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Before the
FEDERAL COMMUNICATIONS COMMISSION
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| In the Matter of | |
| Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 | CC Docket No. 96-98 |
| Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers | CC Docket No. 95-185 |

# COMMENTS OF BELL ATLANTIC[1]

## I. Introduction and Summary

The issue presented here is not a new one. The Commission has twice before recognized that long distance carriers cannot evade access charges by purchasing unbundled network elements solely to handle long distance traffic. In the case of both unbundled loops and unbundled local switching, the Commission decided that carriers may purchase these network elements only to serve their local exchange customers. The Commission should continue to follow this course for unbundled transport for the same legal and public policy reasons.

In crafting the unbundling provisions of the Telecommunications Act, Congress deliberately created an alternative means for local competition that preserved the

[1] The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

Commission's existing access charge system. Congress recognized that access rates have historically made significant contributions to the joint and common costs of running existing local networks and that those contributions should be preserved while local markets are opened to competition.

The Commission has carried out Congress' intent by consistently distinguishing network elements from access services. Where an interexchange carrier is only providing interexchange services, it is not entitled to purchase network elements in lieu of access services. Under the Commission's own decisions, it is only those carriers providing local services to their customers that are entitled to purchase and use unbundled network elements (such as loops, switching and transport) to deliver and receive interexchange traffic without the payment of access charges.

## II. The Telecommunications Act Preserves the Commission's Access Charge System and Distinguishes Access Services From Network Elements.

Congress was well aware of the importance of preserving the Commission's access charge system when it opened local markets to competition. The Conference Committee explained that Section 251 would govern only local interconnection, "not . . . interconnection arrangements between local exchange carriers and telecommunications carriers under section 201 of the Communications Act for the purpose of providing interexchange service." H. R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 117 (1996). The Act's unbundling, resale and interconnection provisions are all designed "to facilitate the entry of competing companies into **local** telephone service markets across the country."

*Iowa v. FCC*, No. 96-3321, slip op. At 96 (8th Cir. July 18, 1997) ("*Iowa*") (emphasis added). As the Eighth Circuit explained, "[a] company seeking to enter the **local** telephone service market may request an incumbent LEC to provide it with any one or any combination of these three services." *Iowa*, slip op. at 97 (emphasis added).

In addition to excluding the purchase of exchange access from the purposes for which local interconnection may be obtained under the Act, Congress expressly preserved the Commission's pre-existing system of access charges. Section 251(i) provides that "[n]othing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201" – the provision under which the Commission sets interstate access charges. *See MTS and WATS Market-Structure*, 93 F.C.C.2d 241, 255 ¶ 41 (1983). And, Section 251(g) provides:

> On and after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier . . . shall provide exchange access . . . to interexchange carriers . . . in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment . . . under any . . . regulation, order or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment.

By incorporating the language "including receipt of compensation," Congress preserved incumbent LECs' existing rights, under Commission "regulation[s], order[s], or polic[ies]," to collect access charges from interexchange carriers. *Iowa*, slip op. at 126.

Had Congress not acted to maintain the Commission's access charge system, both incumbent LECs and new entrants would have suffered. Incumbent LECs would suffer a reduction in revenues without any reduction in costs, since they would continue to

provide exactly the same services to interexchange carriers, but at what in many instances will be greatly reduced rates.[2] These revenue losses would undermine the ability of incumbent local exchange carriers to deploy and maintain ubiquitous, high quality networks to the detriment of consumers and wholesale customers alike.

Competing local carriers would also suffer if Congress had not distinguished network elements from the Commission access charge system. They would lose the ability to compete with incumbents in providing exchange access services to interexchange carriers when the competing local carriers purchase unbundled network elements to provide local telephone services to their own customers.[3] Interexchange carriers would simply purchase those same network elements directly from the incumbent in lieu of any exchange access services offered by the new entrant. This loss of revenue opportunity would discourage new carriers from entering the local market by purchasing network elements from the incumbent local exchange carrier.

## III. The Commission Has Consistently Preserved the Telecommunications Act's Distinction Between Network Elements and Access Services.

The Commission has already twice considered this issue and decided that interexchange carriers may not purchase network elements solely to originate or terminate

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[2] For example, Bell Atlantic's rates for unbundled dedicated transport are significantly below its direct trunked transport rates, even at the deepest discounts.

[3] In the *First Report and Order* (n. 772), the Commission held that carriers purchasing network elements are entitled to use those elements to provide exchange access services to interexchange carriers and collect access charges.

interexchange traffic.[4] An interexchange carrier is entitled to purchase unbundled loops and unbundled local switching only where it has won the customer and is providing local exchange and exchange access services. The Commission should follow the same precedents in the case of unbundled transport.

