BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Determination of Prices, Terms, and Conditions of Line Splitting and Line Sharing.	)))	Case No. TO-2001-440

COVAD'S COMMENTS
ON THE EFFECT OF THE FCC'S TRIENNIAL REVIEW ORDER

On May 15, 2003, the Commission issued an order directing the parties to file comments on the effect of the Federal Communications Commission's ("FCC") *Triennial Review Order* on this proceeding.[1] DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") respectfully responds as follows:

I. Will this Commission Preserve Voice and Data Competition in Missouri?

The *Triennial Review Order* has vested state commissions with responsibility for determining the long-term future of competition in the local telecommunications market. Specifically, the FCC has explicitly delegated to the states the authority to determine whether competitors are entitled to access switching in the residential market during a 9-month impairment proceeding. The long-term future of voice competition in the residential market will hinge upon the ability of competitors to provide a bundled voice and data product, and hence, this Commission must address line splitting rates, terms, and conditions in connection with the 9-month switching proceeding. Further the 9-month loop and transport docket described in the *Triennial Review Order* will significantly impact the future of internet access competition, which is dependent upon interoffice transport and high capacity loops, but is even more dependant upon access to the HFPL and hybrid loops. Accordingly, in order to ensure the long-term future of competition in

[1] *In the Matter of the Determination of Prices, Terms, and Conditions of Line Splitting and Line Sharing (Case No. TO-2001-440) Order Directing Filing issued on May 15, 2003.*

the Missouri internet access market the Commission will need to ensure that competitors are afforded access the HFPL and hybrid loops pursuant to this Commission's independent state law authority, and its authority under Section 271 of the Act.[2]

Should the Commission fail to address line splitting issues in its 9-month switching proceeding, the outcome of that docket will be of little consequence because the future of voice competition in the residential market is dependent upon competitors being able to compete with SBC's bundled voice and data product. Should the Commission fail to address internet access issues in its 9-month loop and transport proceeding, the outcome of that docket will also be of little consequence because the future of internet access competition in the residential market is dependent upon competitors being able to compete with SBC's data products, which SBC itself provisions over the HPFL and hybrid loops.

Having said that, the Commission can accomplish much of what needs to be done to ensure the immediate future of data competition by simply completing the interim line sharing and line splitting provisions of the M2A in this proceeding.

II. The Commission's Independent State Law Authority to Unbundle the HFPL and Hybrid Loops is Preserved by the Act and Has Not Been Preempted by the FCC.

A. The Commission Has Independent State Law Authority to Unbundle the HFPL and Hybrid Loops.

This Commission has independent authority under Missouri law to require SBC to provide competitors with access to the HFPL and hybrid loops. As Covad indicated in its April 21, 2003 Response to Order Directing Filing, the *Triennial Review* has not affected

[2] The "HFPL" is the High Frequency Portion of the Loop used to provide a line shared service (ILEC voice and CLEC data). "Hybrid Loops" refer to loops comprised of both fiber and copper facilities. SBC has named its hybrid loop architecture "Project Pronto."

the need for the Commission to finish its work in this case regarding line splitting and line sharing. The provisions of the M2A regarding line splitting and line sharing still need to be completed. The *Triennial Review* does not alter line splitting and does not purport to immediately eliminate line sharing on a federal basis. SBC obtained 271 relief based in part on the inclusion of line splitting and line sharing in the M2A commitments and the process of converting interim provisions to permanent ones needs to be completed.

Beyond completing the M2A, this Commission has independent authority to require long-term access to unbundled line sharing and line splitting, as well as access to hybrid loops. Section 392.250 provides the Commission with broad authority over telecommunications facilities, services and companies. Further, the Legislature has expressly instructed the Commission to "promote universally available and widely affordable telecommunications services; maintain and advance the efficiency and availability of telecommunications services; [and] promote diversity in the supply of telecommunications services and products throughout the state of Missouri". See Section 392.185(1)-(3). Section 392.200.1 requires telecommunications companies to furnish adequate instrumentalities and facilities. Section 392.200.6 requires companies to "receive, transmit and deliver, without discrimination or delay, the conversations and messages of every other telecommunications company with whose facilities a connection may have been made." Section 392.240.2 authorizes the Commission to determine "just, reasonable, adequate, efficient and proper regulations, practices, equipment and service" to be provided by telecommunications companies. Section 392.240.3 authorizes the Commission to require that "a physical connection can reasonably be made between the

lines of two or more telecommunications companies whose facilities can be made to form a continuous link of communication by the constructions and maintenance of suitable connections for the transfer of messages or conversations." Section 392.470 authorizes the Commission to impose "reasonable and necessary" conditions on providers of telecommunications services. These statutory provisions clearly authorize independent action by the Commission.

