

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Unbundled Access to Network Elements	)	WC Docket No. 04-313
	)	
Review of the Section 251 Unbundling	)	
Obligations of Incumbent Local Exchange	)	CC Docket No. 01-338
Carriers	)	

**PETITION FOR RECONSIDERATION  
OF T-MOBILE USA, INC.**

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T-Mobile USA, Inc. hereby petitions the Federal Communications Commission (“FCC” or “Commission”) to reconsider certain aspects of the Order on Remand that it released in this proceeding on February 4, 2005.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

T-Mobile USA, Inc. (“T-Mobile”) is one of the country’s fastest growing nationwide wireless service providers, offering digital voice, messaging and high-speed wireless data services to more than 17.3 million customers in the United States. Because a substantial majority of its customers are mass market consumers and because it is not affiliated with an incumbent local exchange carrier (“LEC”), T-Mobile is one of the few commercial mobile radio service (“CMRS”) providers with a strong incentive to market its wireless service as a substitute for residential wireline service. Indeed, a key objective of T-Mobile’s business plan has been to

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<sup>1</sup> *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 2005 FCC Lexis 912 (Feb. 4, 2005) (FCC 04-290) (“*UNE TRRO*”).

compete against wireline LECs to be the primary provider of telephone service to mass market consumers. T-Mobile, thus, is well-positioned to become an effective intermodal alternative to the mass market wireline local exchange services offered by incumbent LECs.

In the *UNE Triennial Review Remand Order* (“*TRRO*”), the FCC ruled that CMRS carriers may not obtain access to unbundled network elements (“UNEs”) “for the exclusive provision of mobile wireless services.”<sup>2</sup> The FCC based this decision on its conclusion that the wireless market is already “sufficiently competitive”<sup>3</sup> and on its apparent belief that CMRS carriers, unlike wireline competitive LECs, face little risk of anticompetitive behavior by incumbent LECs in their provision of special access services.<sup>4</sup> The *UNE TRRO*, however, did not address whether CMRS carriers are entitled to obtain access to UNEs in order to compete with incumbent LECs in the provision of telephone service to mass market consumers.

Because this omission could be interpreted to mean that CMRS carriers are completely barred from obtaining access to UNEs, T-Mobile seeks reconsideration of the *UNE TRRO* to the extent necessary for the Commission to make clear that T-Mobile and other CMRS carriers may obtain links between base stations and incumbent LEC central offices, as well as interoffice transport, as UNEs in order to compete with the dominant incumbent LECs.<sup>5</sup> Specifically, the

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<sup>2</sup> *UNE TRRO* ¶ 34.

<sup>3</sup> *Id.*

<sup>4</sup> *See, e.g., id.*, n. 147.

<sup>5</sup> Because the *UNE TRRO* contains no explicit discussion about whether CMRS carriers may obtain access to UNEs to compete to provide landline replacement service, it may plausibly be argued that the FCC simply did not reach that issue. Further, the order itself contains suggestions that the Commission may have postponed consideration of this important decision. *See UNE TRRO*, n. 55 (explaining that the FCC addressed only issues remanded to it by the D.C. Circuit and certain “ancillary” issues, but will address other outstanding issues in subsequent orders.) *See also id.* ¶ 34 (denying access to UNEs “for the *exclusive* provision of mobile wireless services.”) (emphasis added); *See also id.*, n. 113 (acknowledging that wireless carriers can provide local exchange service). To the extent that the Commission in fact deferred that issue, T-Mobile requests that the Commission consider this portion of its petition as a request for

FCC should make clear that incumbent LECs are required to provide CMRS carriers unbundled access to the transmission links that connect a cell site to a central office and to interoffice transport connecting incumbent LEC central offices.<sup>6</sup> Granting such access to CMRS providers also should lead to modest changes to the FCC's eligibility rules so that CMRS carriers will be able to combine UNEs that link their cell sites to incumbent LEC central offices with UNE transport links. These revisions would not undermine the Commission's objective in adopting the eligibility requirements. Rather, the requested modifications are designed to accommodate the differences between wireless and wireline networks.

