

**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	)	
	)	

**REPLY OF T-MOBILE USA, INC.**

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June 16, 2005

**Table of Contents**

**I. INTRODUCTION AND SUMMARY..... 1**

**II. DISCUSSION ..... 3**

A. T-MOBILE AND OTHER CMRS CARRIERS SHOULD BE GRANTED ACCESS TO UNES..... 3

    1. *USTA II does not require a contrary result*..... 4

    2. *CMRS providers are impaired without access to UNEs*..... 5

    3. *Recent developments in the marketplace change the calculus in the application of the “at a minimum” standard.* ..... 6

B. THE CONNECTIONS BETWEEN CMRS BASE STATIONS AND INCUMBENT LEC CENTRAL OFFICES ARE NOT ENTRANCE FACILITIES ..... 7

**III. CONCLUSION..... 8**

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**REPLY OF T-MOBILE USA, INC.**

T-Mobile USA, Inc. (“T-Mobile”) submits this reply in response to oppositions to T-Mobile’s Petition for Reconsideration<sup>1</sup> of the Commission’s Order released February 4, 2005, in the above-referenced proceeding.<sup>2</sup>

**I. INTRODUCTION AND SUMMARY**

As explained in its Petition, T-Mobile has a strong incentive to market its wireless service as a substitute for residential wireline service. Indeed, one of T-Mobile’s key objectives has been to compete against wireline LECs to be the primary provider of telephone service to residential customers. T-Mobile’s ability to meet this objective is severely hampered by the price of underlying incumbent local exchange carrier (“LEC”) facilities on which it depends to connect its base stations to its mobile switching centers. As T-Mobile has explained, the ability to obtain these facilities at cost-based prices, for example as unbundled network elements

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<sup>1</sup> Petition for Reconsideration of T-Mobile USA, Inc., WC Docket No. 04-313, CC Docket No. 01-338 (March 28, 2005) (“*T-Mobile Petition*”).

<sup>2</sup> *Unbundled Access to Network Elements*, Order on Remand, 20 FCC Rcd 2533 (2005) (“*UNE TRRO*”).

(“UNEs”), would have a significant effect on T-Mobile’s ability to compete with the incumbent LECs in the provision of primary-line residential services.

The *UNE TRRO* did not squarely address whether commercial mobile radio service (“CMRS”) providers are entitled to obtain access to UNEs to compete with incumbent LECs to provide local services to mass-market customers. The Bell Operating Companies (“BOCs”) have interpreted this silence as an affirmative finding that CMRS carriers should be denied access to UNEs for all purposes.

As T-Mobile has explained, access to UNEs is critical if T-Mobile and other CMRS carriers are to fulfill their potential as alternatives to the incumbent LECs for mass-market customers, consistent with the FCC’s intermodal competition goals.<sup>3</sup> The Commission therefore must make clear that CMRS providers may obtain links between their base stations and incumbent LEC central offices, as well as interoffice transport connecting incumbent LEC central offices, as UNEs in order to compete in the local exchange market, subject only to the competitive “triggers” that apply to all carriers.

The only parties to oppose the *T-Mobile Petition* are the BOCs. The BOCs’ responses do not refute the central point of the *T-Mobile Petition*, however. Indeed, the BOCs cannot reasonably deny that the excessive prices CMRS providers must pay for access to incumbent LEC facilities are impeding wireless carriers’ ability to compete as substitutes for traditional

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<sup>3</sup> See, e.g., *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, as modified by Errata, 18 FCC Rcd 19020, ¶¶ 1, 5-6, 140 (2003) (“*UNE TRO*”), quoting *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, ¶ 2 (1999); see also *UNE TRO* ¶ 70 & n.233 (discussing the benefits of facilities-based competition and expressing a preference for facilities-based competitors); *id.* ¶ 198 (singling CMRS and cable out as the two most notable “intermodal platforms”); *UNE TRRO* ¶ 215.

wireline local exchange offerings. Instead, the BOCs have raised a variety of unpersuasive objections. If the Commission were to accept these objections, it would allow the BOCs to avoid providing UNEs to a group of carriers that pose one of the most serious potential threats to the incumbent LECs' dominance of the local exchange market.

As the discussion below demonstrates, the BOCs' objections are without merit. The FCC therefore should grant the *T-Mobile Petition* and ensure that CMRS carriers have unbundled access to the transmission links that connect a cell site to a central office as well as the interoffice transport connecting incumbent LEC central offices.<sup>4</sup>

## II. DISCUSSION

### A. T-Mobile and Other CMRS Carriers Should Be Granted Access to UNEs

As T-Mobile has shown, and the FCC has found, CMRS providers currently do not compete in the same product market as wireline local exchange carriers, but could offer a substitute for wireline mass-market services if they were able to reduce prices.<sup>5</sup> T-Mobile has

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<sup>4</sup> The Commission should also adjust its service eligibility rules to accommodate CMRS carriers' need to combine UNE transport with the UNEs that link their cell sites to incumbent LEC central offices. See *T-Mobile Petition* at 3, 9-10.

