DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.

PUBLIC UTILITIES COMMISSION

CHRONOLOGY OF COMPETITION IN NEVADA'S TELECOMMUNICATIONS INDUSTRY

1984:

The current regulatory framework governing local, local toll, and long distance services in Nevada is the result of the divestiture of AT&T in 1984, prompted by a settlement between the United States Department of Justice and AT&T over antitrust allegations. Geographical areas called LATAs were created throughout the United States as a result of the approved AT&T settlement.

AT&T divested its local services into seven (7) RBOCs separating the long distance and local telephone business. The Bell Telephone Company of Nevada (SBC) was the local service provider spun off by AT&T in Nevada. Initially, only ILECs (including RBOCs) were allowed to provide telecommunications services within the LATA. Thus, ILECs provided both local service as well as local toll service (i.e. calls made to destinations within the LATA but outside of the "free" local calling area).

As a result of the AT&T divestiture, IECs were allowed to provide telecommunications services between LATAs (long distance service). Competitors such as WorldCom and Sprint began to offer long distance service in competition with AT&T in the 1970's and now more than 700 companies offer long distance service nationwide.

RBOC-affiliated ILECs, including were initially prohibited from providing long distance services, since the RBOCs took over the former local service territory of AT&T. However, other ILECs were not under the same restriction as the RBOCs. One IEC operating in Nevada that is affiliated with a non-RBOC ILEC is Sprint.

The telecommunications marketplace has evolved since divestiture.

1984-1996:

Following AT&T's divestiture, the Commission opened a rulemaking in 1984 to provide telecommunications carriers greater flexibility to operate in competitive markets to ultimately provide the benefits of competition to consumers. The rulemaking provided the "ground rules" for competition in the state long distance market.

Senate Bill 294 (1989) charged the Commission with adopting a plan of alternative regulation ("PAR") to traditional rate base regulation for local telephone companies. The rule adopted provided that any telephone company electing alternative regulation must cap basic rates for five years. Additional rules adopted provided a way for telephone companies to compete with other businesses that offer telecommunications services (e.g. pay telephones). These later changes also provided rules to prevent

telephone companies from using their monopoly status to compete unfairly with other businesses.

Nevada Bell (SBC) was the only ILEC that elected to enter this form of PAR in 1991.

In 1994 the Nevada Telecommunications Industry Omnibus Group submitted a proposal to amend the PAR. The Commission adopted rules that provided for price cap regulation of the ILEC, detariffing IECs, special protection for small ILECs, and a Nevada Universal Service Fund.

Sprint entered into this form of PAR in January of 1996. Nevada Bell (SBC) also entered this new regulatory PAR in January of 1997.

1996-PRESENT:

TELECOMMUNICATIONS ACT OF 1996

In 1996, Congress enacted the Telecommunications Act of 1996 (TA 96) which allows for RBOC-affiliated ILECs, including SBC, to enter the long distance market with regulatory approval.

At the federal level, TA 96 significantly affects the telecommunications marketplace. Prior to TA 96, the FCC had authority to regulate interstate or jurisdictionally mixed telecommunications services, and states had the authority to regulate intrastate telecommunications services[1]. TA 96 gives the FCC general rulemaking authority to set the ground rules and policies for local competition[2]. It also assigns states the responsibility for implementing many of the statutory and federal regulatory requirements of TA 96, either jointly with the FCC or on their own[3]. In large part, TA 96 focuses on ILECs, the traditional telecommunications service providers in their respective local exchange markets, and their competitors, CLECs. TA 96 seeks to open local markets to competition as follows[4]:

1) mandates that ILECs sell to their competitors, at wholesale rates, any telecommunications services that the ILEC provides to its customers at retail rates in order to allow the CLECs to resell that service to customers (resale).

