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Public Service Commission

April 4, 2002

VIA ELECTRONIC FILING

Honorable William F. Caton, Acting Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CC Docket No. 01-338, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers
CC Docket 96-98, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996
CC Docket No. 98-147, Deployment of Wireline Services Offering Advanced Telecommunications Capability

Dear Mr Caton:

Forwarded herewith are Comments of the Florida Public Service Commission in the above dockets with regard to the Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers.

Should you have additional questions, you may contact Greg Fogleman, the primary staff person in this docket, at (850) 413-6574.

Sincerely,

/ s /

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

CBM:tf

**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
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Deployment of Wireline Services Offering Advanced Telecommunications Capability)	CC Docket No. 98-147
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**COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION
REGARDING THE REVIEW OF SECTION 251 UNBUNDLING OBLIGATIONS OF
INCUMBENT LOCAL EXCHANGE CARRIERS**

The Florida Public Service Commission (FPSC) submits these comments in response to the Notice of Proposed Rulemaking (FCC 01-361) released on December 20, 2001. In this Notice, the Federal Communications Commission (FCC) seeks to identify more precisely how incumbent local exchange carriers (ILECs) should provide network access to requesting carriers on an unbundled basis, pursuant to Sections 251(c)(3) and 251(d)(2) of the Telecommunications Act of 1996 (the Act). Specifically, the FCC proposes to establish a more granular standard of whether, and how, competing carriers are impaired in their ability to provide service without such access. In

addition, the FCC seeks comment on the proper role of state commissions in the implementation of unbundling rules.

Granular Analysis

The FCC seeks comment on applying the unbundling analysis to specific services, geographic locations, and customer types. Currently, the FCC rules require broad unbundling when "technically feasible." However, the FCC did begin to fine tune the unbundling rules to address specific impairments in the UNE Remand Order.¹

While the FPSC believes that a more granular analysis of the ILECs' unbundling requirements has merit, we respectfully question whether the FCC is best suited to evaluate facts that may vary significantly from one market to the next even within a state. Generally, the FCC conducts rulemaking procedures exclusively through the submission of documents (i.e., comments and reply comments). This process does not include discovery, witness testimony, and cross examination that are utilized by state commissions to address and resolve complex factual issues.

If the FCC chooses to establish geographic, more granular unbundling standards, it should only promulgate relatively broad

¹ Specifically, the FCC declined to require unbundling of the operator services/directory assistance element after finding that alternatives are available. The FCC also constructed switching rules that did not require unbundling in dense urban areas, and declined to require the unbundling of packet switching in most circumstances.

rules that would afford state commissions flexibility to customize the level of granularity based on the market conditions within the state. The FPSC believes that states are better positioned to conduct fact-specific inquiries. States are more familiar with conditions within their borders, including the level of competition and the system of retail price regulation that applies to an incumbent carrier. In addition, state commissions generally are able to resolve factual disputes through information gathering procedures which go beyond written comments.

As part of this NPRM, the FCC seeks comment on its existing unbundling rules and how to apply a more granular analytical approach. Elements that would lend themselves to a finer geographic analysis should include loops, switching, and transport. The FPSC believes there would be merit in establishing varying degrees of geographic unbundling requirements depending on the type of element. For example, the appropriate granularity for switches could be set at a more aggregate level, such as a LATA. This is based on Florida's experience that competitive local exchange companies (CLECs) typically provision services throughout an entire LATA using only one switch.

Smaller geographic areas would be warranted for such elements as analog voice grade loops. In some instances, however, varying

geographic unbundling requirements would not make sense. The FCC requested comments on this point, specifically noting Operational Support Systems (OSS). Because OSS is most often provisioned using systems that generally cover more than one state, we do not believe that OSS lends itself to any form of geographic unbundling requirements.

The FCC seeks comment on whether UNEs should be differentiated by facility type in order to account for varying availability of alternatives outside the incumbent's network. To date, the FCC has required ILECs to unbundle facilities largely without regard to the capacities or capabilities of those facilities. While we endorse in principle pursuing such an approach, we would recommend caution because capacity-based distinctions are not always clear. (For example, the distinction between high capacity loops and transport is frequently blurred.)

The FCC asked parties to comment on whether it should consider the type of customer that a requesting carrier seeks to serve in implementing the unbundling provisions of the Act. The FCC specifically questioned whether the availability of UNEs should be different based on whether the requesting carrier would use them to serve residential customers as opposed to business customers. The FCC found in the UNE Remand Order, that "the type of customers that

a competitive LEC seeks to serve is relevant to our analysis of whether the cost of self-provisioning or acquiring an element from a third-party supplier impairs the ability of a requesting carrier to provide the services it seeks to offer." The FPSC believes that such an approach is impractical to implement.

States' Role

As currently structured, the FCC rules do not afford state commissions the authority to remove a UNE from the national list. Should the FCC wish to move to a more granular analysis for requiring the unbundling of network elements, we believe that it would be appropriate for rules to be promulgated that specify under what circumstances broad national unbundling requirements can be relaxed. We envision that such rules would indicate at what level of market disaggregation an analysis may be conducted, and describe the type of evidentiary findings that would be appropriate.

The FPSC envisions that the process for relaxing the national unbundling requirements would be initiated by a request from an ILEC. The petitioner would specify the geographic area for which relaxed unbundling requirements are requested. State commissions could then hold formal hearings, with all of the fact-finding benefits associated with this process. To the extent not specified in the FCC's unbundling rules, an ILEC could propose the area by geographic

boundary, MSA, or exchange to address variations from market to market. States could then apply the rules established by the FCC over the geographic area. In adding a network element, a state commission could conclude that a requested network element that was not currently on the national list should only be available on a limited basis according to the criteria established by the FCC. Whether or not the FCC allows state commissions to address relaxing the availability of network elements on a granular basis, the FCC should retain its existing rules that allow state commissions to add network elements to the national list.

The FCC has held that Section 251(d)(3) of the Act allows state commissions to require ILECs to make available additional network elements beyond those imposed by the FCC. The additional state-imposed elements must "meet the requirements of Section 251 [of the Act] and the national policy framework instituted in [the FCC's] Order."² The FPSC contends that state commissions should be allowed to add additional unbundled network elements (UNEs) to the list (including those removed from the FCC's national list), if warranted by the specific market conditions within a state and in compliance with the requirements of Section 251 of the Act.

² Implementation of Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, ¶ 154.

Conclusion

The FPSC believes that a state commission should continue to have authority to require more stringent unbundling obligations, when necessary, in accordance with Section 251(d)(3) of the Telecommunications Act. The FCC is not as well suited as state commissions to determine the appropriate level of granularity within a state to require unbundling and should only promulgate relatively broad rules that would allow greater flexibility for state commissions to address these issues. Specifically, states are more familiar with conditions within their borders, including the level of competition and the system of retail price regulation that applies to the incumbent. In addition, states generally are able to evaluate factual disputes through procedures that include discovery, sworn testimony, and cross-examination.

Respectfully submitted,

/ s /

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2540 Shumard Oak Boulevard
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DATED: April 4, 2002

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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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