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**
	)	

COMMENTS OF THE MICHIGAN PUBLIC SERVICE COMMISSION

Introduction:

The Federal Communications Commission (Commission) issued a Notice of Proposed Rulemaking in this docket on December 12, 2001. This proceeding considers the circumstances under which incumbent local exchange carriers (LECs) must make parts of their networks available to requesting carriers on an unbundled basis pursuant to sections 251(c)(3) and 251(d)(2) of the Telecommunications Act of 1996 (1996 Act). In this review, the Commission is undertaking a comprehensive evaluation of its unbundling rules. The Commission also seeks to ensure that the regulatory framework remains current and faithful to the pro-competitive, market-opening provisions of the 1996 Act in light of the experience over the last two years, advances in technology, and other developments in the markets for telecommunications services. The Michigan Public Service Commission (MPSC) hereby submits its comments in this docket.

Specific Proposals:

The Commission expressly focuses on the facilities used to provide broadband services and explores the role that wireless and cable companies have begun to play and will continue to

play both in the market for broadband services and the market for telephony services generally. At the same time, the Commission recognizes that the statute contemplates three modes of entry -- through resale of tariffed incumbent LEC services, use of unbundled network elements (UNE), and construction of new facilities. The Commission is statutorily bound to require incumbents to permit both facilities-based and non-facilities-based entry. With respect to facilities-based entry, the Commission seeks to promote entry not only by fully facilities-based carriers but also by those facilities-based carriers that purchase actual UNEs, such as the loop.

Background:

In 1996, the Commission adopted the *Local Competition First Report and Order,* which implemented the local competition provisions of the 1996 Act. In that order, the Commission interpreted the terms "necessary" and "impair" in section 251(d)(2), which contains standards that must be considered in determining the network elements that must be made available. For network elements that are "proprietary in nature," the Commission must consider whether access to them is "necessary" to competitors. For network elements that are not proprietary, the Commission must consider whether "the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." In the *Local Competition First Report and Order,* the Commission interpreted these terms as standards by which it could limit the general obligation in section 251(c)(3) to provide access to all UNEs where technically feasible.

To respond to the Supreme Court's directives, the Commission adopted the *UNE Remand Order.* In that order, the Commission revised its interpretation of the "necessary" and "impair" standards of section 251(d)(2) in order to identify specifically where requesting carriers are impaired without access to the incumbent's network, rather than making UNEs available

wherever it is technically feasible to do so, as the Commission had done in the *Local Competition First Report and Order.*

In applying this section 251(d)(2) analysis to incumbents' networks, the Commission identified seven network elements without which requesting carriers were impaired: (1) loops, including high-capacity lines, dark fiber, line conditioning, and some inside wire; (2) subloops; (3) network interface devices; (4) local circuit switching (but not most packet switching); (5) interoffice transmission facilities, including dedicated transport from DS1 to OC96 capacity levels and such higher capacities as evolve over time, dark fiber, and shared transport; (6) signaling networks and call-related databases; and (7) operations support systems (OSS). In a separate order released shortly after the *UNE Remand Order,* the Commission added the high frequency portion of the loop to the list of elements that must be unbundled on a national basis.

Today the Commission seeks comment generally on how to apply the section 251(d)(2) analysis in a manner that is faithful to the 1996 Act and promotes its goals. The Commission requests comment on many very technical issues regarding the unbundling of network elements. As part of this docket, the Commission also requests comment on the appropriate role of state commissions. Due to the highly technical nature of this docket and the time constraints involved, this is the only issue the MPSC will be addressing.

The Role of the State Commissions:

The Commission seeks comment on the proper role of state commissions in the implementation of unbundling requirements for incumbent LECs. Section 251(d)(3) of the 1996 Act permits state commissions to establish access obligations that are consistent with the Commission's unbundling rules. In the *UNE Remand Order,* the Commission interpreted section 251(d)(3) to grant authority to state commissions to impose additional obligations upon incumbent LECs so long as they met the requirements of section 251 and national policy

framework of that order. However, the Commission found that "state-by-state removal of elements from the national list would substantially prevent implementation of the requirements and purposes of this section and the Act," particularly with regard to uncertainty and frustration of business plans. The Commission also recognizes that state commissions may be more familiar than the Commission with the characteristics of markets and incumbent carriers within their jurisdictions, and that entry strategies may be more sophisticated in recognizing regional differences. It seeks comment, therefore, on the extent to which state commissions can act in creating, removing, and implementing unbundling requirements and the statutory provisions that would provide authority for states to act, consistent with applicable limitations on delegations of authority to the states.