[1] See Sections 2(a) and 2(b) of the Communications Act of 1934, 47 U.S.C. §§ 152 (a) and (b).
[2] See Section 251(d)(1) of TA '96 directing the FCC to adopt rules to implement new interconnection provisions, Section 251(e) giving the FCC jurisdiction over numbering issues, and Section 254(h) requiring the FCC to adopt rules to enhance access to advanced services.
[3] See Section 252 of TA '96 directing states to conduct arbitrations of interconnection disputes, Section 251(e) allowing the FCC to delegate jurisdiction to states over numbering issues, Section 254(a) establishing a Federal-State Joint Board to address universal service issues, and Section 271(d)(2)(B) requiring the FCC to consult with the state before granting the RBOCs authority to compete in the long distance market.
[4] See Section 251 of TA '96

E 2811

2) Establishes procedures for negotiation, arbitration, and approval of interconnection agreements between carriers and making state public utilities commissions the primary agents of such arbitration and approval;

3) Provides competing carriers with access to discrete parts of the ILEC network, called UNEs, in order to serve customers; and

4) Sets forth the requirement that all local exchange carriers, not just the ILECs, interconnect with the facilities and equipment of other carriers so that competing carriers can provide telecommunication services.

PRICING OF THE NETWORK

TA 96 gives the Commission the authority to set prices for interconnection and UNEs. Setting economically efficient prices theoretically provides the right signal to CLECs. Most importantly, it helps CLECs in making their decision either to construct their own network or to lease facilities from the ILEC. If the price of UNEs are set too high, a CLEC may build facilities when society's scarce resources would be better employed if it had rented facilities from the ILEC. On the other hand, if the price of UNEs are too low, a CLEC may rent facilities from an ILEC rather than build. This would reduce society's well being, because the least cost supplier is not the one who is building and maintaining the network facilities. In order to maximize society's welfare, resources should be directed toward the suppliers that can construct a network at the lowest cost to society.

From 1996-1998, the Commission conducted an investigation to adopt a model to utilize for the development of Nevada-specific UNE costs. The analytical model is a computer model designed or used to estimate the cost of constructing and operating the public-switched telephone network. The network is exceedingly involved and complex. It encompasses millions of access lines and hundreds of switches, interoffice transmission facilities, signal links, and other elements. The cost model is used to sort through the complexity of that network, organizing the network into similar elements that have similar costs and estimating the costs of those elements.

In May and July of 1999, the Commission issued orders on the UNE cost studies for Nevada Bell (SBC) and Sprint, respectively. While it was believed that the costs adopted were an accurate reflection of true costs at the time, there is a national recognition that state commissions may have set UNE prices artificially low. A possible indicator of this scenario in Nevada is the lack of construction of the telecommunications infrastructure by CLECs, who instead have chosen to lease and/or buy the UNEs of the ILECs the vast majority of the time.

E 3811

PERFORMANCE CRITERIA

Shortly after the UNE cost studies were complete, the Commission opened an investigation and later established performance standards applicable to ILECs regarding their provision of service to CLECs. The goal of this investigation was to develop performance criteria which would ensure that ILECs provide service to their competitors at a level which is at least at parity with the level of service that the ILECs provide to their retail customers in order to facilitate competition in the local markets.

INTERCONNECTION AGREEMENTS

Pursuant to the TA 96, the Commission has reviewed and approved nearly 300 negotiated interconnection agreements and arbitrated agreements, the latter of which could not be resolved through negotiation. These agreements are the precursors of any local competition, as they allow potential competitors to use the existing telephone network. These interconnection agreements allow a CLEC to pay wholesale rates (based on UNE cost studies) to the ILEC for the ability to use some of the ILEC's equipment and services so it too can offer dial tone service.

PAR

Following Nevada Bell's (SBC) election to be regulated under PAR in 1991 and again in 1997, Nevada Bell (SBC) elected to be regulated under an additional form of PAR pursuant to SB 440 (1999) in May 2000. Under this PAR, Nevada Bell (SBC) was given further flexibility in the pricing of competitive and discretionary services; Nevada Bell (SBC) has the freedom to introduce promotional price reductions on 1-days' notice and new services upon 30-days' notice to the Commission (NRS 704.68968 and 704.68972).

