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November 22, 2004

BY ELECTRONIC FILING

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

Re: WC Docket No. 04-313 – Unbundled Access to Network Elements

Dear Ms. Dortch:

The Independent Telephone & Telecommunications Alliance ("ITTA") writes in response to the numerous comments and *ex parte* submissions in this proceeding that recommend a variety of unworkable impairment test proposals. As the Commission prepares to write its new impairment standards given the recent decision in *United States Telecom Association v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*"), ITTA urges the Commission to carefully tailor its new standards to avoid inappropriate "bright-line" tests based solely on wire center size or the number of competitors in a given market. ITTA believes that the immense variation in small and rural market characteristics demands "impairment" standards that more accurately reflect the existence of actual or potential competition, in *any* size market. Only when market-appropriate impairment standards exist will the Commission have fulfilled its obligations under Sections 251 and 252 of the Communications Act of 1934, as amended (the "Act").

To begin, the Commission should not apply to small and midsize carriers "bright-line" tests designed for Bell Operating Companies ("BOCs") and large, urban markets. Such rough measures, whether based on the overall size of the market or based on the number of competitors in the market, fail to satisfy the Act's requirement that the FCC require unbundling *only* upon a determination that competitors would be "impaired" without regulated UNE access. As ITTA discussed in its filings in the *Triennial Review* proceeding, the markets served by ITTA's members bear little resemblance to the BOC markets either in terms of size or in terms of impairment. Such blunt instruments therefore are inadequate to satisfying the *USTA II* mandate.

In its February 6, 2003 *ex parte* submission in the *Triennial Review* proceeding (attached hereto as *Attachment A*), ITTA documented numerous examples of actual and potential competition in rural and other non-BOC markets of all sizes. As ITTA pointed out then, to the extent the record in this proceeding contains any evidence whatsoever of impairment within the meaning of Section 252(d)(2) of the Act, none of it is sufficient to establish a finding of impairment in non-BOC markets. The FCC must develop impairment standards that better

reflect actual conditions in individual markets, and consider evidence of competitive entry despite biases about the size of markets, the preferred number of competitors, or the preferred technology.[1] Below, ITTA recommends standards that will more precisely identify actual or potential competition in any market.

In particular, ITTA opposes the use of wire center size as the sole guiding criterion by which to judge "impairment." For instance, proposals such as that recommended by BellSouth are wholly inappropriate. BellSouth advocates that 5,000 business lines per wire center is a fair threshold for establishing impairment with respect to high capacity loops, transport, and dark fiber.[2] Under BellSouth's proposal, markets with fewer than 5,000 business lines may be impaired while those with more than 5,000 business lines would not be impaired. Proposals with similar size thresholds are numerous. They range from the relatively low (1,500 lines per central office)[3] to the absurdly high (25,000 business lines per central office).[4] None of these standards is appropriate in rural markets, where the number of business lines is a significantly smaller proportion of the total customer base than in non-rural markets.[5]

But, the evidence before the Commission makes it clear that vigorous competition can and does exist in markets well below the proposed thresholds. Competitors in markets with as few as 550 subscriber lines (and far fewer *business* lines) have gained 50% market share in some areas.[6] Competitors have similarly garnered significant market share in many markets with fewer than 5,000 subscriber lines in Iowa, Minnesota, North Carolina, Ohio, Texas, Virginia, and undoubtedly many other states.[7] Recently, incumbent local exchange carriers (ILECs) have been able to capture entire towns from their neighbors by "edging out" from their existing facilities to serve nearby customers, even becoming the dominant carrier with 80 or 90 percent market share in the neighbor's territory.[8] In a study filed by ITTA in the Triennial Review docket last year,

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1 *See, e.g., USTA II*, 359 F.3d at 563.

2 Comments of BellSouth Corporation, WC Docket No. 04-313, at 39, 44 (Oct. 4, 2004).

3 Reply Comments of the National ALEC Association at 1 (Oct. 19, 2004); s*ee also* Comments of the PACE Coalition, *et al.*, at III (Oct. 4, 2004).

4 Initial Comments of The Loop and Transport CLEC Coalition at 83 (Oct. 4, 2004).

5 For example, NECA reports that, for rural carriers, special access revenues account for a substantially smaller proportion of total interstate revenues than for non-rural carriers. *See* "Trends in Telecommunications Cost Recovery: The Impact on Rural America," National Exchange Carrier Association (Oct. 2002) at 7-8.

6 *Attachment A* at 2.

7 *Id.*

8 *See, e.g., Petition for Order Declaring South Slope Cooperative Telephone Company, Inc. an Incumbent Local Exchange Carrier in the Iowa Exchanges of Oxford, Tiffin and Solon*, WC Docket 04-347 (filed Aug. 24, 2004); *Petition for Order Declaring Mid-Rivers Telephone Cooperative, Inc. an Incumbent Local Exchange Carrier in Terry, Montana,* WC Docket 02-78 (filed Feb. 5, 2002).

the Texas Public Utility Commission reported that competitive LECs (CLECs) enjoy the same market share in rural markets – 16% – as in urban markets, while in rural markets the CLECs tend to be significantly less dependent upon UNEs or resale than their urban counterparts.[9]

For these reasons, ITTA considers proposals to limit unbundling relief to very large markets both inappropriate under the Act and insufficient for identifying actual competitive conditions. Beyond size, other market characteristics are relevant for precisely identifying evidence of impairment. ITTA believes that the Commission can and must create impairment standards that rely on multiple indicia of actual or potential competition and that vary based on an element-by-element basis.

For the reasons discussed below, ITTA urges the Commission to make the following three findings, all of which find support in the record:

(1) The Commission should make a nationwide finding of no impairment for switching, DS-3 or higher loops, DS-3 or higher transport, and dark fiber.

(2) The Commission should make a market-specific finding of no impairment with respect to DS-1 transport or high-capacity loops for enterprise customers in any market with at least 250 voice-grade business lines (or the equivalent).

(3) The Commission should make a market-specific finding of no impairment with respect to transport or loops of DS-1 or lower capacity in any market in which competitors, individually or together, hold at least a 35 percent share of the local exchange market. Facilities used to serve residential (mass market) and business (enterprise) customers should each be defined as separate "markets" in this analysis.

While ITTA believes the definition of the geographic market varies necessarily by location, ITTA recognizes the practical difficulties of requiring an exhaustive exploration of each local "market" in the nation as a prelude to ruling on unbundling obligations in the market. Therefore, to reduce uncertainty and lessen the burden of making unbundling determinations, ITTA would support with each of these tests defining the geographic "market" as the area served by the incumbent LEC's central office. Thus, for example, there would be no impairment (and no unbundling requirements) with respect to transport or loops of DS-1 or lower capacity from any particular central office used to serve enterprise customers if competitors, individually or together, hold at least a 35 percent share of the enterprise market for local exchange service out of that central office.

ITTA believes that these standards, while simple and clear, will better enable the Commission to identify markets where actual or potential competition exists and where unbundling is no longer necessary. Conversely, these standards will confine mandatory

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[9] Report to the 78th Texas Legislature, "Scope of Competition in Telecommunications Markets in Texas," Public Utility Commission of Texas (Jan. 2003) at *xi,* 24-25, 28-29.

unbundling to markets where competitors still may experience "impairment" as contemplated under the Act, rather than relegating most of the carriers in the country to indefinite unbundling that never has been established to be necessary.

With respect to switching and DS-3 or higher capacity loops and transport, the record evidence overwhelmingly supports a nationwide finding of no impairment. Competitive alternatives are widely available, and barriers to self-provisioning are extremely low.[10] With respect to markets with at least 250 business lines, neighboring local exchange carriers have a strong incentive to "edge out" into such market to serve business customers, and hence unbundling is not necessary.[11] With respect to markets where competitors hold a 35% or greater market share, meaningful competition exists and impairment cannot be found.[12]

These standards should not be dependent on a finding that competitors are using a particular technology. The D.C. Circuit in *USTA II* discussed the relevance of both wireless and cable alternatives for impairment.[13] It concluded, as a general matter, "[W]e reaffirm *USTA I's* holding that the Commission cannot ignore intermodal alternatives."[14] Viable competitive alternatives to POTS exist and must be considered in a proper impairment analysis, including the availability of commercial radio mobile services ("CMRS"), cable telephony, and Voice over Internet Protocol ("VoIP"). Several commenters agree with such an approach. At least one, the State of New York's Department of Public Service, which has considerable experience with

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[10] *See, e.g.,* Comments of BellSouth, WC Docket No. 04-313, at 17-24 (Oct. 4, 2004); Comments of Verizon, WC Docket No. 04-313, at 42, 47 (Oct. 4, 2004).

[11] ITTA documented a number of examples of this type of competition a year ago. *See Attachment A.* Numerous other examples can be found of successful "edge out" strategies where rural carriers are capturing lines in neighboring rural markets. *See, e.g., Petition for Order Declaring Mid-Rivers Telephone Cooperative, Inc. an Incumbent Local Exchange Carrier in Terry, Montana,* WC Docket 02-78 (filed Feb. 5, 2002) (rural co-operative Mid-Rivers captured approximately 93% of neighboring Qwest's customers in the Terry, Montana exchange, including 317 residential and 118 business lines); *Petition for Order Declaring South Slope Cooperative Telephone Company, Inc. an Incumbent Local Exchange Carrier in the Iowa Exchanges of Oxford, Tiffin and Solon*, WC Docket 04-347 (filed Aug. 24, 2004) (rural co-operative captured over 80% of the Qwest customers in Oxford (817 customers), Tiffin (1,310 customers) and Solon (1, 902 customers) and became the "dominant" local service provider in these exchanges).

[12] By way of comparison, when the Commission declared AT&T non-dominant in the domestic interexchange market, AT&T had lost about 40% market share, and that was held among some 500 competitors. *Motion of AT&T Corp. To Be Reclassified As a Non-Dominant Carrier,* 11 FCC Rcd. 3271 (1995).

[13] *USTA II,* 359 F. 3d at 575-576, 582.

[14] *Id.* at 572-573.

inter-modal competition, crafted an impairment analysis that explicitly incorporates these competitive alternatives.[15]

As is generally recognized, CMRS is an effective competitive alternative to POTS. Over 60 percent of American households own a wireless phone and 3 to 5 percent of wireless customers use this phone as their only phone, foregoing the traditional wireline option altogether.[16] More relevant to impairment analyses for small and rural communities, competitive wireless carriers have obtained statewide ETC status in a number of states (*e.g.,* US Cellular in Wisconsin, Cellular South in Alabama, RCC Holdings in Alabama), allowing them to receive federal support to extend their services to all consumers in these markets.[17] These facts are strong proof of the viability of CMRS as a competitive alternative, and they indicate that such an alternative should be included in an impairment analysis.

Similarly, cable operators provide facilities-based competition in numerous smaller markets across the country. For instance, in the Anchorage, Alaska market, General Communications, Inc. ("GCI") has garnered nearly half the local exchange market by using its fiber optic cable facilities and its own switches collocated with those of the ILEC, without ever ordering any unbundled switching or shared transport from the ILEC.[18] GCI already is making the transition from UNE loops to its own cable-based switched telephony platform.[19] Other cable companies have announced similar plans to deploy telephony over their own fully independent networks. Under *USTA II*, The FCC may not continue to ignore switched cable telephony as a competitive alternative.

Nor may the Commission overlook emerging VoIP and Broadband over Power Lines ("BPL") offerings, which in the Commission's own estimation bring immediate and

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[15] Comments of the New York State Department of Public Service, WC Docket No. 04-313, at 6 (Oct. 4, 2004) (NYSDPS proposed an impairment test based on index scores for individual wire centers. A wire center's index score is generated by aggregating weightings for each of four basic alternatives to traditional wired telephone service. These alternatives include "(1) UNE-L for residential and business customers, (2) PacketCable phone service, (3) wireless service and (4) VoIP via DSL or cable modem." If a wire center's index score is 2.75 or greater, it is considered impaired. Otherwise, the wire center is considered unimpaired. The weightings are based on various data that NYSDPS collected and incorporated into its comment and related attachments.).

[16] *USTA II,* 359 F. 3d at 575 (discussing these apparently uncontested facts as presented by various ILECs).

[17] *Attachment A* at 3.

[18] Reply Comments of Alaska Communications Systems, WC Docket No. 04-313, at 5 (Oct. 19, 2004).

[19] *See, e.g.,* Report on GCI by Jeffries Telecom Services Group (Nov. 4, 2004) (GCI has been working to transition 8,000 voice customers from UNE loops to its own cable plant by the end of 2004, and announced 25,000 more customers will make the transition in 2005).

effective competition to the local exchange market.[20] Though VoIP may be provided via the facilities of the cable operator or the ILEC, it nevertheless presents an effective alternative for the consumer – particularly the residential consumer – and does so without reliance on UNEs. The Commission must take into account new technologies such as cable telephony, BPL and VoIP offerings because the purpose of the Act is "to stimulate competition—preferably genuine, facilities-based competition," *regardless of the type of facility* over which it is delivered.[21]

In conclusion, ITTA believes that the Commission must adopt impairment standards that more accurately identify the existence of actual or potential competition in all markets, including small and rural markets. As discussed herein and in Attachment A, general rules or "bright-line" tests that rely on a single indicator of competition have the potential to inappropriately burden smaller and rural ILECs with unbundling requirements in markets where competition is obviously strong. Given the susceptibility of small and rural markets to competitive change and alternatives, the Commission should ensure that any new impairment standards take competitive alternatives into account, including, at a minimum, CMRS, cable, and VoIP.

Respectfully submitted,

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[20] *See, e.g., In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, FCC 04-267 (rel. Nov. 12, 2004); *In the Matter of Amendment of Part 15 Regarding New Requirements and Measurement Guidelines for Access Broadband Over Power Line Systems, Carrier Current Systems, Including Broadband over Power Line Systems*, Report and Order, FCC 04-245 (rel. Oct. 28, 2004).

