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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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. 98-32

REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

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REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation (MCI) submits its reply comments to the above-captioned petitions, filed by Bell Operating Companies (BOCs) Bell Atlantic Corporation (Bell Atlantic or Petitioner), Ameritech Corporation (Ameritech or Petitioner), and U S WEST Communications, Inc. (US West or Petitioner).

I. INTRODUCTION AND SUMMARY

In their petitions, the BOCs seek broad forbearance from the application of existing rules and regulations, alleging that such forbearance is the incentive they need to deploy broadband technologies and provide broadband capabilities. The BOCs argue that if they are permitted to build an interLATA broadband network, including the backbone as well as the local loops, unfettered by Local Access and Transport Area (LATA) restrictions and requirements to provide competitors nondiscriminatory access to elements of that network, they would solve an alleged backbone congestion problem and speed the deployment of broadband technology and

capabilities. MCI, as well as most commenters in this proceeding, believes the BOCs' requests are inappropriate. The problem is not with the backbone, but with the BOCs' bottleneck control over the local loop.

The commenting parties are in general agreement that granting the BOCs' petitions will not lead to innovation and the deployment of advanced capabilities, but rather, would stifle such deployment. Competition is the only way to effectively and rapidly deploy advanced capabilities. As Chairman William Kennard and Commissioner Gloria Tristani stated in recent speeches, so long as the BOCs have bottleneck control over the local loop, which extends into the vast majority of American households and most businesses, competitors must have access to the BOCs' facilities.[1] In the end, if the BOCs are permitted to deny use of their networks to competitors, they will be allowed to control the terms and conditions under which advanced capabilities will be deployed.

The necessary connection between competitive providers of advanced capabilities and the consumers of such capabilities cannot occur without access to the BOCs' local loop bottleneck. Unless the competitive provisions of the Act are fully implemented, the same bottleneck that led the courts to order divestiture in 1984 and motivated Congress to include an array of pro-competitive provisions in the Telecommunications Act of 1996 ("Act") will be used by the BOCs to undermine broadband competition. As history has demonstrated, access to the

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[1] As Chairman Kennard stated, the Commission must be " . . . confident all competitors will have the same quality of access to the existing copper loops owned by the incumbents . . .;" Kennard Speech at 4; similarly, Commissioner Tristani stated that "[l]oop management [is] an area where competitors will be fairly reliant on the incumbent." Gloria Tristani, Commissioner, Federal Communications Commission, Remarks of Commissioner Gloria Tristani before the U S WEST Regional Oversight Committee, at 3 (April 27, 1998).

customer is central to competitive environment. Innovation increased dramatically when competitors were allowed to provide long distance services and customer premises equipment; so will broadband innovation be fostered when all providers have the same access to customers and customers have the same access to all providers.

Congress, when enacting the Act, recognized that no new entrant could duplicate the incumbent local exchange network in a short period of time. It reasoned that facilities-based competition would take time to develop and would evolve if new entrants were able to rely on the use of unbundled and combined incumbent local exchange carrier (ILEC) network elements and resale of ILEC retail services. During that period CLECs could cultivate enough demand to invest in and expand their own facilities. The competitive rationale contemplated within provisions of the Act holds true for the provision of broadband capabilities as for traditional local services. MCI therefore encourages careful examination of the issues raised in the BOCs' petitions.[2] The Commission's inquiry should focus on how best to foster innovation, not on whether to forbear from regulating monopoly providers.

II. STRICT ENFORCEMENT OF THE UNBUNDLING AND RESALE REQUIREMENTS IN SECTION 251 IS NECESSARY BECAUSE OF THE BOCS' BOTTLENECK CONTROL OVER THE LOCAL LOOP

Nondiscriminatory access to the BOCs' local loops is the primary means for ensuring that competitive providers of local and advanced capabilities are able to reach subscribers. For new

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[2] As Chairman Kennard recently stated, section 706 is "intended to promote the deployment of advanced telecommunications infrastructure to all American." See William E. Kennard, Chairman, Federal Communications Commission, Remarks to USTA's "Inside Washington Telecom" at 3 (April 27, 1998) (Kennard Speech).