In the *Local Competition Order*, the Commission found that "[w]hen interexchange carriers purchase unbundled elements from incumbents, they are not purchasing exchange access 'services'. They are purchasing a different product, and that product is the right to exclusive access or use of an entire element." *First Report and Order* at ¶ 358. A carrier purchasing a local loop as an unbundled network element "will have to provide whatever services are requested by the customers to whom those loops are dedicated . . . both local and long distance services." *Local Competition Order* at ¶ 357. Accordingly, "interexchange carriers purchasing unbundled loops will most often not be able to provide solely interexchange services over those loops." *Id.*

In the *First Reconsideration Order*, the Commission reached the same conclusion with respect to unbundled local switching. The Commission held that "a requesting carrier that purchases an unbundled local switching element for an end user may not use that switching element to provide interexchange services to end users for whom that requesting carrier does not also provide local exchange service." *First Reconsideration*

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[4] Interexchange carriers "must still pay access charges to incumbent LECs for originating and terminating interstate traffic, even when their end user is served by a telecommunications carrier that resells incumbent LEC retail services." *First Report and Order* at ¶ 980.

*Order* at ¶ 13. Again, unbundled elements are available only to those carriers that use them to provide local exchange services to their customers.[5]

There is no reason to treat unbundled transport any differently. In fact, the Commission has already distinguished unbundled transport from access services and found that "transport provided as part of access service . . . is not a viable substitute for shared transport as a network element." *Third Report and Order* at ¶ 37. As the Commission explained, access transport services "include only interstate transport facilities (transport provided either via a tandem switch or direct trunked between a local switch and the serving wire center), not interoffice transport facilities directly connecting two local switches." Id. When an interexchange carrier is using an incumbent's transport services to handle interexchange traffic for customers to whom the interexchange carrier does not provide local service, it will only use the transport services included in the access tariffs (i.e., transport between a local switch and a tandem switch or between a local switch and a serving wire center). The interexchange carrier will not use any transport facilities that directly connect two of the incumbent's local switches to handle its interexchange traffic. It is only where the interexchange carrier is providing local services to the customer that it will use the incumbent's transport facilities between local switches.

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[5] The Commission framed the issue in this rulemaking as whether a requesting carrier may use unbundled dedicated or shared transport facilities "in conjunction with unbundled switching" to originate or terminate interstate toll traffic to customers to whom the carrier does not provide local telephone service. Since the Commission already decided this issue with regard to unbundled switching in the *First Reconsideration Order*, it should not revisit the issue here.

And it is only in this latter situation that the interexchange carrier is entitled to obtain unbundled transport as a network element.

Moreover, the Commission has already found that when a competing local carrier wins a local service customer, it may purchase network elements such as local switching to serve that customer and use them to provide exchange access service to interexchange carriers that handle interexchange calls for the competing local carrier's customer. Like local switching, the shared transport network element is a shared facility and the competing local carrier is entitled to use that shared transport element to provide exchange access services to interexchange carriers handling interexchange traffic for the competing local carrier's customer. Interexchange carriers cannot purchase the same network elements that the competing local carrier has already purchased.

The conclusion that interexchange carriers cannot purchase transport as a network element solely to handle interexchange traffic is not only consistent with the Commission's prior decisions, it is also consistent with the Eighth Circuit's decision. The Eighth Circuit specifically upheld the Commission's ability to distinguish between competing local carriers and interexchange carriers purchasing access services.

> CompTel also challenges the FCC's interpretation of interconnection as having a discriminatory impact, by permitting LECs to charge different rates for the same service based on whether the carrier who is seeking interconnection and other network services is a long-distance service provider or a local service provider. But the two kinds of carriers are not, in fact, seeking the same services. The IXC is seeking to use the incumbent LEC's network to route long-distance calls and the newcomer LEC seeks use of the incumbent LEC's network in order to offer a competing local service. Obviously the services sought, while they might be technologically identical (a question beyond our expertise), are distinct. And if the IXC wants access in order to offer local service (in other words, wants

to become a LEC), then there is no rate differential. *CompTel,* slip op. at 9-10.

There is therefore no reason for the Commission to stray from its consistent practice of making network elements available only to carriers that use them to provide local service.

## IV. Conclusion

The Commission has twice found that network elements cannot be used by interexchange carriers solely to handle interexchange traffic. Those precedents are fully supported by the law and by sound public policy. There is no reason for the Commission to change course. The Commission should therefore find that interexchange carriers may not use unbundled transport network elements to originate or terminate interstate toll traffic to customers to whom it does not provide local exchange service.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of October, 1997, a copy of the foregoing "Comments of Bell Atlantic" was served by first class U.S. mail, postage prepaid, on the parties listed on the attached service list.

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