USTELECOM
THE BROADBAND ASSOCIATION

February 12, 2009

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Portals II, Room TW-A325
Washington, DC 20554

***EX PARTE PRESENTATION***

RE: Notice of Inquiry Concerning a Review Of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers, CC Docket No. 02-39

Dear Ms. Dortch:

This is to inform you that on February 12, 2009, Glenn Reynolds, representing USTelecom, met with Jennifer McKee, representing the Office of Chairman Copps.

In this meeting, USTelecom urged the Commission to grant its petition for waiver of the EA Scripting Requirement for small and mid-size ILECs. Our statements were consistent with USTelecom's petition in this proceeding and the attached presentation.

Pursuant to Commission rules, please include this notice and attachment in the above-referenced docket.

Sincerely,

Glenn T Reynolds

Glenn Reynolds
Vice President, Policy

cc: Jennifer McKee

# Equal Access Scripting Requirement

Glenn Reynolds
Vice President, Policy

Genie Barton
Vice President & General Counsel

USTELECOM
UNITED STATES TELECOM ASSOCIATION

- USTelecom is asking for **<u>waiver of the EA Scripting Requirement</u>** for small and mid-size ILEC members.
  - This requirement imposes a unique regulatory burden on small and mid-size ILECs without offsetting benefits to them or to consumers.
  - USTelecom is not asking for waiver of any other equal access requirement, such as dialing parity.
- There has been a proceeding open since 2002 that included consideration of the Equal Access Scripting Requirement and the record was refreshed in 2007, but it remains unresolved.
- In 2007, the FCC granted forbearance to AT&T, Verizon, and Qwest and waived the EA Scripting Requirement for their ILEC affiliates, but declined to extend that relief to small and mid-size ILECs because it was under consideration in a separate open proceeding.

- The EA Scripting Requirement is a legacy of the MFJ era, required "at a time when competition in the provision of stand-alone long distances services was nascent and there was little, if any, competition in the provision of local exchange service."

- Market conditions have changed radically since that time.

  – There is now a robust "all distance" market where ILECs face competition from cable, wireless, over the top VoIP, calling card, and dial around service providers.

  – The Commission has concluded that "[s]tand-alone long distance is becoming a fringe market" now that the majority of consumers obtain their long distance service as part of a "bundle."

