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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services	)	CC Docket No. 98-11
	)	
Petition of U S WEST Communications, Inc. for Relief from Barriers to Deployment of Advanced Telecommunications Services	)	CC Docket No. 98-26
	)	
Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Capability	)	CC Docket No. 98-36

REPLY COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

Pursuant to the Public Notices released January 30, 1998 (DA 98-184) and March 16, 1998 (DA 98-513), the Association for Local Telecommunications Services ("ALTS") hereby files this reply to comments on Bell Atlantic, U S WEST, and Ameritech's petitions for "Relief from Barriers to Deployment of Advanced Telecommunications Services" pursuant to section 706(a) of the Telecommunications Act of 1996.[1]

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[1] The March 16th Order consolidated these proceedings for comments and replies concerning all common issues.

U S WEST AND AMERITECH'S REQUEST FOR A NON-DOMINANT SUBSIDIARY TO PROVISION ADVANCED DATA SERVICES SHOULD NOT BE GRANTED.

U S WEST endorses Ameritech's proposal for: " ... less onerous separation requirements" in its comments in support of the RBOCs' section 706 petitions (filed April 6, 1998):

> "As an alternative to the burdensome structural separation requirements of Section 272, Ameritech suggested that the Commission should adopt the less onerous separation requirements -- in the Fifth Report and Order in the Competitive Carrier proceeding -- which apply to BOC long distance affiliates providing out-of-region service. Such an affiliate must keep separate books of accounting, not jointly own switching and transmission facilities with the affiliated incumbent local exchange carrier ('LEC'), and would purchase telecommunications service or facilities from the affiliated LEC at tariffed rates. Ameritech posits that the affiliate would not be either an incumbent LEC or a dominant carrier, effectively relieving it of the more seriously disruptive rules which currently govern BOC operations."

As a threshold matter, both Ameritech and U S WEST are wrong in assuming that section 706 permits the Commission to remove the legal requirements of sections 271 and 272.[2] See, e.g., GTE Comments filed April 6, 1998, at 8: " ... GTE does not believe that the statutory requirements of Sections 271 and 272 can be indirectly overruled through forbearance." Furthermore, any avoidance of section 271 would not be limited to data traffic because the RBOCs effectively admit that separate data networks

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[2] As explained in ALTS' initial comments, section 10(c) prohibits any forbearance from enforcement of sections 251(c) and 271. Because compliance with section 272 is expressly incorporated into section 271 (see section 271(d)(3)(B): "the requested authorization will be carried out in accordance with the requirements of section 272"), the Commission also lacks any authority to forbear from enforcing section 272.

could and would carry interLATA voice traffic.[3] Accordingly, creation of such a subsidiary should only be predicated on prior compliance with sections 271 and 272.

A second legal barrier is posed by the fact that the Fifth Report and Order in Policy and Rules Concerning Rates for Competitive Common Carriers Services and Facilities Authorizations Therefor, 98 FCC2d 1191 (1984), which both U S WEST and Ameritech offer as their model, addressed the situation where incumbents provide out-of-region services. Obviously, there is no way the Commission's conclusions in the Fifth Report can imported into an in-region context without totally invalidating their factual and logical foundation.

Beyond its legal impediments, the Ameritech proposal provides no practical detail about implementation, as even U S WEST acknowledges (U S WEST Comments at 5): " ... many of U S WEST's data services (e.g., its DSL services) are offered in a manner which would not be conducive to separate subsidiary operation." Minimal specifications would have to include:

- A list of all current and planned assets, divided into advanced data assets and all other assets, and also the personnel and operations supporting these assets, divided into the same categories.
- An explanation of the methodology for determining whether new asset acquisitions constitute "advanced data services."

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[3] See Jim Olson's interview with Jim Young, Vice President and General Counsel of Bell Atlantic, CCH Power and Telecom Law, March/April 1998, at 32: "OLSON: But if Internet protocol telephony becomes practical, could you migrate even the voice traffic onto this? YOUNG: The honest answer is 'yes,' but that's true of high speed networks today" (emphasis supplied).

- A complete description of how these assets, personnel and support functions would be separated from the remaining ILEC functions.

- A complete description of how the assets and expenses of the separated advanced data subsidiary would be removed from separations, price caps, and universal service modeling.

- An explanation of how the advanced data subsidiary would comply with all the requirements of the Fifth Report and Order in Policy and Rules Concerning Rates for Competitive Common Carriers Services and Facilities Authorizations Therefor, 98 FCC2d 1191 (1984).

In sketching out these unfulfilled specifications, ALTS is not suggesting the Commission should take seriously any proposal that is more detailed, given the fundamental legal barriers. Rather, ALTS wishes only to point out that this is very much a "pig-in-the-poke" proposal as it stands right now.

Finally, U S WEST and Ameritech's underlying theme that "advanced data services" somehow need no regulation requires correction. We Americans have great faith in the beneficial effects of technology, and are eager to believe that our current burdens -- including regulation -- can be cured by just the right invention. But the economic history of the United States strongly suggests otherwise. The invention of the railroad greatly benefited this county, but not even the railroads' greatest enthusiasts would contend the railroads did not require regulation for much of their history. Similarly, the RBOCs' image of advanced data services as a new "peaceable kingdom," immune from the sort of market imperfections that necessitate regulation is completely undercut by their own cries of potential high-speed data monopolization offered in opposition to the

WorldCom-MCI merger.[4]

ALTS would be pleased to work with the Commission and all interested parties to explore exactly which forms of regulation really are necessary for advanced new services, and which are not. But the assumption that full deregulation can be quickly and easily accomplished by simply dropping digital widgets into a separate subsidiary is hopelessly naive, and should be rejected.

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[4] See AT&T's discussion of this issue in its April 6th Comments at 26-28.

CONCLUSION

For the foregoing reasons, ALTS asks that the Commission deny the RBOCs' section 706 petitions.

Respectfully submitted,

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 1998, copies of the foregoing Reply Comments of the Association for Local Telecommunications Services were served via first class mail, postage prepaid, or by hand as indicated to the parties listed below.

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