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December 7, 2004

BY ELECTRONIC FILING

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

Re: Oral *Ex Parte* Presentation, 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 December 6, 2004, on behalf of MCI, I spoke by telephone with Russell Hanser and Marcus Maher of the Wireline Competition Bureau, regarding the above-captioned proceeding. During that conversation, I discussed the transition required if the Commission were to determine that switching need not be unbundled, and described architectural safeguards to address concerns regarding the use of unbundled network elements ("UNEs") for stand-alone long distance services. In addition, on the same day, Curtis Groves, MCI, spoke by telephone to Jessica Rosenworcel about the switching transition.

Switching Transition. In the *Triennial Review Order*, the Commission provided, in the event of a finding of non-impairment for switching, for a time period in which orders for migrations to competitive LEC-owned switching must be placed, and then for a staged transition of the embedded base of customers served by UNE-P. If UNE-P were eliminated in certain markets, competitive LECs currently using UNE-P would need to consider other options to serve their customer base. This may include serving some customers via UNE-L, and it may also include partnering with other CLECs that already have in place the equipment and facilities necessary to serve customers via UNE-L. Where a competitive LEC (carrier A) partners with another competitive LEC (carrier B), migration of carrier A's embedded base of UNE-P customers from the incumbent LEC's switch to carrier B's switch would raise precisely the same hot cut issues as migration of

that same customer base to carrier A's own switch. That is, incumbent LECs would not be able to perform hot cuts in the volumes required, and instead would have to process the migrations over an extended period of time. Accordingly, the Commission should make clear that any deadlines for placing orders for migration, as well as any staged transition, would apply regardless of whether the competitive LEC is transitioning its UNE-P customer base to its own switch or to the switch of another competitive LEC.

Use Restrictions. MCI's view always has been that service eligibility restrictions are not required by the Communications Act of 1934, as amended ("Act"), and are not good public policy. In particular, the service eligibility requirements adopted in the *Triennial Review Order* are far too broad, precluding CLECs from using loop-transport combinations not only for long distance voice services but likely also for an array of local exchange and exchange access services, including local private line, local data, and special access. As a result, the Commission should not apply any service eligibility requirements to loop-transport combinations.

Further, the Commission should not extend those same service eligibility requirements to individual UNEs. If it were to do so, the ability of CLECs to use UNEs to provide local exchange and exchange access services could be substantially curtailed. For that reason, if the Commission retains the service eligibility requirements, those requirements should continue to be applied only to loop-transport combinations, not to stand-alone elements.

To the extent that the Commission decides to apply the service eligibility criteria adopted in the *Triennial Review Order* to individual UNEs and loop-transport combinations despite these problems, then at a minimum the Commission should modify the application of those criteria with respect to both loop-transport combinations and stand-alone UNEs, as described below. First, with respect to local private line, the Commission should adopt an architectural safeguard that would permit carriers to be eligible for UNEs if they certify that the UNE is being used for a local private line service that connects two end users in the same LATA. Second, exchange access service should not be subject to service eligibility requirements. Third, the Commission should adopt specific architectural safeguards for data services, leaving the architectural safeguards adopted in the *Triennial Review Order* in place for voice services. One way to accomplish this would be to require carriers to make the following three-part certification with respect to local data services: (1) the requesting carrier has received state certification or complied with other applicable requirements necessary to provide local data service in the area being served; (2) the circuit to be provided terminates in a collocation arrangement established pursuant to section 251(c)(6) of the Act, and located within the same LATA as the customer's premises; and (3) the circuit is used to originate or terminate traffic on a switch that employs other than circuit-switched technology and provides local switching functionality, and that is not solely deployed for the purpose of providing long distance services.

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Pursuant to section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this letter is being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,

/s/ Ruth Milkman

Ruth Milkman

cc: Russell Hanser
Marcus Maher
Jessica Rosenworcel