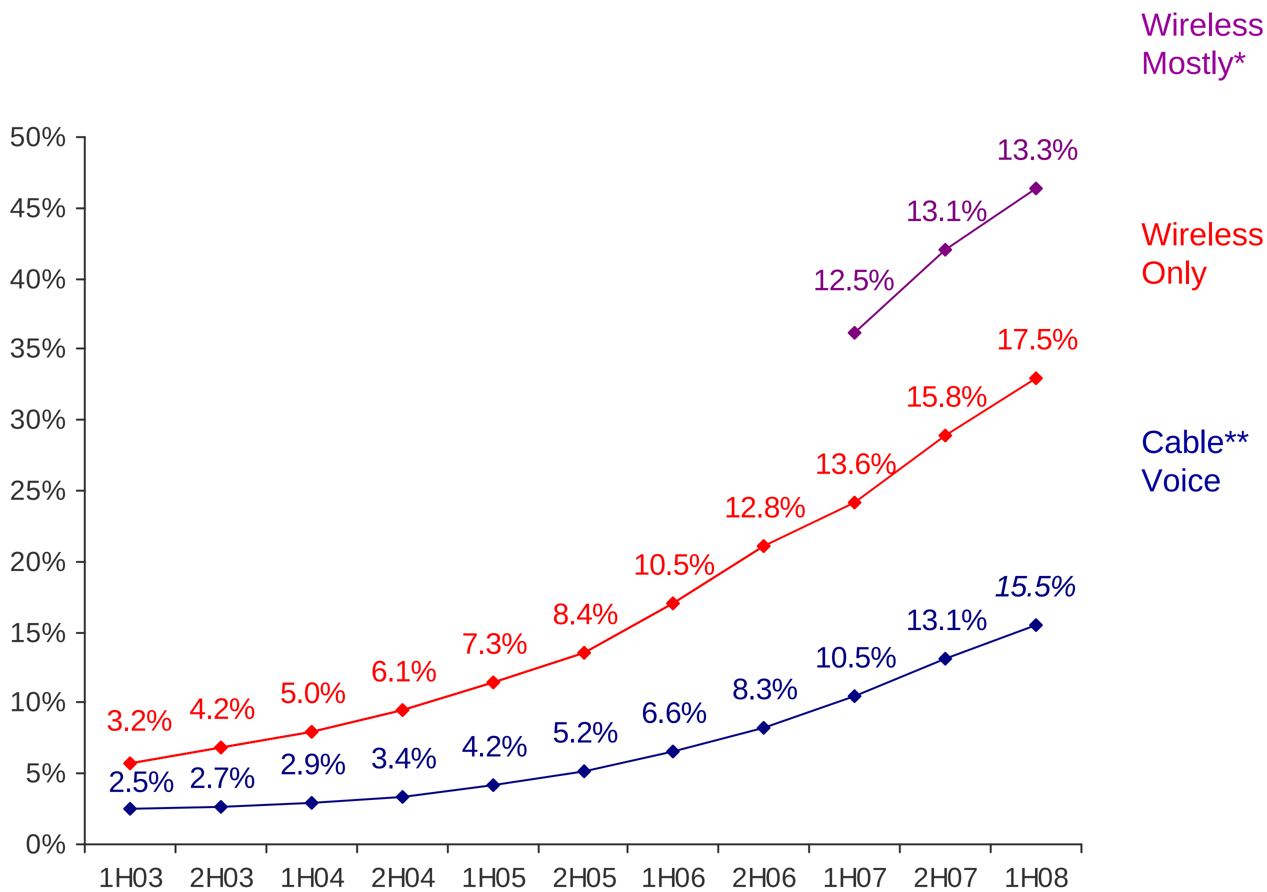
  – The Commission has also noted that wireline long-distance calling is declining now that consumer substitute alternatives, such as wireless, include traditional "long distance" as part of their "all distance" package.

- Consumers are well-aware of their choices in long distance providers.

  – Cable and wireless are among the top 100 industries in advertising spend.

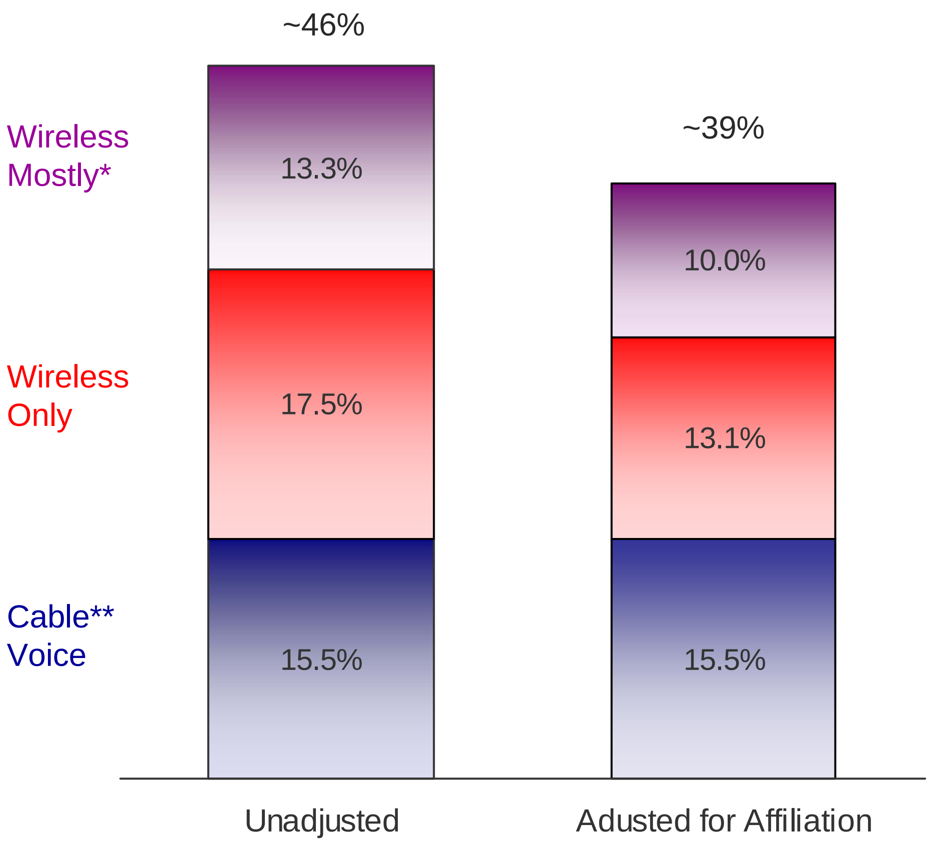
  – 44.5 % of the population primarily uses a non-ILEC provider.