[21] *USTA II,* 359 F.3d at 576.

Attachment A

Ex Parte Submission of ITTA in CC Docket Nos. 01-338, 96-98 and 98-147 (UNE Triennial Review) (filed February 6, 2003)

and

Selected Portions of the Report to the 78th Texas Legislature, "Scope of Competition in Telecommunications Markets in Texas," by the Public Utility Commission of Texas (January 2003)

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February 6, 2003

***EX PARTE* SUBMISSION VIA ELECTRONIC FILING**

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

Re: *Ex Parte* Submission in UNE Triennial Review;
CC Docket Nos. 01-338, 96-98, 98-147

Dear Ms. Dortch:

Today David Zesiger, Executive Director of the Independent Telephone & Telecommunications Alliance, Glenn Rabin of ALLTEL Corp., and I met with Commissioner Adelstein and Lisa Zaina, his Senior Legal Advisor, to discuss the above-referenced proceeding. The attached materials, which were distributed in the meeting, describe the substance of our presentation. Please direct any questions concerning this matter to me.

Respectfully submitted,

/s/ Karen Brinkmann
Karen Brinkmann

cc: Commissioner Jonathan Adelstein
Lisa Zaina
Marsha MacBride
Christopher Libertelli
Matthew Brill
Jordan Goldstein
Daniel Gonzalez
William Maher

THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE (ITTA)
FEBRUARY 6, 2003

UNE TRIENNIAL REVIEW

I. The Impairment Analysis Required By the D.C. Circuit Cannot Be Satisfied With Respect to the Switching UNE.

A. The Record Demonstrates An Abundance Of Affordable, Competitive Switching Capability From Multiple Suppliers.

1. Thousands of CLEC switches have been deployed in markets all over the country, many of them collocated with the ILECs' own switches.[1]

2. ILECs have also demonstrated their ability to enter each other's markets from neighboring service areas using their existing switching capabilities – without even requesting access to the incumbent's network in the market they seek to enter. The availability of switching from neighboring ILECs negates any possibility of "impairment" in switching.

B. The Record Contains No Evidence Of "Impairment" In Obtaining Or Deploying Switching Capability.

C. To De-List An Element, The Commission Need Not Find That CLECs Have Actually Deployed A UNE In Any Particular Market, But Only That The Network Element Be "*Available*" From Sources Other Than The ILEC Network.[2]

II. The Commission May Not Simply Conclude That CLECs Are "Impaired" In Smaller Markets Without Access to UNE Loops -- Section 251(d)(2) Requires the Commission To Conduct a More Granular Analysis Of "Impairment" To Take Into Account the Differing Characteristics of Independent ILEC Markets.

A. Smaller Markets Typically Have Fewer Customers Overall And Fewer Business Customers Than Larger Markets.

1. NECA recently reported that non-rural carriers serve over ten times as many customers per square mile on average than rural carriers (134 lines per square mile vs. 10.5 lines per square mile.)[3]

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[1] *See, e.g., ex parte* submission of United States Telecom Association in CC Dockets 01-338, 96-98 and 98-147 at 2 (Dec. 11, 2002) (citing the Association for Local Telecommunications Services Annual Report, *The State of Local Competition in 2002,* at 8 (April 2002), which reports 1,244 CLEC voice switches and 9,524 CLEC data switches as of September 30, 2001); *see also ex parte* submissions in these dockets by Verizon (January 10, 2003) and SBC (October 24, 2002).

[2] *See AT&T v. Iowa Utilities Board,* 535 U.S. 366, 389 (1999).

[3] NECA, "Trends in Telecommunications Cost Recovery: The Impact on Rural America" (October 2002) at 4-5.

2. A key measure of business customer concentration is given by interstate special access revenue as a percentage of total interstate revenue. NECA recently reported that special access accounts for only 18.9% of total interstate access revenues for rural carriers compared to 63.3% for non-rural carriers.[4]

B. Imposing Uniform Pre-Conditions To UNE Relief For All ILECs Would Contradict The D.C. Circuit's Mandate That The Commission's Rules Must Be Based Upon Market-Specific Analysis.

1. The Act requires that UNE obligations, as well as the conditions for relief from them, reflect market-specific analysis.

2. In considering any threshold criteria for unbundling relief, the FCC should avoid requirements that inappropriately assess competition in smaller markets, or fail to acknowledge such competition altogether.

III. The Commission Should Acknowledge That "Impairment" Means Something Different In Smaller Markets, And Conduct The Appropriate Review In Those Markets.

A. The Commission Should Not Assume A Minimum Size Wire Center Or Line Count As A Necessary Threshold For UNE Relief – To Do So Would Be An Impermissible Failure To Conduct The Impairment Analysis.

1. The size of the wire center is but one in a host of factors that determine what makes it profitable to serve an area.

2. The Act requires the Commission to make an "impairment" finding for every market, not just the most densely populated.

B. Setting Any Hard Threshold For Presumptive Relief Of the Switching or Loop UNE Obligation (Such As Central Offices Serving Less Than 5,000 Lines) Also Fails To Take Into Account Significant Evidence Of The Viability Of Facilities-Based Competition In Those Markets.

1. There are numerous examples of competitors entering markets with central offices serving fewer than 5,000 lines:

a. A rural co-op in Minnesota offers competitive service in communities of 550 lines, 809 lines, 1,000 lines, 2,200 lines, 3,700 lines, and 3,900 lines. Their collective market share in these communities is well above 50%.

b. In Iowa, rural co-ops and municipally operated local exchange carriers provide competition in small, rural communities of 252 lines, 323

[4] *Id.* at 7-8.

lines, 361 lines, 446 lines and 439 lines. In each case, one facilities-based competitor in each market has gained significant market share.

c. Sprint Local Telecom Division has identified 20 exchanges with fewer than 17,000 lines in which they face switch-based competition, including the following examples with fewer than 5,000 access lines:[5]

(1)	Aulander, North Carolina	1,478
(2)	Austinville, Virginia	1,974
(3)	Bland, Virginia	1,846
(4)	Elida, Ohio	2,773
(5)	Mamie, North Carolina	2,122
(6)	Payne Springs, Texas	4,134
(7)	Robbins, North Carolina	2,501

2. Competitive wireless carriers have obtained statewide ETC status in a number of states (*e.g.*, US Cellular in Wisconsin, Cellular South in Alabama, RCC Holdings in Alabama), allowing them to provide competition in numerous smaller and rural communities.

3. Cable operators provide facilities-based competition in numerous smaller markets across the country.

4. In its recent report, "Scope of Competition in Telecommunications Markets of Texas,"[6] the Texas PUC reported that CLECs in Texas serve 16% of local customers in *rural and urban* areas, and CLECs serving rural areas favor facilities-based strategies far more than in urban areas.

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[5] Nor does Sprint represent that this is an exhaustive list. *Ex parte* submission of Sprint Corporation in CC Dockets 01-338, 96-98 and 98-147 (Oct. 16, 2002).

[6] Report to the 78th Texas Legislature, *Scope of Competition in Telecommunications Markets of Texas,* Public Utility Commission of Texas, January 2003 ("Texas PUC Report") at *xi*.

a. Between December 1999 and December 2001, Texas CLECs' market share has grown from less than 5% to more than 15% even as the overall number of access lines has declined over the last two years.[7]

b. In Texas, a number of CLECs target rural markets, and CLECs enjoy as much market share in rural markets as in urban markets --16%.[8]

c. In rural areas of the state, CLECs have a 23% share of the business customers.[9]

d. Facilities-based entry (rather than UNEs or resale) is the preferred method of Texas CLECs serving rural areas:

(1) As of June 2002, the percentage of customers in Texas served by CLECs using their own facilities was highest in rural areas *– fully 48% of the rural lines served by CLECs were receiving facilities-based service.*[10]

(2) For serving residential customers in rural markets, CLECs pursue facilities-based entry at a far greater rate (35%) than in non-rural markets.[11]

(3) Among non-residential customers, facilities-based CLECs have gained *three times* as many lines in rural areas of Texas as in urban markets.[12]

C. The FCC Should Not Impose A Multiple-Competitor Standard As A Pre-Condition To Granting Any UNE Relief, As Some Commenters Have Suggested.

1. Because smaller markets typically have fewer customers than larger markets they are unlikely to support the same number of competitors as larger markets. In fact, the great majority of independent markets may well be unlikely to be able to support more than one new entrant.

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[7] *Id.* at 20. This is consistent with national trends of CLEC market share growth, ILEC market share decline, and overall access line decline. *See id.* at 8 (citing FCC *Local Telephone Competition Reports* 2000-2002).

[8] *Id.* at 24.

[9] This compares remarkably to the CLECs' share of business customers in non-rural markets (12% in suburban areas and 17% in urban areas). *Id.* at 30.

[10] *Id.* at 25 (48% of rural CLEC customers were served by facilities-based CLECs, versus 16% of suburban CLEC customers and 9% of urban CLEC customers).

[11] *Id.* at 28 (35% of residential lines in rural markets served by a CLEC's own facilities, versus 21% in suburban markets and 8% urban markets).

[12] *Id.* at 29.

2. A single competitor can have a far more significant impact in a market served by independent ILECs, as in Anchorage and Fairbanks.[13] A single competitor can often provide powerfully effective competition in these smaller markets.

    a. In Anchorage, one switch-based competitor has 45% of the market, including both residential and business lines, and already has deployed a significant amount of its own distribution plant.[14]

    b. In McMinnville, TN, a single facilities-based competitor operated by a neighboring rural ILEC has captured more than 50% of the business lines from the independent ILEC serving the community.

    c. In Wisconsin, there are 8 active, facilities-based CLECs competing against the ILEC in 14 rural markets; in at least one of these markets, the ILEC has lost up to 46% of the lines.

    d. In the Champaign-Central Illinois area, a single competitor has captured over 50% of the business lines from the independent ILEC serving various rural communities.

    e. In San Marcos, Texas, a single facilities-based competitor has captured a significant percentage of lines from the independent ILEC serving the community *without* using UNEs.

    f. In St. Charles County, Missouri, a single facilities-based competitor has won approximately 12% of the market for residential and small business, and is capturing market share at a rate of 1% per month.

    g. In small, rural Texas communities such as Seymour, Knox City, and Munday, competition from a neighboring ILEC (a cooperative telephone company) using its own switch has garnered 12% of the subscriber lines.

3. Failure to de-list the switching UNE in such markets simply because there are not multiple competitors in the market would ignore the record evidence that CLECs simply are not "impaired" in such markets.

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[13] *See, e.g., ex parte* submission of Alaska Communications Systems Group, Inc. in CC Dockets 01-338, 96-98 and 98-147 (January 6, 2003).

[14] *See, e.g., ex parte* submission of Alaska Communications Systems Group, Inc. in CC Dockets 01-338, 96-98 and 98-147 dated January 6, 2003, and sources cited therein. *See also ex parte* submission of GCI in these dockets dated January 31, 2003 (CLEC has 45% market share in Anchorage, 21% in Fairbanks, 14% in Juneau).

D. The Commission Should Not Mandate National "Hot Cut" Provisioning Requirements That Would Effectively Require All ILECs To Implement Electronic Operations Support Systems ("OSS") Capabilities As A Pre-Condition To Obtaining Relief From The Switching UNE.

1. Independent ILECs serve markets that typically are not large enough to justify the cost of electronic OSS. Virtually no independents currently employ electronic OSS.

2. Competitors entering smaller markets served by independent ILECs have found it equally difficult to justify implementing electronic interfaces with ILECs because of the high costs associated with such systems is not justified by the number of potential customers in such markets.

   a. In Cincinnati, the ILEC was required to develop electronic OSS to facilitate the transition of customers to competitors' networks. However, no competitor ever made use of the electronic OSS, finding the more economical manual processes to be sufficient to meet their needs.

   b. In Fairbanks and Juneau, although the interconnection agreement provides for electronic OSS, neither the ILEC nor the CLEC has desired to incur the cost of implementing electronic OSS; the CLEC has significant market share notwithstanding.

   c. Requiring competitive carriers to interface with an ILEC via electronic OSS arguably places an unacceptable economic burden on the competitor, potentially violating the D.C. Circuit's mandate to analyze at an appropriately granular level the likelihood that a particular unbundling rule would actually stimulate competitive entry.[15]

E. New and Burdensome Performance Measures And Reporting Requirements Tailored To The Market Conditions That Prevail In BOC Markets Similarly Have Not Been Justified In Markets Served By Independent ILECs.[16]

1. For example, performance measures for minimum volumes and maximum timeframes for UNE loop conversions were designed for the BOCs and should not be imposed on independent ILECs; rather, the Commission should acknowledge that access to UNE loops has never been established as a barrier

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[15] For example, the court specifically criticized the Commission's failure to consider that in some markets, such as high-cost markets where rates are held below cost by regulation, any competitive entry that might be induced by unbundling would be "wholly artifical." *United States Telecom Association v. FCC*, *supra*, 290 F.3d at 422-23.

[16] See ITTA's Comments, filed January 22, 2002, and Reply Comments, filed February 12, 2002, in CC Dockets 01-318, *et al.*

to competitive entry in non-BOC markets, and therefore no "impairment" can be said to exist with respect to loop provisioning in these markets.

IV. Section 251(d)(2) Is Informed By the Larger Statutory Context, Including Section 251(f)

A. It Is Axiomatic That the Commission May Not Read Section 251(d)(2) In Isolation But Must Consider It In the Context of the Statutory Framework As a Whole.

