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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Missouri Public
Service Commission

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 in the Telecommunications Act
of 1996

CC Docket No. 96-98

Deployment of Wireline Services Offering
Advanced Telecommunications Capability

CC Docket No. 98-147

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

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Exhibit No. 28
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the contrary, the data confirm what economists have long predicted: UNEs deter facilities-based entry.⁷³

Z-Tel, the only other CLEC even to purport to present “empirical” evidence, claims that the unbundled switching restriction has reduced levels of mass-market competition and CLEC switch deployment.⁷⁴ But Z-Tel’s studies of the unbundled switching restriction are completely meaningless because, as a practical matter, that restriction has not been in effect in the vast majority of the country. SBC, Verizon, and Qwest all have continued to provide unbundled local switching throughout their territory, and did so throughout the period in Z-Tel’s analysis, even to customers to whom the restriction applies. Z-Tel’s analyses suffer from other flaws as well. For example, while the unbundled switching restriction applies only to large business customers, Z-Tel attempts to correlate the effects of that restriction with the levels of competition for residential and small business customers to whom the restriction does not apply. Moreover, while Z-Tel claims that the switching restriction has reduced levels of switch deployment, it overlooks the fact that the supposedly restricted markets already had very high levels of switch deployment before the restriction took effect, which is precisely why the Commission imposed the restriction in the first place. It should come as no surprise that CLECs deployed proportionately fewer competitive switches in markets that already had a relatively high level of competitive switch saturation than in markets with a relatively low level of saturation.

The actual market evidence unequivocally confirms the fundamental economic principle that the UNE-P deters facilities-based investment by CLECs. Looking at data from *all* states with significant volumes of UNE-P, it is clear that facilities-based competition within a state

⁷³ This is true, moreover, if one compares New York to other states. Although UNE-P penetration is far greater in New York than in any other state, CLEC investment is proportionately higher in most other states. Of the 48 contiguous states, New York ranks 39th in the number of CLEC switches deployed per BOC access line. *Id.* at 6-7.

⁷⁴ See Z-Tel Comments Attachs. 14 & 15.

- in the top 100 MSAs, CLECs are *using* these switches to serve customers in more than 80 percent of BOC wire centers, and those wire centers account for more than 95 percent of BOC access lines.⁴⁰⁰

Nor is it just AT&T and WorldCom (which, ironically, are the principal users of the UNE-P) that are using their own switches. Other CLECs have deployed nearly 1,000 circuit switches, and the 15 largest CLECs other than AT&T and WorldCom have deployed nearly 500 of them.⁴⁰¹ These switches, moreover, have been deployed in both large and small communities throughout the country. To be sure, there are more of them in suburban and urban areas, but CLECs also have deployed their own switches in such places as Seguin, Texas; Mojave, California; Lenexa, Kansas; Mishawaka, Indiana; and other small communities.⁴⁰² If a CLEC can use its own switch in Mishawaka, it can do so anywhere.

This evidence is dispositive. Three years ago, in the *UNE Remand Order*, the Commission found that “a significant number of competitive switches have been deployed,”⁴⁰³ but, in a decision from which Chairman Powell dissented, the Commission nevertheless found that CLECs were impaired in their ability to *use* those switches in all but the most narrow of circumstances. The Commission so concluded, in part, because the evidence in the record focused largely on switch *deployment*, as opposed to switch *use*. Even so, that decision defied common sense because it suggested that CLECs had deployed hundreds of switches despite their inability to use those switches to any significant degree. **Indeed, the limited – and conditional – carve-out that the Commission established covered only two percent of SBC wire centers and three percent of its switched access lines.**⁴⁰⁴

⁴⁰⁰ *Fact Report*, App. C, at C-5.

⁴⁰¹ *Id.* at Figure II-1.

⁴⁰² *Id.*, App. B.

⁴⁰³ *UNE Remand Order*, 15 FCC Red at 3809, ¶ 254.

⁴⁰⁴ **This carve-out was so limited that SBC and most other BOCs chose not to meet the onerous conditions necessary to qualify for it.**