Specifically, the Commission asks whether national standards should be established that the states can apply to incumbents' networks, much like the Commission has done with regard to setting network element pricing. The Commission asks whether states are better situated to tailor unbundling rules that more precisely fit their markets. The Commission asks whether the development of federal unbundling standards should rely on any of the federal performance standards that may be established in the *UNE Measurements and Standards Notice and Special Access Measurements and Standards Notice.* The Commission also seeks comment on a proposal to convene a Federal-State Joint Conference on UNEs pursuant to section 410(b) of the Act to inform and coordinate their three-year review.

The MPSC agrees with the Commission that the state commissions may be more familiar than the Commission with the characteristics of markets and incumbent carriers within state jurisdiction. The Commission should maintain a minimum list of national UNEs that would serve as the "floor" for the minimum unbundling required under the federal law. The states should then be permitted to add to this "minimum list" of national UNEs available in their

markets under the act. States may also be more familiar with investment strategies and patterns and marketing strategies of all providers. States may also be more familiar -- just like in 271 -- with the general conduct of all providers. Finally, some States, like Michigan, have been pursuing regulatory strategies based on their individual goals, objectives and circumstances, and those strategies should not now be disrupted by external tinkering.

The Commission should establish a process by which state regulatory commissions can take the lead in determining when alternatives in their states are sufficiently available to warrant the "de-listing" of a UNE. State commissions have policies currently in place that assume the availability of the UNEs on the current national list that were adopted in the context of lengthy proceedings on an extensive factual record. Any unilateral action by the Commission to de-list a UNE, without a detailed and specific coordination with individual states, could undermine these state policies and needlessly require state commissions to conduct proceedings and issue orders re-establishing the state rules and policies undermined by the Commission's unilateral action. States have the ability and the expertise to assemble and analyze more detailed factual records on impairment. The process should include the following:

i) The Commission should identify in advance which UNEs it would be willing to consider de-listing, in order to prevent incumbent LECs from filing frivolous or overreaching petitions to de-list UNEs that are clearly not ready for elimination.

ii) The Commission should establish a streamlined and orderly process for the consideration of state petitions to remove a UNE on the minimum national list.

iii) The Commission should allow for the possibility of de-listing a UNE in only part of a state.

iv) There must be evidence from the state proceedings that amply addresses the factors that the Commission has deemed relevant to the impairment analysis.

Due to the state's familiarity with competitive concerns within its territory, state commissions should have the authority to act in creating, removing, and implementing unbundling requirements. The Commission could set national standards that the states could apply to incumbents' networks, much like the Commission has done with regard to setting network element pricing. States are better suited to tailor unbundling rules that more precisely fit their markets. The state commissions have been responsible for arbitrating interconnection agreements between the incumbents and the competitive local exchange carriers and have been faced with the issue of applying the Commission's unbundling rules to the particular carriers that operate in our states. The technologies are constantly changing, which makes the unbundling issues take on different characteristics as the technologies change.

The MPSC supports the development of federal unbundling standards that rely on the federal performance standards. However, states are developing their own performance standards in 271 proceedings tailored to each particular state. The MPSC would support the federal model as long as states can use that model and refine it to the unique state needs, while staying within the federal standard. The MPSC also supports the Commission's proposal to convene a Federal-State Joint Conference on UNE's pursuant to section 410(b) of the 1996 Act to inform and coordinate the three-year review. Such a federal-state collaborative would greatly facilitate the gathering of information and input into the process.

Conclusion:

In conclusion, the MPSC supports the Commission's efforts to develop a set of network elements, to be unbundled by the incumbents, that may be used by the states to implement individual state policies. The MPSC also requests that the Commission not disrupt the strategies States have been pursuing by changing the rules and that it allow the states to continue to have the authority to act in creating, removing, and implementing unbundling requirements that suit State needs that would best reflect the market situations and other realities in the respective states. Finally, the MPSC supports the convening of a Federal-State Joint Conference on UNEs.

Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION

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