

***Resolution Regarding Expedited Determination that CLECs are Impaired without DS1
UNE Loops***

WHEREAS, On August 21, 2003, the Federal Communications Commission (“FCC”) issued its Report and Order and Order on Remand and Further Notice of Proposed Rulemaking (the “Triennial Review Order”) that set forth rules regarding the unbundling of network elements by incumbent local exchange carriers (“ILECs”); *and*

WHEREAS, In the Triennial Review Order, the FCC unanimously found that Competitive Local Exchange Carriers (“CLECs”) are impaired in most instances without access to unbundled DS1 loops and that it is not economically feasible for CLECs to deploy their own DS1 loops, unless the ILEC can demonstrate that DS1 loop wholesale competitive alternatives are available at a particular customer’s location from a provider other than the ILEC or an ILEC affiliate; *and*

WHEREAS, Various parties appealed the FCC’s Triennial Review Order, and such appeals were consolidated in the United States Court of Appeals for the District of Columbia (D.C. Circuit); *and*

WHEREAS, On March 2, 2004, the D.C. Circuit issued a decision in *United States Telecom Association v. FCC* (“USTA II”), vacating and remanding several of the Triennial Review Order’s unbundling rules back to the FCC, and on June 16, 2004, the mandate for the USTA II decision issued; *and*

WHEREAS, On August 20, 2004, the FCC issued an Order and Notice of Proposed Rulemaking seeking comments on alternative unbundling rules that will implement the obligations of Section 251(c)(3) of the Communications Act of 1934, as amended, in a manner consistent with the D.C. Circuit Court’s decision in USTA II; *and*

WHEREAS, On September 29, 2004, XO Communications, Inc., filed with the FCC a Petition requesting the FCC to bifurcate its consideration of DS1 loops in CC Docket 01-338 and immediately affirm its prior determination that the ability of CLECs to provide services is impaired on a nationwide basis unless ILECs are required to make available DS1 UNE loops; *and*

WHEREAS, The FCC has found that it is economically infeasible for CLECs to self-deploy DS1 loops, as such deployment would require the same significant sunk and fixed costs as higher-capacity loops used to serve the largest businesses, yet would result in much lower revenue opportunities; *and*

WHEREAS, The FCC has found that there is little evidence of wholesale alternative DS1 loop capacity available to CLEC; however, the FCC found that evidence of alternative providers at the DS3 and higher capacity levels suggests that there may be specific locations where competitive carriers have deployed fiber and could offer excess capacity at the DS1 loop level; *and*

WHEREAS, Small and medium-sized businesses - the customer group served by CLECs using DS1 UNE Loops - are vital to economic growth in the United States; *and*

WHEREAS, Small and medium-sized businesses have benefited from the availability of competitively-provided services provisioned over DS1 UNE Loops, including access to low-cost high-speed Internet access and advanced voice services; *and*

WHEREAS, Small and medium-sized businesses will be harmed by a loss of service or by price increases if unbundled DS1 UNE Loops become unavailable to CLECs, and such harm to these businesses would be damaging to the nation's economy; *now therefore be it*

RESOLVED, That the National Association of Regulatory Utility Commissioners ("NARUC"), convened in its November 2004 National Convention in Nashville, Tennessee, supports the request for the FCC to reaffirm its prior determination that the ability of CLECs to provide services is impaired on a nationwide basis unless ILECs are required to make available DS1 UNE loops at cost-based rates, unless the ILEC can demonstrate that DS1 loop wholesale alternatives are available at a particular customer location from a provider other than the ILEC or an ILEC affiliate; *and be it further*

RESOLVED, That NARUC's General Counsel is directed to file in support of this position and take any appropriate actions to further the intent of this resolution.

Sponsored by the Committee on Telecommunications
Adopted by NARUC November 17, 2004