Approved: May 1, 2003 Carl Dean Holmes
Date

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:05 a.m. on March 7, 2003 in Room 526-S of the Capitol.

All members were present except: Representative Nile Dillmore
Representative Peggy Long
Representative Judy Showalter
Representative Jerry Williams

Committee staff present: Mary Galligan, Legislative Research
Dennis Hodgins, Legislative Research
Mary Torrence, Revisor of Statutes
Jo Cook, Administrative Assistant

Conferees appearing before the committee:
Edwardo Rodriguez, SBC-Kansas
Becky DeCook, A T & T
John Ivanuska, Birch Telecom
Richard Lawson, Sprint
Janet Buchanan, Kansas Corporation Commission

Others attending: See Attached List

Information regarding the tour of the Sprint Headquarters, scheduled for Monday, March 10, was distributed to the committee.

Chairman Holmes told the committee that the purpose of the meeting today was to obtain information provided by several telecommunication industry representatives on their understanding and interpretation of the recent Federal Communications Commission (FCC) Triennial Review.

Edwardo Rodriguez, Assistant Vice President-Regulatory for SBC-Kansas, addressed the committee first (Attachment 1). Mr. Rodriguez stated they felt the FCC had largely passed on its legal obligation to determine what network elements must be 'unbundled' or shared with competitors and has left this to the individual states. They feel the order will do nothing to increase certainty in the telecom industry.

Becky DeCook, Counsel for A T & T, spoke to the committee (Attachment 2). Ms. DeCook stated that the FCC decision includes deregulation of broadband facilities, meaning that SBC and others have no obligation to provide their competitors access to their broadband facilities. Additionally, she stated that the decision no longer requires Bell companies to offer line sharing as an unbundled element, while providing a three year transition period in which competitors must transition their existing customers that are line sharing to another arrangement.

John Ivanuska, Vice President of Birch Telecom, offered remarks on the FCC decision (Attachment 3). Mr. Ivanuska stated they believed the FCC voted to eliminate SBC's obligation to unbundle most typed of broadband/high-speed Internet capacity.

Richard Lawson, Sprint State Executive, addressed the committee on the FCC rulings (Attachment 4). Mr. Lawson detailed five issues the ruling specifically deals with. They are 1) a basic impairment standard that will determine what parts of a local telephone company's network must be unbundled and priced based on forward looking costs; 2) the extent local telephone companies have to unbundle their broadband networks; 3) the extent local telephone companies will have to continue offering local switching as an unbundled network element; 4) the extent local telephone companies will have to offer interoffice high-capacity transport to its competitors; and 5) other miscellaneous legal issues.

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES, Room 526-S Statehouse, at 9:05 a.m. on March 7, 2003.

Janet Buchanan, Chief of Telecommunications for the Kansas Corporation Commission, provided remarks on the FCC order (Attachment 5). Ms. Buchanan stated that the final order is not yet available and that it is expected to offer greater clarification to states for determining whether competitive Local Exchange Carriers (LECs) will be impaired without access to a particular UNE. Additionally, Ms. Buchanan told the committee that the FCC indicates it will request further comment on its pick-and-choose rule for interconnection agreements. Also, the Commission has issued an order that will stay further proceedings regarding end-to-end broadband capable loop and the unbundling of packet switching; require parties to file testimony regarding methodology used to determine rates for splitter functionality and require SBC to report on its streamlined ordering process enabling migration from line sharing to line splitting.

Written testimony was provided by Sage Telecom (Attachment 6) and NuVox Communications (Attachment 7).

The conferees responded to questions from the committee.

Chairman Holmes requested that someone from the industry provide to the committee a comparison of what the original **HB 2019** had in it to what the FCC rulings included.

Representative Sloan moved to approved the minutes of the January 14, January 15, January 16, January 21, January 22, January 23, and January 24 committee meetings. Representative Reitz seconded the motion. The motion carried.

The meeting adjourned at 10:15 a.m.

The next meeting will be the tour of the Sprint Headquarters in Overland Park, Kansas on Monday, March 10, 2003.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: March 7, 2003

NAME	REPRESENTING
Debbie Schmidt	WorldNet LLC
Alan Cobb	KCCT
Wanneta Browne	AT&T
Becky DeCook	AT&T
Mike Recht	AT&T
Mike Murray	Sprint
Richard Lawson	Sprint
Judy Coates	Sprint
Debbie Lyon	CNA
Susan Mahoney	SBC
TOM DAY	KCC
Eddie Rodriguez	SBC
John Accurso	Birch
Rebecca Zapale	Federico Consulting
Doug Smith	SITA
Brent Getty	CURB
JANET BUCHANAN	KCC
TOM DAY	KCC
MIKE LURA	CURB
Steve Montgomery	MCI WorldCom

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: March 7, 2003

NAME	REPRESENTING
Nelson Krueger	Everest Connections
Rachel Reiber	Everest Connections
Bob Taylor	SBC
Tim Pickering	SBC
John J. Federico	KCTA
Randy Tomlin	SBC
Judith Gadd	Sprint
Steve Kearney	Worldnet LLC.

House Utilities Committee
March 7, 2003
Comments on the FCC Triennial Review

Statement of Edwardo Rodriguez
AVP-Regulatory, SBC-Kansas

While no order has been released, based on the Federal Communication Commission's ("FCC") press release and comments made during the FCC's February 20, 2003 meeting, it appears that the FCC may take a deregulatory approach to encouraging broadband investment, in-line with the principles proposed in H.B. 2019. It does not appear that any federal rules will require companies like SBC to share their broadband facilities with competitors. Further, the FCC announced a 3-year period for transitioning away from "line sharing." There is discussion that the FCC order will be adding another step of regulation, requiring State Commission approval before copper facilities can be retired and new technologies put in its place. Such additional steps seem the antithesis of encouraging investment to provide consumers with cutting edge telecommunications technology and the economic development that goes with it.

The actual impact of this FCC decision on broadband in Kansas is uncertain, as SBC's competitors have argued that the Kansas Corporation Commission ("KCC") has authority under state law to require such sharing of SBC's network. SBC is encouraged, however, that as a result of the FCC press release, the KCC has delayed implementation of the portion of its January 13, 2003 Order requiring SBC to allow competitors to access its Project Pronto network, pending review of the actual FCC order. However, the KCC has left standing the portion of its Order requiring line splitting and compliance is estimated to cost SBC millions of dollars. This ruling alone could curtail SBC's future investments in Kansas.