The Commission is required by the foregoing statutes, inter alia, to prevent SBC from discriminating against other providers by, for example, refusing or delaying access to the local exchange or refusing or delaying access to any person to another provider. Nondiscriminatory access to the local exchange dictates the unbundling of the HFPL and hybrid loops, which is crucial to competitors being able to compete with SBC's bundled voice and data product.

SBC's own arguments to this Commission require SBC to unbundle the HFPL and the hybrid loops pursuant to the non-discrimination provisions of Missouri law. SBC has contended in a number of proceedings that SBC does not provide telecommunications consumers with DSL service directly, but rather, that SBC provides DSL service through its CLEC data affiliate. Because SBC provides the unbundled HFPL to its CLEC data affiliate, it is likewise required to also provide the HFPL and hybrid loops to independent CLECs on an unbundled basis. If the Commission fails to require SBC to provide such unbundled access, the Commission will be condoning discriminatory conduct in violation of Missouri law.

Accordingly, this Commission can, should, and indeed must order the unbundling of the HFPL and hybrid loops under its own independent state law authority.

B. The Commission's Independent State Law Authority is Preserved by the Act.

It is beyond dispute that the authority granted by Missouri law is not preempted by the federal Telecommunications Act. Section 252(e)(3) of the Act, entitled "Preservation of authority" explicitly states that:

> [N]othing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.[3]

Likewise, Section 251(d)(3) of the Act, entitled "Preservation of State access regulations" states:

> In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that - (A) establishes access and interconnection obligations of local exchange carriers; (B) is consistent with the requirements of this section; and (C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.[4]

Accordingly, the Act preserves the Commission's independent authority set forth in Missouri statutes.

C. The Commission's Independent State Law Authority Was Not Preempted by the FCC in its *Triennial Review Order*.

It is likewise beyond dispute that the authority granted by Missouri statutes is not preempted by the FCC's *Triennial Review Order*. Nor could it be. While the FCC has the authority to interpret the Act, it does not have the authority to re-write it. Indeed, any deference previously accorded to the FCC's interpretation of the Act under the *Chevron* doctrine has long since been forfeited because the FCC's interpretation of the Act has

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[3] 47 U.S.C. § 252(e)(3).

[4] 47 U.S.C. § 251(d)(3).

been repeatedly reversed by the D.C. Circuit.[5] Thus, notwithstanding any statements in the *Triennial Review Order,* the Act defines this Commission's authority, and, as set forth above, the Act does not evince any general Congressional intent to preempt state law unbundling orders. Rather, the Act expressly preserves such state law authority.

Should this Commission place stock in the FCC's interpretation of the Act in its *Triennial Review Order,* it is worth noting that even the FCC recognized that the aforementioned provisions of the Act expressly indicate Congress' intent not to preempt state regulation, and forbid the FCC from engaging in such preemption:

> Section 252(e)(3) preserves the states' authority to establish or enforce requirements of state law in their review of interconnection agreements. Section 251(d)(3) of the 1996 Act preserves the states' authority to establish unbundling requirements pursuant to state law to the extent that the exercise of state authority does not conflict with the Act and its purposes or our implementing regulations. Many states have exercised their authority under state law to add network elements to the national list.[6]

The FCC further acknowledges in the *Triennial Review Order* that Congress expressly declined to preempt states in the field of telecommunications regulation:

> We do not agree with incumbent LECs that argue that the states are preempted from regulating in this area as a matter of law. If Congress intended to preempt the field, Congress would not have included section 251(d)(3) in the 1996 Act.[7]

Accordingly, the FCC has explicitly acknowledged that this Commission retains its independent unbundling authority.

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[5] MCI v. AT&T, 512 U.S. 218,229 (1994) (holding that an agency's interpretation of a statute is not entitled to deference when it goes beyond the meaning that the statute can bear).

[6] *See Triennial Review Order*, at ¶ 191.