entrants to be viable providers of xDSL[3] capabilities, and not simply niche providers who will be unable to offer alternatives to many of its customers, the unbundling, pricing and resale provisions of the Act must be fully applied. New entrants must have access to the same network elements, such as conditioned loops and xDSL equipment, that the BOCs use when they provide xDSL service to their own end user customers.[4] With nondiscriminatory access to all unbundled or combined network elements,[5] CLECs can compete to provide broadband services and capabilities to businesses and residences consistent with the Act's paradigm of providing new entrants with alternative ways to enter local markets.

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[3] xDSL is a family of digital subscriber line technologies that allow for the provision of broadband services over properly conditioned copper lines. One of the technologies, HDSL, is already widely deployed for the provision of T1 services and other business applications. Another technology, ADSL, is being developed for mass market applications.

[4] An unbundled xDSL-conditioned loop is an unbundled local loop that is free of load coils and excessive bridge taps. Carriers use loading coils to increase voice service quality in rural and suburban areas approximately every 6,000 feet -- although some load coils can be as close as 3,000 feet -- from the central office switch. Bridge taps are unused branches of a copper loop that do not interfere with voice transmission quality, but limit the effectiveness of xDSL services by introducing extra resistance and reflecting the data signal. Loading coils and bridge taps are features of the BOC network that limit the effectiveness of xDSL services.

[5] Although Bell Atlantic and other ILECs agreed to combine network elements for CLECs, after the Eighth Circuit invalidated section 51.315(b) of the Commission's rules, the petitioners and other ILECs immediately petitioned state commissions to be relieved of their obligation to combine elements even though nothing in the Eighth Circuit decision prevents the ILECs from combining elements or leaving them combined. Forcing competitors to take network elements on a disassembled basis when they are already combined in an ILEC's network imposes costs on new entrants that the ILECs do not incur, which violates the nondiscrimination requirement in section 251(c)(3). MCI is confident that the Supreme Court will reverse the Eighth Circuit decision. See Iowa Utilities Bd. v. FCC, No. 96-3321, 1998 U.S. App. LEXIS 1043 (8th Cir. Jan. 22, 1998) (writ of mandamus granted); Iowa Utilities Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), amended on reh'g, 1997 U.S. App. LEXIS 28652 (8th Cir. Oct. 14, 1997), cert. granted, 118 S. Ct. 879 (1998).

Section 251 applies to the BOCs' facilities because Congress recognized that the BOCs have a monopoly over network facilities that CLECs need access to in order to enter the local market. New entrants need a variety of options to compete to provide advanced capabilities, just as they have a variety of options to compete to provide more traditional local services. CLECs have a natural incentive to choose the option that minimizes their dependence on their competitor, the ILEC. For that reason and as Congress has recognized, while competition develops, all options for providing local service must be available on reasonable and nondiscriminatory terms.

BOC control of the local loop creates the greatest impediment to the development of competition for xDSL services.[6] CLECs are already entitled to these conditioned loops despite the BOCs' contentions to the contrary.[7] Despite these express requirements by the Commission, in many instances, the BOCs have been unwilling to grant access to xDSL-conditioned unbundled local loops.[8] The necessary conditioning of the local loop serviced with DSL

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[6] See DSL Access Telecommunications Alliance (DATA) Comments, CC Docket Nos. 98-11, 98-26, 98-32 at 11 (filed April 6, 1998); see also COVAD Communications Comments, CC Docket Nos. 98-11, 98-26, 98-32 at 8-11 (filed April 6, 1998).

[7] The Commission has mandated that the BOCs and other incumbent LECs unbundle local loops, which are defined to include two-wire and four-wire analog and voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, and HDSL. Further, if the BOCs' unbundled loops are not conditioned for xDSL or other services, the BOCs are required "to take affirmative steps to condition existing loop facilities to enable requesting carriers to provide services." *Id.* at ¶ 382.