In August 1999, the Commission approved a stipulation for an application by Sprint to continue its participation in the earlier form of PAR. Sprint filed another PAR application in December 2001, which the Commission approved pursuant to a Stipulation by the parties in May 2002.

271 APPLICATION

Besides seeking to open local markets to competition, TA 96 promoted increased competition in the long distance market. Section 271 of TA 96 allows RBOCs such as SBC to enter the long distance market after they each prove that they have opened their respective local markets to competition. Since entry into the long distance market would allow SBC to offer its customers "one stop shopping" for local, local toll, and long distance services, Section 271 provided a business incentive for SBC and other RBOCs to cooperate with the mandate of opening their networks to local competition.

The federal hallmark of true competition in Nevada, the entry of the RBOC (SBC) into long distance markets occurred on April 25, 2003, when the FCC granted SBC's 271 Application following review and approval by the Commission in December 2002.

E 4811

TODAY

In February 2003, the FCC conducted its Triennial Review of the telecommunications industry. As a result, the FCC adopted new rules for network undbundling obligations of ILECs. These rules are supposed to provide greater incentives for broadband build-out and greater granularity in determining UNEs. While the final order has yet to be issued, the Commission expects the ramifications of this order to be debated on appeal in the courtrooms for some time.

The CLECs in Nevada have full pricing flexibility in providing telecommunication services to the public. The CLECs do not have to obtain Commission approval before changing prices or introducing new services.

Under PAR as dictated by the Nevada Legislature pursuant to SB 294 (1989) and SB 440 (1999), the Commission has gradually increased pricing flexibility for Sprint and SBC, while ensuring that prices for basic residential telephone services remain just and reasonable. While Sprint and SBC have pricing flexibility for some services, they currently do not have the same flexibility on pricing local business services as CLECs.

As the telecommunications marketplace evolves, delineation between local, local toll, and long distance services are less and less distinct. The future in telecommunications will likely come down to those companies that can provide "one-stop shopping" for all telecommunications needs—local, toll, long distance, and the Internet—whether it is over wireline, cable, or wireless. In the seven (7) years since TA 96, smaller CLECs have come and gone without substantial construction of telecommunications infrastructure. One of the major issues facing regulators at both the state and federal level now is whether or not the larger LECs should be harnessed by restrictive regulation to benefit the smaller LECs.

E 5811

NEWS

Federal Communications Commission
445 12th Street, S.W.
Washington, D. C. 20554

News media Information 202 / 418-0500
TTY 202 / 418-2555
Fax-On-Demand 202 / 418-2830
Internet: http://www.fcc.gov
ftp.fcc.gov

FOR IMMEDIATE RELEASE:
February 20, 2003

NEWS MEDIA CONTACT:
Michael Balmoris 202-418-0253
Email: mbalmori@fcc.gov

FCC ADOPTS NEW RULES FOR NETWORK UNBUNDLING OBLIGATIONS OF INCUMBENT LOCAL PHONE CARRIERS

Greater Incentives for Broadband Build-Out and Greater Granularity in Determining Unbundled Network Elements Are Key Commission Actions

Washington, D.C. – The Federal Communications Commission (Commission) today adopted rules concerning incumbent local exchange carriers' (incumbent LECs) obligations to make elements of their networks available on an unbundled basis to new entrants. The new framework provides incentives for carriers to invest in broadband network facilities, brings the benefits of competitive alternatives to all consumers, and provides for a significant state role in implementing these rules.