[7] *See Triennial Review Order*, at ¶ 192.

1. The FCC Held that State Law Authority is Preserved Unless the Exercise of That Authority Would "Substantially Prevent Implementation" of Section 251.

In its *Triennial Review Order* the FCC claimed to identify a narrow set of circumstances under which federal law would act to preempt state law unbundling orders:

> Based on the plain language of the statute, we conclude that the state authority preserved by section 251(d)(3) is limited to state unbundling actions that are consistent with the requirements of section 251 and do not "substantially prevent" the implementation of the federal regulatory regime…
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> [W]e find that the most reasonable interpretation of Congress' intent in enacting sections 251 and 252 to be that state action, whether taken in the course of a rulemaking or during the review of an interconnection agreement, must be consistent with section 251 and must not "substantially prevent" its implementation.[8]

Based upon the Eight Circuit's *Iowa Utilities Board I* decision the FCC specifically recognized that state law unbundling orders that are merely inconsistent with the FCC's unbundling orders are not *ipso facto* preempted:

> That portion of the Eighth Circuit's opinion reinforces the language of [section 251(d)(3)], i.e., that state interconnection and access regulations must "substantially prevent" the implementation of the federal regime to be precluded and that "merely an inconsistency" between a state regulation and a Commission regulation was not sufficient for Commission preemption under section 251(d)(3).[9]

In sum, the FCC's *Triennial Review Order* confirms that "merely an inconsistency" between state rules providing for competitor access and federal unbundling rules is insufficient to create such a conflict. Rather, the FCC recognized that the state laws

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[8] *See Triennial Review Order*, at ¶¶ 192, 194.

[9] *See Triennial Review Orde*r, ¶ 192 n. 611 (citing *Iowa Utils. Bd. v. FCC*, 120 F.3d at 806).

would not be subject to preemption unless they "substantially prevent implementation" of section 251.

2. The FCC Did Not Conclude That Any Existing State Commission Orders Unbundling the HFPL or Hybrid Loops Would "Substantially Prevent Implementation" of the Act or the FCC's Rules.

In its *Triennial Review Order*, the FCC did not preempt ***any existing*** state law unbundling requirements, nor did it act to preclude the adoption of ***any future*** state law unbundling requirements. This is significant because several states, including California and Minnesota, have exercised their independent state law authority to unbundle the HFPL.[10] Likewise, several states, including Illinois, Wisconsin, Indiana, and Kansas, have exercised their independent authority to unbundle hybrid loops.[11] The FCC declined to preempt any of these unbundling orders, stating only that "in *at least some circumstances* existing state requirements will not be consistent with our new framework and may frustrate its implementation."[12] Accordingly, the FCC specifically acknowledged that in many circumstances state law unbundling of the HFPL and hybrid

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[10] **California:** CPUC Docket No. R.93-04-003/I.93-04-002; Open Access and Network Architecture Development, Permanent Line Sharing Phase, D. 03-01-077(Jan. 30, 2003); **Minnesota:** MPUC Docket No. P-999/CI-99-678; *In the Matter of a Commission Initiated Investigation into the Practices of Incumbent Local Exchange Companies Regarding Shared Line Access* (Oct. 8, 1999).

[11] **Illinois:** ICC Docket No. 00-0393; P*roposed Implementation of High Frequency Portion of Loop (HFPL)/Line Sharing Service* (March 14, 2001); **Wisconsin:** WPSC Docket No. 6720-TI-161; Investigation into Ameritech Wisconsin's Unbundled Network Elements (March 22, 2002); **Indiana:** *IURC Cause Number 40611-S1, Phase II; In the Matter of the Commission Investigation and Generic Proceeding on Ameritech Indiana's Rate's for Interconnection, Service, Unbundled Termination Under the Telecommunications Act of 1996 and Related Indiana Statutes* (Feb. 17, 2001); **Kansas:** KCC Docket No. 01-GIMT-032-GIT; *In the Matter of the General Investigation to Determine Conditions, Terms, and Rates for Digital Subscriber Line Unbundled Network Elements, Loop Conditioning, and Line Sharing* (Jan. 13, 2003).

[12] *See Triennial Review Order*, ¶ 195.

loops would be consistent with the FCC's framework and would not frustrate its implementation.

