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Via Electronic Filing

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

Re: *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 & WC Docket No. 04-313

Dear Ms. Dortch:

As MCI explained in its initial comments in the above-captioned proceeding, the *USTA I* and *USTA II* court decisions require the Commission to conduct a granular analysis to determine whether competitors are impaired in their ability to offer mass market voice service without access to unbundled local switching.¹ The Bell Operating Companies (“BOCs”) claim that the Commission need not conduct a granular analysis because it can rely instead on the availability of Voice over Internet Protocol (“VoIP”) applications to justify a failure to find impairment for unbundled switching on a nationwide basis.² In fact, however, VoIP is not uniformly available across the United States, as the National Telecommunications and Information Administration (“NTIA”) recently concluded.

In a September 2004 report, NTIA noted that over 22% of rural dial-up Internet households report that they have no access to a broadband connection because neither cable modem nor DSL is available in their areas.³ Thus these consumers cannot subscribe to VoIP service. According to NTIA, “[t]his [disparity] is not new. As explained in the April 2000

¹ See *United States Telecom Ass’n v. FCC*, 359 F.3d 554, 570 (D.C. Cir. 2004) (“*USTA II*”) (“the Commission cannot proceed by very broad national categories where there is evidence that markets vary decisively”) (citing *United States Telecom Ass’n v. FCC*, 290 F.3d 415, 425-26 (D.C. Cir. 2002) (“*USTA I*”)); see also *USTA II*, 359 F.3d at 569 (“[T]he Commission may not ‘loftily abstract[] away from all specific markets,’ but must instead implement a ‘more nuanced concept of impairment.’”) (quoting *USTA I* at 426).

² See, e.g., SBC Reply Comments, WC Docket No. 04-313, at 77-79; Verizon Comments, WC Docket No. 04-313, at 85-88, 91-99, 106-109.

³ U.S. Department of Commerce: Economics and Statistics Administration and National Telecommunications and Information Administration, “A Nation Online: Entering the Broadband Age,” at 14 (Figure 11) (Sept. 2004) (“NTIA Report”), available at: <<http://www.ntia.doc.gov/reports/anol/NationOnlineBroadband04.pdf>>. This figure does not include the number of rural, non-Internet households that cannot obtain a broadband connection.

report co-authored by the Departments of Agriculture and Commerce, cable modem and DSL technologies are less likely to serve rural areas for varied reasons.”⁴ The cost of building out cable where the subscriber base is limited, as well as limitations on the ability to provide DSL when the customer’s loop is more than 15,000 to 18,000 feet from the central office, deter deployment of these technologies to more rural and high-cost areas.⁵ The significant geographic variation with respect to the availability of broadband and, by extension, VoIP, underscores the critical need for the Commission to conduct a granular analysis examining impairment for unbundled local switching on a market-by-market basis, in accordance with *USTA I* and *USTA II*.

Even where VoIP is available, unless it is provided by the cable company, it is not the type of intermodal, facilities-based competition that the *USTA* court required the Commission to consider.⁶ As SBC Chairman and CEO Edward E. Whitacre Jr. recently stated, VoIP providers like Vonage do not use their own facilities, but rather simply offer a software application that “rides” over another company’s broadband connection.⁷ As Mr. Whitacre told the *Wall Street Journal*:

Companies like Vonage and Skype are laying on a voice application on broadband connections. They’re getting a free ride. They’re using my infrastructure and facilities . . .⁸

Consequently, the Commission may not rely upon VoIP to ensure that mass market customers will have a choice of local voice providers in the absence of unbundled switching.

Respectfully submitted,



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cc:	Scott Bergmann	Matthew Brill	Michelle Carey
	Jeffrey Carlisle	Gail Cohen	Ian Dillner
	Aaron Goldberger	Daniel Gonzalez	Russ Hanser
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⁴ *Id.* at 13. The percentage of rural households with Internet service that subscribe to cable modem (14.3%) or DSL (9.2%) also is significantly lower than the national averages (20.6% and 15.2%, respectively). *Id.* at 13 (Table 3).

⁵ *Id.* at 13.

⁶ *See USTA I*, 290 F.3d at 428-29.

⁷ “Meet the New TV Guy: SBC’s Whitacre Revs Up for Video as Cable, Internet Eat into His Phone Business,” *Wall Street Journal*, B1, B5 (Nov. 23, 2004).

⁸ *Id.* at B5.