Regarding voice services, the FCC has largely passed on its legal obligation to determine what network elements must be "unbundled" or shared with competitors – and instead has left this task to the individual state commissions. In particular, the FCC seems to have set out two presumptions with respect to the switching element. In the first case, the FCC appears to have presumed that competitors are not legally entitled to switching for some large business customers (those served by high-capacity DS-1 lines). In the second case, the FCC appears to have presumed that competitors should have access to switching for residential and small business customers, comprising the majority of all access lines. The FCC has given State Commissions time to conduct proceedings to rebut these presumptions and we await details of the KCC's plan to accomplish their investigation.

Assuming this approach survives court challenges, these matters are to be settled in state proceedings, which may lead to up to 51 different outcomes; hardly a model of the regulatory certainty so desperately needed in this industry. The time, expense and confusion that will be needed to sort this out are mind boggling to those of us who toil in the arcanum of telephone regulation.

Obviously, from what we can gather, the order will do nothing to increase certainty in the telecom industry. Both incumbents and competitors have stated their intent, based on FCC commissioner comments and press releases, to appeal the FCC order once it is issued. At a very

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ATTACHMENT 1

basic level, the FCC has yet again declined to follow through with its obligation to create unbundling rules that can be consistently applied. The only thing we do know for sure is nothing is settled, and for an industry trying to find its footing after two disastrous years, we are still walking on quicksand.

Attached for your further reading are articles opining on the effect of the triennial review on telecommunications firms like SBC and on the free market. Undoubtedly, however, an accurate representation of the effect of the triennial review will only come after a thorough and complete reading of the actual order.

Thank you for your time today.

The Washington Times
www.washingtontimes.com

Wires crossed at FCC

House Editorial

Published February 25, 2003

Politics triumphed over good policy at the Federal Communications Commission (FCC) Thursday, when a majority of commissioners broke ranks with Chairman Michael Powell while voting on new regulations for local telephone companies. Mr. Powell had wanted the FCC to change the rules, but he was outmaneuvered by Commissioner Kevin Martin, a fellow Republican whose own plan got the support of two Democratic commissioners. The result of this jockeying of egos and agendas will be paralysis, because the plan that Mr. Martin & Co. approved will generate a flurry of court challenges around the country and stymie regulatory reform.

On the brighter side, the FCC did speak with one voice on broadband, or high-speed Internet. Mr. Powell, Mr. Martin and other commissioners supported dropping a requirement on the Baby Bells to lease out their fiber-optic cables for broadband to competitors.

But they significantly disagreed on rules for the local telephone market. Under Mr. Powell's plan, the FCC would have dropped a requirement on the Baby Bells to lease out, at government set and below market prices, part of their technological infrastructure to rivals. Mr. Powell urged commissioners to set a federal rule freeing the Baby Bells from having to lease out their switches, known as the brains of the telecommunications network.

Mr. Martin, on the other hand, proposed letting states decide what rules for the local phone companies should be. Mr. Martin's plan prevailed. And since the FCC, at Mr. Martin's bidding, failed to relax federal regulations, rules on telecommunication regulations will be fought out in state courts around the country. Many of these cases will then be heard by the 12 federal court of appeals and, finally, at the Supreme Court. The result will be a regulatory paralysis for several years.

And that apparently, is what the White House wanted. Relaxing leasing requirements on the Baby Bells would reinvigorate the industry as a whole and give companies new incentives to develop new technologies and modernize existing ones. But the White House, we have heard, feared that deregulation would cause a short-term rise in local telephone rates — right in time for the 2004 elections. So Mr. Martin, who campaigned for President Bush and whose wife is Vice President Dick Cheney's chief public affairs strategist, convinced the FCC to do what was best for the White House, rather than the industry. But eventually, the Baby Bells will prevail, because the courts, first the Supreme Court in 1999 and then the D.C. Court of Appeals in May, have generally ruled in favor of deregulation, pursuant to the 1996 telecommunications act.

In terms of broadband, the FCC appears to have done the right thing, by deciding that the Baby Bells would no longer be required to lease out modern fiber-optic technology for broadband service. This move by the FCC was overdue. Cable companies control about 60 percent of the broadband market, and they have misused their dominance by becoming the gatekeepers to the virtual world, limiting surfers access to certain Web sites.

But the FCC's failure to deregulate the local telephone industry at the federal level reflects a weakness in the White House's policy shop. Apparently, they lack advisers expert enough to convey the policy short falls of a politically expedient argument.

Return to the article

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Business World / *By Holman W. Jenkins Jr.*

Bye Bye, Baby Bells?

"Narook" may sound like a sneeze that ended badly. It also happens to be the nickname of one of those obscure Washington interest groups that control everything—its proper name being the National Association of Regulatory Utility Commissioners, or Naruc.

Blame these folks for the sausage that came out of the Federal Communications Commission last week and passed itself off as telecom policy. The Bush administration had a sour experience with Naruc's membership two years ago, when countless state commissioners planted themselves in front of local news cameras and blamed the White House for rising electricity bills during the West Coast power crisis. Who wants to go through that again with phone bills before the next presidential election? Hence the sausage.

Narookers were instrumental in persuading Kevin Martin, an FCC swing vote and former George W. Bush campaign adviser, to block a long-awaited move to free the surviving Baby Bells from having to rent out access to their local phone infrastructure to resellers at regulated prices. Though not one person in a hundred has the magical ability to keep his eyes open when the issue is discussed, everyone understands somehow that last week's decision was a watershed.

Defeat for the Bells was a victory for state regulators, who will still have something to regulate. It was also a victory for AT&T's lobbying clout. The long-distance company has become a leading reseller of local phone service under its own label and was everywhere last week congratulating the FCC for "preserving competition" in local dialing.

Uh huh. Those involved better hope they've moved safely on to their next political jobs before their handiwork yields its inevitable outcome. The "competition" they have preserved is not the market kind but a regulatory jostle over who will extract the remaining cash to be milked from the old, declining local phone networks of the last century.

We have nothing against AT&T as a company but it wasn't good policy to come down on Ma Bell's side. Her future, as she well recognizes, lies with providing long-haul data services to corporate customers. Ma's own consumer business, the long-distance service that 40% of American households still subscribe to, will inevitably disappear as voice traffic becomes part of a larger Internet-based data network.

The company has looked this future bravely in the eye and assured Wall Street that it will manage the decline of its consumer business with a hardheaded goal of "cash maximization." As part of this strategy AT&T has been willing to buy local service and repackage it with long distance to keep customers from jumping ship. But the willingness comes with a caveat: Ma Bell will do so only if regulators set the local-loop price low enough to guarantee her a gross profit margin of 45% or better.

Ma has stuck to her guns admirably on this. She's not going to throw money at local service to defend her wasting position in long distance. Only those states that knuckle under see hide or hair of her.

Now, when a Bell loses a local dialing customer to AT&T, it still collects a wholesale rate from AT&T—albeit one set by regulators. In some sense, this is simply a battle of marketing programs. But AT&T naturally targets the most profitable Bell customers, and does so by using cheapo access to an infrastructure that *all* Bell customers have to pay for.