B. Congress Evinced a Clear Intention to Afford Market-Appropriate Treatment to Rural and Midsize Carriers.

1. Section 251(f) Represents the Judgment of Congress That a One-Size-Fits-All Approach In Implementing Section 251 Is Inappropriate.

2. Section 251(f) Demonstrates a Congressional Preference For a More Granular Analysis of Market Conditions, Consistent With the D.C. Circuit's Interpretation of 251(d)(2).

C. Section 251 Codified the Presumption That Unbundling Obligations Are Inappropriate In Markets Served By Rural Carriers, Where Congress Deemed Local Circumstances Sufficiently Different From Other Markets To Warrant Different Unbundling Rules.

1. All rural carriers enjoy the exemption unless and until a requesting carrier proves that unbundling under Section 251(c) is "not unduly economically burdensome, is technically feasible, and is consistent with Section 254 of the Act..."[17]

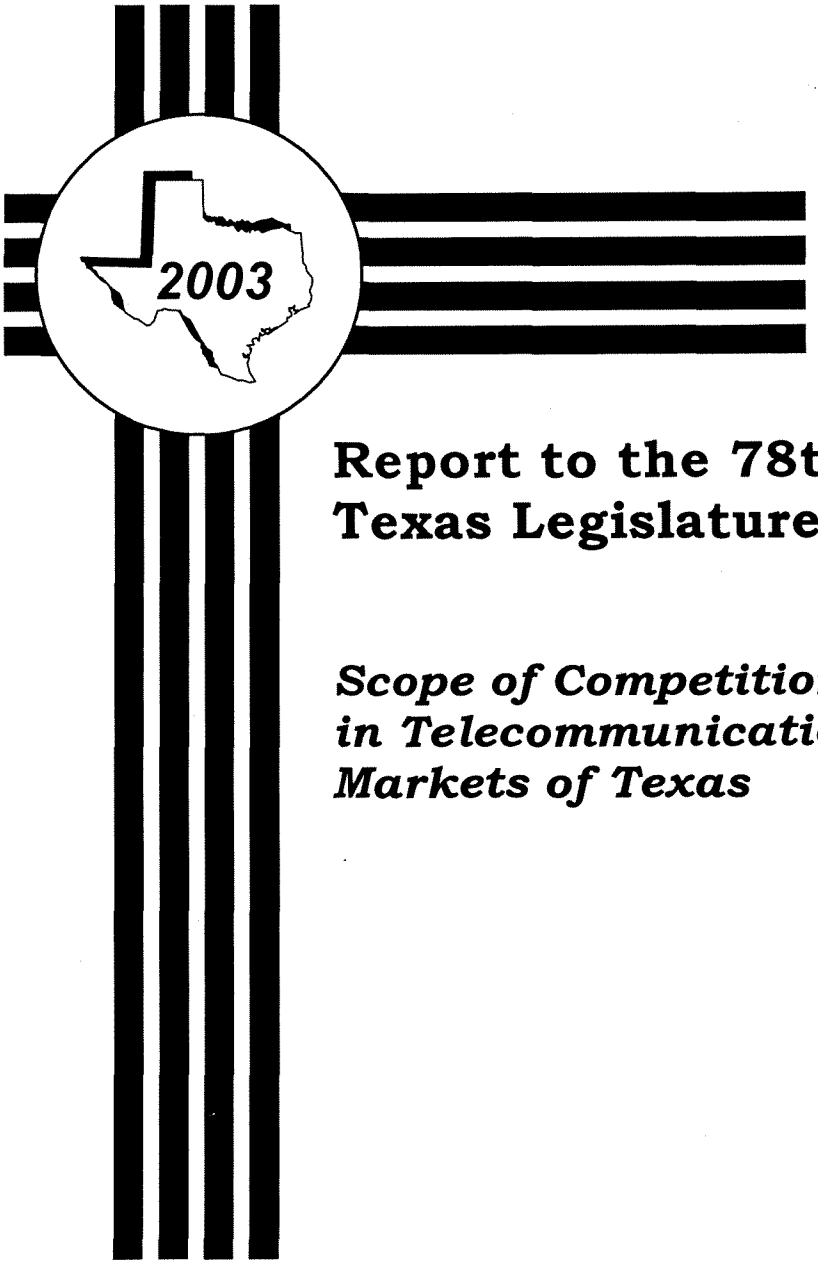
2. In order to fully comply with the policy of market-specific regulation embodied in Section 251, the FCC should adopt appropriate burden-of-proof rules for markets served by rural carriers; this will guide the states in rural exemption termination cases and ensure the policies identified by the 8th Circuit are implemented uniformly nationwide.[18]

[17] 47 U.S.C. §251(f)(1).

[18] *See* Petition for Reconsideration of Action in Rulemaking Proceeding, FCC Public Notice Rep. No. 2508 (rel. Oct. 19, 2001), 66 Fed. Reg. 54009 (Oct. 25, 2001); *see also Iowa Util. Bd. v. FCC*, 219 F.3d 744, 762 (8th Cir. 2000) ("It is the full economic burden on the ILEC of meeting the request that must be assessed by the state commission.... [T]he FCC has impermissibly weakened the broad protection Congress granted to small and rural telephone companies.").

D. Section 251 Also Granted "Broad Protections" Under Sections 251(b) and (c) to Two Percent Carriers.[19] The Commission should instruct the states to consider whether unbundling obligations, and preconditions to relief of those obligations, have a disproportionate impact on two percent carriers, considering their "full economic burden" as instructed by the 8th Circuit.

[19] A state commission "*shall* grant" a two percent carrier's petition for suspension or modification of §251(b) or (c) requirements to the extent such suspension or modification "(A) is necessary – (i) to avoid a significant adverse economic impact on users of telecommunications services generally, (ii) to avoid imposing a requirement that is unduly economically burdensome, or (iii) to avoid imposing a requirement that is technically infeasible; and (B) is consistent with the public interest, convenience, and necessity." 47 U.S.C. §251(f)(2).



Report to the 78th Texas Legislature

Scope of Competition in Telecommunications Markets of Texas

Public Utility Commission of Texas
January 2003

Chapter III. Status of the Texas Telecommunications Industry

In June 2000, Southwestern Bell Telephone (SWBT) was granted approval by the Federal Communications Commission (FCC) to enter the long-distance market in Texas. As determined by the Commission and the FCC during SWBT's Section 271 approval process, SWBT had met the statutory requirements to open its local markets to competition.[46] SWBT entered the long-distance market in July 2000. Two years later, Southwestern Bell Corporation (SBC) has made significant progress in the long-distance market while competition in the local market is still emerging, and many competitors of SWBT are struggling to remain financially viable. As competition in the telecommunications market continues to take hold in Texas, several issues and matters have been brought to the forefront for the Commission's consideration.

Chapter III examines competitive issues relating to the local service market in Texas. The discussion begins with an assessment of the data regarding the overall industry revenue and market share for incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs) in Texas. The discussion then turns to how ILECs and CLECs compete in the marketplace. This analysis includes a discussion of the CLECs' methods of entry and geographic market.

Additionally, the Chapter examines competitive issues relating to the long-distance market, including the disparity between intrastate and interstate access rates and the pass-through of access rate reductions by long-distance carriers. The Chapter ends with a look at competitive issues relating to broadband.

A. Local Telephone Market in Texas

1. Texas CLEC Certifications

From the passage of the FTA until 1999, Texas saw a huge influx of CLECs seeking to serve markets throughout the State. Under the Public Utility Regulatory Act (PURA) § 54.001, a CLEC must have a certificate issued by the Commission to operate and provide telecommunications service in Texas.[47] As illustrated by Figure 5, the number of service provider certificates of operating authority (SPCOAs) and certificates of operating authority (COAs) applied for and granted annually has declined steadily since 2000. For the year 2001, the Commission awarded 73 SPCOAs and 1 COA; and as of October 23, 2002, the Commission had awarded 34 SPCOAs and 2 COAs. This represents a noticeable decline from the year 2000 when 106 SPCOAs and 6 COAs were awarded. In addition, the number of SPCOAs and COAs relinquished by CLECs has increased from 10 in 2000 to 23 and 19 in 2001 and 2002, respectively.

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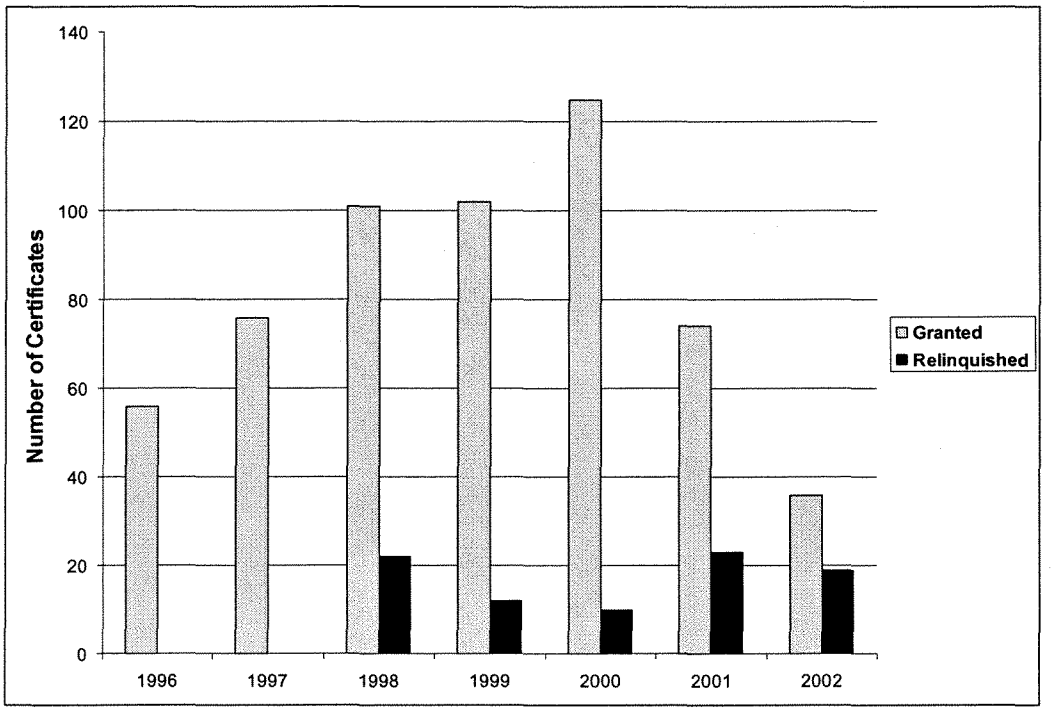
[46] *Application by SBC Communications Inc, Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket 00-65, Memorandum Opinion and Order, at 395 (rel. June 30, 2000).

[47] PURA § 54.001 (Vernon 1998 & Supp. 2003).

Figure 5 — Number of SPCOAs and COAs Certifications Granted and Relinquished in Texas, by Year



SOURCE: PUC filings

As shown in Table 3, there are 490 CLECs certified to operate in Texas. Of the 554 certificated telecommunications utilities in Texas, 202 submitted data responses to this year's scope of competition data request, 138 of them CLECs, compared to 128 CLECs in 2000.[48] In addition, 76 CLECs filed letters stating that they did not provide services in Texas during the requested time period.[49]

Table 3 — Number of Texas CLECs

	1996	1998	2000	2002
Approx. Number of Certificated CLECs	70	200	432	490
Approx. Number of CLECs filing Data Responses	n/a	50	128	138

SOURCES: *Report to the Seventy-Fifth Legislature on the Scope of Competition in Telecommunications Markets* at 2 (January 1997), *Report to the Seventy-Sixth Legislature on the Scope of Competition in Telecommunications Markets* at 55, 92 (January 1999), *Report to the Seventy-Seventh Legislature on the Scope of Competition in Telecommunications Markets* at 37 (January 2001); Texas PUC 2003 Scope of Competition Data Responses.

This decline in the number of CLECs in Texas is consistent with trends at the national level. The number of CLECs in Texas declaring bankruptcy and discontinuing services has steadily increased; between 1999 and 2002, 47 CLECs declared bankruptcy. Seven of those went into Chapter 7 bankruptcy, which resulted in the liquidation of the company's assets. A complete list of all carriers with operations in Texas that have filed for bankruptcy is available in Appendix G.

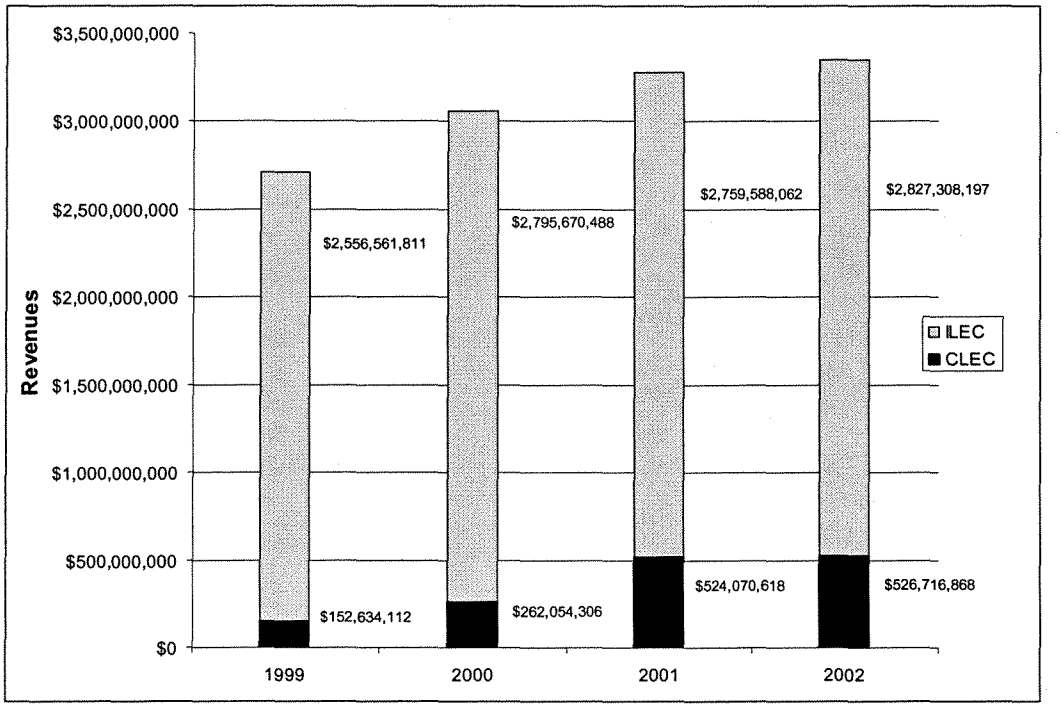
[48] The data compiled for this year's scope report includes self-reported data from 202 ILECs and CLECs. The Commission estimates that this represents at least 95% of the access lines served in Texas.

