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HOGAN & HARTSON
L.L.P.

DAVID L. SIERADZKI
PARTNER
(202) 637-6462
DLSIERADZKI@HHLAW.COM

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COLUMBIA SQUARE
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1109
TEL (202) 637-5600
FAX (202) 637-5910
WWW.HHLAW.COM

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Federal Communications Commission
Office of Secretary

December 8, 2004

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

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

Dear Ms. Dortch:

On behalf of WilTel Communications, LLC ("WilTel"), my colleague Peter Rohrbach (participating by telephone) and I made an *ex parte* presentation yesterday to Jeff Carlisle, Chief of the Wireline Competition Bureau, and Pam Arluk, Russell Hanser, and Jeremy Miller of the Bureau staff. Also yesterday, I made brief *ex parte* presentations by telephone to Scott Bergmann, legal advisor to Commissioner Adelstein, and Jessica Rosenworcel, legal advisor to Commissioner Copps. Today, Mr. Rohrbach and I made an *ex parte* presentation to Dan Gonzalez, senior legal advisor to Commissioner Martin, and I made a brief *ex parte* presentation by telephone to Matthew Brill, senior legal advisor to Commissioner Abernathy. Each of these presentations covered the points summarized in the attached handout.

If you have any questions, please contact me.

Respectfully submitted,

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David Sieradzki

David L. Sieradzki
Counsel for WilTel Communications, LLC

Enclosure

cc: FCC staffers listed above

The Commission Should Not Impose Discriminatory Eligibility Criteria on High-Capacity (DS1/DS3) Unbundled Loops

- **Introduction:**
  - WilTel is very concerned that some ILECs may be encouraging the Commission to adopt discriminatory eligibility restrictions on high-capacity UNE loops.
  - Eligibility restrictions on loops make no sense in the developing world of broadband-originated service, where distinctions between voice and data no longer apply.
  - In particular, the Commission must not impose a discriminatory set of restrictions that give some broadband service providers access to UNEs, while competing providers are ineligible to use them to provide identical services.

1. **Non-discrimination in local connectivity for IP-enabled services is crucial.**
   * ... to promote widespread deployment of competitive IP-enabled services.
   * ... to comply with the non-discrimination requirements of Section 251.

2. **Eligibility restrictions on high capacity UNE loops would introduce unlawful discrimination into the IP-enabled services world.**
   - WilTel and others increasingly use high cap loops for broadband data services, including data transmission used in IP-enabled VoIP applications. These may be wholesale or retail services.
   - We and other competitors have built out our networks close to end users, relying on the principle that all of us will be treated the same with regard to our ability to use high cap UNE loops. This reliance is justified because the Commission has not suggested that it would impose eligibility restrictions in the past. It is in the public interest to encourage such network deployments.
   - Eligibility restrictions on high cap loops would make no sense in a broadband world.
     * Broadband services inherently reflect the convergence of traditional categories of data, voice and video.
     * Customers may use broadband services for local, interstate, or international connectivity, as the Commission found in *Vonage*. The UNE loop inputs for such services should not be available to one company, but not to its broadband competitor.
     * In contrast, the current EEL restrictions relate to a conventional circuit-switched world. They have no place being extended to high cap UNE loops.

- Extension of EEL-type eligibility restrictions to high cap loops would by definition unlawfully discriminate against some VoIP providers to the benefit of others.

  * It would be wrong to condition access to high cap loops based on the type of services provided over those UNEs. For example, the Commission should be neutral as to whether a high cap UNE loop is used for traditional local circuit-switched voice, broadband, or both.

  * Similarly, it would be wrong to import EEL-related conditions to high cap loops. For example, in a broadband world providers should be eligible for high cap loop UNEs without having to get state certificates, or deploy "switched CLEC" style collocations or interconnection architecture, or meet PSTN numbering and 911 requirements beyond those the Commission applies to VoIP.

- The same rules should apply regardless of whether services are provided by a single facilities-based provider end-to-end, or if multiple service providers are involved (*e.g.*, in part by a wholesale carrier). *AT&T IP-in-the-Middle Order*, ¶ 19. Both wholesalers and retailers must have access to UNE loops.