You see the problem: The customers AT&T is being bribed to lure away are exactly the ones who bear a disproportionate share of the freight of the old system. AT&T doesn't care: Its future is assured even if the local phone networks go down the tubes, since AT&T provides long-distance haulage for competing wireless and cable telephony operators too. For the Bells, though, last week's ruling was an intimation of the dreaded "death spiral," wherein all the good customers leave and only the money-losing ones stay.

Kevin Martin

Why state regulators are keen to use the local loop to subsidize AT&T's efforts to extract cash from its dying long-distance business is the big mystery here. Fortunately, wireless has become so cheap that even the poor have somewhere to go to escape the declining local phone networks. But the Bells are still left with a business survival problem.

The Bells had been hoping that last week's FCC decision would buy them some time, but no such luck. SBC's Ed Whitacre has been sniffing around satellite broadcaster DirecTV, producing much rolling of eyeballs among those who recall the Bells' failed TV ventures of years past.

Verizon, for its part, has made noises about challenging AT&T in the business of servicing corporate clients, though Verizon lacks the nationwide capacity and know-how to serve a corporate clientele. Neither of the two biggies has given strong evidence of still wanting to be in the residential landline business after the Internet swallows everything.

The possible exception is BellSouth, which has breathed the odd hint that it would consider building the dream network of techno-gurus: fiber to the home. Thus far, of about 100 million households in the U.S., only 72,000 or so have fiber, and only a couple thousand of those got it from a Baby Bell. Most get it from either a high-end real estate developer or a few rural municipalities.

In theory, last week's FCC decision liberated the Bells to reap a market profit on any future rollouts. A fiber last-mile network, if anyone bothered to build it, would become the channel of choice for its ability to deliver massive amounts of data. A single strand can carry up to 100 terabits per second, or enough 3-D video-on-demand to drown any household.

But it's hard to picture the financial markets giving the Bells the hundreds of billions of dollars it would take. Investors have eyes in their heads. After last week they could be forgiven for wondering if the politicians can ever be trusted not to pillage the captive Bells for short-term political gain.

THE FINANCIAL COMMUNITY'S REACTION TO THE FCC's FEBRUARY 20TH TRIENNIAL REVIEW ORDER

WALL STREET'S COMMENTS

Bernstein Research – February 21, 2003

- *"The FCC failed to ease the uncertainty clouding sentiment around telecom regulation when it issued a summary order on the unbundling requirements of the regional bells lacking sufficient details for the investment community to make well informed decisions and driving a significant sell-off in the large-cap names."*
- *"The ruling will undoubtedly spawn a flurry of lawsuits by the RBOCs calling into question the legality of the FCC's continued inclusion of switching in the UNE platform through misapplication of the CLEC impairment standard and will likely rely heavily on the Chairman's own dissenting comments for support of their position."*

Precursor Group – February 24, 2003

- *"Contrary to our deregulatory expectations, the prevailing Democratic majority coalition increased phone regulation, expanded UNE-P, and added investment uncertainty to the core business that comprises most of the telecom industry's profitability. Simply, the FCC majority chose more government price reductions for consumers over stimulating job creation and investment. The FCC also increased its anti-investment bias by favoring resellers over infrastructure owners and equipment suppliers."*
- *"We no longer believe investors should rotate into the telecom sector because of increasing government price regulation and investment uncertainty."*
- *"We also advise an underweight of telecom equipment, because their primary customers face more profit pressure…"*

Morgan Keegan Equity Research – February 21, 2003

- *"In our opinion, based on this FCC decision, we would expect the following trends:*
  1. *It's good to be a telecom lawyer*
  2. *More uncertainty*
  3. *Near term lowering of capital spending*
  4. *Long term transition to broadband*
  5. *No change in financial trends"*

Morgan Stanley – February 20, 2003

- *"Net net the decision is negative for the Bells and arguably the entire industry as it injects further uncertainty in the market and perpetuates an unsustainable business model."*
- *"Usually a decision of this magnitude would bring with it greater certainty and clarity. Yet, in this instance, we believe the issue is as confused and uncertain as ever."*
- *"The FCC believes that making new investment free from the UNE-P rules will spur new investment and the build-out of fiber to the curb. We cannot imagine why that would be the case. There is virtually no incentive for the Bells to spend billions of dollars building out local fiber for two reasons: 1) Line sharing is no longer that big of a competitive threat due to the numerous bankruptcies of the DLECs so the Bells will be content to offer broadband over existing copper loops, and 2) the FCC did not provide UNE-P relief for*

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switching, which was the most important element for the Bells. We would not expect the Bells to react so favorably to such a decision as to go out and invest in a local fiber build."

Goldman Sachs – February 21, 2003

- *"A discussion of valuations wouldn't be complete without acknowledging that one is hard pressed to find fundamental reasons why investors should want to be at all exposed to this group. We think many investors who don't need to be in U.S. telecoms won't and shouldn't stay here."*
- *"The majority's stated goal in the Broadband ruling was to try to incent upgraded investment from the RBOCs, with the logic that the Bells will simply upgrade faster and more broadly in order to maximize the number of DSL lines that are not subject to unbundling. We don't believe that this will have the intended effect, and see only a slight amount of incremental spending, specifically from VZ and SBC. We think that it is naïve to think that the Bells, facing such a negative UNE-P decision will turn around and step up spending on a part of their business that only produces long term incremental returns. In the short term they need to respond to the damage that the FCC has imposed on their existing business."*
- *"In our view, the most profound effect of this decision is the increased uncertainty it has re-introduced into the equation. Appeals at the federal level will take time and lead to an unpredictable outcome. Implementation of the order at the state level will be unchartable, and inevitably lead to an unending series of appeals."*
- *'The UNE-P decision provides no incentive for either the Bell's, who, barring a successful appeal, could continue to have to rent their switches to competitors, or for the IXCs, who can continue to lease facilities and thus do not need to build them out. In addition, it probably dis-incents cable companies from moving into telephony."*

Leman Brothers – Feberuary 20, 2003

- *"In sum, this ruling effectively maintains the status quo on the vast majority of the UNE-P market, and is likely to embolden the IXCs to continue their economically inefficient UNE-P customer acquisition efforts. It highlights a fractured, dysfunctional FCC, which is likely to create much regulatory uncertainty on this and many other issues, leading to lower industry multiples in the intermediate term."*

Utendahl US Equity Research – February 20, 2003

- *"FCC Triennial Review: What a mess! A lawyer's dream come true."*
- *"The latest ruling creates far more uncertainty than it resolves. This uncertainty is likely to depress valuations not only for the bells, but for CLECs as well, who will be unable to make long term plans until the legal battles are resolved."*
- *"Perhaps the most disturbing element of the FCC order pertaining to switching is the broad role it gives to the states."*