Today's action resolves various local phone competition and broadband competition issues and addresses a May 2002 decision by the U.S. Court of Appeals for the District of Columbia which overturned the Commission's previous Unbundled Network Elements (UNE) rules. Following is a brief summary of the key issues resolved in today's decision (a more detailed summary of today's action is attached):

1. **Impairment Standard** – A requesting carrier is impaired when lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and economic barriers, which are likely to make entry into a market uneconomic. Such barriers include scale economies, sunk costs, first-mover advantages, and barriers within the control of the incumbent LEC. The Commission's unbundling analysis specifically considers market-specific variations, including considerations of customer class, geography, and service.

2. **Broadband Issues** – The Commission provides substantial unbundling relief for loops utilizing fiber facilities: 1) the Commission requires no unbundling of fiber-to-the-home loops; 2) the Commission elects not to unbundle bandwidth for the provision of broadband services for loops where incumbent LECs deploy fiber further into the neighborhood but short of the customer's home (hybrid loops), although requesting carriers that provide broadband services today over high capacity facilities will continue to get that same access even after this relief is granted, and 3) the Commission will no longer require that line-sharing be available as an unbundled element. The Commission also provides clarification on its UNE pricing rules that will send appropriate economic signals to carriers.

E 6811

3. **Unbundled Network Element Platform (UNE-P) Issue** – The Commission finds that switching - a key UNE-P element - for business customers served by high-capacity loops such as DS-1 will no longer be unbundled based on a presumptive finding of no impairment. Under this framework, states will have 90 days to rebut the national finding. For mass market customers, the Commission sets out specific criteria that states shall apply to determine, on a granular basis, whether economic and operational impairment exists in a particular market. State Commissions must complete such proceedings within 9 months. Upon a state finding of no impairment, the Commission sets forth a 3 year period for carriers to transition off of UNE-P.

4. **Role of States** – The states have a substantial role in applying the Commission's impairment standard according to specific guidelines tailored to individual elements.

5. **Dedicated transport** – The Commission finds that requesting carriers are not impaired without Optical Carrier (or OCn) level transport circuits. However, the Commission finds that requesting carriers are impaired without access to dark fiber, DS3, and DS1 capacity transport, each independently subject to a route-specific review by states to identify available wholesale facilities. Dark fiber and DS3 transport also each are subject to a route-specific review by the states to identify where competing carriers are able to provide their own facilities.

With today's action, the Commission also opened a Further Notice of Proposed Rulemaking (FNPRM) seeking comment on whether the Commission should modify the so-called pick-and-choose rule that permits requesting carriers to opt into individual portions of interconnection agreements without accepting all the terms and conditions of such agreements.

Action by the Commission February 20, 2003, by Report and Order and Further Notice of Proposed Rulemaking (FCC 03-36). Chairman Powell approving in part and dissenting in part, Commissioner Abernathy approving in part and dissenting in part, Commissioner Copps concurring in part and dissenting in part, Commissioner Martin approving, and Commissioner Adelstein concurring in part and dissenting in part. Chairman Powell, Commissioners Abernathy, Copps, Martin, and Adelstein issuing separate statements.

-FCC-

Docket No.: CC 01-338

Wireline Competition Bureau Staff Contact: Tom Navin at 202-418-1580.

E 7611

ATTACHMENT TO TRIENNIAL REVIEW PRESS RELEASE

Order on Remand

- Local Circuit Switching – The Commission finds that switching - a key UNE-P element - for business customers served by high-capacity loops such as DS-1 will no longer be unbundled based on a presumptive finding of no impairment. Under this framework, states will have 90 days to rebut the national finding. For mass market customers, the Commission sets out specific criteria that states shall apply to determine, on a granular basis, whether economic and operational impairment exists in a particular market. State Commissions must complete such proceedings (including the approval of an incumbent LEC batch hot cut process) within 9 months. Upon a state finding of no impairment, the Commission sets forth a 3 year period for carriers to transition off of UNE-P.

- Packet Switching – Incumbent LECs are not required to unbundle packet switching, including routers and DSLAMs, as a stand-alone network element. The order eliminates the current limited requirement for unbundling of packet switching.