[49] It is important to note that the number of SPCOAs and COAs overstates the actual number of entrants into the market. While the Commission has certified many carriers to provide service, some have yet to offer any service to the public. A carrier who does not have any customers to date is only a potential competitor. In addition, some carriers with certificates no longer provide service.

2. Overall Industry Revenues and Market Share

After three years of rapid growth, CLEC revenues and access lines ceased to grow in 2002. As shown in Figure 6, CLEC revenues from basic dial-tone service in Texas have also flattened out to approximately $527 million in June 2002, compared to $2.8 billion for the ILECs.

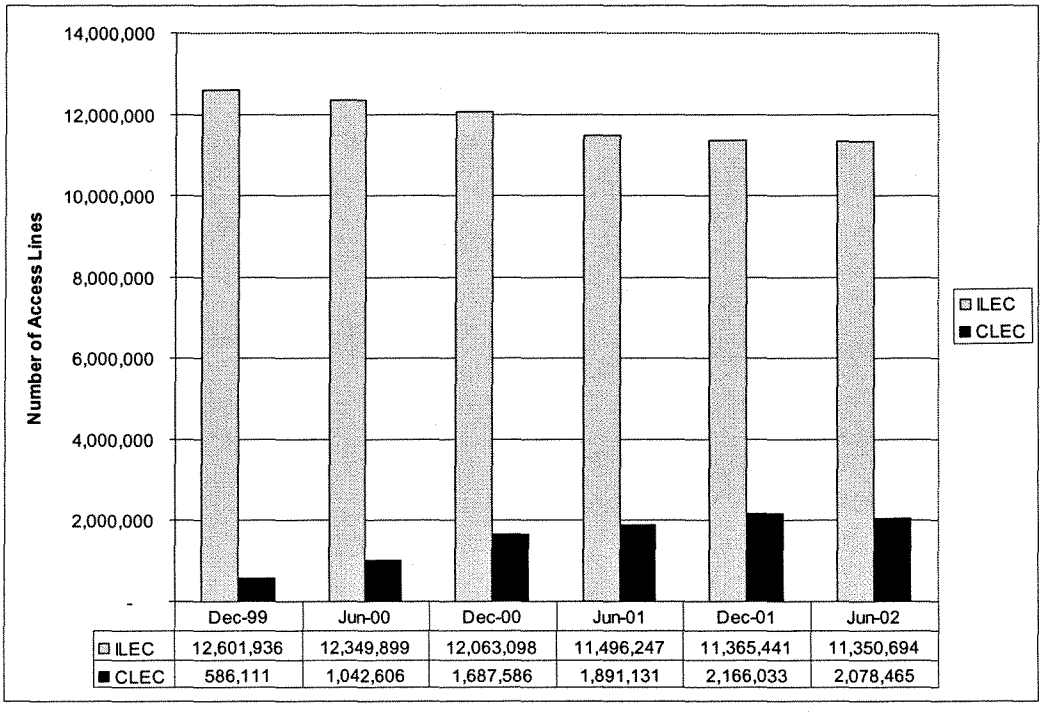
Figure 6 — ILEC vs. CLEC Basic Local Service Revenues in Texas



SOURCE: Texas PUC 2003 Scope of Competition Data Responses. The June 2002 revenue as reported has been doubled to estimate year-end 2002 revenues.

From December 2001 to June 2002, the number of ILEC lines decreased from 11,365,441 to 11,350,694, while the total number of CLEC lines decreased from 2,166,033 to 2,078,465 during that same period.[50] This represents a decrease of CLEC market share from 16% to 15% during that same period and a corresponding increase in ILEC market share from 84% to 85%, despite the overall decrease in ILEC lines.

Figure 7 — ILEC vs. CLEC Lines in Texas



	Dec-99	Jun-00	Dec-00	Jun-01	Dec-01	Jun-02
ILEC	12,601,936	12,349,899	12,063,098	11,496,247	11,365,441	11,350,694
CLEC	586,111	1,042,606	1,687,586	1,891,131	2,166,033	2,078,465

SOURCES: *Local Telephone Competition Reports,* FCC (Aug. 2000, May 2001, July 2002), Texas PUC 2003 Scope of Competition Data Responses.

The rate of overall CLEC market-share growth, which measures the momentum of competitors in the local exchange market, has shown a sharp downward trend over the last two-year period.

Table 4 — CLEC Market Share and Growth Rates in Texas

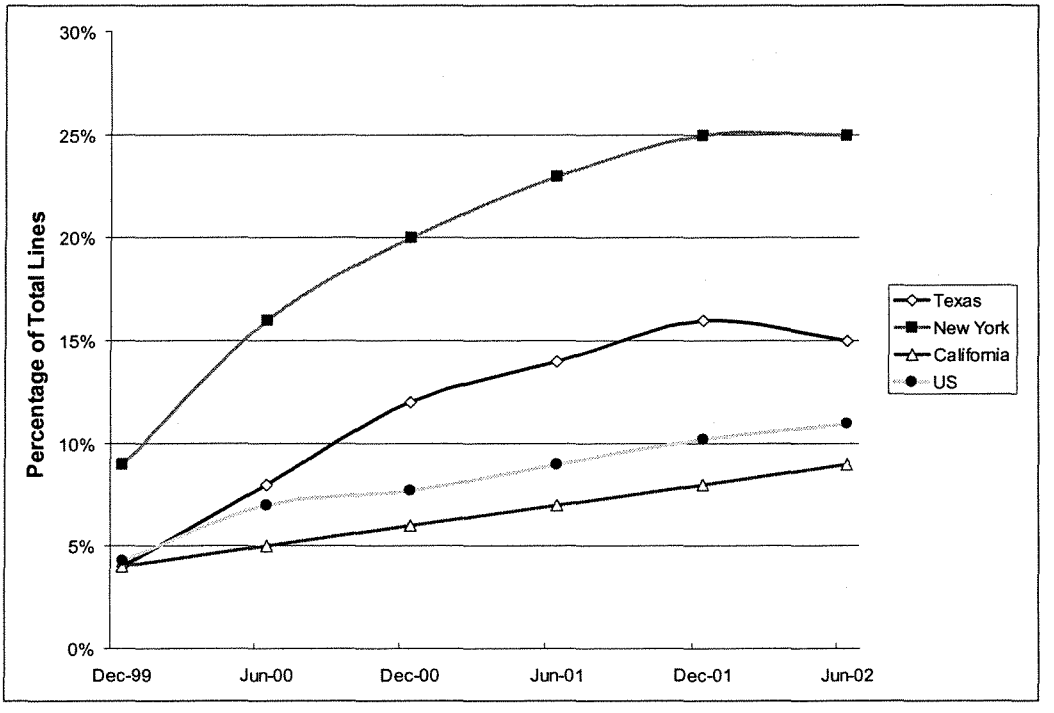
	Dec. 1999	June 2000	Dec. 2000	June 2001	Dec. 2001	June 2002
Market Share	4%	8%	12%	14%	16%	15%
Growth Rate	—	75%	58%	15%	13%	-3%

SOURCES: *Local Telephone Competition Reports*, FCC (Aug. 2000, May 2001, July 2002), Texas PUC 2003 Scope of Competition Data Responses.

[50] For additional data regarding ILEC and CLEC Retail lines in Texas from December 1999 to June 2002, please see Appendix H.

To put the data in a national context, CLEC line growth in Texas (approximately 15% at the end of June 2002) was higher than both the national average (approximately 11%) and the CLEC share in California (approximately 9%). As shown in Figure 8, CLECs in New York, the first state to gain Section 271 approval in 1999, had 25% of the lines.

Figure 8 — CLEC Line Growth in Texas Compared with Nationwide and Other States



SOURCES: *Local Telephone Competition Reports,* FCC (Aug. 2000, May 2001, July 2002, Dec. 2002), Texas PUC 2003 Scope of Competition Data Responses. The FCC reported 2,170,914 CLEC access lines in Texas as of June 2002, which is 92,449 more lines than CLECs reported to the Texas PUC for the same reporting period.

3. CLEC Business Strategies

a. CLEC Modes of Entry

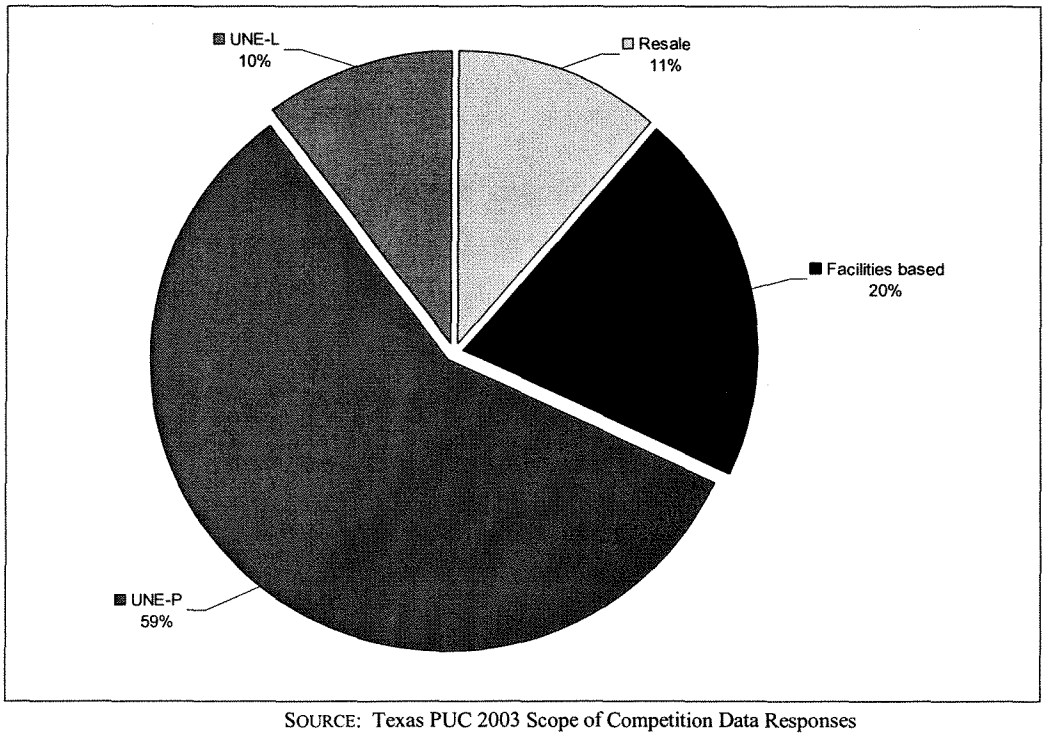
As explained in Chapter II of this Report, Section 251 of the Federal Telecommunications Act (FTA) envisioned three basic modes of entry by CLECs: [51] (1) facilities-based; (2) unbundled network elements (UNEs);[52] and (3) resale.

[51] Please see Appendix I for a detailed explanation of CLEC entry strategies.

[52] The leasing of UNEs typically occurs in one of two fashions, via UNEs (also known as UNE-Loop or UNE-L, which is the lease of one or more of the network components required for the provision of a telecommunications service), or UNE-Platform (UNE-P, which is the lease of a complete set of network elements that allows the provision of an end-to-end circuit). Individual or combinations of UNEs are available pursuant to the parties' relevant interconnection agreement, such as the Texas 271 Agreements (T2A).

As illustrated by Figure 9, Texas CLECs serve customers primarily through unbundled network element platform (UNE-P). As noted earlier, many incumbents are attempting to restrict or limit the CLECs' ability to provide service to end-use customers through UNE-P by seeking changes at the federal level. Because Texas CLECs rely heavily on the use of UNE-P as an entry mechanism, such a decision could have a widespread effect on the competitive market for local telecommunications services in Texas. As is also shown in Figure 9, CLECs serve 30% of their customers using some or all of their own facilities. This includes CLEC-owned and unbundled network element loop (UNE-L) entry strategies.