## II. DISCUSSION

The Commission in this and other proceedings has repeatedly emphasized the importance of ensuring that mass market consumers enjoy the competitive benefits of the Telecommunications Act of 1996.<sup>7</sup> As T-Mobile explained in its earlier comments in this proceeding, it is particularly well-positioned to become an effective competitor for existing

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an expeditious ruling that CMRS carriers are entitled to obtain access to UNEs in order to offer that replacement service.

<sup>6</sup> CMRS access to these UNEs would be subject to the same geographic and capacity restrictions that apply to wireline carriers' access to loops and transport. *See UNE TRRO* ¶ 126 (limiting access to DS1 transport on routes connecting two Tier 1 wire centers); *id.* ¶ 129 (limiting access to DS3 transport on routes connecting Tier 1 or Tier 2 wire centers to other Tier 1 or Tier 2 wire centers); *see also* 47 C.F.R. § 51.319(a)(4) and (a)(5) (limiting access to DS1 and DS3 loops to buildings served by wire centers meeting certain criteria).

<sup>7</sup> *See, e.g., UNE TRRO* ¶¶ 1-3; *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978,17025, ¶ 5 (2003) ("*UNE TRO*"); *see also* Michele C. Farquhar, Chief of the FCC's Wireless Telecommunications Bureau Remarks Before the National Wireless Resellers Association Conference on Wireless Resale: The Path to the Future, 1996 FCC LEXIS 2086 (April 25, 1996) (stating that a major FCC objective after passage of the 1996 Telecommunications Act "is to make sure that consumers benefit from the new competition" in various telecommunications segments).

landline customers because T-Mobile's current customer base consists largely of mass market consumers and includes a substantial share of young consumers who are regarded as the most likely to become "cord cutters."<sup>8</sup> Moreover, one of T-Mobile's key corporate objectives is to become a serious competitor for wireline service customers. As explained below, T-Mobile and other CMRS providers require access to efficiently priced UNEs in order to eliminate the cost barrier created by their current reliance on incumbent LEC-provided special access.

#### **A. Providing CMRS Carriers Access to UNEs Will Promote Intermodal Competition in the Provision of Local Exchange Services**

A little over three months before the Commission released the *UNE TRRO*, the FCC concluded that mobile wireless services offered to mass market customers currently are not in the same relevant product market as wireline services offered to those customers.<sup>9</sup> The Commission also observed that there was record evidence that wireless service offerings, priced properly with an adequate bucket of minutes, "could result in a significant number of households choosing to cut the cord."<sup>10</sup>

T-Mobile showed in its prior comments that the prices it must pay to lease special access circuits from incumbent LECs in order to interconnect its cell sites with its network are a substantial component of its overall cost of service and, consequently, have a material effect on the prices it charges for its retail services.<sup>11</sup> Further, T-Mobile demonstrated that if it obtained

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<sup>8</sup> See, e.g., Petition for Reconsideration of T-Mobile USA, Inc., WC Docket No. 04-313 at 6 (October 2, 2003) ("Petition for Reconsideration").

<sup>9</sup> See *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. for Consent to Transfer Control*, Memorandum Opinion and Order, 19 FCC Rcd 21522, ¶ 239 (2004) ("AT&T Wireless/Cingular Order").

<sup>10</sup> *Id.*, ¶ 240 (footnote omitted).

