



*Jason D. Oxman
General Counsel
Association for Local Telecommunications Services
888 17th Street, NW, Suite 1200
Washington, DC 20006
Office: 202-969-2587 / Fax: 202-969-2581
E-mail: joxman@alts.org*

2 November 2004

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

Re: In the Matter of IP-Enabled Services, WCB Docket No. 04-36, and Petition of SBC Communications, Inc For Forbearance from the Application of Title II Common Carrier Regulation to IP Platform Services, WCB Docket No. 04-29.

Dear Ms. Dortch,

As part of the its ongoing review of the appropriate regulatory regime for Internet Protocol (IP)-enabled services, the Commission is undertaking a jurisdictional analysis that will define the ambit of federal and state authority over such services. On behalf of the nation's facilities-based competitive local exchange carriers (CLECs), the Association for Local Telecommunications Services (ALTS) urges the Commission to affirmatively preserve access to unbundled local network elements (UNEs), interconnection, and other related Title II regulatory mandates as part of its jurisdictional analysis. Put another way, the Commission must affirmatively state that, notwithstanding the jurisdictional analysis undertaken in the above-referenced dockets, the statutory mandates requiring access to incumbent local exchange carrier (ILEC) networks, as well as the Commission's implementing rules, remain in full force and are not impacted by the Commission's jurisdictional determinations related to retail Voice over Internet Protocol (VoIP) and related services.

The Commission must ensure that competitive providers of broadband transmission services and IP-enabled services are able to obtain the inputs they need to compete. Sections 251 and 271 form the core statutory regime for enabling competitive

entry. The Commission must ensure that its choice of regulatory classification for IP-enabled services does not undermine or in any way diminish competitors' abilities to obtain access to underlying facilities and inputs such as interconnection, unbundled network elements, collocation, and number portability under this framework in an IP environment. Many ALTS members currently provide IP-enabled services or plan to do so in the near future. While ALTS stresses light regulation of the retail IP-enabled services themselves, the underlying ILEC bottleneck facilities must still be regulated so that UNEs are available to competitive carriers providing telecommunications and broadband services.

Regardless of the regulatory classification of retail IP-enabled services themselves, the Commission must ensure the continued viability of the local competition framework established by Congress in Sections 251 and 271 of the Act. This framework is especially important for the development of competition among providers of broadband transmission. Eligibility for many of the inputs competitors need from incumbents turns on whether the competitor is providing a telecommunications service or, in the case of interconnection under Section 251(c)(2), telephone exchange or exchange access service. For example, a requesting carrier may obtain: (1) access to unbundled network elements only if it uses such network elements to provide a telecommunications service (*see* 47 U.S.C. § 251(c)(3)); (2) interconnection under Section 251(c)(2) if, as mentioned, it uses such interconnection to exchange telephone exchange or exchange access traffic (*see* 47 U.S.C. § 251(c)(2)); (3) physical collocation if the competitor uses the collocation arrangement to obtain access to UNEs or to interconnect under Sections 251(c)(2) (*see id.* at § 251(c)(6)); (4) number portability to enable "users of telecommunications services" to retain their telephone numbers without service degradation where the competitor can show that such users are "switching from one telecommunications carrier to another" (*see id.* at § 251(b)(2)); and (5) dialing parity as well as access to operator services, directory assistance, and directory listings where the competitor qualifies as providing telephone exchange service or telephone toll service (*see id.* at § 251(b)(3)). Competitors also have an independent right under items 4-7 and 10 of the Section 271 competitive checklist to unbundled loops, transport and switching, access to 911/E911, directory assistance, and operator call completion services as well as to databases and associated signaling for call routing and completion. *See id.* at § 271(c)(2)(B). Here again, however, the statute limits eligibility for these rights to "telecommunications carriers." *See id.*

CLECs that rely on inputs from incumbent LECs obtained pursuant to section 251(c) to serve consumers and small business customers represent the only source of competition and innovation for broadband transmission. For example, CLECs first developed and pioneered integrated access over T1 loops, which is now broadly demanded by small and medium-sized business customers. Congress recognized in adopting sections 251 and 271 that competitors can only provide such innovation and lower cost curves in the parts of the network that they can efficiently self-deploy if the inputs to which they are entitled under sections 251 and 271 remain available.

In sum, ALTS urges the Commission to maintain a distinction between the application or services provided over a transmission facility and the underlying facility itself. Impairment analysis for the underlying ILEC facilities is not dependent on the regulatory classification of the applications riding over such facilities. Regardless of the Commission's jurisdictional classification of particular retail IP-enabled services, the regulatory treatment of those services should not impact CLEC access to the underlying facilities on which such retail services ride.

Respectfully submitted,

/s / Jason Oxman

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