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December 8, 2004

VIA ECFS

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

Re: Unbundled Access to Network Elements, WC Docket No. 04-313; Review of the Section 251 Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338

Dear Ms. Dortch:

Telscape Communications, Inc., through its undersigned counsel, respectfully submits this letter for the record in the above-captioned proceedings. Telscape asks the Commission to consider incorporating two items into its decisions in these matters. First, Telscape believes that any mandatory transition from unbundled switching to self-provided switching should be over a reasonable period of time. Telscape believes that the 27 months provided for in the *Triennial Review Order* would be adequate. Anything less will risk significant disruption in cutovers and customer service, thus harming both competition and consumers.

Second, Telscape believes that in the segment of the market it serves – the Spanish language residential market – there is substantial and ongoing "impairment" to competitors sufficient to justify the continued provision of unbundled switching. Even if the Commission generally finds that on an overall national basis there is no such impairment, Telscape submits that the Commission should carve out an exception to that finding in central offices which serve a population where 25 percent or more of the customers are eligible for universal lifeline telephone service (" ULTS") or its equivalent. Without some exception for such economically disadvantaged areas, there is almost certain to be no competitive provider available to the vast majority of residents of such neighborhoods.

Telscape successfully serves economically disadvantaged areas with UNE-L and UNE-P

Telscape is in many ways living proof that it is possible for a facilities-based CLEC to compete for residential customers given the right market environment. Telscape has about 100,000 customers, over 99 percent of which are residential and all but a few of which are in the greater Los Angeles area. Further, about 90 percent of these customers receive their bill in Spanish, and about 70 percent are ULTS eligible. This makes Telscape the third largest provider of telephone services to ULTS customers in California, behind only Pacific Bell and Verizon. Telscape serves about 50,000 of its customers from one of 36 co-locations using one of its two switches. (Based on information submitted to the California PUC in a proceeding there, Telscape believes it subscribes to about half of all residential DS0 loops leased in California.) The other half of Telscape's customer base currently is served using UNE-P. Telscape believes that given sufficient time it can migrate a significant portion of these UNE-P customers to its UNE-L service and has 10 more co-locations in process for that purpose.

Telscape has successfully grown its customer base through a strategy of customer acquisition followed by facilities construction. In this way, the Company is able to finance the quarter of a million dollars that each co-location project costs. First using UNE-P the company obtains a few thousand customers in an area served by a single ILEC central office. Then it builds out a co-location space in that central office and migrates its customers to one of its own switches.

This incremental growth strategy has several advantages for Telscape. For one thing, it reduces the risk of taking on the debt required to add co-location spaces by doing so only as customer acquisition clearly justifies. This is critical to a CLEC because the competitive telecommunications market is viewed so poorly by investors and bankers today that access to investment capital (debt or equity) is very limited. Additionally, this incremental approach allows Telscape to optimize its marketing efforts by advertising over a broader area than just the irregular footprint covered by a single central office. Initially taking customers on a UNE-P basis within a broader area enables the Company to get a return on its marketing expenses while continuing to expand its facilities-based service area.

Impairment exists in central offices that serve largely low income residents

In California, consumers are eligible for "universal lifeline telephone service" ("ULTS") based on an income test. The current eligibility cut-off is $28,400 annual income for a family of four. As indicated above, about 70 percent of Telscape's 100,000 residential customers meet this standard. And 90 percent of Telscape's customers receive their monthly invoice in Spanish.

Telscape believes that its success in attracting this customer base, and its continued rapid growth in this market segment, demonstrates that Telscape is bringing a valuable service to consumers that the ILECs are not providing. The marketplace acceptance of the service tells the story. Importantly, however, Telscape encounters very limited competition from other CLECs in serving the areas populated by these customers. The lower income residential consumer simply has not been attractive to many competitive companies. The fact that Telscape subscribes to half of all the residential DS0 loops in California further supports this conclusion: if Telscape is not able to continue its aggressive marketing in its target community, these areas will certainly revert to monopoly status.