<sup>11</sup> See, e.g., Comments of T-Mobile USA, Inc., WC Docket No. 04-313 at 19-20 (October 19, 2004) ("T-Mobile Comments"). Specifically, T-Mobile relies on special access services to link its base stations to incumbent LEC central offices and for interoffice transport within the incumbent LECs' networks. T-Mobile purchases the majority of its base station-to-central office

access to these needed wireline circuits at efficient prices, it would not only be able to offer its services at more attractive prices, but also would be able to invest in facility and other upgrades to improve service quality that would help to overcome other perceived deterrents to “cord cutting.”<sup>12</sup>

Therefore, although the Commission concluded in the *UNE TRRO* that CMRS carriers are not entitled to obtain access to UNEs “for the exclusive provision of mobile wireless services,”<sup>13</sup> the Commission should now make clear that CMRS carriers are entitled to such access in order to compete as a replacement for wireline service.<sup>14</sup> The fact that these facilities would also be used to carry traffic for CMRS customers that continue to subscribe to wireline service does not require a different outcome. As the Commission made clear in the *UNE TRRO*, “a carrier obtaining access to a UNE for the provision of a telecommunications service for which UNEs are available may use that UNE to provide other services as well.”<sup>15</sup>

As an independent CMRS provider, T-Mobile has a strong incentive to offer to mass market consumers services that can replace the primary line services provided by the incumbent LECs. And T-Mobile has made that goal an important element of its overall business and

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links as DS1 channel terminations. T-Mobile also uses DS1 or DS3 channel mileage circuits to provide most of the interoffice transport links within the incumbent LECs’ network. T-Mobile also often uses incumbent LEC facilities for the link between its mobile switching centers (“MSCs”) and the incumbent LECs’ network. Because there often are competitive alternatives available for these particular links, and those competitive alternatives constrain incumbent LEC prices for entrance facilities, T-Mobile does not seek reconsideration of the FCC’s decision that incumbent LECs are not required to provide entrance facilities as UNEs.

<sup>12</sup> See T-Mobile Comments at 19-20; See also T-Mobile Comments, Attachment C, Williams Declaration ¶ 13 (“Williams Declaration”).

<sup>13</sup> *UNE TRRO* ¶ 34.

<sup>14</sup> See *UNE TRRO*, n. 113 (clarifying that the FCC’s determinations regarding mobile wireless service should not be understood to imply that mobile wireless service can never be “a service within a telephone exchange”).

<sup>15</sup> *UNE TRRO*, n. 83.

marketing strategy. Without access to UNEs, however, T-Mobile has been placed at a significant cost disadvantage in attempting to compete against incumbent LECs as a wireline replacement service.

If T-Mobile were able to use UNEs to provide its base station-to-central office links and interoffice transport, it could reduce its monthly costs of service.<sup>16</sup> This cost reduction would enhance T-Mobile's ability to compete against the incumbent LECs in the provision of local services. For example, lower costs would allow T-Mobile to offer service packages at more attractive prices to customers that currently rely on wireline LECs as their primary local exchange provider. Access to UNEs also would reduce the cost of adding and operating new base stations, which would allow T-Mobile to upgrade its network, invest in advanced technologies, and improve service quality to make its service a more viable alternative to the wireline service provided by the incumbent LECs.<sup>17</sup>

The elimination of UNE-P as a source of intramodal competition<sup>18</sup> underscores the importance of removing unnecessary regulatory obstacles to intermodal competition. The two leading wireline providers of competitive local exchange service have already announced their plans to reduce their efforts to compete for residential local phone business. After the Department of Justice determined that it would not seek Supreme Court review of the *USTA II* decision, AT&T announced that it is withdrawing from the consumer phone business,<sup>19</sup> and in

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<sup>16</sup> See Williams Declaration ¶ 13.

<sup>17</sup> Williams Declaration ¶ 13; Petition for Reconsideration at 12; see also T-Mobile Comments at 7-16 (explaining that CMRS providers are impaired without access to UNEs).

<sup>18</sup> See *UNE TRRO* ¶ 199.