<sup>5</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, ¶¶ 239-240 (2004) ("*AT&T Wireless/Cingular Order*"); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Ninth Report, 19 FCC Rcd 20597, ¶ 31 (2004) (explaining that "[t]he basic economic principle for defining the scope of the relevant product market is to include . . . services in the same product market if they are essentially interchangeable from the perspective of most consumers – that is, if consumers view them as close substitutes"); see also Christopher Rhoads, *Cutting the Phone Cord Isn't as Popular as Once Predicted*, THE WALL STREET JOURNAL, June 2, 2005, at B1. As T-Mobile has explained, wireless carriers must also improve quality and reliability before wireless service can be a substitute for wireline primary-line service. Comments of T-Mobile USA, Inc., WC Docket No. 04-313, at 18-19 (Oct. 4, 2004) ("T-Mobile's UNE TRRO Comments"); Reply Comments of T-Mobile USA, Inc., WC Docket No. 04-313, at 2-3, 9-11 (Oct. 19, 2004) ("T-Mobile's UNE TRRO Reply Comments"). Even if they make the necessary improvements in quality and

attempted to enter this market, but has been thwarted to a large degree due to its dependence on over-priced special access services.<sup>6</sup> Access to UNEs would allow T-Mobile to offer products that are more attractive alternatives to the BOC's wireline local exchange services, enabling it to compete as a viable substitute for the primary-line service traditionally offered only by the BOCs and other wireline LECs.<sup>7</sup>

1. USTA II does not require a contrary result

The BOCs claim that *USTA II* effectively bars the Commission from granting CMRS carriers access to UNEs.<sup>8</sup> At the time of the *USTA II* decision, however, the court did not have the benefit of the FCC's findings defining the relevant markets. Therefore, the court's findings regarding CMRS providers' access to UNEs focused entirely on mobile-to-mobile competition within the CMRS market, and not on the potential for intermodal competition between wireline and wireless providers.<sup>9</sup> Similarly, the FCC's conclusions in the *TRRO* explicitly are limited to

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reliability, however, CMRS carriers will not be able to compete in the same market as wireline carriers without access to UNEs.

<sup>6</sup> See, e.g., T-Mobile's UNE TRRO Comments at 19-20; *id.*, Attachment C, Declaration of Michael A. Williams, ¶ 13 ("Williams Declaration").

<sup>7</sup> Concerns that CMRS providers will not use UNEs to compete for wireline customers are misplaced. See Opposition of Qwest Communications International Inc., WC Docket No. 04-313, at 9 (June 6, 2005) ("Qwest Opposition"). The competitiveness of the CMRS marketplace will force providers to pass savings on to consumers, making wireless services more attractive to residential wireline customers. Thus, CMRS access to UNEs would lead inexorably to increased competition between wireless and wireline carriers. See, e.g., Letter from Thomas J. Sugrue to Chairman Powell (Dec. 7, 2004); T-Mobile's UNE TRRO Reply Comments at 2-3.

<sup>8</sup> See Response of SBC Communications Inc. to Petitions for Clarification and/or Reconsideration, WC Docket No. 04-313, at 49 (June 6, 2005) ("SBC Response"); Consolidated Response of BellSouth Corporation to Petitions for Reconsideration and Clarification, WC Docket No. 04-313, at 39 (June 6, 2005) ("BellSouth Response"); Response of Verizon to Petitions for Reconsideration, WC Docket No. 04-313, at 27-28 (June 6, 2005) ("Verizon Response").

<sup>9</sup> *United States Tel. Ass'n v. FCC*, 359 F.3d 554, 575-76 (D.C. Cir. 2004) ("*USTA II*").

access to UNEs “for the exclusive provision of mobile wireless services.”<sup>10</sup> Thus, neither the court nor the FCC has directly addressed CMRS carriers’ access to UNEs for purposes of competing with wireline LECs. Thus, *USTA II* does not prevent the Commission from requiring the incumbent LECs to provide UNEs to CMRS carriers for the purpose of providing primary-line service to residential customers.<sup>11</sup>

