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# Public Service Commission

October 18, 2002

## VIA ELECTRONIC FILING

Honorable Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW - Portals II, TW-A325  
Washington, DC 20554

Re: *Ex Parte* Letter in CC Docket No. 01-338, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; and  
CC Docket No. 96-98, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996

Dear Ms. Dortch:

Forwarded herewith is a copy of a letter from Florida Public Service Commission Chairman Lila A. Jaber to Chairman Michael Powell in the above dockets.

Should you have additional questions, you may contact Greg Shafer, the primary staff person in this docket, at (850) 413-6958.

Sincerely,

/ s /

Cynthia B. Miller, Esquire  
Office of Federal and Legislative Liaison

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# Public Service Commission

October 17, 2002

Honorable Michael Powell  
Chairman  
Federal Communications Commission  
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**Re: Unbundled Network Elements and the Impact on Competitive Alternatives**

Dear Chairman Powell:

Of late there has been a great deal of attention focused on the impact of the pricing and availability of Unbundled Network Elements (UNE) on telecommunications competition. While the Florida Public Service Commission (FPSC) laments the financial distress that has befallen the entire telecommunications industry, we believe it must be viewed in a much broader context than simply the pricing of Unbundled Network Elements. We too believe that it is important to address the wholesale pricing issue in a manner that sends the proper price incentives to encourage competition and further investment in the telecommunications sector. However, the FPSC believes state commissions are best positioned to develop regulatory policy at the state level that can promote facilities-based competition as envisioned by the 1996 Telecommunications Act.

In 1996 the Congress, with input from the telecommunications industry and many other stakeholders, including state public utility commissions, passed perhaps the most comprehensive telecommunications legislation in history. The Telecommunications Act of 1996 (the Act) was supposed to mark the beginning of a new, competitive age in telecommunications. As part of the Act, incumbent local exchange companies (ILECs) were required to provide unbundled access of those portions of their networks that were necessary to provide alternative providers the ability to offer service without having to have in place an entirely separate network. The Act touched off a flurry of investment, regulatory initiatives and legal maneuvering. Now in 2002 we are seeing the impacts of those investments, initiatives, and legalities. Much of the regulatory activity and legal clarification has been completed or is nearing completion and a degree of calm and certainty in those areas is settling in. Among those regulatory initiatives is the identification and pricing of UNEs which many states across the country have established and some have already fine tuned initial decisions. The process of establishing the proper elements and pricing is ongoing.

Honorable Michael Powell  
October 17, 2002  
Page Two

In the long term, facilities-based competition is the best way to provide maximum benefit to consumers. However, we recognize and we hope others recognize, that in order to spur long term investment and commitment it is necessary to provide a stable, reasonably predictable legal and regulatory framework under which investors and service providers can operate with confidence. We believe that it is premature to conclude that UNE and UNE-P pricing is flawed and that it is the sole reason for diminishing investment in the current financial environment. Adding more regulatory change and uncertainty will most certainly serve to further restrict investment.

The FPSC has recently completed its Section 271 proceeding on BellSouth's entry into interLATA (or long distance) competition. In addition, the FPSC, in the last thirty days has completed UNE pricing dockets for BellSouth and Verizon and has yet to implement UNE rates for Sprint. These proceedings entailed a detailed review, evidentiary proceedings, and a large expenditure of staff and Commission time. The UNEs are a method of entry into the market that should not, at this time, be undermined. There could be unintended consequences to altering the regulatory framework that has yet to be fully implemented.

In addition, the FPSC has created an Office of Market Monitoring and Strategic Analysis. This enables state commission monitoring of developments in the competitive marketplace. Thus, we are developing ways, at the state level, to survey the markets. The marketplace must be given time to react and adjust to the current regulatory and legal framework. Then, after a thorough review of the telecommunications market development, it may be appropriate for states to revisit not only UNE availability but costing and pricing methodologies, as well. However, it must come only after a thorough evidentiary process that fully examines the evolution of the market in individual states. States are best positioned to determine which UNEs, if any, should be deleted, and which UNEs, if any, should be added and what costing and pricing methodologies are appropriate. A one-size-fits-all approach may not be feasible. Therefore, until sufficient time is allowed for the market to mature, Congressional or any other type federal action on this matter is premature.

We encourage the FCC to stay the course and, by all means, to permit the marketplace time to mature.

Sincerely,

/ s /

Lila A. Jaber  
Chairman

LAJ:gs:tf

cc: Brad Ramsay, NARUC  
Jessica Zufolo, NARUC

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

In the Matter of	)	
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing comments will be mailed to the persons on the attached list.

/ s /

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