

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	§	
	§	
Petition for Expedited Rulemaking to Adopt	§	WC Docket No. 09 -222
Rules Pertaining to the Provision by	§	
Regional Bell Operating Companies of	§	
Certain Network Elements Pursuant to 47	§	
U.S.C. § 271(c)(2)(B) of the Act	§	

**COMMENTS OF TEXALTEL**

TEXALTEL, through its Executive Director, hereby offers its comments regarding the petition of 360networks, et al, regarding the need for rules regarding RBOC provision of Network Elements pursuant to 47 U.S.C. § 271(c)(2)(B).

**Summary**

The Commission has devoted a tremendous amount of resources to implement the Federal Telecommunications Act of 1996. Robust competition exists for some classes of customers in some areas. But there are some customer classes, primarily residence and very small business, where competition is limited to a duopoly in some geographic areas, and rural areas where competition is largely non-existent. And even where wireline competition exists, it is largely dependent on the ILEC for last mile connectivity. One of the biggest barriers to reaching less dense suburban and rural markets is the cost of middle mile and last mile connectivity.

**271 (c) – A Promise Broken**

FTA 96 correctly envisioned that if competitors were required to duplicate the networks of the incumbents for middle and last mile connectivity, competition would be slow to develop and then only to the densest of areas. Competitors who were enticed to enter the telecom market because of the Telecom Act of 1996 believed that they had a path to obtain essential elements from ILECs as long as they needed them. ILECs would provide UNEs pursuant to Section 251 for so long as the ILECs held a monopoly on middle or last mile and then those elements would be available pursuant to section 271(c).

The UNE expectation was a success. Many new entrants were able to start business and rely on UNEs for middle mile connectivity of their networks and last mile connectivity to reach customers. But the 271(c) promise has failed. The RBOCs have offered tariffed special access to fulfill this requirement

– offering competitors a wholesale offer that is priced exactly the same as their retail offer, and at prices that may be as much as 1000% to 1500% above costs. This has cast a huge pall over the competitive market place and has stopped or slowed competitive development in many areas. While the vision was that withdrawal of 252 UNEs would occur when there were competitive choices to reach customers, the reality is that there are huge pockets of customers even in the densest wire centers where the ILEC is still the only means of connecting customers.

Reliance on special access pricing to meet 271(c) requirements has proven a gross failure. THE COURTS have found that the states are without authority to establish reasonable rates in compliance with 271(c). The FCC has not acted either, leaving a regulatory “black hole” that is impeding further development of competition and which will make any future debates about “delisting” UNEs an agonizing process, as it may require competitors to abandon portions of their markets. The Qwest experiment to forebear from requiring UNEs in certain markets has proven a disastrous failure for this very reason – rather than simulate competitors to enter and under price the ILECs outrageously overpriced services, it caused competitors to withdraw from markets where the loss of reasonably priced middle and last mile services pushed their costs above the market price for retail services.

Some Texas Special Access rates of AT&T are as much as 15 times the TELRIC based prices for the same services when priced as UNEs. While one might argue that a different costing standard might apply for 271 (c) requirements, we are sure that there is no costing standard that could be concocted that would justify these rates as satisfying the intentions of 271(c). Many of the existing special access rates have not undergone any regulatory scrutiny in decades. Costs of providing transport services have plummeted since that time. What may have been a “reasonable”, and maybe even allegedly cost based prices 20 or more years ago are prehistoric today.

**Duplication of Middle and Last Mile facilities, just to avoid exorbitant ILEC prices, is uneconomic and bad public policy.**

An examination of the grant and loan requests submitted pursuant to the Stimulus Bill is also enlightening. There were proposals to build middle mile facilities that totaled to huge sums. Nearly all of these proposals would duplicate the facilities of the ILEC and the sole reason was to make facilities available to facilitate last mile services at prices that more closely correspond to costs. It is so obviously logical that a simple exercise in regulatory responsibility to set reasonable 271(c) rates rather than spending billions of government dollars to duplicate underutilized facilities and force market prices down that one has to wonder why it even needs to be pointed out.

TEXALTEL suggests that the best public policy is one that encourages competitors to do what they do best – to try to distinguish themselves in the marketplace by installing newer networks that the ILECs do not have, by providing services the ILECs do not provide, by aggressive pricing that offers relief from some of the ILEC legacy prices, and by finding ways to be more customer friendly in this era where large companies race to outsource customer service to call centers with strange accents. The vision of FTA was that this could be encouraged by allowing competitors to use elements of the ILECs and to avoid having to build their own networks in order to avoid outrageous and sometimes predatory pricing by ILECs. If competitors were forced to divert their very limited resources from service innovation to

building alternative networks for middle and last mile transport, their entry into the market place would have been dramatically slowed, and it is doubtful that RBOC re-entry into the long distance markets would have been justified.

The public is not going to realize any gains if competitors must duplicate middle and last mile facilities of the ILECs just to obtain cost based pricing. In fact, the public will suffer if such a requirement slows the provision of services.

Public policy today is focused on making broadband services universally available, and is focused on developing services and applications that will make broadband universally desired and useful. And the reality is that what we consider “broadband” is itself a moving target. While we once thought 256K was a super fast speed, and that megabit services were huge pipes, we are now seeing suggestions that 100 megabit or perhaps even gigabit services will be the standard at some point in the future. Thus, we have bandwidth demand being pushed from at least 3 directions – bigger pipes to customers, a growing number of customers, and a plethora of new applications causing more and more use of the pipes that exist. Thus, data demands on the middle mile infrastructure continue to grow exponentially.

One of the realities of competitive telecommunications services is that customers come and go. They may change providers once in awhile, and customers change locations. If competitors are required to build to customer locations, then they have facilities that are not useful if those customers change providers or move. FTA envisioned that TELRIC priced UNEs would be available for the last mile, and that no matter which competitor the customer chose, the ubiquitously available ILEC facilities would likely be used to provide service. This is so logical that it hardly seems worth mentioning. The alternatives would be the race of the cable plows to work each customer service order. While this may seem such a ridiculous result that one would wonder why we mention it, the reality is that in areas where TELRIC priced UNEs are no longer available (or have never been available, such as reaching other ILEC customers) there are no means to reach consumers at costs that make sense in today’s market.

For the many reasons cited above, TEXALTEL urges the Commission to take up the petition by 360networks, et al. and proceed to review whether the ROBCs are complying with 271(c) and to act to require more reasonable pricing of elements to competitors.

Sincerely  
TEXALTEL  
500 N Capital of Tx HiWay  
Bld 8, Suite 250  
Austin, Texas 78746

Charles D. Land, P.E.  
Executive Director