

Before the
Federal Communications Commission
Washington, D.C. 20554

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

REPLY COMMENTS OF THE
MICHIGAN PUBLIC SERVICE COMMISSION

The Michigan Public Service Commission (MPSC) respectfully submits the following comments in reply to the April 5, 2002 pleadings filed in response to the to the Notice of Proposed Rulemaking (*Triennial Review*) issued by the Federal Communications Commission (Commission) in the above-captioned proceedings.¹ Because of the critical impact action in this proceeding will have on existing State commission policy initiatives, the MPSC is compelled to file and specifically endorse the National Association of Regulatory Utility Commissioner’s (NARUC) April 5, 2002 comments (1) requesting that the Commission immediately convene a § 410(b) Federal-State Joint Conference to facilitate, inform and coordinate its implementation of the three-year unbundled network element (UNE) review; and (2) assure that States retain the authority to impose additional unbundling “obligations upon incumbent local exchange carriers

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-92, 96-98 and 98-147, *Notice of Proposed Rulemaking*, FCC 01-361 (rel. Dec. 20, 2001) (“*Notice*”).

(LECs) beyond those imposed by the national list, as long as they meet the requirements of [§] 251.” Specifically, we endorse the following NARUC positions:

- (1) *A Joint Conference is in the Public Interest:* Given the critical role played by State regulators in implementing the statutory UNE regime, as well as the intensive data- and State-specific nature of the three-year review, *at a minimum*, the Commission should establish a formal mechanism to secure the State participation necessary for an informed application of the statutory “necessary” and “impair” standards.
- (2) *State Authority To Add New UNEs/Obligations:* We agree with the FCC findings that § 251(d)(3) of the 1996 Act “grants State commissions the authority to impose additional obligations upon incumbent LECs beyond those imposed by the national list, as long as they meet the requirements of [§] 251.” We believe Congressional intent as outlined in the 1996 federal statute, existing State enabling statutes, and the Commission rules and prior findings in this and related dockets support this approach.²
- (3) *Impact of Federal Minimum List:* As recognized implicitly in the *UNE Remand Order*’s specific State authority findings, the States are better positioned to conduct a detailed review of additional unbundling that is appropriate for local market conditions. Consequently, the Commission should defer to State determinations of whether unbundling requirements in any State should collapse to the existing or new federal minimums. Assuming any new federal minimum removes one or more UNE from the national list or restricts availability of any UNE, such limitations should not apply in any State unless that State first determines that a competitor’s access is “necessary” or whether lack of access “would impair” that competitor’s ability to offer services, or is required as a matter of State rule or statute.³
- (4) *Impact of Federal Action on UNE-P:* The Commission “. . . should support the implementation of universal availability of the UNE-P, on the basis that one form of entry should not be favored over another.” Specifically, the Commission should assure that its implementation of

² See, *Implementation of the Local Competition Provisions, of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd 3696, 3766-7 at ¶¶ 153-154 (rel Nov. 5, 1999) (“*Remand Order*”). See also *NARUC’s February 2002 Resolution Concerning the States’ Ability to Add to the National Minimum List of Network Elements* (“[NARUC] urges the FCC to recognize that States may continue to require additional unbundling beyond that required by the FCC’s national minimum.”)

³ See, *NARUC December Letter* at 2 (“[A] party seeking to remove or scale back a UNE bears the burden of proof to show, by a preponderance of [] evidence, that the requested relief is justified.”)

§ 251 “does not favor one method of entry, at the expense of other methods of entry.”⁴ In this regard, the U.S. Supreme Court recently upheld the Commission’s requirement under § 251(c)(3) that incumbent LECs combine UNEs, as requested by the CLECs.⁵

NARUC’s position is consistent with the earlier comments that the MPSC filed and we therefore endorse NARUC’s position as outlined here.

Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION

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01-338 et al/Reply Comments

⁴ See, *NARUC November 13, 2001 Resolution on the UNE-P Platform*. (“[A]ny party seeking to remove or scale back a UNE bears the burden of proof to show, by a preponderance of record evidence, that the requested relief is justified.”)

⁵ See, *Verizon Communications, Inc v F.C.C.*, 523 US ____; 70 USLW 4396; 2002 US LEXIS 3559 (May 13, 2002).