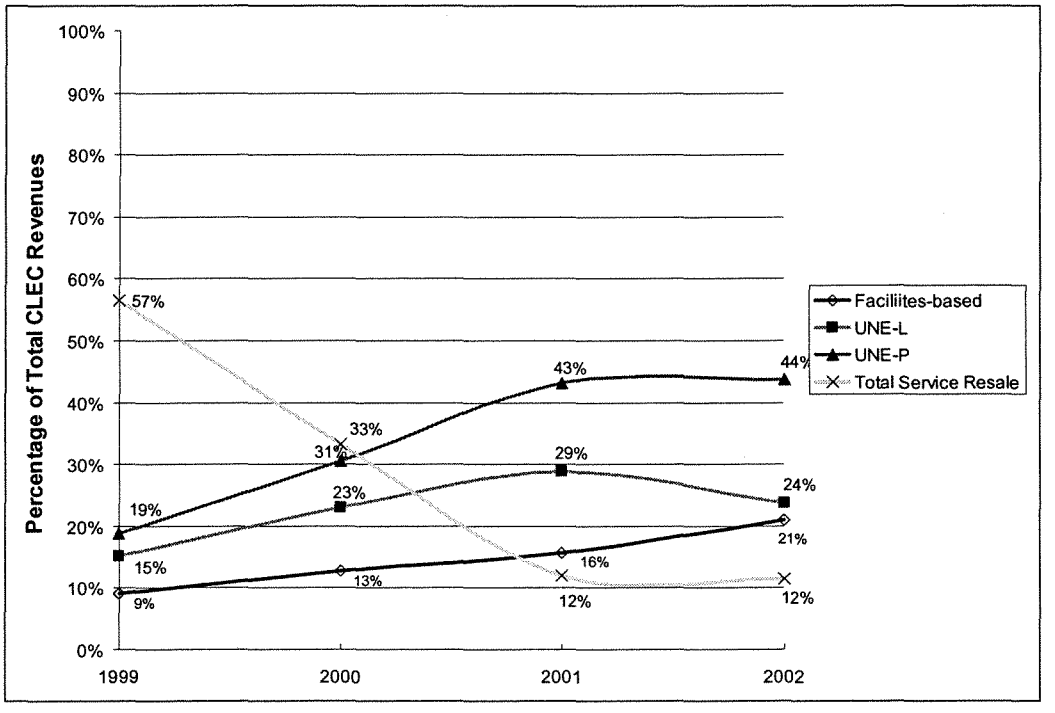
Figure 9 — CLEC Lines by Entry Strategy in Texas, as of June 2002



SOURCE: Texas PUC 2003 Scope of Competition Data Responses

Revenues from total service resale (TSR) have sharply dropped since 1999, and seem to have bottomed out. Revenues reported from the use of unbundled network elements (UNEs) in combination with the CLEC's own switch (known as UNE-L) have also recently shown a downward trend. In contrast, revenues from providing service entirely through the CLEC's own facilities (facilities-based) have steadily increased in the past six months. CLECs using the UNE-P reported revenues that almost doubled between 2000 and 2001, and have since flattened out.

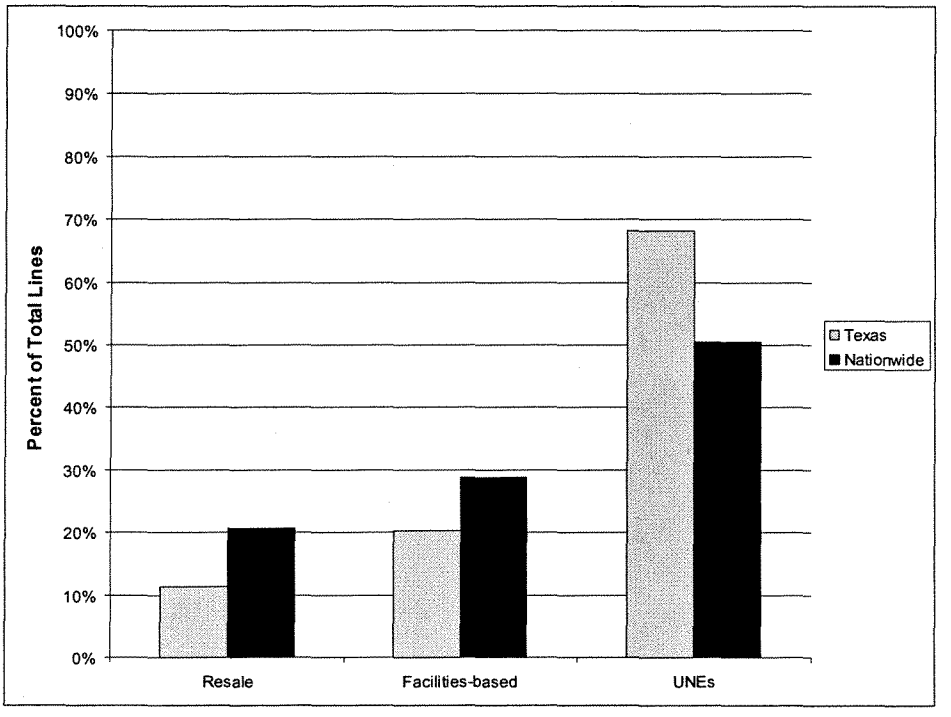
Figure 10 — Revenue by CLEC Entry Strategy in Texas



SOURCE: Texas PUC 2003 Scope of Competition Data Responses. The June 2002 revenue as reported has been doubled to estimate year-end 2002 revenues.

As reflected in Figure 11, the CLECs in the Texas market rely on UNEs more than CLECs in other States. Texas is second only to New York in the number of lines served via UNEs.

Figure 11 — Texas CLEC Entry Strategy vs. Nationwide



SOURCE: June 2002 national data reported in *Local Telephone Competition Reports*, FCC (Dec. 2002), compared with June 2002 Texas data from the Texas PUC 2003 Scope of Competition Data Responses.

b. CLEC Geographic Markets

Overall, CLECs serve Texas customers in all areas of the State, although CLECs serve more customers in urban than in rural areas in absolute terms.

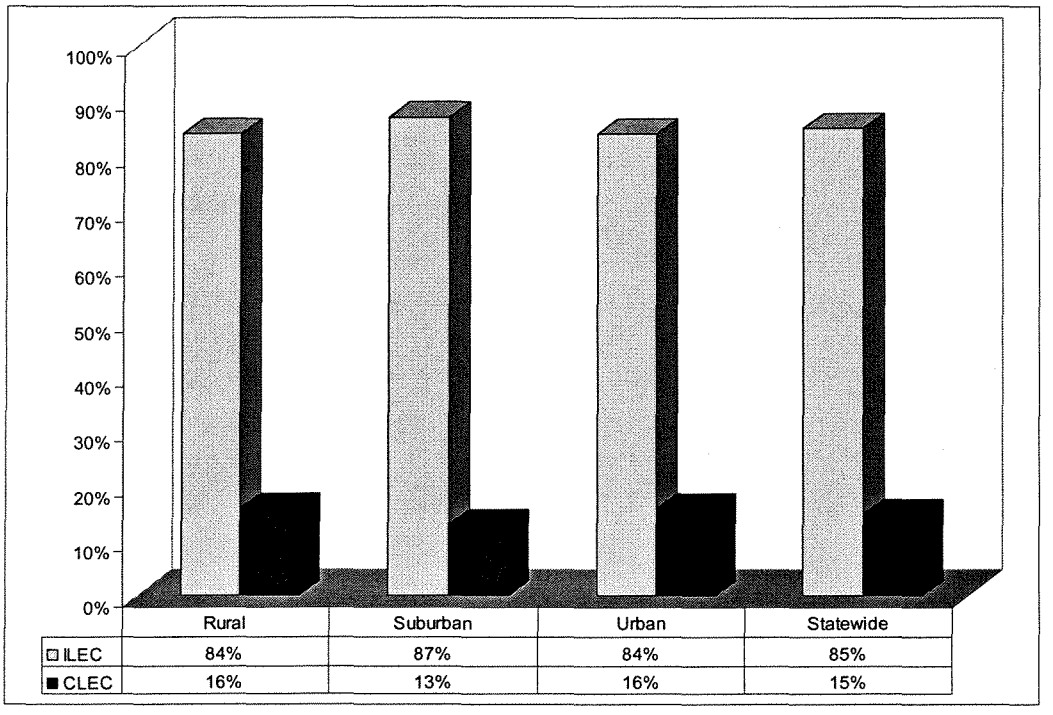
Table 5 — Total Access Lines by Geography

	Rural	Suburban	Urban	Total
ILEC	2,918,097	2,287,050	6,145,547	11,350,694
CLEC	564,413	330,484	1,182,759	2,077,656
Total	3,482,510	2,617,534	7,328,306	13,429,159

SOURCE: Texas PUC 2003 Scope of Competition Data Responses. The CLEC line total excludes 809 access lines for which exchange information was not provided by the carrier.

On a percentage basis, CLECs now serve the same percentage of the access lines in rural areas as in urban areas, as shown by Figure 12. CLECs actually serve a smaller percentage of the access lines in suburban areas than they do in urban or rural areas.

Figure 12 — ILEC versus CLEC Lines in Texas by Geography as of June 30, 2002



	Rural	Suburban	Urban	Statewide
ILEC	84%	87%	84%	85%
CLEC	16%	13%	16%	15%

SOURCE: Texas PUC 2003 Scope of Competition Data Responses

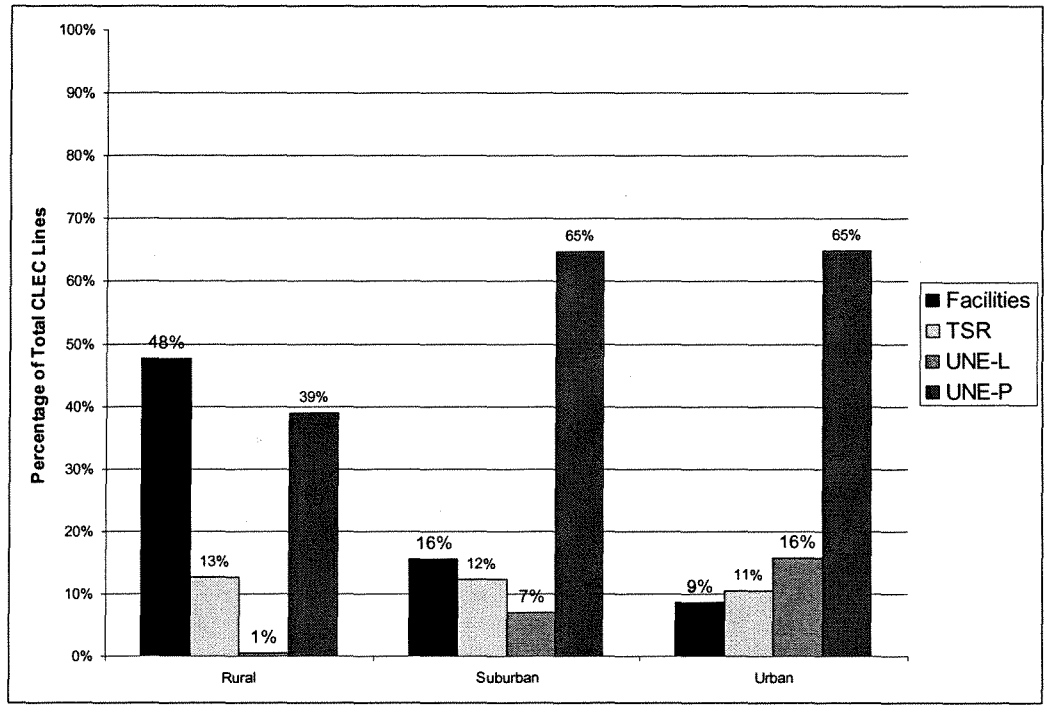
While many CLECs continue to focus their competitive efforts in urban areas, a few niche players have remained strong by serving suburban or rural customers. Sage Telecom, for example, serves rural residential and business customers exclusively through UNE-P, without using any of its own facilities.[53] Using market entry strategies such as UNE-P, UNE-L, TSR, and facility deployment, CLECs have acquired some level of penetration in virtually all areas of the State.[54]

[53] *Petition of MCI Metro Access Transmission Services, LLC, Sage Telecom, Inc., Texas UNE Platform Coalition, McLeod USA Telecommunications Services, Inc. and AT&T Communications of Texas, L.P. for Arbitration with Southwestern Bell Telephone Company Under the Telecommunications Act of 1996*, Docket No. 24542, Direct Testimony of Gary P. Nuttall at 7 (Dec. 7, 2001).

[54] *See* maps contained in Appendices J-M.

As shown in Figure 13, of June 2002, a higher percentage of rural than urban or suburban customers were served by CLECs using the CLEC's own facilities.[55]

Figure 13 — CLEC Lines by Geography and by Entry Strategy in Texas, as of June 2002



SOURCE: Texas PUC 2003 Scope of Competition Data Responses

As shown in Table 6, CLECs serve far fewer lines in suburban areas than in rural or urban, and more than twice as many customers by their own facilities in rural than in urban areas.

