

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Unbundled Access to Network Elements	)	WC Docket No. 04-313
	)	
Review of the Section 251 Unbundling	)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange	)	
Carriers	)	

**COMMENTS  
of the  
ALABAMA PUBLIC SERVICE COMMISSION**

**I. Introduction**

The Alabama Public Service Commission (Alabama PSC) hereby files its initial comments in response to the Federal Communications Commission's (Commission of FCC's) Order and Notice of Proposed Rulemaking (NPRM) seeking comments on alternative unbundling rules that will implement the obligations of section 251(c)(3) of the Communications Act of 1934, as amended, in a manner consistent with the U.S. Court of Appeals for the District of Columbia Circuit's (D.C. Circuit) decision in *United States Telecom Ass'n v. FCC*.<sup>1</sup>

In its Order and Notice of Proposed Rulemaking released August 20, 2004, the FCC solicits comments on alternative unbundling rules for unbundled network elements and issued an Order in which it takes several steps designed to avoid disruption in the telecommunications industry while the rules are being written. The FCC set forth a comprehensive twelve-month plan consisting of two phases to stabilize the market. The incumbent local exchange carriers (LECs) are required to continue providing unbundled

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<sup>1</sup> 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*), *pets. for cert. filed*, Nos. 04-12, 04-15, 04-18 (June 30, 2004). See also *United States Telecom Ass'n v. FCC*, No. 00-1012, Order, (D.C. Cir. Apr. 13, 2004) (granting a stay of the court's mandate through June 15, 2004) (*USTA II Stay Order*). The *USTA II* mandate issued on June 16, 2004.

access to switching, enterprise market loops, and dedicated transport under the same rates, terms and condition that applied under their interconnection agreement as of June 15, 2004. These rates terms and conditions shall remain in place until the earlier of the effective date of final unbundling rules promulgated by the Commission or six months after Federal Register publication of the Order. However, the rules can be superceded by (1) voluntarily negotiated agreements, (2) an intervening Commission order affecting specific unbundling obligations, or (3) ( with respect to rates only) a state public utility commission order raising rates for network elements. The FCC also set out transitional measures for the next six months thereafter.

The FCC recognized the work that the states had undertaken to implement the *Triennial Review Order* and encouraged the state commissions and other parties to file summaries of the states proceedings and commission's efforts to develop a batch hot cut processes.

The FCC asserts in the order: "The actions we take today are designed to advance the Commission's most important statutory objectives: the promotion of competition and the protection of consumers."<sup>2</sup>

## **II. Comments:**

The Alabama PSC will not be filing a summary of the Alabama TRO case. As a result of the scheduling of the BellSouth proceedings in the nine states, Alabama had not initiated its hearing before the Court decision was rendered. Therefore, the APSC has not verified any of the information that was filed or made any findings on the case. The APSC has not formally addressed the batch hot cut process nor issued a decision on the hot cut processes.

The Alabama PSC shares the FCC's objectives of promoting competition and protecting consumers in addressing the D.C. Circuit decision. The widespread distribution of the telecommunication consumers throughout the state results creates high cost to serve individual customers. Additionally, Alabama is a secondary market for Competitive Carriers. There are two incumbent non-rural local exchange companies (ILECs) and twenty-eight independent rural carriers in Alabama. There are

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<sup>2</sup> See Order and Notice of Proposed Rulemaking, par 1

approximately 2.6 million residential and business telephone lines in Alabama. BellSouth's service area accounts for 79% of the lines; CenturyTel 11%; and, the rural ILECs the remaining 10% of the lines. The two non-rural carriers control 90% of the access lines in the state. The Alabama PSC is concerned that local competition in Alabama will be adversely impacted by any FCC actions in which the net effect is to remove vital elements such as mass market local circuit switching from the list of UNE's.

Much of the competition for small business customers and residential customers in Alabama is provided by UNE-P arrangements. The ability to combine the local loop with local switching or UNE-P at cost based rates provides the competitor with viable access to customers which are not otherwise accessible. Most Competitive Local Exchange Carriers (CLECs) in Alabama do not have an alternative provider for local switching other than BellSouth. Most of the competitors which own switches are not willing or able to accommodate other competitive carriers because the owner of the switch has already committed the capacity of that switch to current customers or to growth of the system. Since these competitors are not obligated to unbundle their networks, the CLECs using UNE-P have no alternative if UNE-P is not available or priced too high for them to cover their costs and make a profit.

The FCC's actions in the next year may determine whether there is true competition in the residential and small business markets for many years to come. The cable TV companies in Alabama are not a real factor in the local competition picture since their share of the telecom market is miniscule. The projections for these competitors do not show them to be a real factor in local competition in Alabama. The PSC's telecommunications staff has compiled information which indicates that CLEC-owned facilities account for only about 1.5% to 2.0% of the lines in the state. Resale is not a viable option for a truly competitive market because the margins are too small to allow most CLECs to make a profit. If the only option available to a CLEC is to install their own facilities in order to compete in this state, most CLEC's will opt not to invest. Most CLECs have allocated capital to the larger markets which have a higher density of potential customers. Currently, CLECs are having trouble raising capital to compete in secondary markets such as Alabama. Thus UNE based competition is the only alternative for Alabama to have competition in the residential and small business markets.

We must work together to promote competition in order to provide a wider array of telecommunications services available to the people of this state. With your help we can ensure that there is a greater choice of telecommunication services at affordable prices available for the consumers from multiple providers by ensuring a truly competitive environment.

### **III. Conclusion:**

The Alabama PSC appreciates the FCC's commitment to the promotion of competition and the protection of consumers. Without rules that provide a real opportunity and create the conditions that allow true competition to develop the consumers and the industry will suffer great harm.

Respectfully Submitted,  
Alabama Public Service Commission

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