[8] See e.g., COVAD Comments at 8; DATA Comments at 9; Comments of AT&T Corp., CC Docket Nos. 98-11, 98-26, 98-32 (filed April 6, 1998); Opposition of WorldCom, Inc., CC Docket Nos. 98-11, 98-26, 98-32 (filed April 6, 1998). MCI has also met with staunch opposition by the BOCs to requests for xDSL-conditioned loops and is in the process of negotiating with the BOCs to obtain such loops.

equipment enables the BOCs to control access to, as well as the quality and cost of, these conditioned loops available for CLECs.[9]

Access to unbundled xDSL-conditioned loops alone is insufficient to ensure competition in the provision of advanced capabilities. Just as CLECs may choose to collocate equipment to concentrate voice traffic at the central office, CLECs must also have the ability to choose to collocate xDSL-related equipment, such as modems and splitters required to separate the data and voice traffic, at an ILEC's central office to provide xDSL services.[10] Such collocation of xDSL equipment must be available on reasonable, nondiscriminatory terms and conditions. By themselves, xDSL-conditioned local loops only provide CLECs with connectivity from the central office to the customer. Obtaining collocation space from the ILECs, however, is a costly and arduous process, often with delayed -- or, in many instances, no -- results.[11]

Current ILEC procedures for obtaining collocation space involve delayed processing of requests due to claims of limited space, delays in coordinating customer cut-overs, and additional

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[9] ILECs are using integrated digital loop carrier (IDLC) technology, which allows aggregation and multiplexing of local loop traffic at a remote concentration point. The Commission has required ILECs to provide competitors access to unbundled loops whether or not the ILEC uses IDLC. (Local Competition Order at ¶ 383). xDSL technology can be used with copper and IDLC loops. CLECs should therefore be permitted to interconnect with ILECs at the feeder distribution interface to employ IDLC.

[10] Of course, MCI believes that collocation should not be required, but CLECs should have the option to collocate xDSL-related equipment at an ILEC's central office, especially in circumstances where collocation is the most efficient or viable way for a CLEC to provide xDSL-related services and capabilities.

[11] As DATA and COVAD accurately note, collocation is a significant barrier to deployment of DSL technologies because of alleged severe space limitations. DATA Comments, CC Docket Nos. 98-11, 98-26, 98-32, at 9-10; COVAD Comments, CC Docket Nos. 98-11, 98-26, 98-32 at 13-14.

time and expense needed to construct collocation cages at all ILEC switch locations. The ILECs also impose excessive and unnecessary costs for collocation, such as charges for the collocation application, real estate costs, BOC/ILEC installation and maintenance charges, per-order charges and BOC/ILEC escort charges. These costs are in addition to the internal costs to CLECs, such as facility support costs, cage costs, CLEC installation costs, cables, and systems development. MCI therefore joins COVAD and DATA in asking that the Commission ensure that the ILECs' collocation practices be reformed to ensure that CLECs have access to collocation cages sufficient to provide service throughout residential and business areas.[12] The BOCs' refusal to allow CLECs to collocate xDSL equipment, or their assessment of excessive collocation charges, is tantamount to a denial of access to xDSL-conditioned loops.

In addition, it will not always be sufficient to simply make unbundled xDSL-conditioned loops and collocation available. CLECs need nondiscriminatory access to the xDSL-related equipment at "forward-looking" costs and the ability to resell the ILEC's xDSL services. As with traditional local service, CLECs will not be able to deploy equipment in every central office simultaneously. In suburban and rural central offices, for example, demand for advanced capabilities may not be large enough to justify CLEC expenditures for collocation cages and xDSL equipment. Moreover, it would be wasteful and inefficient to require each CLEC to build out collocation cages and xDSL modems in thousands of ILEC central offices when sharing

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[12] Cf. DATA Comments at 25 (encouraging the Commission to require that the BOCs reform their current collocation practices to facilitate DSL competitors in obtaining "blanket" collocation coverage in residential neighborhoods and business districts); COVAD Comments at 13-14 (arguing that ILECs be required to reform their medieval, cage-based physical collocation practices in a manner that would provide CLECs with more cost-effective and rapid collocation solutions).