Table 6 — CLEC Lines by Entry Strategy and Geography in Texas

	Facilities	TSR	UNE-L	UNE-P	Total
Rural	269,300	71,684	3,036	220,393	564,413
Suburban	51,681	40,877	23,615	214,311	330,484
Urban	102,741	124,401	186,345	769,272	1,182,759

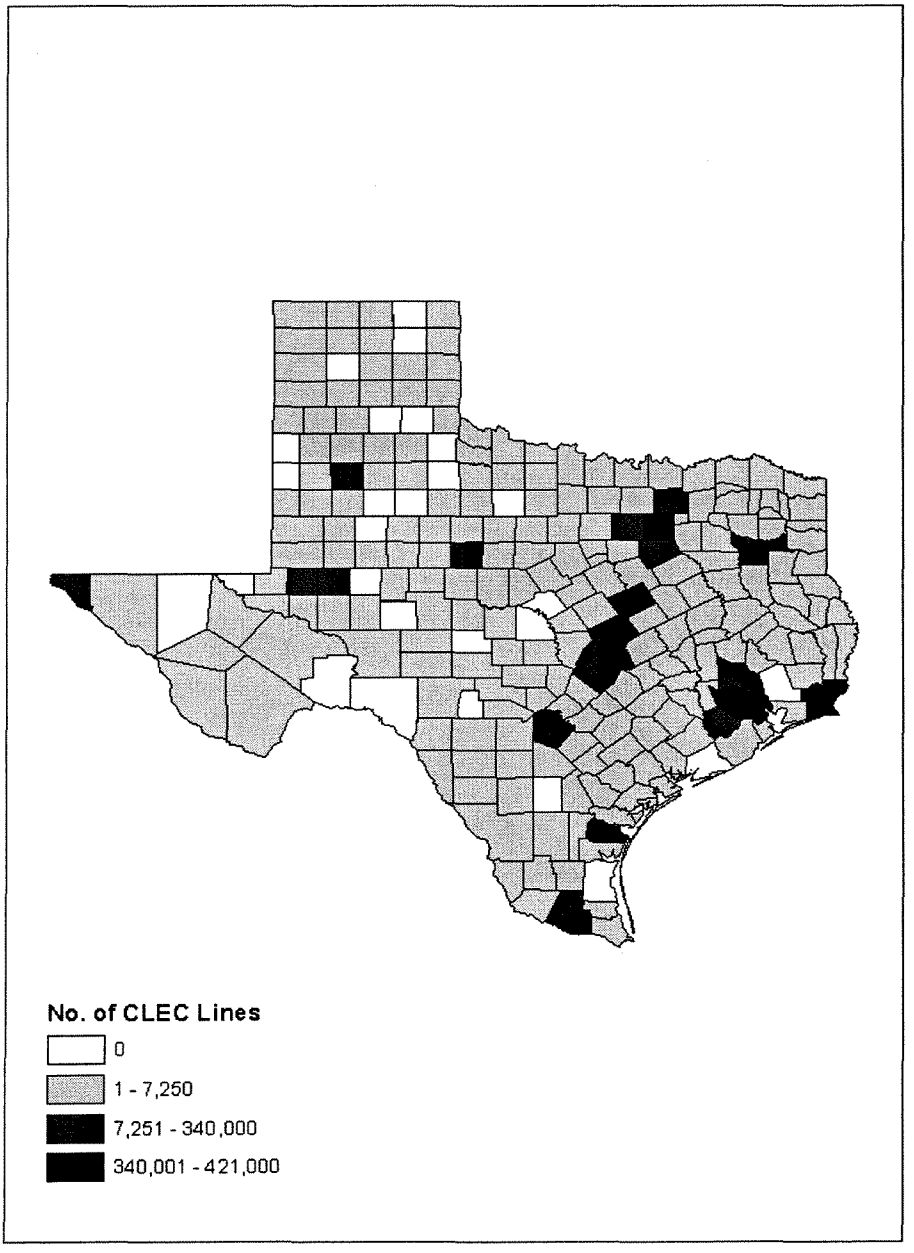
SOURCE: Texas PUC 2003 Scope of Competition Data Responses

As illustrated by Figure 14, CLECs have obtained more lines in urban areas, primarily in downtown and other business districts.[56] This could be attributed to high investment costs and small customer bases in rural areas, resulting in smaller profit margins.

[55] Appendix A, Research Methodology, contains the definition of rural, suburban, and urban that was used to collect data for the 2003 Scope of Competition Report.

[56] *See also* maps contained in Appendices J-M.

Figure 14 — Total Number of CLEC Lines by County, as of June 2002



SOURCE: Texas PUC 2003 Scope of Competition Data Responses

c. CLEC Business and Residential Customers

As of June 2002, CLECs served more residential than business lines in all markets throughout the State. However, it is important to note that the statewide ratio of residential versus non-residential lines is 1.75 to 1, whereas the CLEC ratio is 1.5 residential lines to 1 non-residential line.

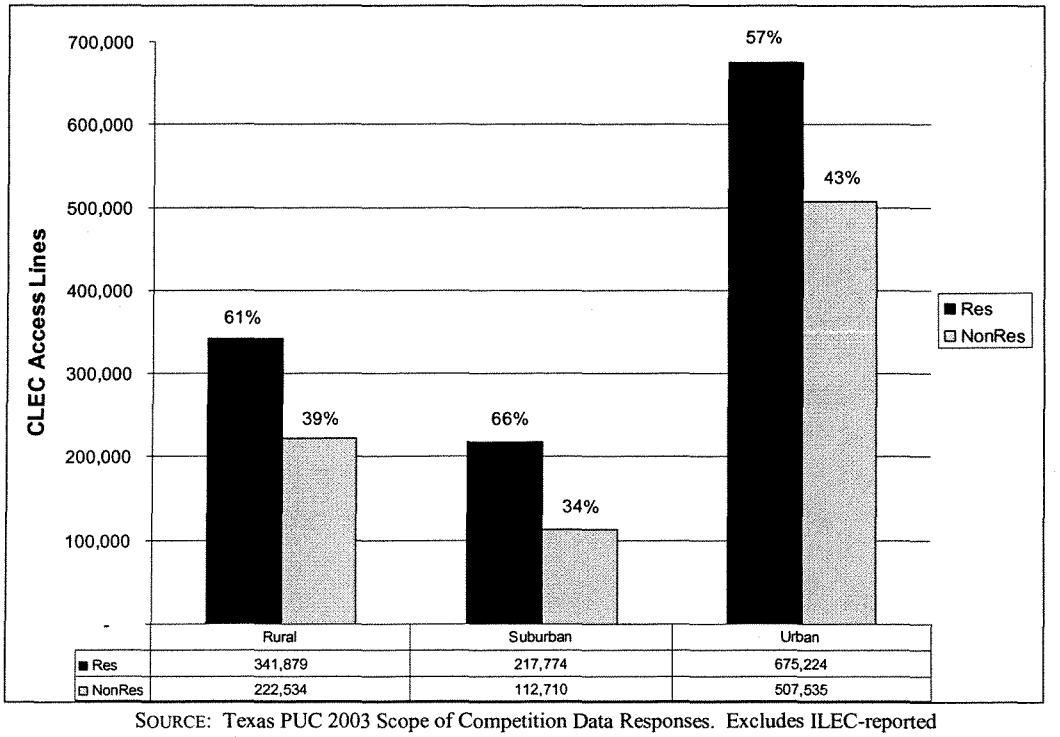
Table 7 — Total ILEC and CLEC Residential and Non-Residential Lines in Texas, as of June 2002

	ILEC	CLEC	TOTAL
Residential	7,319,140	1,235,214	**8,554,354**
Non-Residential	4,031,554	843,251	**4,874,805**

SOURCE: Texas PUC 2003 Scope of Competition Data Responses, excludes ILEC-reported wholesale lines.

A further breakdown of the CLEC residential and non-residential lines in Texas reveals that in all three zones of the State (rural, suburban, and urban),[57] CLECs have more residential lines than non-residential.

Figure 15 — CLEC Lines by Geography and Type of Customer in Texas

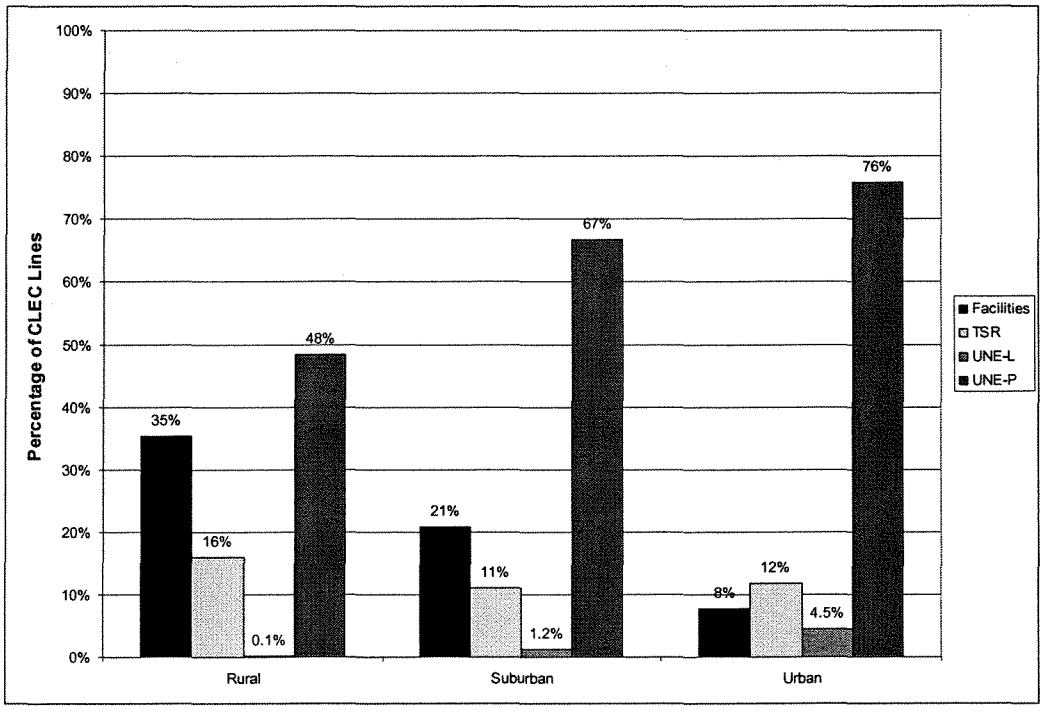


SOURCE: Texas PUC 2003 Scope of Competition Data Responses. Excludes ILEC-reported wholesale lines, and 809 CLEC access lines for which exchange information was not provided.

[57] Appendix A, Research Methodology, contains the definition of rural, suburban, and urban that was used to collect data for the 2003 Scope of Competition Report.

UNE-P remains the entry strategy of choice for CLECs to serve residential customers in any of the three zones.

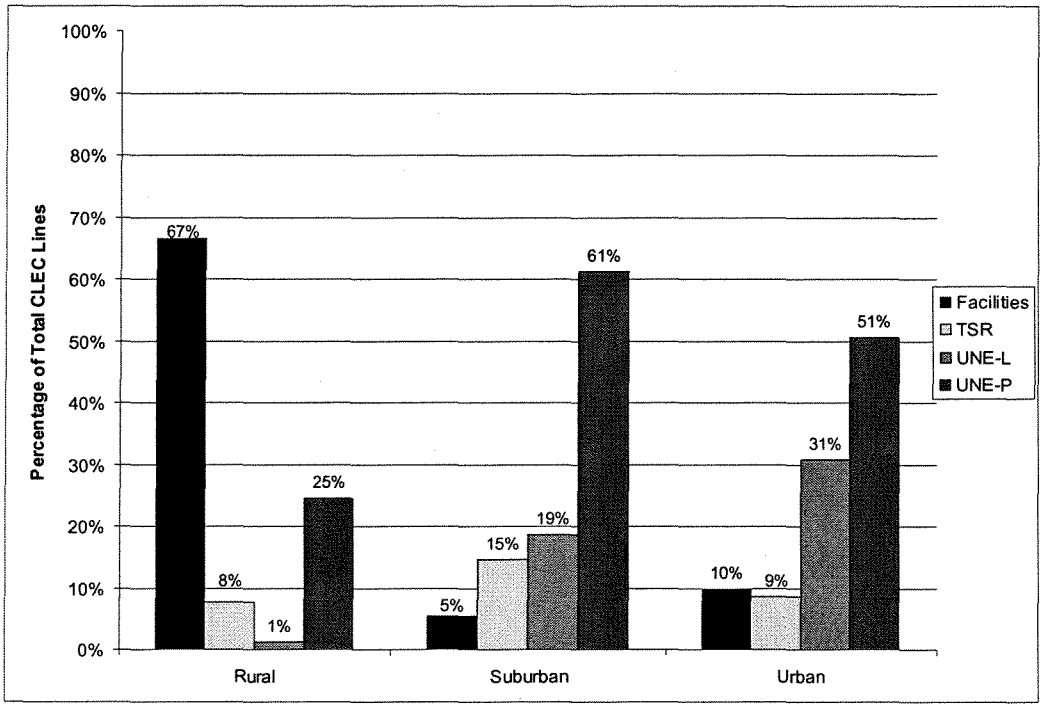
Figure 16 — CLEC Residential Lines by Entry Strategy in Texas



SOURCE: Texas PUC 2003 Scope of Competition Data Responses

However, as shown in Figures 17 and 18, CLECs have made deeper inroads into the non-residential market. CLECs serve three times as many non-residential customers in rural areas (148,190 lines) than in urban areas (49,899 lines) using their own facilities to provide service.