# % of U.S. Households Using Voice Alternative to ILEC




*Updated January 2008.*
Source: NCTA; Centers for Disease Control; U.S. Census Bureau, USTelecom Analysis. * Wireless mostly means a majority of calls are received via wireless, even though the customer retains a wireline service. ** NCTA reported subscribers as 15.1 million for 4Q07 and 16.5 million for 1Q08. We estimate growth to approximately 18 million based on linear trend and assume 115 million households to get 15.5%.

# Estimated Share for Voice Alternatives to ILEC




***Adjustment for Wireless Affiliation***

In order to account for the probability that a "cord cutter" resides in the footprint of a large, wireless-affiliated ILEC and the substituted wireless carrier is affiliated with the ILEC, we adjust the wireless shares down by 37.5%.

To arrive at this number, (1) we assume the probabilities are commensurate with national footprint of the top 2 ILECs (~75%) and (2) in order to account for in-region brand identification, we conservatively double the market share of the large ILEC-affiliated wireless carriers (i.e., 2 * 25% = 50%).

75% * 50% = 37.5%

*Updated January 2008.*

Source: NCTA; Centers for Disease Control; U.S. Census Bureau, USTelecom Analysis. * Wireless mostly means a majority of calls are received via wireless, even though the customer retains a wireline service. ** NCTA reported subscribers as 15.1 million for 4Q07 and 16.5 million for 1Q08. We estimate growth to approximately 18 million based on linear trend and assume 115 million households to get 15.5%.

- The Commission has already determined that the EA Scripting Requirement was "no longer justified as applied to AT&T, Quest, and Verizon, given the marketplace changes that have occurred since the requirement's adoption and the requirement's relative costs and benefits."
  - "Competition for stand-alone long distance services would function better absent the market-place distorting effects of the current EA Scripting Requirement."
  - Consumers no longer needed the EA Scripting Requirement.
  - The public interest would be better served without it.
- In his concurrence, Commissioner McDowell noted that "the independent incumbent local exchange carriers continue to be subjected to regulation that may be ripe for a lighter regulatory touch."
- However, because the issue was never resolved, small and mid-size ILECs are caught in a regulatory time warp.
- No other providers of voice services — not wireless, not cable, not VoIP — are subject to this regulatory burden.

- Small and mid-size ILECs must still inform customers seeking new service that they have a choice of long distance provider and read to them a randomized list of available providers of stand-alone wireline long distance service, upon request.

  - For example, Blackfoot Communications, a company with fewer than 20,000 access lines, at regular intervals must gather data on competing wireline long distance carriers, then once a week randomly select the carriers to put on a list provided to its marketing staff, which is printed and posted for Blackfoot staff to read aloud to customers.

- These small and mid-sized ILECs generally do not have facilities-based long distance affiliates.

- They typically provide their own long distance services by purchasing capacity on a wholesale basis from other long distance competitors, including affiliates of AT&T, Verizon, and Qwest that have already received this relief.

# Conclusion

- Continued application of the EA Scripting Requirement to a subset of ILECs is not justified when they are subject to the same market conditions as carriers which have already received relief.
- Continuing to single out small and mid-sized ILECs for a regulatory obligation originally designed to foster a fledgling stand-alone long distance market injects a regulatory distortion into what is now a much broader and more competitive communications market.
- Continued application of other equal access requirements such as dialing parity provide further assurance that waiving the EA Scripting Requirement will not cause competitive harm.