- Signaling Networks – Incumbent LECs are only required to offer unbundled access to their signaling network when a carrier is purchasing unbundled switching. The signaling network element, when available, includes, but is not limited to, signaling links and signaling transfer points.

- Call-Related Databases – When a requesting carrier purchases unbundled access to the incumbent LEC's switching, the incumbent LEC must also offer unbundled access to their call-related databases. When a carrier utilizes its own switches, with the exception of 911 and E911 databases, incumbent LECs are not required to offer unbundled access to call-related databases, including, but not limited to, the Line Information database (LIDB), Toll Free Calling database, Number Portability database, Calling Name (CNAM) database, Operator Services/Directory Assistance databases, and the Advanced Intelligent Network (AIN) database.

- OSS Functions – Incumbent LECs must offer unbundled access to their operations support systems for qualifying services. OSS consists of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information. The OSS element also includes access to all loop qualification information contained in any of the incumbent LEC's databases or other records.

- Loops

  - Mass Market Loops

    * Copper Loops – Incumbent LECs must continue to provide unbundled access to copper loops and copper subloops. Incumbent LECs may not retire any copper loops or subloops without first receiving approval from the relevant state commission.

E 8811

* Line Sharing – The high frequency portion of the loop (HFPL) is not an unbundled network element. Although the Order finds general impairment in providing broadband services without access to local loops, access to the entire stand-alone copper loop is sufficient to overcome impairment. During a three-year period, competitive LECs must transition their existing customer base served via the HFPL to new arrangements. New customers may be acquired only during the first year of this transition. In addition, during each year of the transition, the price for the high-frequency portion of the loop will increase incrementally towards the cost of a loop in the relevant market.

* Hybrid Loops – There are no unbundling requirements for the packet-switching features, functions, and capabilities of incumbent LEC loops. Thus, incumbent LECs will *not* have to provide unbundled access to a transmission path over hybrid loops utilizing the packet-switching capabilities of their DLC systems in remote terminals. Incumbent LECs must provide, however, unbundled access to a voice-grade equivalent channel and high capacity loops utilizing TDM technology, such as DS1s and DS3s.

* Fiber-to-the-Home (FTTH) Loops – There is no unbundling requirement for new build/greenfield FTTH loops for both broadband and narrowband services. There is no unbundling requirement for overbuild/brownfield FTTH loops for broadband services. Incumbent LECs must continue to provide access to a transmission path suitable for providing narrowband service if the copper loop is retired.

- Enterprise Market Loops

  * The Commission makes a national finding of no impairment for OCn capacity loops.

  * The Commission makes a national finding of impairment for DS1, DS3, and dark fiber loops, except where triggers are met as applied in state proceedings. States can remove DS1, DS3, and dark fiber loops based on a customer location-specific analysis applying a wholesale competitive alternatives trigger.

  * Dark fiber and DS3 loops also each are subject to a customer location-specific review by the states to identify where loop facilities have been self-deployed.

- Subloops

  * See the copper loops summary above. In addition, incumbent LECs must offer unbundled access to subloops necessary for access to wiring at or near a multiunit customer premises, including the Inside Wire Subloop, regardless of the capacity level or type of loop the requesting carrier will provision to its customer.

E 98 11

- Network Interface Devices (NID) – Incumbent LECs must offer unbundled access to the NID, which is defined as any means of interconnecting the incumbent LEC's loop distribution plant to the wiring at the customer premises.

- Dedicated Interoffice Transmission Facilities – The Commission redefines dedicated transport to include only those transmission facilities connecting incumbent LEC switches or wire centers.

    * The Commission finds that requesting carriers are not impaired without access to unbundled OCn level transport.

    * The Commission finds that requesting carriers are impaired without access to dark fiber, DS3, and DS1 transport, except where wholesale facilities triggers are met as applied in state proceedings using route-specific review.

    * Dark fiber and DS3 transport also each are subject to a granular route-specific review by the states to identify where transport facilities have been self-deployed.