## 2. CMRS providers are impaired without access to UNEs

In the *UNE TRRO*, the FCC clarified that whether lack of access to a UNE poses a barrier that is likely to make entry into a market uneconomic is determined with regard to “a reasonably efficient competitor,” not on a carrier-by-carrier basis.<sup>12</sup> Thus, contrary to the suggestions of some BOCs,<sup>13</sup> T-Mobile is not required to make an individualized, carrier-specific showing of impairment. The FCC has already determined that a reasonably efficient competitor is impaired without access to DS-1 facilities in virtually every geographic area, and without DS-3 facilities on the majority of routes.<sup>14</sup> T-Mobile has agreed that its access to UNEs should be limited to the

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<sup>10</sup> *UNE TRRO* ¶ 34. The term “exclusive provision of mobile wireless services” suggests that the Commission intended to leave open the possibility that CMRS carriers should be permitted to use UNEs for the purpose of competing with the incumbent LECs in the provision of primary-line services; otherwise, there would have been no reason to qualify the phrase “wireless services” with the word “mobile.” *Cf.* Qwest Opposition at 8; BellSouth Response at 40. If this is consistent with the FCC’s intent, it should simply clarify its Order. If the FCC was deferring the issue, it should address it now. *See UNE TRRO* ¶ 19 n.55 (stating that issues other than those remanded to the FCC will be addressed in subsequent orders).

<sup>11</sup> *See UNE TRRO* ¶ 38 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>12</sup> *UNE TRRO* ¶¶ 24-26.

<sup>13</sup> BellSouth Response at 33; SBC Response at 51; Verizon Response at 28.

<sup>14</sup> *UNE TRRO* ¶ 5.



companies more important than ever.<sup>19</sup> Accordingly, the FCC should reconsider the exercise of its “at a minimum” authority.

### **B. The Connections between CMRS Base Stations and Incumbent LEC Central Offices Are Not Entrance Facilities**

Some of the BOCs claim that the base station-to-central office link should be classified as an entrance facility, and therefore should not be subject to unbundling.<sup>20</sup> As T-Mobile has explained in previous pleadings, however, the term “entrance facilities” usually refers to connections deeper in the incumbent LEC’s network, such as the connection between an incumbent LEC’s central office and an interexchange carrier’s point of presence or a CMRS carrier’s mobile switching center. The base station-to-central office links resemble loops or sub-loops rather than entrance facilities.<sup>21</sup>

This conclusion is confirmed by the manner in which the Commission distinguished entrance facilities from interoffice transport. Specifically, the Commission concluded that carriers are not impaired without access to entrance facilities because those links “are less costly to build, are more widely available from alternative providers, and have greater revenue potential than dedicated transport between incumbent LEC central offices.”<sup>22</sup> Unlike entrance facilities that involve carrying “enormous” amounts of traffic (usually OC-n) “very short distances,”<sup>23</sup> base station-to-central office links involve carrying relatively small amounts of traffic (usually DS-1) over what are often considerable distances from remote wire centers to the nearest central

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<sup>19</sup> These recent developments also constitute new facts that meet the procedural requirements for a petition for reconsideration. *Cf.* BellSouth Response at 33, 39; Verizon Response at 27.

<sup>20</sup> Qwest Opposition at 9.

<sup>21</sup> *See e.g.*, Reply of T-Mobile USA, Inc., CC Docket No. 01-338, at 3-6 (Nov. 17, 2003).

<sup>22</sup> *UNE TRRO* ¶ 141.

<sup>23</sup> *Id.* ¶ 141 n.397.

office.<sup>24</sup> Functionally, this is the equivalent of a loop rather than an entrance facility or some type of interoffice transport. Accordingly, the base station-to-central office link should be subject to the same impairment test as wireline loops rather than the standard that the Commission applied to the far more competitive entrance facilities.<sup>25</sup>

### III. CONCLUSION

As explained above, the BOCs have raised no sound argument in opposition to T-Mobile's Petition for Reconsideration. Accordingly, T-Mobile requests that the Commission grant the relief requested therein.

Respectfully submitted,

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<sup>24</sup> T-Mobile's UNE TRRO Comments at 8-9.

<sup>25</sup> Even assuming that the base station-to-central office links constitute entrance facilities, the FCC would have to conduct an impairment analysis of such lower-capacity (DS1) "entrance facilities." *See USTA II*, 359 F.3d at 586 ("If entrance facilities are correctly classified as 'network elements,' an analysis of impairment would presumably follow.") As noted above, the Commission's impairment analysis of entrance facilities was based on the assumption that the facilities in question were higher-capacity connections. If the Commission concludes that base station-to-central office links are a new form of low-capacity "entrance facilities," it should conduct a capacity-specific impairment analysis, similar to the one used to determine access to loops and transport.

Certificate of Service

I HEREBY CERTIFY that on this 16th day of June, 2005, I caused true and correct copies of the foregoing Reply of T-Mobile USA, Inc. to be mailed, postage prepaid, to:

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