UBS Warburg – February 21, 2003

- *"The Bells: Triennial Review Mirrors Our Worst Case Scenario."*
- *"While this could (broadband portion of the Order) potentially improve the economics of building out these facilities for the bells, we believe there remains little incentive for the Bells to take on additional cost in this capital constrained environment."*

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Merrill Lynch – February 21, 2003

- *"Indeed, arguably we are in a more messy situation now than before."*
- *"While Chairman Powell has made clear his view that the FCC should shift the UNE resale regulations to promote greater facilities based competition for local exchange service, he was unable to secure the two other votes needed to move his agenda forward."*

Credit Suisse First Boston – February 20, 2003

- *"We believe that today's decision clearly puts greater control of the administration of UNE-P in particular into the hands of the states. That decision will drive on-going litigation at both the federal level as well as all 50 states driving a more complex regulatory process to follow."*

Lazard U.S. Equity Research – February 21, 2003

- *"A disappointing ruling with negative consequences for the stocks."*
- *"…the commission, essentially, ceded responsibility for designing and implementing reform to state regulators, a setback for the RBOCs in two ways: 1) material change to the existing UNE-P regime is likely to be slow to come; and 2) the regulatory outlook has grown murkier because UNE-P policy will be set (and therefore contested) on a state-by-state basis rather than by uniform national policy. Additionally, it appears that the FCC intends to broaden access to low-priced enhanced extended links (EELs), a potential negative for the RBOCs as broader access thereto could reduce demand for retail-priced special access circuits."*
- *"…significant legal challenges are likely to delay full implementation of the new rules."*

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Comments of
Rebecca DeCook
Counsel for AT&T
Before the House Utilities Committee
Regarding the FCC's February 20, 2003
Triennial Review Decision
March 7, 2003

When the FCC announced its recent Triennial Review decision on February 20, 2003, that decision represented the culmination of more than a year of information gathering and public debate. At the end of the day, the FCC forged a bipartisan compromise that in AT&T's view granted incumbent monopolies far more broadband deregulation than is warranted, but does provide AT&T and other CLECs with the tools to continue to compete in the local voice market. While the FCC has not issued its actual order, it has issued a 2-page press release and a 2-page attachment in which it explains the high level principles that have been decided.

Let me address what the FCC has decided. First and foremost, the FCC deregulated the very broadband facilities that SBC sought to deregulate through its recent legislation. According to the FCC's press release, SBC and the other Bell Companies have no obligation to provide their competitors access to their broadband facilities. They will ***not*** have to provide access to Project Pronto, loops that the FCC has characterized as hybrid loops. In addition, there is no unbundling requirement for Fiber to the Home facilities for both broadband and voice services. These are loop facilities that are completely fiber from the switch to the customer's home.

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More importantly, on the broadband action taken by the FCC, the FCC has expressed a clear intent to prohibit the states from imposing any regulation on these broadband facilities.

While AT&T believes that SBC and the other Bell Companies got far more deregulation than is justified, SBC and the other Bell Companies got just what they have been asking for. The Bell Companies have urged the deregulation of broadband for years, claiming that if they have to share their new next generation facilities with their competitors, there would be no incentive for them to invest in upgrading their network. On broadband facilities, the FCC has provided the Bell Companies the investment incentives that they have been demanding.

Second, the FCC will no longer require the Bell Companies to offer line sharing as an unbundled element. The line sharing obligation required the Bell Companies to make the high frequency portions of the copper loop available to CLECs to provision DSL type service to the customer, where Bell is providing the underlying voice service to the customer on the same loop. The FCC established a three-year transition period in which competitors must transition their existing customer base that utilize line sharing to some other new arrangement. In addition, during each year of the transition, the price for the high-frequency portion of the loop will increase incrementally towards the full cost of a loop.

For other network elements, the FCC reached a number of preliminary conclusions on whether the elements should be unbundled. For many of these facilities, the FCC recognized the role and expertise of state commissions in fostering local telephone competition and their knowledge of local conditions. It gave the state

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commissions an important role in determining the continuing availability of these other unbundled elements.

As background, the federal Telecommunications Act of 1996 requires incumbent local exchange carriers to provide nondiscriminatory access to network elements on an unbundled basis. The FCC established a national list of the minimum network elements that were required to be unbundled by every state, but then allowed the states to go beyond the minimum list if the states determined that additional network elements were necessary for CLECs to offer competitive choices to customers. In its Triennial Review decision, the FCC has once again given state commissions a significant role in determining what network elements shall continue to be made available to CLECs in order to provide for customer choice in voice services.

For example, the FCC determined that the Bell Companies will no longer be required to provide unbundled access to switching for business customers served by high-capacity loops (loops that are DS-1 capacity and higher), unless the state commission finds that the CLECs will not be able to provide service to their customers without access to high capacity switching. Under the FCC's framework, state commissions may conduct proceedings within 90 days of the effective date of the FCC Order to rebut this national finding.

For switching to serve residential and small business customers (referred to in the FCC press release as mass market customers), the FCC made a finding that CLECs would be unable to serve these customers without access to switching. From AT&T's perspective this is an important ruling, because switching for residential and small business customers is a key component of the UNE-Platform. The inability for CLECs to

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gain access to unbundled switching to serve these markets would have gutted residential and small business competition. Under the FCC's Order, state commissions are to conduct proceedings and apply criteria established by the FCC to determine, on a granular or more local basis, whether lack of access to certain switches would impact the CLECs' ability to provide service to residential and small business customers. State commissions must complete such proceedings within 9 months of the effective date of the FCC Order. If the state commission finds that the ability of competitors to serve these customers would be harmed, the Bell Company must continue to offer switching for residential and small business customers on an unbundled basis. If the state finds that the ability of competitors to serve these customers would not be harmed, the FCC establishes a 3-year transition period for CLECs to transition off of UNE-P.

For other network elements, such as non-broadband loops and transport facilities, the FCC made findings as to whether the facilities must be made available to CLECs. In the interest of time, I will not summarize all of these findings, but merely point out that the FCC again gave state commissions an important role in assessing the necessity of continuing the availability of these facilities to CLECs based upon local conditions, similar to the state commission role I have discussed for switching.

In summary, while the FCC's decision grants SBC and the other Bell Companies far more deregulation than is warranted in broadband services, the decision did give SBC exactly what they have aggressively sought for several years. In exchange for deregulation of broadband, SBC promised investment. Policymakers should monitor closely the level of SBC's future investment to see if the deregulation granted by the FCC fosters the investment that was promised by SBC.