facilities with the ILEC would result in more efficient use of resources. The BOCs, therefore, must make the xDSL equipment deployed in their networks available on a nondiscriminatory, unbundled basis at forward-looking, cost-based rates, both as individual elements and in combination. In addition, the Act entitles CLECs the right to resell the BOC's end-to-end service at wholesale rates.[13]

III. COMPROMISES ON THE ACT'S REQUIREMENTS ARE IMPERMISSIBLE AND UNJUSTIFIED

MCI vehemently opposes recommendations that the Commission compromise or otherwise cut any regulatory deals with the BOCs in exchange for their commitment to deploy innovative capabilities.[14] US West, for example, indicated that, in return for some relaxed regulation, it would commit to a timetable for deployment of advanced capabilities. It is ironic that US West would agree to such a commitment for advanced capabilities.[15] Indeed, US West

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[13] Furthermore, MCI finds unpersuasive the BOC claim that resale would prevent it from differentiating its advanced from those of resellers. Comments of Ameritech Corporation, CC Docket Nos. 98-11 at 7 (filed April 6, 1998). It is the resellers that have the burden of distinguishing themselves from the customer's long-standing service provider. Resellers and other new entrants are entering a market where the incumbent has 99 per cent of the subscribers, name recognition and years of providing service in a respective region. Earning market share from the entrenched incumbent provider is a slow process, and new entrants have the heavy burden of winning customers.

[14] Comments of Compaq, CC Docket Nos. 98-11, 98-26, 98-32 at (filed April 6, 1998); Comments of the Internet Access Coalition, CC Docket Nos. 98-11, 98-26, 98-32 at (filed April 6, 1998).

[15] US West cannot even provide plain old telephone service (POTS) service on a timely basis. In Oregon, for example, US West was regulated under an alternative, incentive-based regulatory scheme, but was returned to rate-of-return regulation by the state commission because of its failure to meet its commitment to install residential local service on a timely basis. See In the Matter of the Petition of Pacific Northwest Bell Telephone Co. d/b/a U S WEST Communications, Inc., to Price List Telecommunications Services Other than Essential Local

has indicated an unwillingness to undertake investment in rural areas where US West deems such investment potentially risky or unprofitable.[16] Before any regulations are relaxed, the BOCs must first implement section 251's unbundling, pricing and resale requirements for the provision of voice services.[17] As the Minnesota Public Service Commission stated, US West, as well as other BOCs, should first be required to demonstrate compliance with the Act.[18]

Rather than the Commission, or various state commissions, trying to set a timetable for the BOCs to deploy advanced capabilities, the market should determine when, how, and where the BOCs and other providers invest in advanced capabilities. Without the benefit of this research, the Commission would schedule deployment either too slow or too fast. Regulatory forbearance would also make it difficult for the Commission to determine when the BOCs would

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Exchange Services, Oregon P.U.C. Order No. 96-107, (Apr. 24, 1996). Moreover, CLECs in US West's territory, cannot get interconnection trunks installed when and where they need them. The Iowa Utilities Board, for example, set a schedule for US West to provide basic documentation about its OSS to CLECs. US West failed to meet that schedule and as a result, was assessed a daily fine over a period of several months until it complied with the order. See In re MCImetro Access Transmission Services Inc., and US WEST Communications, Inc., Iowa Dep't of Comm. Util. Bd. Docket No. AIA-96-2 (ARB-96-2) (Feb. 27, 1998); see also In re AT&T Communications of the Midwest, Inc., and US WEST Communications, Inc., Iowa Dep't of Comm. Util. Bd. Docket No. AIA-96-1 (ARB-96-1) (Feb. 27, 1998) see also In re MCImetro Access Transmission Services Inc., and US WEST Communications, Inc., Iowa Dep't of Comm. Util. Bd. Docket No. AIA-96-2 (ARB-96-2) (Apr. 4, 1997).

[16] See "State Activities," Communications Daily, May 6, 1998 (Arizona Corporation Commission grants Table Top Telephone authority to become incumbent telephone company in two of the state's 16 geographic areas that have no local service after US West declined to extend its service to the regions.).