- Shared Transport – Incumbent LECs are required to provide shared transport to the extent that they are required to provide unbundled local circuit switching

- Combinations of Network Elements – Competitive LECs may order new combinations of UNEs, including the loop-transport combination (enhanced extended link, or EEL), to the extent that the requested network element is unbundled.

- Commingling – Competitive LECs are permitted to commingle UNEs and UNE combinations with other wholesale services, such as tariffed interstate special access services.

- Service Eligibility – Service eligibility criteria apply to all requests for newly-provisioned high-capacity EELs and for all requests to convert existing circuits of combinations of high-capacity special access channel termination and transport services. These criteria include architectural safeguards to prevent gaming.

    ▪ Certification – Each carrier must certify in writing to the incumbent LEC that it satisfies the qualifying service eligibility criteria for each high-capacity EEL circuit.

    ▪ Auditing – Incumbent LECs may obtain and pay for an independent auditor to audit compliance with the qualifying service eligibility criteria for high-capacity EELs. The incumbent LEC may not initiate more than one audit annually.

- Modification of Existing Network/"No Facilities" Issues – Incumbent LECs are required to make routine network modifications to UNEs used by requesting carriers where the requested facility has already been constructed. These routine modifications include deploying mutliplexers to existing loop facilities and undertaking the other activities that incumbent LECs make for their own retail customers. The Commission also requires incumbent LECs to condition loops for the provision of xDSL services. The Commission

E 10811

does not require incumbent LECs to trench new cable or otherwise to construct transmission facilities so that requesting carriers can access them as UNEs at cost-based rates, but it clarifies that the incumbent LEC's unbundling obligation includes all transmission facilities deployed in its network.

- Section 271 Issues – The requirements of section 271(c)(2)(B) establish an independent obligation for BOCs to provide access to loops, switching, transport, and signaling, under checklist items 4-6 and 10, regardless of any unbundling analysis under section 251. Where a checklist item is no longer subject to section 251 unbundling, section 252(d)(1) does not operate as the pricing standard. Rather, the pricing of such items is governed by the "just and reasonable" standard established under sections 201 and 202 of the Act.

- Clarification of TELRIC Rules – The order clarifies two key components of its TELRIC pricing rules to ensure that UNE prices send appropriate economic signals to incumbent LECs and competitive LECs. First, the order clarifies that the risk-adjusted cost of capital used in calculating UNE prices should reflect the risks associated with a competitive market. The order also reiterates the Commission's finding from the *Local Competition Order* that the cost of capital may be different for different UNEs. Second, the Order declines to mandate the use of any particular set of asset lives for depreciation, but clarifies that the use of an accelerated depreciation mechanism may present a more accurate method of calculating economic depreciation.

- Fresh Look – The Commission will retain its prior determination that it will not permit competitive LECs to avoid any liability under contractual early termination clauses in the event that it converts a special access circuit to an UNE.

- Transition Period – The Commission will not intervene in the contract modification process to establish a specific transition period for each of the rules established in this Order. Instead, as contemplated in the Act, individual carriers will have the opportunity to negotiate specific terms and conditions necessary to translate the Commission's rules into the commercial environment, and to resolve disputes over any new contract language arising from differing interpretations of the Commission's rules.

- Periodic Review of National Unbundling Rules – The Commission will evaluate these rules consistent with the biennial review mechanism established in section 11 of the Act. These reviews, however, will not be performed *de novo* but according to the standards of the biennial review process.

Further Notice of Proposed Rulemaking

- The Commission opens a further notice of proposed rulemaking to seek comment on whether to modify the Commission's interpretation of section 252(i) – the Commission's so-called pick-and-choose rule. The Commission tentatively concludes that a modified approach would better serve the goals embodied in section 252(i), and sections 251-252 generally, by promoting more meaningful commercial negotiations between incumbent LECs and competitive LECs.

E 11 of 11