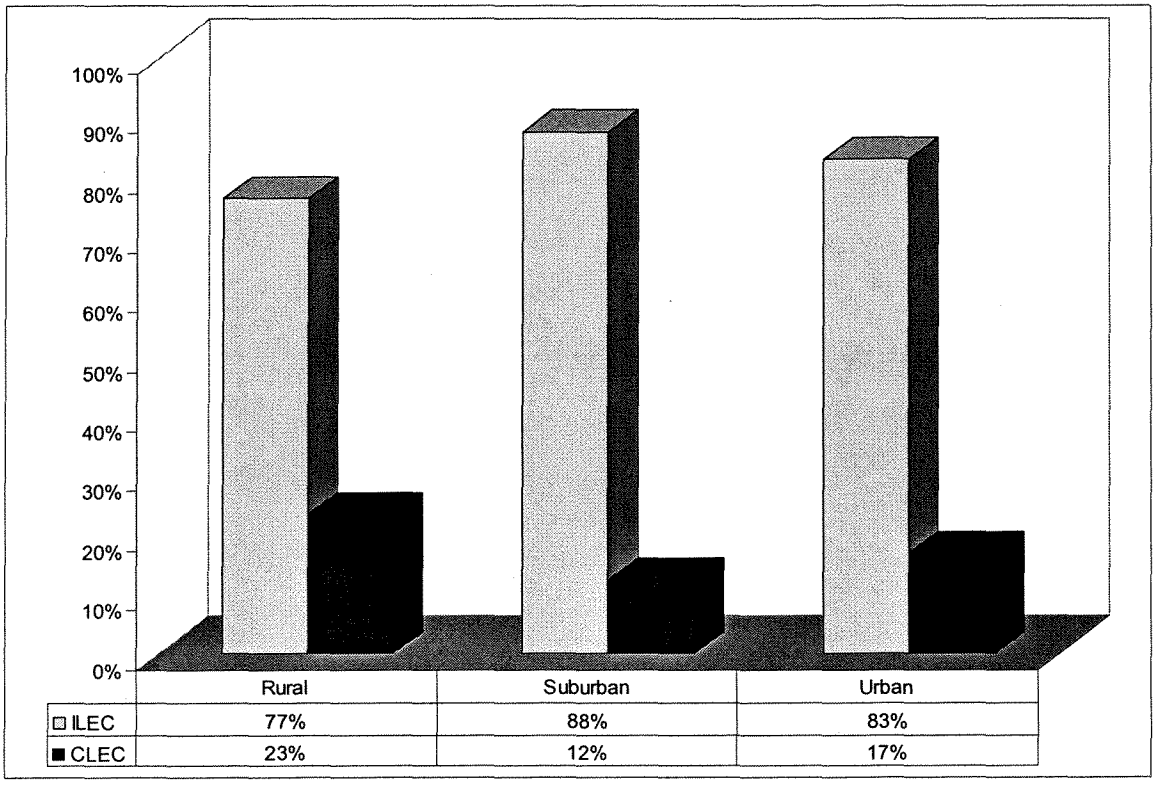
Figure 17 — CLEC Non-Residential Lines by Entry Strategy in Texas



SOURCE: Texas PUC 2003 Scope of Competition Data Responses

In addition, CLECs serve 23% of the business customers in rural areas of the State, compared to 17% market penetration in urban areas, and just 12% in suburban areas.

Figure 18—LEC Non-Residential Lines in Texas by Geography as of June 30, 2002



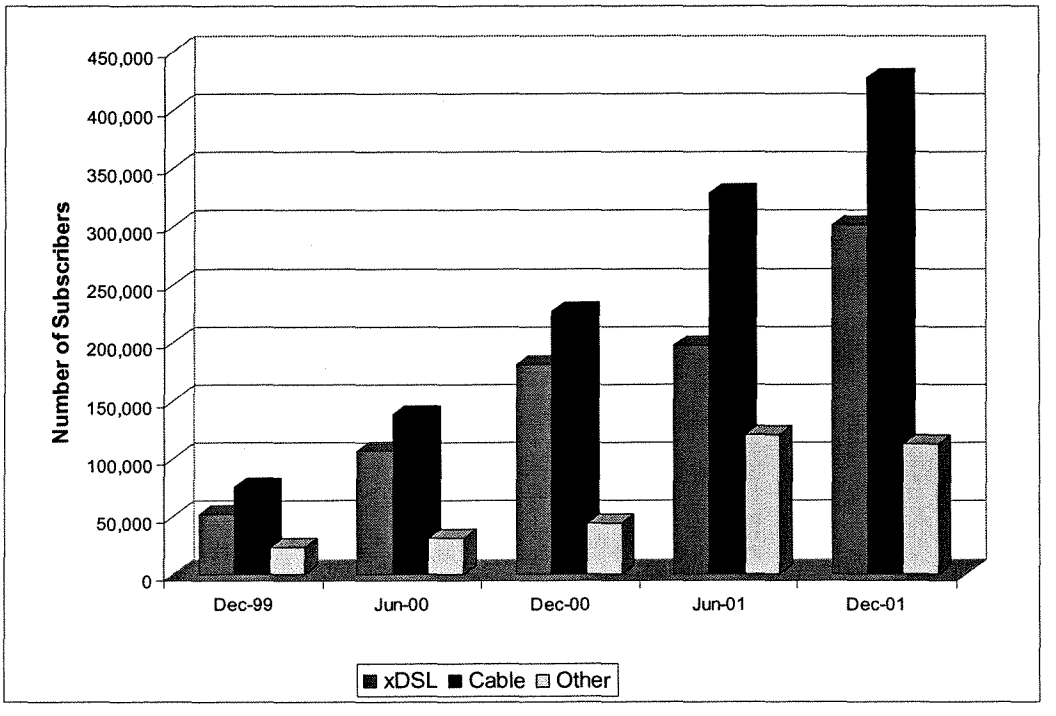
	Rural	Suburban	Urban
ILEC	726,338	796,921	2,495,478
CLEC	222,534	112,710	507,535

SOURCE: Texas PUC Scope of Competition Data Responses. Excludes ILEC-reported wholesale lines, and 809 CLEC access lines for which exchange information was not provided.

B. Broadband Market in Texas

Since the *2001 Scope Report*, broadband subscribership in Texas has grown from 152,000 customers in December 1999 to over one million customers as of June 2002.

Figure 19 — Broadband Subscribers in Texas



SOURCE: *High Speed Services for Internet Access,* FCC (Dec. 2000, August 2001, Feb. and July 2002).

FCC data reveals that of the high-speed lines in Texas, 89% were for residential and small business use; the remaining 11% were lines in service connecting to medium and large business, institutional, or government end-user customers.[58]

With respect to technology deployed in the last mile, 55% of high-speed services were delivered over coaxial cable; 35% were delivered over asymmetric digital subscriber line (ADSL); and 10% included wireline technologies other than asymmetric digital subscriber line (ADSL), optical fiber to the subscriber's premises, satellite, and terrestrial, fixed wireless systems.[59]

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[58] Federal Communications Commission, Industry Analysis and Technology Division, *High-Speed Services for Internet Access, Status as of June 30, 2002.* WIRELINE COMPETITION BUREAU, December 2002. Available online at: www.fcc.gov/wcb/iatd/comp.html.

[59] Federal Communications Commission, Industry Analysis and Technology Division, *High-Speed Services for Internet Access, Status as of July 30, 2002,* WIRELINE COMPETITION BUREAU, December 2002. Available online at: www.fcc.gov/wcb/iatd/comp.html.

With respect to other States, Texas was ranked fourth for the number of high-speed lines. For the period 1999 to 2002, Texas's broadband growth rate exceeded the national average and that of many other large States.[60]

Table 8 — Broadband Subscribers in Texas Compared to Other States

STATE	1999 TOTAL	JUNE 2000 TOTAL	DEC. 2000 TOTAL	JUNE 2001 TOTAL	DEC. 2001 TOTAL	JUNE 2002 TOTAL	% CHANGE 1999 TO 2002
Texas	152,518	267,087	522,538	646,839	840,665	1,050,511	589
California	547,179	910,006	1,386,625	1,705,814	2,041,276	2,598,491	375
Massachusetts	114,116	185,365	289,447	357,256	505,819	583,627	411
New York	186,504	342,743	603,487	893,032	1,199,159	1,460,894	683
North Carolina	57,881	81,998	136,703	205,616	357,906	461,736	698
Pennsylvania	71,926	79,892	176,670	263,236	376,439	516,488	618
Nationwide Total	2,754,286	4,367,434	7,069,874	9,616,341	12,792,812	16,202,540	488

SOURCE: *High Speed Services for Internet Access,* FCC (December 2002).

Broadband providers continue to offer new products and services to attract additional customers. In August 2002, SBC Communications released plans to roll out additional lower-speed, lower-priced digital subscriber line (DSL) options in certain markets in Texas in an attempt to compete with the cable modem market.[61] For example, in a co-branding arrangement with Yahoo, SBC rolled out a slower, less expensive DSL service for $42.95 per month in September 2002.[62]

Cable continues to capture market share, and with the addition of video-on-demand platforms, the cable industry is expected to continue to perform well.[63]

As reflected in Figures 20 and 21 below, in general, there are more broadband providers in counties with higher population densities. However, Figure 21 demonstrates that while several counties in Texas lack cable or DSL providers altogether, a few somewhat sparsely populated counties of the State actually are served by one or more providers.

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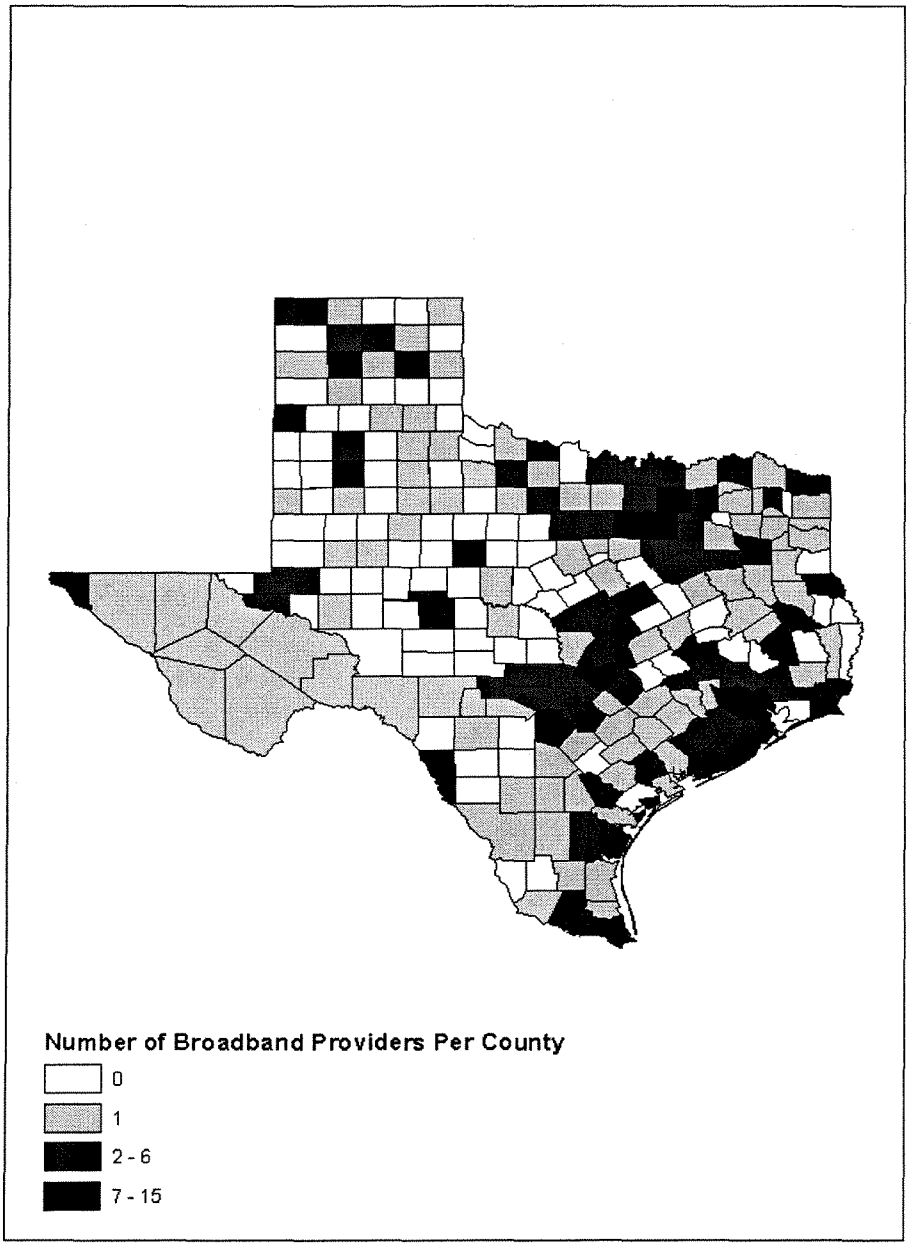
[60] *Id.*

[61] Andrea Ahles, *Quick studies*, FORT WORTH STAR-TELEGRAM, August 22, 2002, p. C1.

[62] Andrea Ahles, *SBC Communications offers co-branded broadband service*, STAR-TELEGRAM at 2C (Sept. 19, 2002).

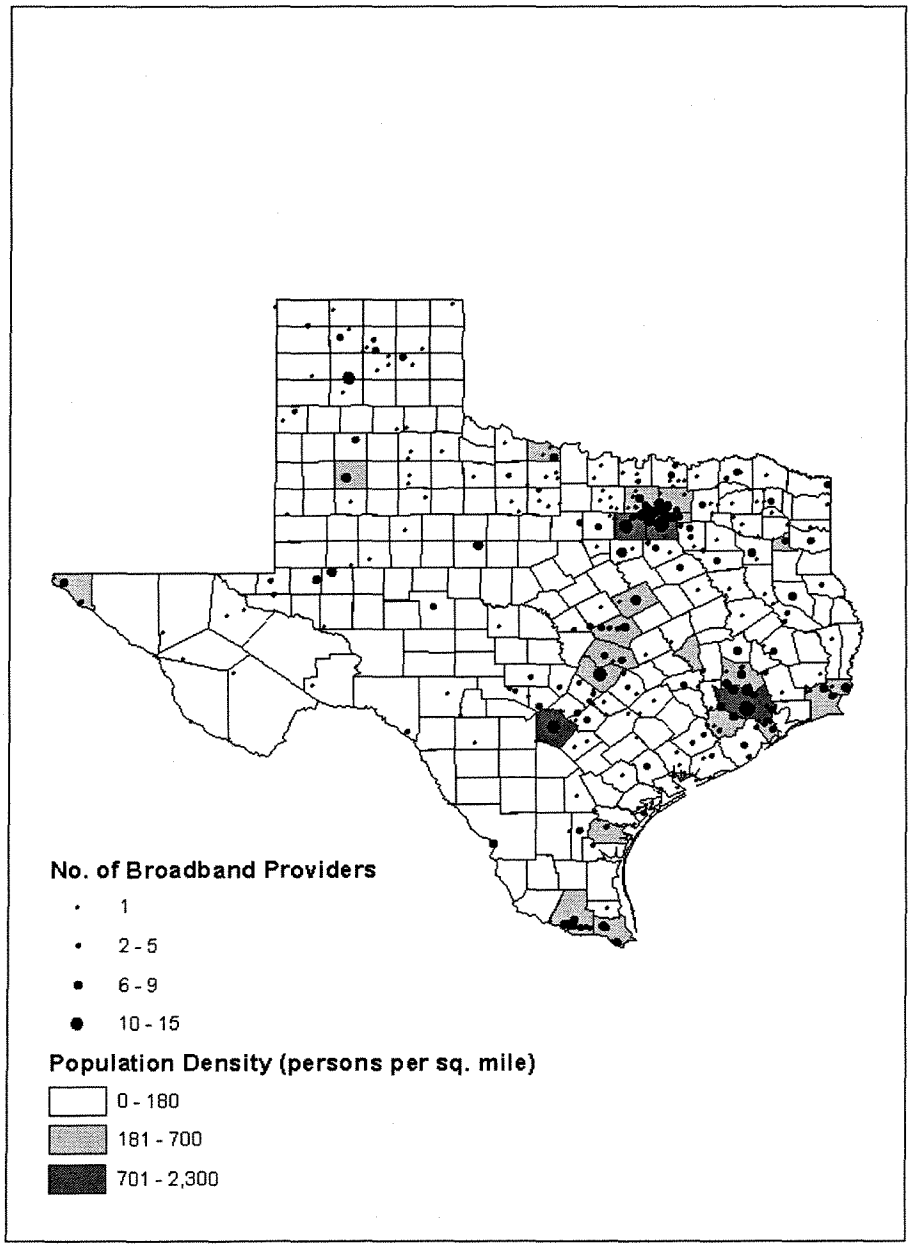
[63] Roben Farzad, *Telecom-Mess Survivors*, FWST (May 5, 2002); Dan Sweeney, *Cable's Plumb Position*, AMERICA'S NETWORK at 32 (July 1, 2002).

