November 9, 2004

The Honorable Michael K. Powell
Chairman, Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

WC Docket No. 04-313 and CC Docket No. 01-338

Dear Chairman Powell:

As Chairman and Chief Executive Officer of McLeodUSA Incorporated, I urge the FCC to expressly define the term "mass market" for purposes of access to loops and transport as encompassing exclusively residential customers or possibly home office business customers. The Commission's recent orders granting further unbundling relief for fiber and hybrid loops serving the "mass market" requires that this term be expressly defined by the FCC in the permanent rules to provide clarity and predictability.

Mass market should be strictly limited to residential customers. One of the Commission's primary rationale for granting additional unbundling relief for mass-market customers was the existence of ubiquitous intermodal competition in the mass-market segment. Today, the only market with ubiquitous intermodal competition for telephony services is the residential market in the form of alternative cable and/or wireless service providers. Cable telephone, wireless, and VoIP provide limited competitive choices for business customers. Therefore, there is no basis for concluding that intermodal competition justifies defining the mass market as encompassing any category of business customers.

Nor is there any policy basis for extending mass-market unbundling relief to enterprise customers based on the Commission's objective to promote broadband deployment. The *TRO* exempted unbundling of fiber-to-the-home and next generation hybrid loops because it wanted to provide an incentive to the RBOCs to build new high-speed broadband facilities in the residential market by ensuring that incumbents would not have to share its new network. The Commission's limitation of unbundling relief is consistent with the record that shows that there is no need for additional incentives to build out broadband facilities to business customers. They have *already* deployed broadband facilities to most business customers, and even where they have not, they need no special incentives to do so. The existence of competition for business customers has already forced the RBOCs to deploy network to those business locations. Consequently, the RBOCs willingly build to business locations without the need for additional unbundling relief from the Commission. Thus, the Commission recently concluded that "the

record shows additional investment incentives are not needed" to provide the RBOCs with the incentive to deploy broadband-capable loops to enterprise customers.[1]

If the definition of mass market is not limited to residential customers, then the Commission should limit "mass market" customers to residential and home office business customers. A home office business customer is thoroughly consistent with your statement accompanying the fiber-to-the-curb (FTTC) order that this relief was geared to "very small" business customers. This would also be consistent with the Commission's previous decision to limit fiber-to-the-home (FTTH) relief to "predominantly residential" premises, since the fact that incidental business activities conducted within a home do not change the fact that the premises is primarily residential.

While the *precise* definition of "mass market" was not established in the *TRO*, the Commission explained its intent that "[m]ass market customers consist of residential customers and *very small* business customers."[2] The *TRO* explained that "very small" business customers "typically purchase the same kinds of services as do residential customers, and are marketed to, and provided service and customer care, in a similar manner."[3] Therefore, McLeodUSA's alternative definition of mass-market customers as including home office business customers is consistent with prior Commission characterizations of this term.

We also urge the FCC to reject any proposal to define the "mass market" based on the number of access lines used by a customer, including in particular Verizon's proposal to include all customers using up to 48 lines. In our reply comments in this proceeding, McLeodUSA suggested in the alternative that a definition of mass market could include small business customers with less than four lines in total, across all locations.[4] However, based on our review of the record and additional customer information, McLeodUSA now urges the Commission to reject this alternative definition. Defining mass market using any access line count standard would be arbitrary and confusing.

For example, we currently provide local service to two very large business customers that have over 4,000 and 1,900 locations, respectively, with the vast majority of these having only one or two access lines. McLeodUSA classifies these two large business customers as separate customers for each location to accommodate customer invoicing requests. Despite the very small line counts at each location, these customers are very large enterprise customers that the RBOCs strive to win back. Because of the value of serving all locations of these very large enterprise customers, the RBOCs are already incented to provide broadband and other advanced services to these types of large enterprise customers. However, if the FCC were to define mass

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1 *Review of the Section 251 Obligations of Local Exchange Carriers*, CC Docket 01-338, Order on Reconsideration, ¶ 8 (rel. Aug. 9, 2004).

2 *TRO* at ¶ 127 (emphasis added).

3 *TRO* at n. 432.

4 McLeod USA Reply Comments, p 1. p. 7-8.

market in terms of access lines per location, these very large business customers would be forced back to the RBOC because they only require one or two lines at each business location. As this example shows, what may be classified as a small business customer using a strict access line per location standard is in fact a very large enterprise customer.

The FCC would also be required to arbitrarily draw a line for defining mass market customers. As this example shows, an access line standard would deny competitive choices to very large business customers to whom the RBOCs are already incented to offer broadband and other advanced services.

Moreover, an access line standard would be confusing to administer since other network elements have access line equivalencies. Such a standard could be misconstrued or misapplied to the detriment of competitive choice for business customers.

McLeodUSA urges the FCC to define mass market customers as residential and small home office business customers. This definition provides a bright line test and avoids the problems of creating an arbitrary standard that would deny the choice of competitive providers to a significant number of small, medium and even very large business customers.

Finally, we are at a critical crossroads for intramodal, facilities-based competition. Defining the "mass market" as residential customers or alternatively residential and home office business customers, plus adopting national impairment findings for DS0 and DS1 loops, transport and EELs along with minimum federal standards for batch hot cut processes will help ensure ubitiquous competitive choices for consumers, especially for small and medium-sized business customers.

We look forward to working with you on these critical issues.

Sincerely,

Chris A. Davis
Chairman and Chief Executive Officer

cc: Theodore J. Forstmann, Chairman of the Executive Committee
Stephen C. Gray, President
Honorable Kathleen Q. Abernathy
Honorable Jonathan S. Adelstein
Honorable Michael J. Copps
Honorable Kevin J. Martin
Honorable Michael D. Gallagher