Recognizing that its ability to preempt state unbundling orders was limited (if existent at all), the FCC declined to issue a blanket determination that all state orders unbundling the HFPL or hybrid loops were preempted. Rather, the FCC simply invited parties to seek declaratory rulings from the FCC regarding whether individual state unbundling orders "substantially prevent implementation" of Section 251. Contrary to this standard, however, the FCC stated that it was "*unlikely*" that it would refrain from preempting a state law or Order that required the "unbundling of network elements for which the Commission has either found no impairment . . . or otherwise declined to require unbundling on a national basis."[13] While the FCC's preemption analysis (or more accurately, its unsupported supposition) is flawed, it is important to note that even pursuant to this faulty analysis the FCC expressly refused to conclude that an order unbundling the HFPL or hybrid loops would be preempted as a matter of law, thereby signaling to state commissions that the HFPL and hybrid loops could be unbundled under particular circumstances.

3. State Law Access Requirements Are Valid "As Long as the Regulations Do Not Interfere With the Ability of New Entrants to Obtain Services."

The proper analysis to determine whether state access laws impermissibly conflict with the federal regulatory regime is set forth in *Michigan Bell v. MCIMetro*, 323 F.3d 348 (6th Cir. 2003). In *Michigan Bell*, the Sixth Circuit Court of Appeals refused to preempt an Order of the Michigan Commission (allowing MCI to transmit resale orders

[13] *See Triennial Review Order*, ¶ 195.

by fax pursuant to its Michigan tariff) which SBC argued "conflicted" with MCI's tariff and the Act. Conducting its preemption analysis the Sixth Circuit first noted that the Michigan Commission's authority was expressly preserved by the Act:

> When Congress enacted the federal Act, it did not expressly preempt state regulation of interconnection. ***In fact, it expressly preserved existing state laws that furthered Congress's goals and authorized states to implement additional requirements that would foster local interconnection and competition***, stating that the Act does not prohibit state commission regulations 'if such regulations are not inconsistent with the provisions of [the FTA].'[14]

The Court then explained that "as long as state regulations do not prevent a carrier from taking advantage of sections 251 and 252 of the Act, state regulations are not preempted.[15] The Court later reiterated that an Order of this Commission would be affirmed provided that it "does not frustrate the purposes of the Act."[16] An order requiring access to the HFPL or hybrid loops under state law would not prevent a carrier from taking advantage of the network opening provisions of the Act, nor would such unbundling frustrate the purposes of the Act. The Court unequivocally stated:

> The Commission can enforce state law regulations, ***even where those regulations differ from the terms of the Act*** or an interconnection agreement, as long as the regulations do not interfere with the ability of new entrants to obtain services.[17]

Accordingly, contrary to the FCC's statement that it is "unlikely" that state laws requiring access to the HFPL and hybrid loops would escape preemption, it is clear that this Commission had, and continues to have the authority to implement state law and require

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[14] *Michigan Bell*, 323 F3d at 358.

[15] *Id*. at 359.

[16] *Id*. at 361.

[17] *Id*.

access to the HFPL and hybrid loops because such orders would not interfere with the ability of new entrants to obtain services.

4. Contrary to its "Unlikely" Prediction, the FCC Acknowledges Unbundling Will Be Required Under Certain Circumstances.

Although the FCC stated that it was "unlikely" to refrain from preempting a state law unbundling access to the HFPL or hybrid loops, the *Triennial Review Order* broadly identifies the circumstances that would lead the FCC to decline to preempt a state commission order unbundling a network element that the FCC has declined to unbundle nationally. Specifically, in its discussion of state law authority to unbundle network elements, the FCC states that "the availability of certain network elements may vary between geographic regions."[18] Indeed, according to the FCC, such a granular "approach is required under *USTA*."[19] Thus, if the requisite state-specific circumstances exist in a particular state, state rules unbundling network elements not required to be unbundled nationally are permissible in that state, and would not substantially prevent the implementation of section 251.

D. The Commission Has the Authority to Require SBC to Provide Access to HFPL Consistent with Federal Law Based Upon Missouri-Specific Facts.

While the FCC's *Triennial Review Order* found that competitors are not impaired on a national basis without access to the HFPL, the FCC also made clear that state-specific facts could warrant a different unbundling requirement in a particular state. Such state-specific circumstances warrant the unbundling of the HFPL in Missouri. That is, the facts relied upon by the FCC in reaching a national finding of non-impairment

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[18] *See Triennial Review Order*, ¶196.

