

November 20, 2002

Chairman Michael Powell  
Commissioner Kevin Martin  
Commissioner Kathleen Abernathy  
Commissioner Michael Copps  
Commissioner Jonathan Adelstein  
445 12<sup>th</sup> Street SW, Portals II Building  
Washington, D.C. 20544

**RE: Notice of Written Ex Parte Comment – Two Originals filed in the proceeding captioned: *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98 and 98-147, Notice of Proposed Rulemaking, FCC 01-361 (rel. Dec. 20, 2001).**

Dear Commissioners:

As this year ends, all eyes in the telecommunications industry are focused on your agency's plans to act in the above-captioned proceeding. As you know, just last month, NARUC Commissioners from all over the country converged on Detroit either in person or by phone to discuss local phone competition issues with two FCC Commissioner colleagues.

NARUC believes it speaks volumes of those FCC commissioners' sensitivity to State concerns that they traveled to Detroit and devoted practically a whole day to the meeting. A representative from the office of the Chairman and another staff representative from the FCC's Wireline Competition Bureau also attended. We believe their presence demonstrates recognition that States must continue to play a significant role in the partnership fostered by the 1996 legislation. Commissioner Copps was unable to make the meeting because of some unavoidable conflicts, but he also made specific arrangements to speak separately with interested NARUC commissioners on these issues.

This letter is to re-emphasize our commitment to the tasks Congress assigned to the State commissions. We urge each of you not to limit or restrict the tools available to the States in fulfilling our Congressionally assigned tasks as we join the FCC to meet our common goal of assuring that consumers reap the benefits of a competitive local market. In this environment, the country will benefit from State experimentation. The FCC should follow the suggestions of the recent D.C. Circuit decision and allow States to make the granular analysis needed to see which UNEs are required in their respective markets.

**STATE FLEXIBILITY TO MAINTAIN UNE-P AS WELL AS THE ABILITY TO ADD TO ANY NATIONAL UNE LIST IS CRITICAL TO KEEPING COMPETITION "ON TRACK."**

The undersigned strongly support, as a necessary prerequisite to keeping the competition initiative on track, continued State flexibility to maintain the UNE-P as an entry strategy, as well as the ability to add to any national list of UNEs. Any restriction on the State flexibility on this option will negatively impact the growth of local competition. We offer the following basic outline as our suggestions for the components of a useful FCC order in this docket.

#### **Elements State Regulators Urge as Components of any FCC Order**

##### **(1) NO STATE PREEMPTION:**

Any FCC Order should make clear no preemption is intended or should be implied - particularly with respect to additions to the National list imposed by States.

(2) PRESUMPTIVE NATIONAL LIST THAT INCLUDES EXISTING UNE's.

Any FCC list should, at a minimum, include all existing items.

(3) STATE CHECK OFF BEFORE A UNE IS DE-LISTED

Carriers that want to remove an item from the list must make a factual case before a State commission.

(4) TIMING OF IMPACT OF STATE DECISION

Any challenged UNE stays on the required list until State commission makes contrary finding.

(5) CAUCUS WITH STATES NECESSARY PREREQUISITE

FCC should caucus with State Commissions extensively before promulgating the "necessary and impair" standard used to evaluate if a UNE should be available.

(6) STATE AUTHORITY TO ADD UNEs CONFIRMED.

FCC should confirm its previous ruling that States RETAIN the right to add to the national list after hearing based on State and Federal law.

State commissions remain focused on the difficult tasks of promoting facilities-based competition as envisioned by the 1996 Telecommunications Act and assuring customers receive better services and more choices at lower prices. We emphasize that we cannot accomplish that important economic policy goal without the availability of effective competitive entry strategies such as UNE-P.

Thank you for your attention to our concerns. Please do not hesitate to contact any one of us for additional information on this or any other telecommunications issue.

Sincerely,

Signatories to the Letter (The original is signed.):

David A. Svanda, NARUC President; Michigan Commissioner

Stan Wise, NARUC First Vice President; Georgia Commissioner

Marilyn Showalter, NARUC Second Vice President; Washington Chairwoman

Joan H. Smith, Chair, NARUC Telecommunications Committee; Oregon Commissioner

Robert B. Nelson, Vice Chair, Telecommunications Committee; Michigan Commissioner

Thomas J. Dunleavy, Vice Chair, Telecommunications Committee; New York Commissioner

New Jersey Commissioner Jack Alter

Arkansas Commissioner Daryl E. Bassett

Oregon Commissioner Lee Beyer

New Mexico Commissioner Jerome D. Block

Nebraska Chair Anne Boyle

South Dakota Chair James A. Burg

Vermont Commissioner John Burke

New Jersey Board Commissioner Fred Butler

Utah Commissioner Ric Campbell

District of Columbia Chairman Angel Cartegena

Michigan Chair Laura Chappelle

North Dakota Commissioner Anthony T. Clark

Vermont Commissioner David Coen  
Maryland Commissioner J. Joseph Curran, III  
Arkansas Commissioner Betty C. Dickey  
Louisiana Commissioner Irma Dixon  
Vermont Chair Michael Dworkin  
Wyoming Chairman Steve Ellenbecker  
Ohio Commissioner Ronnie Fergus  
Louisiana Chair James M. Field  
New Jersey Board Chair Jeanne M. Fox  
Wyoming Commissioner Steve Furtney  
Wisconsin Commissioner Bert Garvin  
Connecticut Commissioner Jack Goldberg  
Maryland Commissioner Ronald A. Guns  
Illinois Commissioner Terry Harvill  
Oregon Chair Roy Hemmingway  
Washington Commissioner Richard Hemstad  
Arkansas Chairman Sandra L. Hochstetter  
New Jersey Board President Connie Hughes  
New Mexico Commissioner Herb H. Hughes  
Illinois Commissioner Edward C. Hurley  
Arizona Commissioner James M. Irvin  
Nebraska Commissioner Lowell Johnson  
Nebraska Commissioner Rod Johnson  
Ohio Commissioner Judith A. Jones  
Idaho Commissioner Paul Kjellander  
Texas Chair Becky Klein  
Illinois Commissioner Ruth K. Kretschmer  
Iowa Commissioner Mark. O. Lambert  
Nebraska Commissioner Frank Landis, Jr.  
Wyoming Commissioner Kristin Lee  
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North Dakota President Susan E. Wefald  
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District of Columbia Commissioner Agnes A. Yates  
Indiana Commissioner David E. Ziegner