
New Orleans, LA	NWORLALK	N.O. - LAKE		✓
New Orleans, LA	NWORLAMR	N.O. - MARRERO		✓
New Orleans, LA	NWORLAMU	N.O. - MICHOUUD		✓
New Orleans, LA	NWORLARV	N.O. - RIVERSIDE		✓
New Orleans, LA	NWORLASK	N.O. - SEABROOK		✓
New Orleans, LA	PRRVLAMA	PEARL RIVER		
New Orleans, LA	SLIDLAMA	SLIDELL		✓
New Orleans, LA	YSCLLAMA	YSCLOSKEY		

# Special Access Is Not a Substitute (cont.)

- NuVox's entry into local market to serve small and medium-sized businesses is based on UNEs not special access.

## Market Entry Coincides with UNE Access



# Special Access Is Not a Substitute (cont.)

- Special access rates are substantially higher than TELRIC rates, especially for the transport component of EELs.

## UNE/EEL Pricing vs. Special Access Pricing

Atlanta MSA

UNE Density Zone 1, SPA Density Zone 1 MSA Price Flex (Full Relief)

Element	EEL USOCs	EEL Rate	SPA USOCs	SPA MTM	SPA 49 Mos.	BellSouth Tariff Ref
Channel Termination (DS1Loop)	USLXX	\$41.02	TMECS	\$168.00	\$123.00	FCC #1 23.5.2.9(A)(1)
Mileage @ 10 miles	1L5XX	\$1.15	1L5XX	\$180.00	\$80.00	FCC #1 23.5.2.9(B)(2)
Interoffice Channel Fixed	U1TF1	\$34.19	1L5XX	\$85.00	\$65.00	FCC #1 23.5.2.9(B)(2)
COLO Cross Connect	PEIP1	\$0.37	PE1P1	\$2.65	\$2.65	FCC #1 13.3.23 (B)(1)
<b>Total</b>		<b>\$76.74</b>		<b>\$435.65</b>	<b>\$270.65</b>	

# Special Access Is Not a Substitute

## UNE/EEL Pricing vs. Special Access Pricing

Greenville SC MSA

UNE Density Zone 1, FCC Density Zone 2 MSA Price Flex (Limited Relief)

Element	EEL USOCs	EEL Rate	SPA USOCs	SPA MTM	SPA 49 Mos.	BellSouth Tariff Ref
Channel Termination (DS1Loop)	USLXX	\$79.51	TMECS	\$175.00	\$123.00	FCC #1 7.5.9(A)(1)
Mileage @ 10 miles	1L5XX	\$3.42	1L5XX	\$186.50	\$54.50	FCC #1 7.5.9(B)(2)
Interoffice Channel Fixed	U1TF1	\$77.14	1L5XX	\$80.00	\$70.00	FCC #1 7.5.9(B)(2)
COLO Cross Connect	PEIP1	\$1.12	PEIP1	\$2.65	\$2.65	FCC #113.3.23(B)(1)
<b>Total</b>		<b>\$161.19</b>		<b>\$444.15</b>	<b>\$250.15</b>	

# Special Access Is Not a Substitute

UNE/EEL Pricing vs. Special Access Pricing  
 Wichita MSA  
UNE Density Zone 3, SPA Density Zone 2 non-MSA Pricing

Element	EEL USOCs	EEL Rate	SPA USOCs	SPA MTM	SPA 5- YR.	BellSouth Tariff Ref
Channel Termination (DS1Loop)	U4D1X	\$64.78	TMECS	\$185.00	\$102.90	FCC #73 7.3.10(F)(1) & 7.3.10(F)(10.3)(a)
Mileage @ 10 miles	ULNHS	\$3.50	1L5XX	\$155.00	\$88.50	FCC #73 7.3.10(F)(2) & 7.3.10(F)(10.3)(b)
Interoffice Channel Fixed	ULNHS	\$46.86	1L5XX	\$60.00	\$34.00	FCC #73 7.3.10(F)(10.3)(b) & 7.3.10(F)(2)
COLO Cross Connect	UCXHX	\$7.12	SP1A1	\$4.64	\$4.64	FCC #73 25.7.5(A)(1)
<b>Total</b>		<b>\$122.26</b>		<b>\$404.64</b>	<b>\$230.04</b>	

# Special Access Is Not a Substitute

- Special access mileage rates are even more anticompetitive in price flex MSAs.

## Comparison of Price Flex and Non-Price Flex Rates\*

	Month-to-Month		Discounted	
	Non-Price Flex	Price Flex	Non-Price Flex	Price Flex
<b>Local Channel</b>	\$168.00	\$168.00	\$120.00	\$123.00
Interoffice Per Mile	\$16.00	\$18.00	\$3.90	\$8.00
<b>Interoffice Fixed</b>	\$75.00	\$85.00	\$65.00	\$65.00

\*See NuVox's comments in this proceeding at Page 44 of both its confidential and redacted filings.