[19] *See Triennial Review Order*, para. 196 (citing *USTA*, 290 F.3d at 427).

without access to the HFPL do not exist in the state of Missouri. Because of these Missouri-specific circumstances, an obligation imposed by Missouri law to unbundle access to the HFPL would not substantially prevent implementation of section 251, and the FCC's federal unbundling regime. Accordingly, the FCC would be unlikely to preempt such a finding.

The primary and deciding factor relied upon by the FCC to make a national finding of non-impairment with respect to the HFPL is the supposed ability of competitors to obtain revenues from all of the services the loop is capable of offering, including voice and data bundles using line splitting. In the state of Missouri, however, SBC has not made line splitting operationally available in the same manner as its own retail voice and data bundles. Indeed, there are significant financial and operational obstacles to CLEC's providing line splitting in Missouri. For example, there are customer impacting limitations on timing of line splitting orders; there are discriminatory versioning policies for submission of line splitting orders; there is an inadequate trouble ticket processes for line splitting; SBC's NRC for line splitting create an enormous barrier to entry; there are customer impacting limitations on line splitting with the hunting feature; SBC has in place an untenable process for migrating customers from line splitting back to UNE-P; and SBC has in place a policy that threatens accuracy of E911 databases. Because of the operational and cost disadvantages competitive data providers continue to face in providing line split voice and data bundles in Missouri, competitors face severe competitive disadvantages in obtaining "all potential revenues derived from using the full functionality of the loop."[20] Accordingly, the assumption underlying the

[20] *See Triennial Review Order*, ¶ 258.

FCC's conclusion that competitors are not impaired without access to the HFPL does not comport with the facts as they exist in Missouri.

Thus, in Missouri, the requisite state-specific circumstances exist for this Commission to unbundle access to the HFPL under its independent state law authority, without substantially preventing the implementation of section 251 of the federal Communications Act.

III. The Commission Has Authority Pursuant to Section 271 of the Act to Require SBC to Provide Unbundled Access to the HFPL and Hybrid Loops.

In addition to its authority to unbundle network elements under state law, this Commission also has the authority to enforce the unbundling requirements of Section 271 of the federal Telecommunications Act. The FCC made clear in the *Triennial Review* that section 271 creates independent access obligations for the Regional Bell Operating Companies:

> [W]e continue to believe that the requirements of section 271(c)(2)(B) establish an independent obligation for BOCs to provide access to loops, switching, transport, and signaling regardless of any unbundling analysis under section 251.[21]
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> Section 271 was written for the very purpose of establishing specific conditions of entry into the long distance that are unique to the BOCs. As such, BOC obligations under section 271 are not necessarily relieved based on any determination we make under the section 251 unbundling analysis.[22]

Thus, there is no question that, regardless of the FCC's analysis of competitor impairment and corresponding unbundling obligations under section 251 for *incumbent LECs*, as a Bell Operating Company SBC retains an independent statutory obligation

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[21] *See Triennial Review Order*, ¶ 653.

[22] *See Triennial Review Order*, ¶ 655.

under section 271 of the Act to provide competitors with unbundled access to the network elements listed in the section 271 checklist.[23] There is no question that SBC's network access obligations include the provision of unbundled access to loops under checklist item #4: "Checklist items 4, 5, 6, and 10 separately impose access requirements regarding loop, transport, switching, and signaling, without mentioning section 251."[24]

In addition, the Commission has independent authority to enforce these section 271 BOC obligations. This enforcement authority encompasses the authority to ensure that SBC fulfills its statutory duties under section 271. Furthermore, not even SBC would dare to argue that the Commission's enforcement of SBC's section 271 checklist obligations would "substantially prevent the implementation" of any provision of the federal Telecommunications Act. In fact, where state enforcement activities do not impair federal regulatory interests, concurrent state enforcement activity is clearly authorized.[25] Indeed, the Act expressly preserves a state role in the review of a BOC's compliance with its section 271 checklist obligations, and requires the FCC to consult with state commissions in reviewing a BOC's section 271 compliance.[26] Thus, the Commission clearly has the authority to enforce SBC's obligations to provide unbundled

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[23] *See* 47 U.S.C. § 271(c)(2)(B).