2-4

In addition, the FCC decision gave the KCC a significant role in determining whether customer choice for voice services will continue to exist in the state by allowing the KCC to determine, after review, what network elements shall continue to be made available to CLECs. The federal Telecommunications Act of 1996 established a state and federal collaborative process for developing local competition. The Triennial Review decision reinforces that process, as did this committee's decision to reject HB2019.

There is no need for this legislature to do anything more. In fact, SBC SNET, agreed earlier this week that the broadband bill that was pending in Connecticut could be "withdrawn in part because a recent ruling by the FCC raised questions about how federal policy and state law would intersect." The spokesman for SBC SNET said that SBC "thought, why don't we wait and see what the FCC order says?" AT&T believes that is good advice for the state of Kansas as well.

Thank you for your time today and I would be glad to answer any questions you might have.

Comments of
John Ivanuska, Vice President
Birch Telecom
Before the House Utilities Committee
Regarding the FCC February 20, 2003 Decision
on Broadband Issues
March 7, 2003

Thank you once again Chairman Holmes and members of the Committee for letting me appear before you and offer my remarks.

After more than a year of evidence gathering and very visible and vocal public policy debate in the FCC's "Triennial Review Notice of Proposed Rulemaking," on February 20, 2003 the FCC made a critical decision regarding the extent to which SBC should be required to offer leased capacity on their network. As we await the full text of this landmark decision, it is abundantly clear that the FCC voted to eliminate SBC's obligation to unbundle most types of broadband/high-speed Internet capacity. In short, the FCC did what SBC had been asking them to do in the prior "Tauzin-Dingell" broadband legislation in Washington, D.C., and more recently in state broadband legislative initiatives such as Kansas House Bill 2019. They preemptively deregulated broadband, but did it in a precise, thorough, and extremely thoughtful manner. When all is said and done, the FCC Order will be hundreds of pages, compared to the blunt instrument, extremely interpretable few sentences being offered by SBC in the state broadband legislation they're pushing.

So with its February 20th ruling, the FCC fulfilled a major public policy goal of SBC, yet SBC is still pushing for broadband deregulation on a state-by-state basis. I've heard of statements from SBC ranging from "well now that the FCC has acted, states MUST pass this state legislation to fulfill the requirements set forth by the FCC in this decision" to "with the possibility of the FCC's Decision being Stayed by a Court, states MUST move swiftly to pass this state legislation."

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The comments emanating from the SBC spin machine range from speculative at best to just plain wrong.

In fact, in SBC's fervor to keep the far-reaching state broadband legislative initiatives alive, we can now see the REAL agenda that the opponents of HB 2019 feared was just below the surface all along – to reach past broadband deregulation to essentially deregulate all of SBC's wholesale network sharing obligations, putting State PUCs like the KCC out of the business of protecting consumers. As I testified before this Committee earlier, the KCC is in the best position to protect the interests of Kansans as competition evolves in Kansas, and the FCC recognized this fact in its February 20th Decision.

And even some of SBC's closest public policy "friends" are pretty dismayed at SBC's negative reaction to the FCC's decision to deregulate broadband investment.

While Rep. Billy Tauzin (R., La.) has been on a perpetual rant since February 20th, Rep. John Dingell (D., Mich.), the "Tauzin-Dingell" legislative co-author, has quite a different reaction to SBC's ungraciousness. In hearings before the US House Energy and Commerce subcommittee on telecommunications, held February 26, Rep. Dingell commented:

"I have read in recent days, however, that certain Bell [chief executive officers] have announced that they will not invest in advanced networks because they did not receive all the relief they were seeking. I hope that this is not true. I expect the Bells to use this new found regulatory freedom to do what they have promised, which is to invest rapidly and on a significant scale in local broadband networks."

Even the Bell's champion, FCC Chairman Michael Powell, at the February 26th hearing, dismissed the Bell's reactions commenting:

"I think it is a lot of crying, a lot of cry-baby reactions to a business decision at the end of the day. I still don't think when they go back in the board room and they take a look at their fiduciary responsibility to shareholders, they won't be able to ignore completely the opportunity that this decision provides."

Now negative reactions like this haven't necessarily dissuaded SBC from pursuing its biased public policy agenda in the past, but I'm asking you once again to see SBC's once-hidden agenda in the full light of day. SBC got **what it said it wanted** in state broadband initiatives like HB 2019, and they got it from the FCC on February 20th. So if SBC remains relentless in the face of a very, very favorable FCC decision for them on broadband deregulation, you have to ask yourself why. Why? It's obvious to those of us who follow SBC's public policy mischief machine around. They didn't get the FCC to grant a national mandate that would eliminate their wholesale local switch unbundling obligations, take State PUCs out of play, and kill voice competition. So they're going to continue to press state legislatures to finish the job.

But you said "no" to SBC on February 14th and as we stand here today, your "no" is even more of a reasoned, rational "no" now that the FCC Decision has been rendered.

Thank you.

Sprint

Before the Kansas House Utilities Committee
Richard Lawson, Sprint State Executive
March 7, 2003

Mr. Chairman and Members of the Committee:

Earlier this week, Jeff Carlyle, senior deputy chief of the FCC's wireline competition bureau, spoke to the Missouri House of Representatives Committee on Communications, Energy and Technology. Mr. Carlyle outlined for the committee what he believes will be in the FCC's order dealing with network unbundling obligations of incumbent local telephone companies like Sprint and SBC. Mr. Carlyle did not depart much from the FCC's press release related to this matter, and he focused mostly on broadband issues, as the committee had asked him to do. I thought it might be helpful if I use my time today to relay to you some of his observations.

As a general matter, he said the FCC's order will deal with five buckets of issues. These buckets include:

1. A basic impairment standard that will determine what parts of a local telephone company's network must be unbundled and priced based on forward looking costs.

2. To what extent local telephone companies have to unbundled their broadband networks.

3. To what extent local telephone companies will have to continue offering local switching as an unbundled network element.

4. To what extent local telephone companies will have to offer interoffice high-capacity transport to its competitors.

5. Miscellaneous legal issues.

Regarding the broadband issues, Mr. Carlyle said the order will address to what extent local telephone companies will be required to unbundled broadband. He said the order will address three environments:

- Copper loops that connect telephone company switching facilities with a small business or residence. These are known as "home run loops."

- Hybrid copper/fiber loops that allow the provision of broadband service to customers located more than 18,000 feet from a switching office. I believe this is what SBC refers to as Project Pronto.

- Fiber from the switching office to the home or small business.

The order will examine line sharing separately. Line sharing occurs when one entity uses the high frequency portion of a loop to provide broadband

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service and another entity uses the low frequency portion of the same loop to provide voice service.

Mr. Carlyle said the underlying intent of the commission's order addressing broadband unbundling is to provide new rules for new facilities and to retain the old rules for old facilities. In practice, this means:

- Copper loops will continue to be unbundled and made available to competitors.