<sup>19</sup> See, e.g., Christopher Stern, *MCI Reports \$71 Million Loss, Has Plan for Cash; Long Distance Firm Announces Dividend*, THE WASHINGTON POST, August 6, 2004, at E01.

recent months, AT&T has repeatedly stated that it is exiting the consumer business.<sup>20</sup> MCI also has stated that it expects to have a diminished presence in the residential phone business.<sup>21</sup> And both AT&T and MCI have agreed to be acquired by major incumbent LECs (SBC and Verizon, respectively), thus eliminating each of them entirely as a competitor in its prospective parent's region and, perhaps, more broadly.

Accordingly, the Commission should require incumbent LECs to allow CMRS providers offering replacement landline services to obtain access to UNEs to connect CMRS base stations with incumbent LEC central offices.<sup>22</sup> Unless the base station-to-central office link is classified as interoffice transport, the Commission should require incumbent LECs to provide unbundled

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<sup>20</sup> See, e.g., SBC Communications Inc. and AT&T Corp. Public Interest Statement, WC Docket No. 05-65, at 7 (filed Feb. 21, 2005) (referring to AT&T's "irreversible . . . decision to discontinue actively marketing local and long distance service to residential and small business customers"); Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934, Commission File No. 1-01105 at 3 (filed February 9, 2005), available at: <<http://www.sec.gov/Archives/edgar/data/5907/000095012305001389/y052761ldefa14a.htm>> (stating that AT&T is "moving [its] focus away from traditional consumer services.").

<sup>21</sup> See Brian Grow and Catherine Yang, *MCI Is Looking for Safety; Soured on the Long-Distance Phone Market, the Cash-Rich Giant Bets on Computer Security With Its Buy of Network Security Technologies*, BUSINESS WEEK ONLINE, Jan. 19, 2005, available at: <[http://www.businessweek.com/bwdaily/dnflash/jan2005/nf20050119\\_9069\\_db016.htm](http://www.businessweek.com/bwdaily/dnflash/jan2005/nf20050119_9069_db016.htm)>; see also Jeffrey Bartash, *Qwest Falls on Merger Talk, Downgrade*, CBS MARKETWATCH, Feb. 7 2005, available at: <<http://cbs.marketwatch.com/news/archivedStory.asp?archive=true&dist=ArchiveSplash&siteid=mktw&guid=%7B1B434617%2D4207%2D45B8%2DA969%2D56E7E2480A91%7D&returnURL=%2Fnews%2Fstory%2Easp%3Fguid%3D%7B1B434617%2D4207%2D45B8%2DA969%2D56E7E2480A91%7D%26siteid%3Dmktw%26dist%3D%26archive%3Dtrue%26param%3Darchive%26garden%3D%26minisite%3D%26>>.

<sup>22</sup> The FCC can accomplish this goal by classifying the base station-to-central office link as a loop, sub-loop or interoffice transport or by defining the base station-to-central office connection as a separate network element that is subject to the unbundling requirements of section 251. See, e.g., T-Mobile Comments, 7-10.

access to the link at cost-based rates for all base stations served by a wire center with fewer than 60,000 business lines or fewer than four fiber-based collocators.<sup>23</sup>

Similarly, the Commission should ensure that CMRS carriers are able to gain access to UNE interoffice transport in order to offer their services as replacements for landline services in competition with the incumbent LECs. CMRS carriers' access to these UNEs, of course, would be subject to the same geographic and capacity limitations that the FCC imposed on wireline carriers seeking unbundled access to interoffice transport (*i.e.*, no access to DS3 transport on routes connecting central offices with 24,000 or more business lines or three fiber-based collocators and no access to DS1 transport on routes connecting two central offices both of which have four or more fiber-based collocations or 38,000 or more business lines).