This circumstance leads Telscape to conclude that "impairment" within the meaning of Section 251 of the Telecommunications Act is certainly present if unbundled local switching is not made available in ILEC central offices serving impacted economic areas. Since precious little competition has arisen even while switching is available, it would not appear likely that the elimination of switching will further the prospects for the development of competition. Telscape stands as the embodiment of proof that in economically impacted areas unbundled switching is necessary for the expansion of competition, and that without it, competitive carriers' ability to enter the market will be severely impaired.

Certainly the lack of unbundled switching will hinder Telscape's efforts greatly. First, it will substantially increase the barrier to entry by requiring the investment in co-locations in advance of the offering of service. This financial barrier is a very onerous hurdle to a competitor of Telscape's size. As indicated above, very limited sources of capital are open to CLECs today, especially for the expenditure of a quarter of a million dollars to build a single co-location to serve residential consumers in an economically disadvantaged area. Telscape simply will have to reduce its growth plans to a slow trickle of new co-locations.

Second, the lack of unbundled switching will make it difficult for Telscape to utilize the most efficient marketing approaches. Today, with UNE-P available, Telscape can purchase mass market radio advertising in Southern California and accept customers across a broad geographic area. Where it does not have a co-location, it provisions customers on UNE-P; where it does have co-locations, it provisions them on UNE-L. Over time, new co-locations are built as customer density grows. This is how Telscape will have grown to 46 co-locations in five years. Without unbundled switching, Telscape will be limited to marketing to only those areas it can serve by means of co-locations and UNE-L. This vastly smaller geographic area cannot be described in radio ads, and such mass market ads reach such a small proportion of eligible customers as to make them uneconomic. Telscape will be forced to rely on much more costly direct marketing methods. The attached map illustrates this dramatic reduction in the coverage area available to Telscape when unbundled switching is withdrawn.[1]

Given the clear fact that competition will not develop in these impacted areas without unbundled local switching, and Telscape's successful demonstration that it can be developed if switching is available, the "impairment" standard seems clearly to be met. The only real question is how to define the areas where economically disadvantaged consumers are present in sufficient numbers to meet this test. Telscape submits that if one-quarter of the consumers served by a central office meet the test for ULTS, then competition in that area is "impaired" by the lack of competitive alternatives or attractiveness.

This 25 percent figure is a reasonable estimate of the definition of an economically impacted area. Where one quarter of the population qualifies for assistance as below the poverty line, it can fairly be said that the area is economically disadvantaged. It can also reasonably be concluded that local competition there is unlikely to develop if impaired by the unavailability of unbundled local switching.

A 27 month transition period is needed

The *Triennial Review Order* chose 27 months as its transition period, and that aspect of the ruling has not been reversed by the courts. Telscape believes that this period is appropriate for the reasons described in that *Order*. There are many steps to be taken in a transition, including the construction of new co-locations, the installation and testing of equipment, and the migration of customers following these equipment matters. Each of these steps takes months to complete and often will be subject to unforeseen delays and problems. These difficulties are even more predictable where regulatory actions create a need for all UNE-P providers to make the transition simultaneously

In the end, the true victims of a transition plan that is too short will be consumers. They will lose service, suffer reduced quality of service, and will lose many alternative sources of supply if the transition does not permit an orderly change from UNE-P to other modes of service. The Commission can prevent a consumer disaster, without running afoul of the court's rulings, by adopting a transition plan that permits a reasonable approach. As the Commission previously concluded, 27 months is a proper period for this transition.

For all these reasons, Telscape asks the Commission (1) to find that the Section 251 "impairment" test is met for unbundled switching in any telephone company central office where 25 percent or more of the consumers are below the poverty line, and (2) to provide for a

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1 *See* ***Attachment A***.

27 month transition period for those central offices where no impairment is found and unbundled local switching is to be phased out as a Section 251 UNE.