- Competitors will not have access to hybrid copper/fiber facilities for the provision of broadband services.

- If a provider builds fiber to the home where there are no existing facilities (a new subdivision, for example), the provider is not required to unbundle these facilities and provide them to a competitor. This is called a "green field" environment. The theory is that anyone can build new facilities to this new, unserved development.

- If a provider builds fiber to the home where there are existing facilities (home run copper loops), the provider must make the existing loops available as an unbundled network element. If these copper loops are retired, the provider must make available unbundled voice grade channels.

The one caveat in all of this is that a competitor using any of these facilities today to provide broadband services will be able to continue to have the same access to them when the new rules become effective.

Regarding line sharing, telephone companies no longer have to provide as an unbundled network element the high frequency portion of the loop. Competitors using this portion of the loop today to provide broadband services will have to migrate their customers to a new architecture over three years.

Mr. Carlyle made these general observations:

- The Commission's order will be strong and give the industry certainty. He believes that the order will withstand court appeals.

- Regarding broadband unbundling, the order will presumptively pre-empt state commissions by establish a clear federal regime. The Federal Telecommunications Act gives the FCC this authority and requires that state policy be consistent with federal policy. In short, the FCC does not anticipate any subsequent state actions regarding broadband unbundling.

- As a result of the Commission's order, states will have a stronger role than ever in developing rules to foster competition. Based on state-specific market conditions, state commission will determine if certain unbundled network elements must be made available. However, this does not include broadband facilities.

Kansas Corporation Commission

Kathleen Sebelius, Governor John Wine, Chair Cynthia L. Claus, Commissioner Brian J. Moline, Commissioner

Briefing of Triennial Review
Janet Buchanan, Chief of Telecommunications
Kansas Corporation Commission Staff

Before the House Utilities Committee
March 7, 2003

Chairman Holmes and Members of the Committee:

Thank you for allowing me to appear before you this morning on behalf of the Kansas Corporation Commission Staff to discuss the outcome of the FCC's Triennial Review. My name is Janet Buchanan. I am the Commission's Chief of Telecommunications.

The FCC's order detailing its decision in the Triennial Review is not yet available. Some reports indicate that an order may be issued on March 21, 2003. Within approximately two weeks of issuing the order, it will be published in the Federal Register. The order becomes effective 30 days after publication unless a stay is issued.

At the time an order is issued, more definitive information will be available regarding the FCC's decisions on unbundled network elements (UNEs). However, a general sense of the FCC's decisions can be derived from its press release. The following is a summary of the more significant decisions that appear to have been made by the FCC as reflected in the FCC's press release and individual FCC Commissioner statements.

Before turning to the FCC's decision, recall that Section 251(d)(2) of the Federal Act requires that:

> In determining what network elements should be made available for purposes of subsection (c)(3), the Commission shall consider, at a minimum, whether –
>
> (A) access to such network elements as are proprietary in nature is necessary; and
>
> (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services it seeks to offer.

The FCC is expected to offer greater clarification to states for determining whether competitive LECs will be impaired (the requirement in (B) listed above) without access to a particular UNE. The order is likely to set out specific criteria for states to apply in determining, in a granular manner, whether impairment (economic or operational) exists. The TR State Newswire and TR Daily publications indicate that they believe the FCC

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will require analysis of impairment based on customer class, geography and service. Presumably, the FCC is applying its new impairment guidelines in the determinations it is making in this Triennial Review.

SWITCHING

The FCC appears to determine that switching for business customers served by high-capacity loops (DS-1 or higher capacity) will no longer be unbundled on a presumptive finding of no impairment. However, states will have 90 days to rebut this national finding. For other customer classes, the FCC will set out specific criteria that states will apply to determine on a market-by-market basis whether economic and operational impairment exists if switching is not available to competitive LECs. It is unclear whether the FCC will make a presumptive finding of impairment for customers not served by high capacity loops. State commissions will be required to complete proceedings within 9 months from the effective date of the order. If a state finds that no impairment exists in a market, the FCC sets out a transition plan to phase out the availability of UNE-P. The National Association of Regulatory Utility Commissioners has developed a task force for states to discuss and perhaps come to consensus regarding how to determine whether a competitive carrier will be impaired without access to switching as an UNE within the time frame set out by the FCC.

The FCC appears to determine that incumbent LECs will not be required to unbundle packet switching. This determination includes the packet switching function through routers and DSLAMS. Access to packet switching is important for broadband providers if the incumbent is providing broadband services using digital loop carrier equipment. However, as explained below, it seems the FCC will no longer require access to the high frequency portion of the loop, hybrid fiber and copper systems used to provide broadband, or new fiber facilities. Thus, access to broadband UNEs is not likely to be required.

LOOPS

The FCC press release indicates that the FCC will maintain its requirement that access to copper loops and subloops must be provided by an incumbent LEC. The press release also indicates that an incumbent LEC may not retire any copper loops or subloops without receiving approval from the state commission. However, there has been considerable debate about whether the order will include the requirement to receive approval before retiring copper loops.

The FCC apparently will determine that the high frequency portion of the loop is not an UNE. (However, four of the five FCC Commissioners expressed concern about elimination of this UNE.) It seems the Commission will find that as long as a competitive LEC has access to the entire stand-alone copper loop there is no impairment in its ability to provide broadband service. Competitive LECs currently leasing the high frequency portion of the loop will be given a three-year transition period to create new serving arrangements for their existing customer base. Competitive LECs will be permitted to acquire new customers using the high frequency portion of the loop during

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the first year of that transition period but not thereafter. During the transition, the price of the high frequency portion of the loop will increase toward the cost of the entire loop in the relevant market.

Because the FCC appears to have determined that no unbundling would be required for the packet switching features, functions and capabilities, the incumbent LEC will not be required to provide unbundled access to that facility we have referred to as the broadband capable loop – those hybrid copper and fiber loop facilities that make use of digital loop carrier and other equipment to provide high speed data service. However, it appears the FCC will require an incumbent LEC to provide unbundled access to a voice-grade equivalent channel over such hybrid loop facilities.

The press release indicates that the FCC will not require unbundling of newly built fiber-to-the-home loops for either broadband or voice service. Additionally, the FCC will not require unbundling of overbuild fiber-to-the-home loops for broadband services. In this instance, the incumbent LEC must continue to provide access to a suitable transmission path for voice service even if the underlying copper is retired.

The press release indicates the FCC finds that there is no impairment to a competitive LEC if high capacity, OCn (optical carrier) loops are not unbundled. For DS1 loops, DS3 loops and dark fiber it appears the FCC will find that impairment does exist and these loops will be subject to a more granular state review.