# Special Access Prices Dramatically Increase Cost

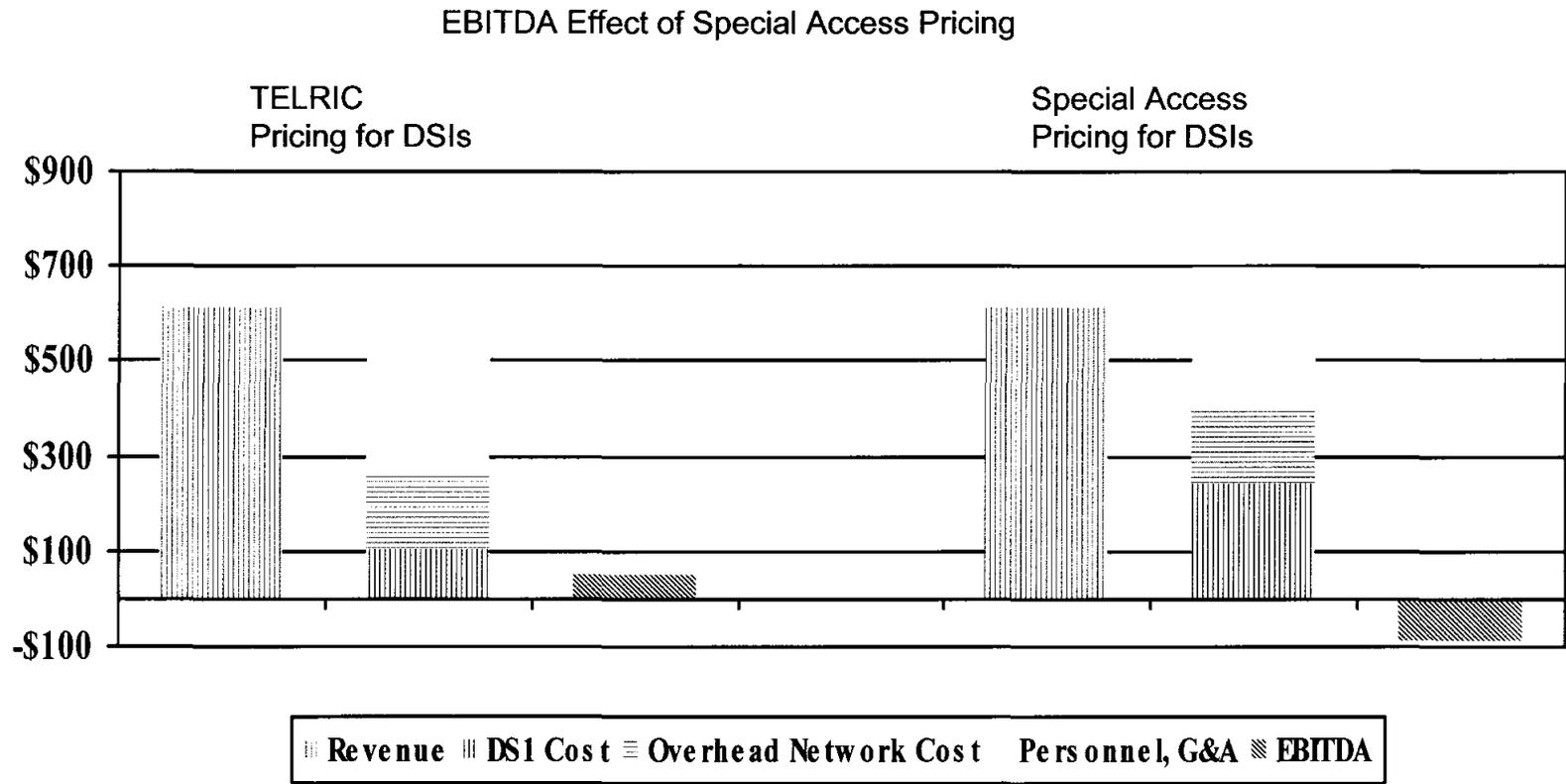
Actual Cost Increases From Using Special Access Rates

MSA	Current MRC	FCC MTM MRC	SPA Discounted MRC
Atlanta, GA	\$ 185,165.04	\$ 1,081,876.25	\$ 685,924.45
Greenville, SC	\$ 206,302.11	\$ 551,881.05	\$ 357,952.20
Wichita, KS	\$ 47,286.14	\$ 143,956.90	\$ 81,092.45
St. Louis, MO	\$ 267,610.91	\$ 521,723.36	\$ 287,683.66
Indianapolis, IN	\$ 48,908.33	\$ 428,505.20	\$ 174,257.55
<b>Totals</b>	<b>\$ 755,272.53</b>	<b>\$ 2,727,942.76</b>	<b>\$ 1,586,910.31</b>
<b>Total MRC Increase under Special Access Discount Plans</b>			<b><u>\$ 831,637.78</u></b>

# Effect of Special Access Rates

- BOCs claim diminution of profitability by having to use higher priced special access does not lead to impairment.
- Special Access rates do more than reduce profitability, they increase NuVox's network costs from 36% to 53%, sending EBITDA into the red. (See chart on following slide).
- Overall costs increase by approximately \$4.5 million compared to the total monthly revenue of approximately \$26 million dollars.

# Special Access Is Not a Substitute



# Unlike EELs Special Access Undermines Facilities-Based Competition

- The Commission found in the *TRO* that EELs promote facilities-based competition and innovation.
- Special Access discount plans lock in demand and impede the ability of carriers to move to third party providers or to self-deploy.
- Special access tariffs are designed to keep carriers on BOC networks by imposing substantial penalties for decreasing committed traffic.