[24] *See Triennial Review Order*, ¶ 654.

[25] *See Florida Avocado Growers v. Paul*, 373 U.S. 132, 142, 83 S.Ct. 1210, 1217, 10 L.Ed.2d 248 (1963). Courts have long held that federal regulation of a particular field is not presumed to preempt state enforcement activity "in the absence of persuasive reasons – either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained." *See De Canas v. Bica*, 424 U.S. 351, 356, 96 S.Ct. 933, 936, 47 L.Ed.2d 43 (1976) (quoting *Florida Avocado Growers*, 373 U.S. at 142, 83 S.Ct. at 1217).

[26] *See* 47 U.S.C. § 271(d)(2)(B) (requiring the FCC to consult with state commissions in reviewing BOC compliance with the 271 checklist).

access to loops under Section 271 checklist item #4. In particular, the Commission has authority to complete the interim line sharing and line splitting provisions of the M2A.

A. The Commission Has the Authority Under Section 271 to Require SBC to Provide Access to HFPL.

Although the FCC concluded in its *Triennial Review* that competitors are not impaired without unbundled access to the HFPL pursuant to section 251(c)(3) of the Act, the FCC acknowledged that section 271 creates separate, statutory HFPL unbundling obligations for the Bells, wholly separate and apart from the statutory unbundling obligations in section 251. SBC cannot deny that section 271 checklist item 4 requires the Bells to provide access to the HFPL. By its plain language, checklist item 4 requires the Bells to provide access to "local loop transmission from the central office to the customer's premises, unbundled from local switching or other services."[27] The HFPL is clearly a form of loop transmission—a loop transmission that SBC itself routinely uses to provide xDSL services separately from narrowband voice services.[28] In light of this clear statutory language, there is no question that SBC remains under a statutory obligation to offer unbundled HFPL loop transmission to competitors, notwithstanding the FCC's finding of no impairment pursuant to section 251.

Each time the FCC has reviewed a 271 application since the advent of line sharing the FCC has insisted the BOC long distance applicant offer non-discriminatory access to the HFPL in order to comply with checklist item #4.[29] To this day, months after its

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[27] *See* 47 U.S.C. § 271(c)(2)(B)(iv).

[28] In other words, SBC customers typically purchase narrowband voice services without also purchasing xDSL, and pay a separate monthly fee in order to add xDSL services to their local loop.

[29] *See, e.g., Joint Application by SBC Communications, Inc., et al., for Provision of In-Region InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, CC Docket No. 00-217, FCC 01-29, ¶¶. 214-219 (2001).

decision to eliminate HFPL access as annunciated in its February 20, 2003 press release, the FCC continues to look at the non-discriminatory availability of line sharing as an integral component of its checklist item #4 analysis in section 271 proceedings.[30] The significance of this point cannot be understated. The FCC required Qwest, the BOC long distance applicant, to provide non-discriminatory access to the HFPL as a precondition to gaining long distance authority pursuant to checklist item #4 of section 271 more than a month after the FCC voted to eliminate line sharing (the HFPL) as a UNE.[31] There is simply no question that the Act, and the FCC, require SBC to provide non-discriminatory access to the HFPL if SBC desires to provide long distance services.

IV. The Commission Clearly Has the Power and Authority to Save Voice and Data Competition; the Only Question is Whether the Commission Will Do So.

Covad respectfully submits that it has demonstrated, beyond credible refutation, that this Commission has the statutory authority to grant competitors unbundled access to the HFPL and hybrid loops. This Commission should require unbundled access to these elements that are essential to the ability of competitors to provide Missouri consumers competitive data services. In the meantime, the Commission needs to complete the interim line sharing and line splitting provisions of the M2A. Covad appreciates the opportunity granted by this Commission to submit these Comments.

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[30] *See Application by Qwest Communications International, Inc., for Authorization to Provide In-Region, InterLATA Services in Minnesota,* Memorandum Opinion and Order, WC Docket No. 03-90, FCC 03-142, para. 53, and App. C, ¶¶ 50-51.

[31] *See id.* at ¶ 1.

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Certificate of Service

A true and correct copy of the foregoing was served upon the parties identified on the attached service list on this 10th day of September, 2003, by placing same in the U.S. Mail, postage paid.

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