OTHER

The FCC requires the incumbent LEC to make routine network modifications to UNEs used by competitive LECs where the requested facility has already been constructed. Routine modifications include the deployment of multiplexers to existing loop facilities and other activity the incumbent would undertake to serve its own customers, including loop conditioning required for provisioning of DSL service. The FCC will not require the incumbent LEC to trench new cable or construct transmission facilities.

The FCC provides clarification of its TELRIC pricing rules. First, the FCC clarifies that the risk-adjusted cost of capital be used in calculating UNEs and should reflect the risk associated with a competitive market. The cost of capital may be different for different UNEs. The FCC also clarifies that the use of an accelerated depreciation mechanism may be a more accurate method of calculating economic depreciation of assets.

Section 271 of the Federal Act requires that Regional Bell Operating Companies provide unbundled access to loops, switching, transport, and signaling regardless of the FCC's determination of unbundling requirements. These are items in a 14-point checklist that a Regional Bell Operating Company must comply with before being permitted to provide in-region, interLATA long distance service. Where the FCC has determined that a checklist item is no longer subject to unbundling under Section 251 of the Federal Act, a Regional Bell Operating Company must still offer unbundled access to meet the requirements of Section 271 but the pricing will be determined on a commercial basis under the "just and reasonable" standards of the Act.

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The FCC indicates that it will request further comment on its pick-and-choose rule for interconnection agreements. The FCC believes modification of the rule may be necessary to promote more meaningful negotiation between incumbent LECs and competitive LECs.

Again, until a written order is available, it is uncertain how all of these issues will be determined.

STATUS OF DOCKET NUMBER 01-GIMT-032-GIT

On March 3, 2003, the Kansas Corporation Commission issued Order 21 in Docket Number 01-GIMT-032-GIT. In this order, the KCC will:

> Stay further proceedings regarding the end-to-end broadband capable loop until the FCC's Triennial Review order is issued and require parties to file briefs within 45 days of the release of the FCC's order discussing its affect on Order 19 in this docket.
>
> Stay further proceedings regarding the unbundling of packet switching utilized in the Project Pronto network until the FCC's Triennial Review order is issued and require parties to file briefs within 45 days of the release of the FCC's order discussing its affect on Order 19 in this docket.
>
> Not reconsider its ruling that SBC must provide access to the splitter functionality during the FCC's phase out of access to the high frequency portion of the loop or line-sharing.
>
> Require parties to file testimony regarding the methodology to be used in determining rates for the splitter functionality, recommend specific rates derived from that methodology, and file briefs within 45 days after the release of the FCC's order addressing whether SBC will be required to provide splitters at the end of the transitional period phasing out line-sharing. Testimony is to be filed on June 27, 2003.
>
> Require SBC to provide a report, on March 14, 2003, regarding its streamlined ordering process to enable migration from line sharing to line splitting in compliance with a directive of the FCC.

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Sage

March 6, 2003

Sage fully supports the framework of the FCC Triennial Review Order as represented by the comments of the Commissioners released February 20, 2003. Pending review of the final details of the order, Sage's position on the Order is outlined below.

Sage Telecom, Inc.'s existing customer base is ninety-four percent residential in rural and suburban markets. Eighty-four percent of our residential customers live in areas of less than 500 people per square mile. Thirty-six percent of our residential customers live in counties with population densities of less than 100 people per square mile. Our business customers average 2.1 lines per account. Competitive choice would not exist for these customers without wide-scale use of the un-bundled network element platform ("UNEP").

We are encouraged by the FCC decision to not only maintain UNEP as a viable form of entry but, to allow the State utility commissions the authority to establish and regulate the network elements that will be offered.

It is significant to note that the FCC has established a method for determining whether or not a carrier is impaired by the lack of access to specific incumbent LEC network elements. This is important because the FCC has made a unilateral decision that the incumbent is no longer required to unbundled local switching for high-capacity loops. However, they have allowed the states nine months in which to rebut that decision through use of an impairment methodology.

By pushing the determination of impairment to the Kansas Commission, the FCC has ensured that:

1) The level of Local exchange phone competition will be specific to the needs of each economic area throughout Indiana; and

2) The Commission can analyze unbundled network elements based on information specific to Indiana markets. (including customer class, geography and service)

As a small competitive local exchange provider serving rural areas, Sage is pleased with the content of the initial comments of the FCC Commissioners regarding this Order. We look forward to fully participating in the process of promoting telecommunications competition at the state level.

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Sage Telecom, Inc.

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SUPPLEMENTAL TESTIMONY OF EDWARD CADIEUX
ON BEHALF OF NUVOX COMMUNICATIONS
BEFORE THE HOUSE UTILITIES COMMITTEE
MARCH 7, 2003

Chairman Holmes and Members of the Committee:

Thank you for the opportunity to present this supplemental testimony. My name is Ed Cadieux. I am Vice President of Regulatory Affairs for NuVox Communications, and am licensed as an attorney in the State of Missouri. I have more 22 years of experience in legal and regulatory aspects of telecommunications. NuVox is competitive local exchange carrier and high-speed internet access services provider headquartered in St. Louis, Missouri. My company was formed in 1998 and now has operations in 30 cities across 13 Southeastern and Midwestern states. In Kansas we have operations in the Kansas City and Wichita areas. NuVox provides voice and high-speed internet access services to small and medium-sized business customers. We currently serve more than 750 Kansas businesses. My Company has invested approximately $14 million dollars in its own state-of-the-art communications switching and transmission equipment and related supporting systems in the State of Kansas, and has 41 Kansas employees.

The purpose of my supplemental testimony is to provide NuVox's view of the implications of the February 20, 2003 decision by the FCC in its *UNE Triennial Review* proceeding regarding the SBC-backed effort to obtain passage of state "broadband deregulation" legislation in Kansas. While the FCC's decision covers a wide range of issues, I will focus on the areas of "broadband loop" and "line-sharing", since those are the matters most directly relevant to the "broadband deregulation" state legislative

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initiative. As characterized by the FCC, its decision, "provides substantial unbundling relief [to incumbent LECs] for loops utilizing fiber facilities." The specific forms of relief adopted by the FCC are described in more detail below, but as a threshold matter it is important to note that the FCC's actions were taken in response to arguments very similar to those by SBC to this Committee in support of HB 2019 – that a reduction in unbundling obligations is, according to SBC, necessary in order to give SBC an incentive to make the investments associated with next generation loop facilities.[1] By reducing the unbundling obligations, the FCC decision goes a long way toward insulating SBC's investment in next generation loop facilities. The FCC gave the incumbent LECs ("ILECs") unbundling relief in the following specific areas:

- **Fiber-to-the-Home Loops**

The FCC's decision essentially eliminates the ILECs' obligation to allow unbundled access to "fiber-to-the- home" loops – i.e., loops that are full fiber (no copper whatsoever) all the way from the customer premises to the customer's serving central office. Specifically, where a fiber-to-the-home loop is built to a completely new development – i.e., where there is no existing copper loop in place at the time the fiber is deployed – the ILEC is relieved of all unbundling obligations – both for broadband and narrowband services. Where the fiber-to-the-home loop is built as a replacement for existing copper loops, the unbundling obligation is removed for broadband services, but a limited unbundling obligation remains only for narrowband services. As a result,

[1] NuVox continues to believe that this "disincentive" contention is completely unfounded because SBC's deployment of additional fiber in its loop network quickly pays for itself by substantially reducing operation and maintenance expenses and by paving the way for significant increases in SBC's retail DSL coverage and revenues.

