

STATE OF FLORIDA

COMMISSIONERS:  
LILA A. JABER, CHAIRMAN  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY



DIVISION OF EXTERNAL AFFAIRS  
CHARLES H. HILL  
DIRECTOR  
(850) 413-6800

# Public Service Commission

July 11, 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: CC Docket No. 01-338, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers;  
CC Docket No. 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 Ms. Dortch:

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
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	

**REPLY 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 reply 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). Such a review of the FCC's rules is particularly timely in light of the D.C. Circuit Court of Appeals recent remand of the unbundling rules.<sup>1</sup>

**D.C. Circuit Court Decision**

We believe that our initial comments are consistent with, and complementary to, the conclusions of the court and, more broadly, to the position of many state commissions and of NARUC. Specifically, the court found that to adopt uniform rules applicable nationwide to almost all elements

---

<sup>1</sup> U.S. Court of Appeals for the District of Columbia Circuit, *USTA v. FCC*, Argued: March 7, 2002, Decided: May 24, 2002.

without regard to the state of competitive impairment in any particular market is inconsistent with the Act. We believe, however, (as stated in our initial comments and in those of the Ohio, Michigan, and Texas Commissions) that it is the role of the FCC to establish the guidelines for removing or adding UNEs to a national minimal list, in order to provide some level of consistency in the implementation of the Telecommunications Act.

### **Regional State Commission Workshop**

The FPSC appreciates the complexity of UNE review and the uncertainty on the part of some market participants that is engendered by decentralizing the decision-making process as it relates to a core list of UNE availability. However, we strongly believe that markets vary significantly by regions of the country and within certain market areas within those regions. For this reason, we believe that a national approach is limited in its effectiveness to address specific market conditions. By providing greater flexibility to the states to address specific market conditions, markets can be made more responsive and effective. In order to provide some degree of comfort to market participants, the FPSC believes that the state commissions, the industry, and the FCC should work together to establish a general framework under which some degree of uniformity can be maintained while providing necessary flexibility to states to address specific market conditions.

The FPSC suggests that the FCC, at a minimum, proceed to conduct a series of regional state commission workshops to identify relevant geographic areas, market criteria, capacity or capability criteria, and any other relevant factors that states may be suited to address. Such workshops could be similar to those used to address performance standards issues in Chicago and Dallas. From those workshops, the FCC could then establish a set of general rules and guidelines to aid states in

determining how and when to add or remove UNEs to the core national list. The FPSC is willing to provide a venue for a southeastern states workshop if requested.

### **States' Role**

The FPSC maintains that state commissions are in a better position to implement both federal unbundling standards and corresponding state law, and should thus retain the opportunity to require unbundling beyond the national minimum list. The FPSC contends that should the FCC eliminate certain unbundled network elements (UNEs) from the national minimum list, state commissions should retain authority to require additional UNEs (including those removed from the FCC's national minimum list), if warranted by the specific market conditions within a state, in compliance with the requirements of section 251 of the Act.

As part of our existing responsibilities, the FPSC has recently established an Office of Market Monitoring and Strategic Analysis. It is responsible for assessing markets and recommending solutions if market failures are detected. We believe that this newly created office could assist the FCC in establishing the appropriate levels of granularity for specific elements as well as for determining the criteria for removal of specific elements from the national minimal list. Should rules be adopted in this regard, we envision that this office would play a critical role in their implementation.

### **Conclusion**

The FPSC believes that a state commission should continue to have authority to require more stringent unbundling obligations, when necessary, in accordance with § 251(d)(3) of the Telecommunications Act. The FCC is not well suited 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 most 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. To this end, the FPSC supports the comments of the Ohio, Michigan, and Texas Commissions. In addition, the FPSC believes there is merit to holding a Federal-State regional workshops on this important topic.

Respectfully submitted,

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

FLORIDA PUBLIC SERVICE COMMISSION  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
(850) 413-6082

DATED: July 11, 2002

**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
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	

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 /

\_\_\_\_\_  
CYNTHIA B. MILLER  
Office of Federal and Legislative Liaison

FLORIDA PUBLIC SERVICE COMMISSION  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
(850) 413-6082

DATED: July 11, 2002

## Service List

The Honorable Michael Powell, Chairman  
Federal Communications Commission  
445 Twelfth St., SW, Rm. 8-B201  
Washington, D.C. 20554

The Honorable Michael J. Copps, Commissioner  
Federal Communications Commission  
445 Twelfth St., SW, Rm. 8-A302  
Washington, D.C. 20554

Qualex International  
The Portals, 445 - 12th Street SW  
Rm CY-B42  
Washington, DC 20554

The Honorable Nanette G. Thompson, Chair  
Regulatory Commission of Alaska  
1016 W. 6<sup>th</sup> Ave., Ste. 400  
Anchorage, AK 99501

Peter A. Pescosolido  
Connecticut Dept. of Public Utility Control  
10 Franklin Square  
New Britain, CT 06051