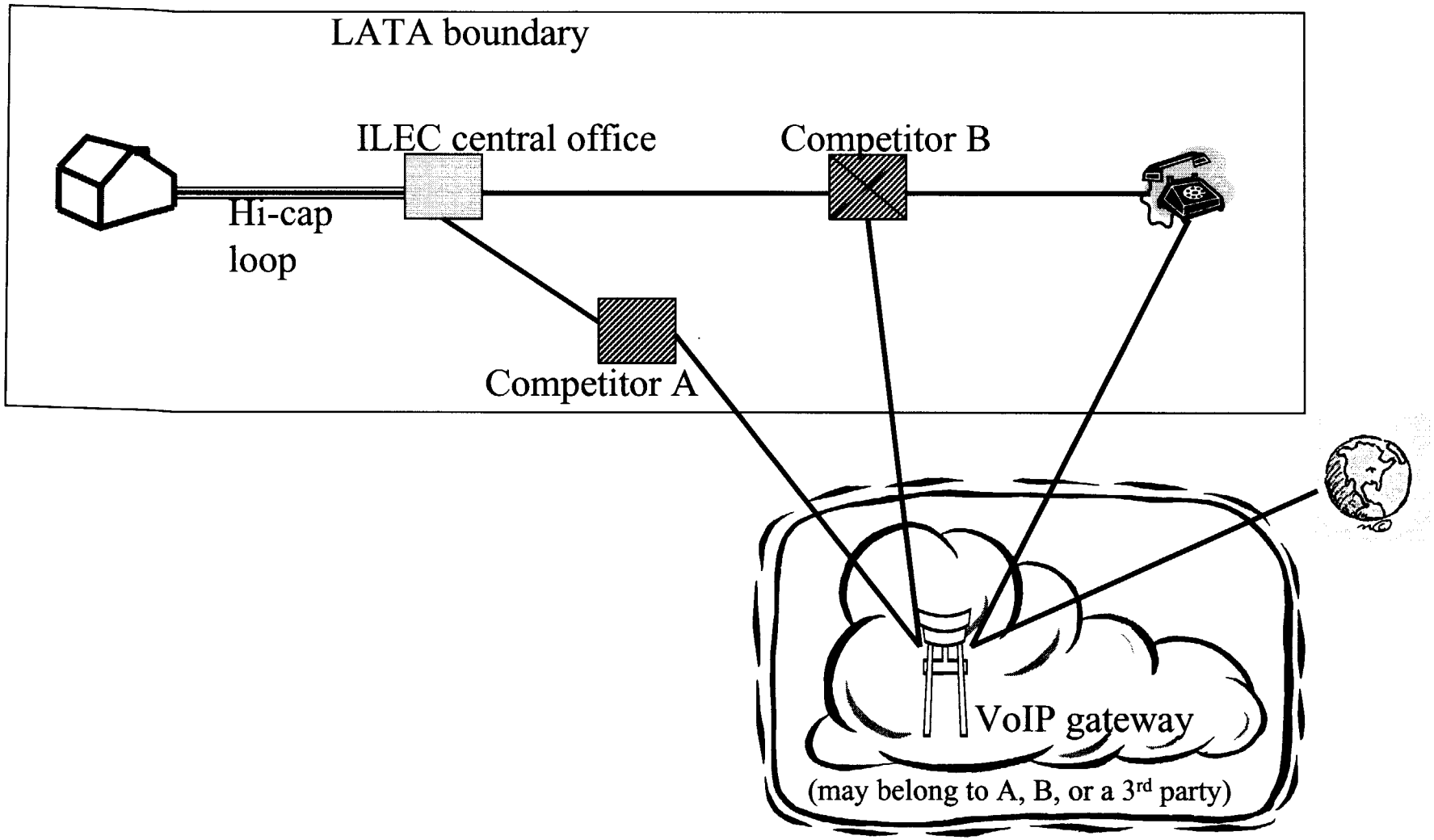
3. **At the least, the Commission should defer high cap eligibility restrictions pending further consideration.**

- WilTel strongly believes that the Commission should reject the concept of eligibility restrictions on high cap UNE loops.

- Short of that, the Commission should create a separate record on this subject, and review it in connection with the *IP-Enabled Services* rulemaking.

4. **In any case, the Commission should not give some providers of IP-enabled services access to high cap loops for broadband services, while denying that right to competitors.**

- This discriminatory result would unlawfully punish broadband companies whose business plan does not include recreating the conventional switched voice world.

- If the Commission nevertheless imposes eligibility restrictions, then the high cap UNE loops should be available only for the specific eligible non-broadband services. At a minimum, ratcheted rates should apply to the extent that the loops also are used for putatively non-eligible services like broadband.

Do Not Impose Discriminatory Eligibility Restrictions on Unbundled Hi-Cap Loops