Sincerely,

Danny E. Adams / APE

Danny E. Adams
Counsel to Telscape Communications, Inc.

cc: Christopher Libertelli
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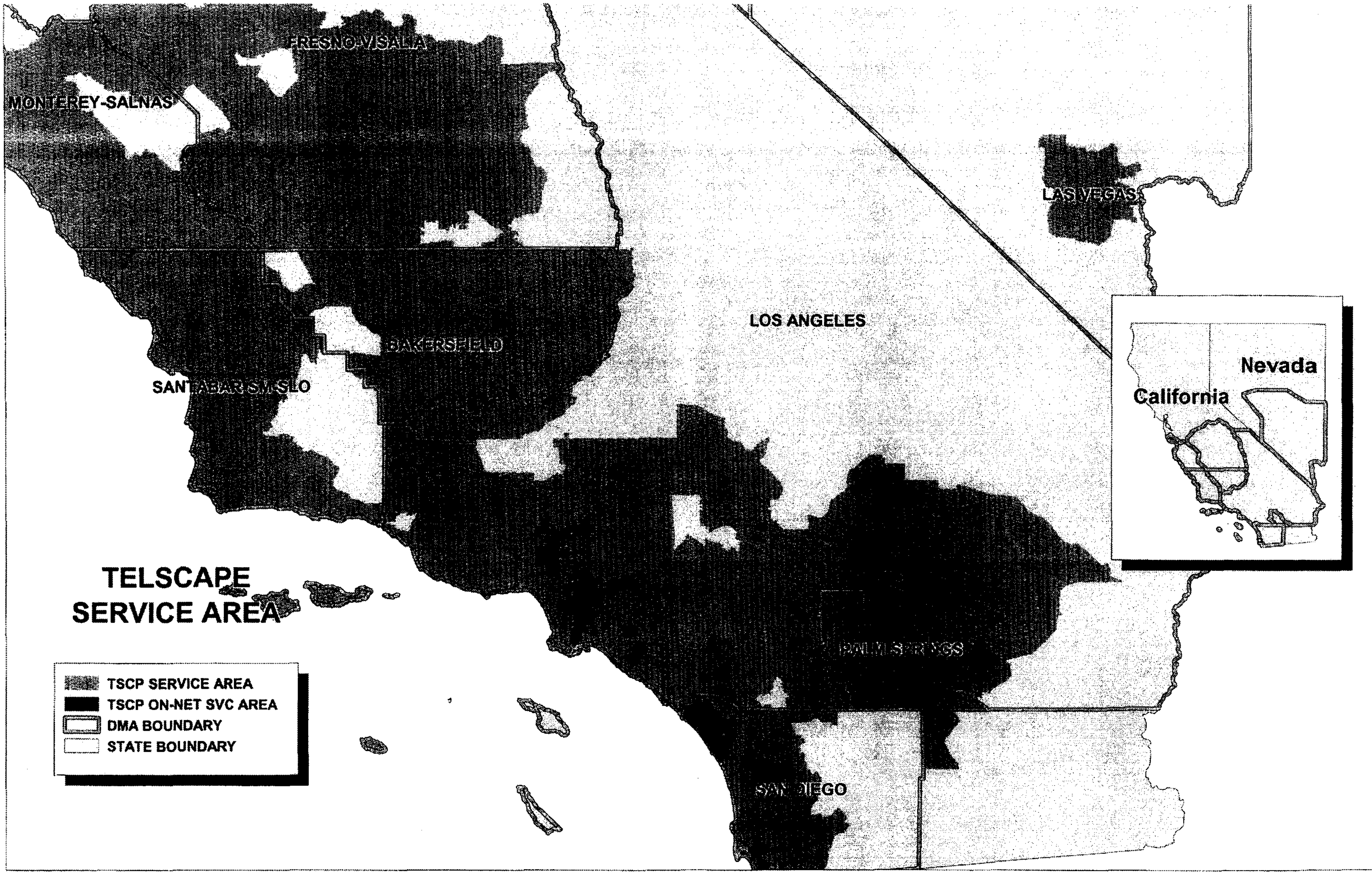
ATTACHMENT A



TSCP is the area Telscape serves by UNE-P.
TSCP ON-NET SVC area is the area Telscape serves by UNE-L.
DMA Boundaries are the direct marketing areas representing minimum purchase areas for radio and television advertising.