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CLECs will not have the right to lease these facilities as unbundled network elements ("UNEs") from the ILECs. That means incumbent LECs can either: (a) completely deny CLECs access to these facilities; or (b) allow access to the facilities but at a rate that is not subject to the Total Element Long-Run Incremental Cost ("TELRIC") pricing requirements. Thus, incumbent LECs will be able to deny CLECs use of these fiber-to-the-home loops, either by denying access explicitly or by pricing these loops at levels so high as to effectively preclude there use by CLECs. As a result, these fiber-to-the-home developments will become monopoly enclaves for the incumbent LECs.

- **Packet-based Transmission over Copper/Fiber Hybrid Loops**

The second element of the "broadband unbundling relief" granted to the incumbent LECs by the FCC decision involves CLEC access to ILEC copper/fiber hybrid loops for packet-based transmissions. Copper/fiber hybrid loops are, as the name suggests, loops that are part copper and part fiber – copper in the "distribution" portion of the loop (the portion closest to the customer premises), and fiber in the "feeder" portion of the loop (the portion closer to the central office). These hybrid loops have become very prevalent in SBC's network over the last several years. The FCC's announced decision limits the ILECs' obligations by removing unbundling requirements for the packet-switching features, functions, and capabilities related to these hybrid loops.

The FCC describes the limitation in terms of the ILECs no longer having "to provide unbundled access to a transmission path over hybrid loops utilizing the packet-switching capabilities of their DLC [Digital Loop Carrier] systems in remote terminals." (By way of explanation, a DLC system is the copper/fiber interface. It multiplexes [i.e.,

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aggregates] individual customer-serving copper distribution loops to higher bandwidth -- e.g., DS1 or DS3 – and connects them to fiber feeder loop facilities running to the customers' serving central office. It also converts the copper-borne electrical signals to the optical signals carried over the fiber. Remote terminals are the mid-loop enclosures where the DLC systems are located.) On the other hand, ILECs must continue to provide unbundled access to these hybrid loops to "a voice-grade equivalent channel and high capacity loops utilizing TDM [Time Division Multiplexing] technology, such as DS1s and DS3s." Again by way of explanation, packet-based technology is a more advanced and more efficient transmission method than TDM, and is increasingly being deployed in telecommunications networks. By removing the ILECs' unbundling obligation on the packet-switching capabilities of the DLC, the FCC has curtailed CLECs' ability to make full and equal use of the ILECs' hybrid loops relative to the use the ILECs can make of these facilities for their own purposes – i.e., as a result of the FCC's decision it appears that the ILECs' will be able to confine these more efficient, packet-switching capabilities to their own retail services and deny them to the CLECs.

- **Line-Sharing**

Line-sharing is the process by which the frequencies of a single standard plain old telephone ("POTS") line (loop) can be subdivided between high-frequency and low-frequency portions, with the high frequencies used by a competitive carrier to provide the customer DSL service, while the ILEC continues to use the low-frequency portion to provide the customer voice services. This has been an important method by which some competitive carriers have provided high-speed internet access to customers via DSL. It

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has been an important DSL provisioning method because it permits the customer to retain local voice service from the ILEC, yet obtain DSL from an alternative provider, and do so without having to install and pay for an additional line (loop). Notwithstanding the competitive benefits, in its February 20 decision the FCC stated that it would relieve the ILECs of their obligation to offer line-sharing on an unbundled basis. To avoid flash-cut disruption, the decision specifies a three-year transition period during which competitive carriers can only add new line-sharing customers during the first year. This decision will insulate the ILECs from a significant source of broadband internet access competition since -- for the very large embedded base of customers that continue to obtain local voice service from an ILEC -- competitive carriers will no longer be able to offer those customers DSL service without causing the customer to install and pay for an additional line. That will inevitably make it more difficult and less economically feasible for competitive carriers to provide DSL service, particularly to residential and very small business customers. And in geographic areas where cable companies do not offer high-speed cable modem service, this decision will likely result in residential and very small business customers being left with no alternative to the ILEC for high-speed internet access – i.e., unregulated monopoly ILEC control over high-speed access to the internet across large geographic areas. By removing this important means of providing competitive DSL service, this portion of the FCC's decision likewise insulates the fiber-based loop investment by which the ILECs provide their own retail DSL services.

All of these cut-backs on the ILECs unbundling obligations provide substantial benefits to the ILECs because -- whether one assumes a full copper loop, a full fiber loop

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or a copper/fiber hybrid loop – as a practical matter CLECs have no feasible means of duplicating the ubiquitous ILEC loop network that was financed and deployed over the decades and under the protection of a government-sanction monopoly. As a result, these cut-backs on the ILEC unbundling obligations will tend to insulate certain portions of the market from competition. That will benefit the ILECs to the detriment of CLECs and to detriment of consumer choice and the public interest.

A final note: Based on their press releases and press statements, it is clear that the Bell companies' dissatisfaction with the FCC's February 20 decision stems not from the portions dealing with broadband loops, but instead lies with how the FCC handled a completely separate and unrelated issue – the Unbundled Network Element Platform ("UNE-P"). (UNE-P is a particular type of use of unbundled network elements whereby the CLEC does not use any of its own equipment, but instead relies completely on use of all of the primary UNEs -- loop, switching and transport -- from the ILEC. NuVox does not use UNE-P except in very limited and unusual circumstances – NuVox leases some UNEs from the ILECs, but we combine those UNEs with our own switching equipment.) **The FCC did not immediately cut back on the availability of UNE-P as the Bell companies had advocated, but instead delegated the decision-making regarding UNE-P back to the state PSCs, subject to certain rebuttable presumptions.** ***The important thing to note in this regard is that UNE-P is a voice-only service – it cannot be used for broadband services because it does not come with the necessary electronic equipment.*** **So, to the extent the Bells are disappointed with the UNE-P aspect of the FCC decision,** ***that disappointment relates to a separate and distinct voice services issue, and is not related to the scope of concessions that they obtained from the FCC regarding broadband services and related investment.***

This concludes my testimony.

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