Figure 20 — Number of Broadband Providers per County as of June 2002



SOURCE: Texas PUC 2003 Scope of Competition Data Responses

Figure 21 — Number of Broadband Providers by Population Density of County



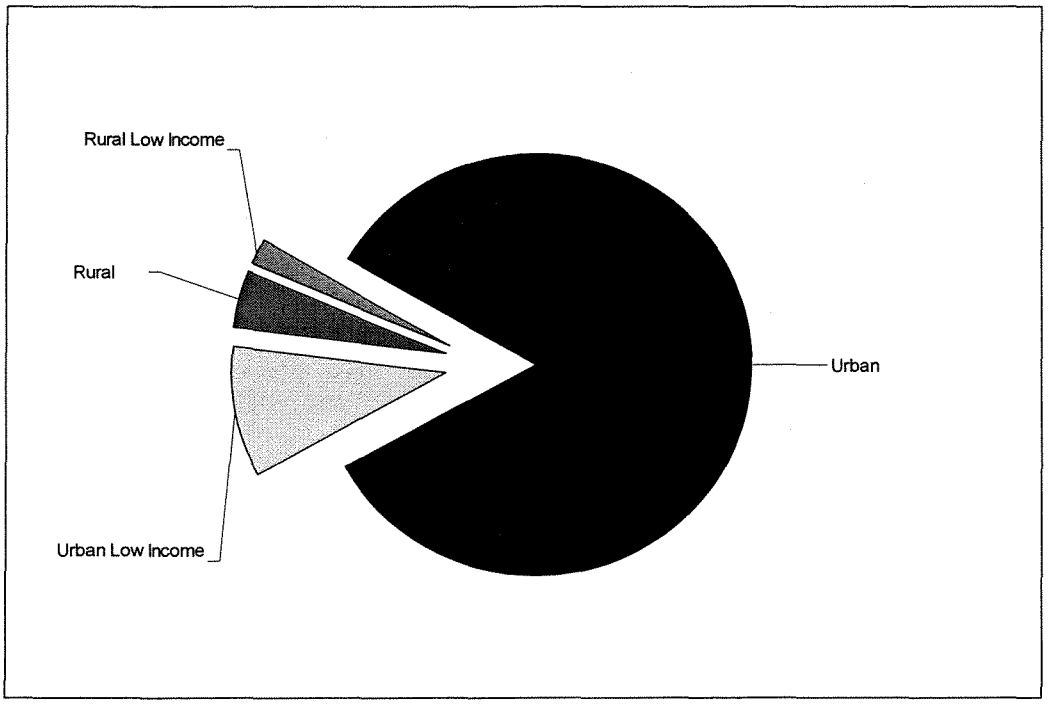
SOURCE: Texas PUC 2003 Scope of Competition Data Responses

Project Pronto

SBC offers a DSL product—referred to as Project Pronto—that it launched in the Fall of 1999.[64] By placing remote terminals further into residential neighborhoods, SBC is able to overcome distance limitations to bring DSL service within the reach of the vast majority of its customers. SBC's goal at the outset was to have DSL available to 80% of its customer base by 2002. By October 2001, SBC had scaled that number back to 58% and was announcing a further slowdown in towns with lower population densities.[65] This slowdown was intended to cut capital expenditures by $1 billion.

As shown in Figure 22, 94% of SBC's DSL deployment in Texas is in urban areas, including low-income urban areas.

Figure 22 — Urban vs. Rural SBC Wire Centers with DSL Deployment, 4th Quarter 2001



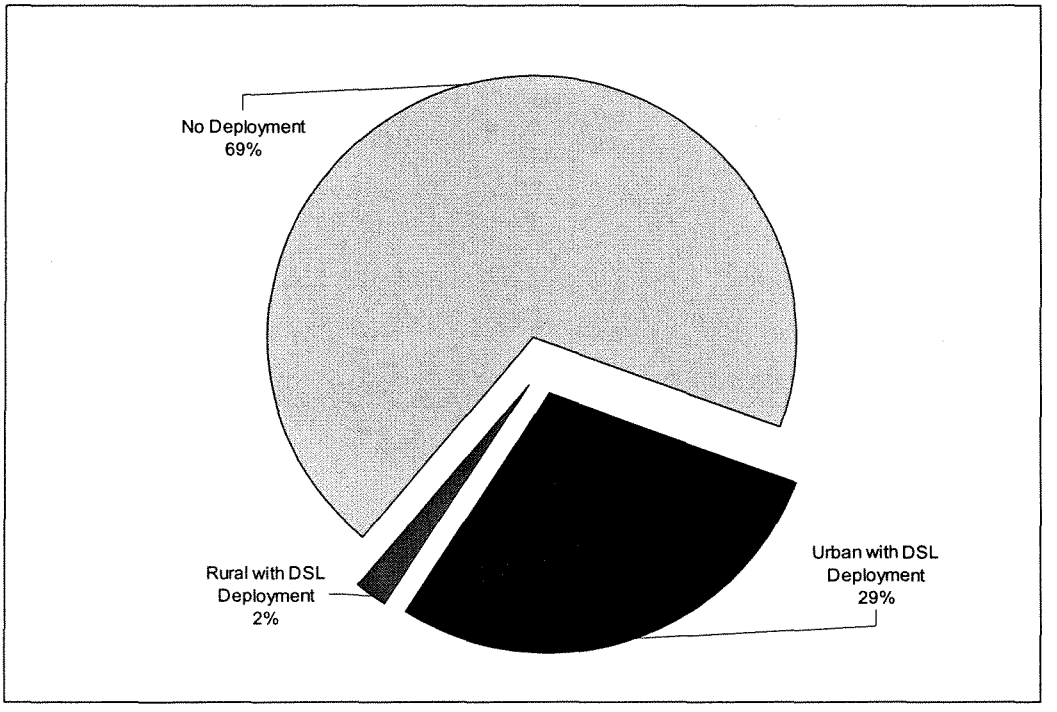
SOURCE: SBC/Ameritech Merger xDSL Deployment, http://www.fcc.gov/wcb/mcot/SBC_AIT/xDSL_deployment (October 30, 2002)

[64] Karen Brown, *SBC Takes Pronto Out Of DSL Buildout Pace*, BROADBAND WEEK, October 29, 2001.

[65] *Id.*

Figure 23 shows that as of the fourth quarter of 2001, 69% of SBC wire centers in Texas had no deployment of DSL.

Figure 23 — xDSL Deployment in SBC Wire Centers, 4th Quarter 2001



SOURCE: SBC/Ameritech Merger xDSL Deployment, http://www.fcc.gov/wcb/mcot/SBC_AIT/xDSL_deployment (October 30, 2002)

SBC has argued that while DSL could be one of its key growth enterprises, it is unwilling to invest further substantial capital in it under current regulations.[66] According to SBC, on a nationwide scale, although 70% of high-speed internet access consumers use a cable modem and only 30% use DSL, the cable industry remains virtually unregulated while SBC faces what it calls "pervasive regulation."[67]

[66] Vikas Bajaj, *SBC says industry policies need to change*, DALLAS MORNING NEWS, July 9, 2002, p. D1.

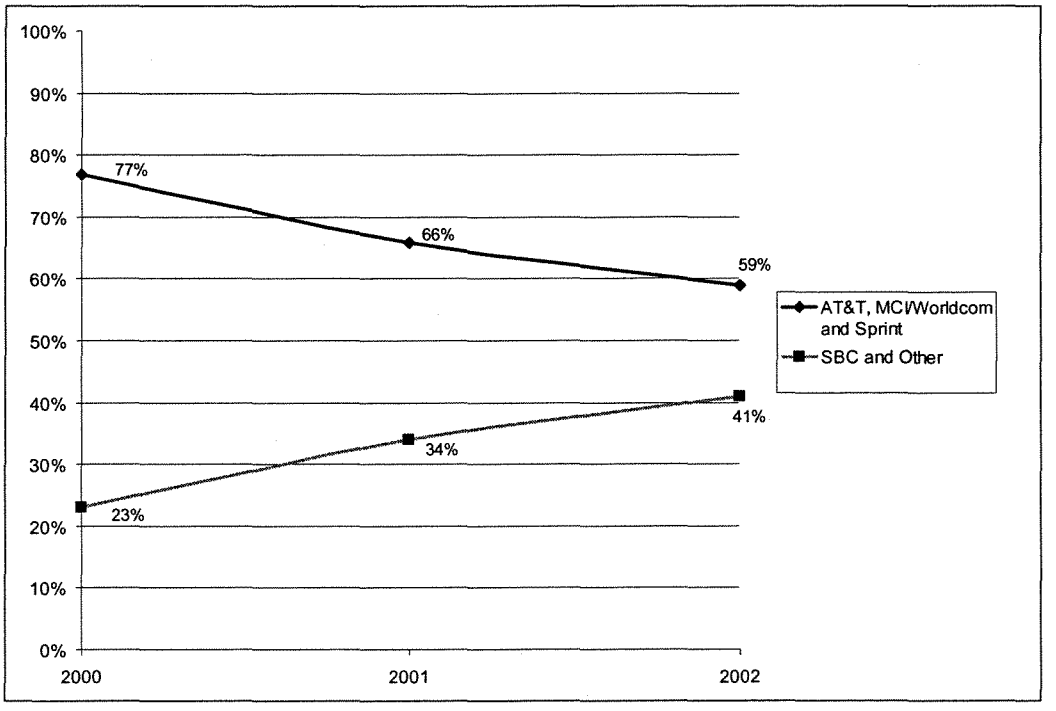
[67] *Id.*

C. Long-Distance Market in Texas

1. Market Share

Since entering the interLATA telephone markets in 2000, SBC's share of the Texas long-distance market has grown. Comparing the long-distance market share (measured in minutes-of-use) jointly held by AT&T, MCI/WorldCom, and Sprint with that of SBC and other carriers, the market share of SBC and others grew from 23% in 2000, to 34% in 2001, and reached 41% in 2002.[68]

Figure 24 — Long-distance Market Share Over Time



SOURCE: Texas PUC 2003 Scope of Competition Data Responses. The other category includes facilities-based IXCs, such as Williams Communications and Broadwing, Inc., as well as resellers.

Increased long-distance competition has resulted in substantial savings for customers. A recent analysis of Texas long-distance rates indicated that Southwestern Bell's entry into the long-distance market lowered peak long-distance prices by 11%, weekday off-peak prices by 18%, and weekend off-peak prices by 9%.[69] The same study found that the average Texas consumer would have paid $17.52 for long-distance prior to SWBT's entry and would have paid $15.72 in the post entry period, implying a savings of $1.80 or 10.3%.

[68] Texas PUC 2003 Scope of Competition Data Request.

[69] Hausman, Leonard, and Sidak, Does Bell Company Entry Into Long Distance Telecommunications Benefit Consumers?, 70 ANTITRUST L.J. (2002) at 463.

2. Long-Distance and Wireless Comparison

As discussed in Chapter II of this Report, the wireless market is growing while the long-distance market seems to be shrinking. Table 9 demonstrates that there is some correlation between the growth in the wireless market and the decline in the long-distance market. This comparison was done by comparing the number of mobile subscribers in Texas, which has nearly doubled in the last two years, with the number of switched access minutes-of-use in Texas, which increased slightly between 1999 and 2000 and has subsequently fallen off by about 3%. Table 9 also includes the number of basic dial tone lines, which expanded in 2000 from 1999 levels, but fell in 2001.

Table 9 — Comparison of Wireline and Wireless in Texas

	1999	2000	2001
Mobile Wireless Subscribers	5,792,453	7,548,537	9,062,064
Long-distance (Switched Access) Minutes of Use	11,397,493,545	11,495,969,512	11,137,023,457
Total Basic Dialtone Lines	13,188,047	13,750,684	13,531,474

SOURCES: *Local Telephone Competition Reports,* FCC (Aug. 2000, May 2001, July 2002), Texas PUC 2003 Scope of Competition Data Responses.