Keisha Rivers
Area Manager—Industry Markets

SBC Communications
Four Bell Plaza 8TH FLOOR
Dallas, TX 75202
Phone: 214-464-0401
Fax: 214-464-8528
Email: ks1577@txmail.sbc.com

April 20, 2004

Russell M. Blau
Eric J. Branfman
Richard M. Rindler
Swidler Berlin Shereff Friedman, LLP
The Washington Harbour
3000 K Street, NW, Suite 300
Washington, DC 20007-5116

RE: ACN Communications Services, Inc.; Adelphia Business Solutions Operations, Inc. d/b/a TelCove; City Signal Communications, Inc.; Conversent Communications LLC; CoreComm Illinois Inc.; CoreComm Michigan Inc.; CoreComm Newco Inc.; DSLnet Communications, LLC; El Paso Networks, LLC; Essex Acquisition Corporation; Fiber Technologies Networks, LLC; Globalcom, Inc.; LDMI Telecommunications, Inc.; Mpower Communications Corp.; New Edge Networks; RCN Telecom Services, Inc.; Southern California Edison Company (Edison Carrier Solutions); Vycera Communications, Inc.; Focal Communications; Choice One Communications Inc.; and their respective affiliates

Dear Sirs:

We are in receipt of your March 18 and 20, 2004 responses (on behalf of the above-named CLECs) to our March 11, 2004 letter enclosing a proposed "Lawful UNEs Amendment" for consideration by the aforementioned CLECs. In your letters, you reject SBC's efforts to engage in negotiations of the Lawful UNEs Amendment until "a change of law has occurred under the terms of [CLECs'] Agreements."

We are confused by your statement because, of course, multiple changes of law have occurred in the recent months. As we clearly stated in our March 11, 2004 letter, the Lawful UNEs Amendment supplements and/or modifies language previously provided in the course of a change in law process initiated in October of 2003, and arising out of the D.C. Circuit Court of Appeals initial 2002 USTA decision ("USTA I"), as well as the FCC's Triennial Review Order, made effective October 2, 2003. Consequently, the contractual time periods relative to change in law negotiations have been honored by SBC.

You also claim that the proposal is "new" and that CLECs were not given enough time to consider it, yet the Lawful UNEs Amendment has the benefit of being shorter and

accomplishing essentially the same goal as the more detailed TRO Amendment language previously proposed by SBC. We have not received meaningful responses from many of the CLECs to our October notice, either; therefore, we're not sympathetic to claims that you have not had enough time to consider these issues. Furthermore, far from being inconsistent with our October 30, 2003 change in law notice, which invoked both USTA I and TRO, the Lawful UNEs Amendment can also be viewed as reflecting the sweeping vacatur of previous unbundling rules by USTA I, in addition to generally reflecting the holdings of the TRO, which declassified or called for the declassification of several network elements.

We also disagree with your suggestion that our Lawful UNEs Amendment language in any way derogates the general unbundling requirements of the 1996 Telecommunications Act, including Sections 251 and 271. As you are aware, the *USTA II* decision recently reinforced prior judicial and FCC rulings that it is the unique role of the FCC to promulgate lawful unbundling rules to implement the Act, including defining specific elements that are required to be unbundled. Without lawful rules in place, there are no such elements and, therefore, no unbundling obligations to be contractually enforced.

You attempt to avoid SBC's lawful overtures for change in law negotiations by claiming that it would be a "waste of time" for CLECs to consider SBC's Lawful UNEs Amendment, given that SBC advised in its March 11th letter that there would likely be further change in law amendments necessary in light of the D.C. Circuit's latest decision in *USTA II*. Of course, the rapid and dramatic changes in law that have occurred within the last six months (much less the ones before that) are not within SBC's control. The parties' agreements call for change in law modification (as you acknowledge) and therefore the parties' contractual intent must be presumed to be to carry out those modification plans. The SBC Lawful UNEs Amendment is designed to streamline the incorporation of future changes in law by introducing a reasonable transition process into the agreement(s). Thus, the Lawful UNEs Amendment is well suited to avoid the "waste of time" that CLECs wish to avoid.

We appreciate your concern that state commission resources may be strained by dispute resolutions flowing from change in law negotiations on top of already ongoing 251/252 arbitration proceedings. The better way to avoid the unnecessary use of scarce resources is, of course, for us to engage in meaningful negotiations and attempt to avoid those dispute resolution proceedings. Apparently, CLECs have chosen not to pursue that course.

We are disappointed in your response, and will continue to pursue resolution of this matter, consistent with applicable contractual and legal rights and obligations, including the pursuit of resolution via formal dispute resolution if the matter continues to be unresolved by agreement. If you have any questions, please feel to contact me at 214-464-0401.

Sincerely,

Keisha Rivers