Jennifer A. Gilmore  
Indiana Utility Reg. Commission  
302 W. Washington St., Ste. E306  
Indianapolis, IN 46204

Joel B. Shifman, Esq.  
Maine Public Utilities Commission  
242 State St., State House, Station 18  
Augusta, Maine 04333-0018

The Honorable Bob Rowe  
Montana Public Service Commission  
1701 Prospect Avenue/P.O. Box 202601  
Helena, MT 59620-2601

Jeff Pursley  
Nebraska Public Service Commission  
300 The Atrium, 1200 N. St./P.O. Box 94927  
Lincoln, Nebraska 68508

The Honorable Kathleen Q. Abernathy,  
Commissioner  
Federal Communications Commission  
445 Twelfth St., SW, Rm. 8-B115  
Washington, D.C. 20554

The Honorable Kevin J. Martin, Commissioner  
Federal Communications Commission  
445 Twelfth St., SW, Rm. 8-A204  
Washington, D.C. 20554

Mary E. Newmeyer  
Federal/Congressional Affairs  
Alabama Public Service Commission  
100 N. Union St., Ste. 800  
Montgomery, AL 36104

Lori Kenyon, Common Carrier Specialist  
Regulatory Commission of Alaska  
1016 W. 6<sup>th</sup> Ave., Ste. 400  
Anchorage, AK 99501-1693

Earl Poucher, Legislative Analyst  
Office of Public Counsel  
111 W. Madison St., Rm. 812  
Tallahassee, FL 32399-1400

Larry M. Stevens  
Iowa Utilities Board  
350 Maple St.  
Des Moines, IA 50319

Nancy Zearfoss, Ph.D.  
Maryland Public Service Commission  
6 Saint Paul St., 16<sup>th</sup> Floor  
Baltimore, MD 21202-6806

Mike H. Lee  
Montana Public Service Commission  
1701 Prospect Ave./P.O. Box 202601  
Helena, MT 59601-2601

Charles Bolle, Policy Adviser  
Nevada Public Utilities Commission  
1150 E. William St.  
Carson City, NV 89701-3105

The Honorable Thomas J. Dunleavy  
New York Public Service Commission  
One Penn Plaza, 8<sup>th</sup> Floor  
New York, NY 10119

Philip F. McClelland  
Pennsylvania Office of Consumer Advocate  
555 Walnut St., Forum Pl., 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923

Billy Jack Gregg  
West Virginia Consumer Advocate  
700 Union Bldg.  
Charleston, WV 25301

John T. Nakahata  
Harris, Wiltshire & Grannis LLP  
1200 Eighteenth St., NW, Ste. 1200  
Washington, DC 20036

David L. Sieradzki  
Hogan & Hartson, LLP  
555 Thirteenth St., NW  
Washington, DC 20004

Lori Cobos  
Public Utility Commission of Texas  
1701 N. Congress Ave./P.O. Box 13326  
Austin, TX 78711-3326

Margot Smiley Humphrey  
Holland & Knight  
2099 Pennsylvania Ave., NW, Ste. 100  
Washington, DC 20006

Joseph DiBella  
Verizon  
1515 N. Courthouse Rd., Ste. 500  
Arlington, VA 22201-2909

Paul G. Afonso  
Massachusetts Dept. of Telecomm. & Energy  
One S. Station  
Boston, MA 02110

Doug Kitch  
2110 Vickers Dr., Ste. 2106  
Colorado Springs, CO 80918

Carl Johnson, Telecom Policy Analyst  
New York Public Service Commission  
3 Empire State Plaza  
Albany, NY 12223-1350

Peter Bluhm, Director of Policy Research  
Vermont Public Service Board  
112 State St., Drawer 20  
Montpelier, VT 05620-2701

Barbara Meisenheimer  
Missouri Office of Public Counsel  
301 W. High St., Ste. 250  
Jefferson City, MO 65102

SBC Communications, Inc.  
1401 Eye St., NW, Ste. 400  
Washington, DC 20005

Lawrence E. Sarjeant  
United States Telecom Assoc.  
1401 H St., NW, Ste. 600  
Washington, DC 20005-2164

L. Marie Guillory  
National Telecommunications Coop. Assoc.  
4121 Wilson Blvd., 10<sup>th</sup> Floor  
Arlington, VA 22203

Richard M. Sbaratta  
BellSouth Corporation  
675 W. Peachtree St., NE, Ste. 4300  
Atlanta, GA 30375-0001

Sidley Austin Brown & Wood LLP  
1501 K. St., NW  
Washington, DC 20005

Thomas G. Fisher, Jr.  
Hogan & Fisher, P.L.C.  
3101 Ingersoll Ave.  
Des Moines, IA 50312-3918

Jonathan E. Nuechterlein  
Wilmer, Cutler & Pickering  
2445 M St., NW  
Washington, DC 20036