The Commission suggests in a footnote in the *UNE TRRO* that CMRS carriers need not be concerned about anticompetitive practices by incumbent LECs in the provision of special access because such activities “by one incumbent LEC would invite retaliation from other incumbent LECs.”<sup>24</sup> There are two obvious problems with this rationale for denying CMRS carriers access to UNEs. First, it ignores the fact that T-Mobile and several other CMRS providers are not affiliated with an incumbent LEC and, therefore, are not “protected” against anticompetitive incumbent LEC practices under the FCC’s theory (assuming it were true). Second, in the next sentence in the same note, the Commission observes that “[i]n contrast, in the local exchange service market, incumbent LECs have a clear incentive to discriminate against

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<sup>23</sup> The vast majority of base station-to-central office links are DS1 capacity connections. To the extent that a CMRS carrier seeks access to a DS3 capacity link to connect its base station to an incumbent LEC’s central office, such links should be made available as UNEs unless the base station in question is served by a wire center with more than 38,000 business lines and at least four fiber-based collocators.

<sup>24</sup> *UNE TRRO*, n. 147.

their competitors.”<sup>25</sup> Since T-Mobile seeks access to UNEs for the express purpose of being able to offer its service as a replacement for incumbent LEC landline service, incumbent LECs have precisely the same “clear incentive” to engage in anticompetitive practices to harm T-Mobile as they do to hinder wireline competitive LECs. The Commission’s peculiar approach to distinguishing between the treatment of CMRS and wireline carriers is based on the implicit assumption that each group offers a different “product.” The overriding objective of T-Mobile’s advocacy in this proceeding is to gain access to the UNEs that it requires to compete to offer a landline replacement product.

**B. The FCC Should Reconsider Its Service Eligibility Rules To Accommodate The Differences Between Wireless and Wireline Networks**

If the FCC makes clear that incumbent LECs must offer CMRS carriers unbundled access to the links needed to connect CMRS providers’ base stations to incumbent LEC central offices and interoffice transport within the incumbent LECs’ networks, the Commission also should revise its service eligibility rules to the extent necessary to allow CMRS carriers to combine UNE loops and transport in order to provide local exchange services to residential customers. As T-Mobile has explained previously, differences between CMRS networks and wireline networks may make the service eligibility criteria adopted for wireline networks unworkable for CMRS carriers.<sup>26</sup> For example, although T-Mobile has a point of interconnection in every LATA in which it provides service, it may not have a “collocation arrangement”<sup>27</sup> – as that term is defined in the FCC’s rules – in every LATA.<sup>28</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> Petition for Reconsideration, 15-16.

<sup>27</sup> 47 C.F.R. § 51.318(c).

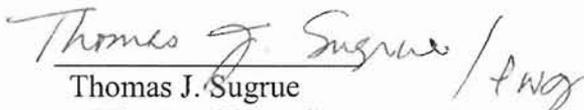
<sup>28</sup> *See* T-Mobile Comments at 23.

The FCC therefore should modify its service eligibility rules to clarify that CMRS providers that are licensed to offer service in a particular area and that have a point of interconnection in the LATA in which service is being offered meet the FCC's service eligibility requirements and may combine UNE loops and transport, on the sole condition that those UNEs are used to provide local exchange services to residential customers.

### III. CONCLUSION

For all the reasons set forth above, T-Mobile respectfully requests that the Commission rule that incumbent LECs are required to provide CMRS carriers with access to UNEs for the purpose of providing residential customers an alternative to primary wireline services. Such access should encompass the links required to connect CMRS carriers' base stations to incumbent LEC central offices as well as interoffice transport between incumbent LEC central offices. T-Mobile also requests that the Commission reconsider its service eligibility rules to ensure that CMRS providers may combine UNE loops and transport in order to provide local exchange service to residential customers.

Respectfully submitted,



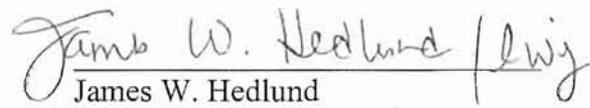
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March 28, 2005

**Certificate of Service**

I hereby certify that on this 28<sup>th</sup> day of March, 2005, I caused a true and correct copy of the foregoing Petition for Reconsideration of T-Mobile USA, Inc., to be mailed by electronic mail to Best Copy and Printing, Inc., FCC@bcpweb.com

 James W. Hedlund