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August 3, 2005

Chairman Kevin J. Martin
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Wireline Broadband Proceeding*
CC Docket Nos. 02-33, 98-10, 95-20

Dear Chairman Martin:

If the Commission determines in this proceeding that the telecommunications component of ILEC broadband Internet access service is subject only to Title I, the Commission must make explicit in its order that its classification of ILEC broadband Internet access service has no bearing on the ILEC obligation to provide unbundled access to network elements under Section 251(c)(3) of the Act.[1] The Commission must require that ILECs interconnect on nondiscriminatory terms and conditions with other carrier and non-carrier broadband service providers. And, the Commission should impose a "net neutrality" obligation. To implement these suggestions, McLeodUSA respectfully suggests that the Commission include the following language in any decision determining that ILEC wireline broadband Internet access service is subject to Title I.

> We take this opportunity to clarify and establish certain obligations of ILECs in connection with their provision of wireline broadband Internet access service. We stress that our decision today does not alter the ILECs' obligation to comply with the unbundling obligations otherwise applicable to network elements under Section 251 of the Act and our unbundling rules. We reaffirm the principle that if a requesting carrier makes an otherwise valid request for unbundled access to a network element, the incumbent LEC must provide the UNE notwithstanding that the ILEC is currently using the element to serve the same or other customers for provision of wireline broadband Internet access services. As we found in the

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[1] For all the reasons stated by McLeodUSA and others in earlier filed comments in this proceeding, the Commission should not apply in this proceeding its analysis and result of the *Cable Modem Declaratory Ruling*. Initial Comments of McLeodUSA Telecommunications Services, Inc., CC Docket No. 02-33, filed May 3, 2002; Comments of Cbeyond, El Paso Networks, Focal, New Edge Networks, and Pac-West Telecomm, Inc., CC Docket No. 02-33, filed May 3, 2002. In this connection, the Supreme Court in *Brand X* specifically found that the Commission could continue to impose different regulatory regimes on cable modem service and ILEC services. *National Cable & Telecommunications Ass'N v. Brand X*, 125 S. Ct. 2688. p. 60-61 (2005).

Triennial Review Order, "to interpret the definition of network element so narrowly as to mean only facilities and equipment actually used by the incumbent LEC in the provision of a telecommunications service also would be at odds with the statutory language in section 251(d)(2) and the pro-competitive goals of the 1996 Act."[2] In addition, any telecommunications carrier may still choose to offer wireline broadband Internet access service on a common carriage basis, regardless of our classification of ILEC wireline broadband Internet service. If a carrier chooses to offer telecommunications transmission as defined by Section 3(43), 47 U.S.C. § 153(43), of the Act "directly to the public" (such as on a retail basis directly to consumers) or to "such classes of users as to be effectively available directly to the public" (such as on a wholesale basis to ISPs),[3] such broadband transmission services would remain telecommunications services subject to Title II and therefore would qualify a CLEC to use an unbundled network element.[4]

Second, in an environment of increasing movement towards IP-enabled services, including provision of voice service using IP, it is important that ILECs remain subject to the duty of interconnection. Absent an interconnection obligation, ILECs could deny interconnection or impose unreasonable terms and conditions on other providers. This could result in a balkanized broadband network and threaten the goal of universal interconnectivity for voice and other services. Accordingly, we require under Title I that ILECs provide interconnection to the telecommunications component of their wireline broadband Internet access service on nondiscriminatory and reasonable terms and conditions.

Third, we impose under Title I an obligation of "net neutrality." Under this obligation, ILECs providing wireline broadband Internet access service under Title I of the Act may not impede the ability of the consumer to: a) access any aspect, feature or site of the Internet, b) use any application of the consumer's choice, or c) attach devices of the consumer's choice to the broadband connection. This condition is necessary to assure that ILECs may not, in effect, become arbiters of content available to customers, and to ensure that the Internet remains a vibrant a open conduit for innovative services and applications.

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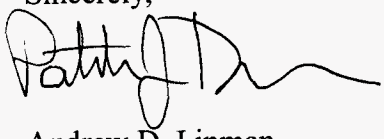
2 *Triennial Review Order*, ¶ 60.

3 47 U.S.C. § 153(46).

4 Further we continue to hold that "the relevant inquiry for purpose of determining who is an incumbent LEC pursuant to Section 251(c) is whether a carrier provided telephone exchange and exchange access service in a given service area on February 8, 1996." *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Remand, 15 FCC Rcd 385, 389 ¶ 10 (1999), *aff'd WorldCom v. FCC*, 246 F.3d 390, 395 (D.C. Cir 2001). Thus our decision here does not alter our interpretation of the statutory definition of the term Incumbent LEC and continues to obligate incumbent LECs to comply with the relevant unbundling provisions of the Act and our rules, even where they provide wireline broadband Internet access services that we classify as subject to Title I.

Please contact the undersigned if you have any questions.

Sincerely,



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