[17] Comments of Minnesota Department of Public Service, CC Docket No. 98-26 at 2 (filed April 6, 1998) (Minnesota PSC Comments); Division of the Ratepayer Advocate Comments, CC Docket No. 98-11 at 8 (filed April 6, 1998) (NJ Ratepayer Comments).

[18] Minnesota PSC Comments at 1-2.

have made the necessary investments. The Commission would not know when the BOCs would have made them if the market were indeed competitive. With regulatory forbearance, enforcement of deployment would also be problematic. Absent continued regulation of the BOCs, the Commission would lack the ability to effectively enforce any schedule it would establish. As the State of New Jersey, Division of the Ratepayer Advocate argued, Bell Atlantic and the other BOCs want the Commission to agree to relax federal regulations without first assessing the effect relaxation would have on the local market, or without a demonstration by Bell Atlantic that its petition is in the public interest.[19]

Regulatory forbearance is unnecessary to give the BOCs incentives to widely deploy innovative and advanced capabilities. As MCI and other parties demonstrated, it is only the threat of competition, and the ability to distinguish its services, that will give the BOCs the incentive to innovate. Interestingly, now that CLECs are starting to provide xDSL services, the BOCs have begun to take steps to offer similar services.[20] By requesting the Commission's forbearance from regulation, the BOCs are effectively seeking to eliminate competition before investing in innovative capabilities. Petitioners' approaches are typical of monopolist behavior -- they will not invest absent assurance that up-front costs will be recovered. CLECs do not have the luxury of assured cost recovery from captive ratepayers. ILECs should be required to take risks in providing services in competition with others, as do ILEC competitors.

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[19] NJ Ratepayer Advocate Comments at 4-5.

[20] See DATA Comments at 6; see also MCI Telecommunications Inc. Opposition, CC Docket Nos. 98-11, 98-26, 98-32 at 16 (filed April 6, 1998).

Further, as MCI pointed out in its Opposition,[21] the BOCs will not incur any substantial risks in connection with xDSL because the states were expressly authorized to establish unbundled network element prices using the risk-adjusted cost of capital reflecting particular business risks.[22] Moreover, as several parties discussed in this proceeding, pricing is established by the states.[23] Indeed, most state agencies have set prices using some form of "forward-looking costs" which enables the ILECs to collect a return on capital.[24]

The BOCs' announcements trumpeting the deployment of xDSL technologies and the offering of data and video services using xDSL belie their claim that they require regulatory forbearance or any other regulatory deal.[25] The underlying economics suggest that any BOC reluctance to invest in advanced technologies and offer advanced capabilities represents a strategic decision to delay competitive entry. The costs associated with deploying xDSL technology are not substantial, because a significant portion of the costs are borne directly by customers as customer premises equipment. Some of the end office equipment -- e.g., line cards in the digital modems (DSLAMs) in the end offices -- need not be deployed until demand has developed. Their relatively small investments allow the BOCs' significant embedded copper

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[21] See e.g., MCI Opposition, CC Docket No. 98-26 at 20-21.

[22] Local Competition Order, 11 FCC Rcd 15499, 15856 at ¶ 702.

[23] ALTS Comments at 9-10.

[24] MCI also agrees with LCI, which points out that, if the BOCs maximize the number of competitors using xDSL-conditioned loops, the BOCs will be assured cost recovery. Comments of LCI Corp., CC Docket Nos. 98-11, 98-26, 98-32 (filed April 6, 1998).

[25] See, e.g., "Bell Atlantic to Spend $1.5 Billion on Broadband Network," Communications Daily's Washington Telecom Newswire, March 30, 1998.

plant (and a portion of digital loop carrier plant) to be used for broadband services and capabilities. Further, the use of xDSL technology relieves data congestion on circuit switches and therefore significantly decreases BOC investment needs for switching.

By their petitions, the BOCs are in effect threatening to withhold further deployment of xDSL and other advanced capabilities unless the Commission forbears from implementing the procompetitive requirements of the Act. Such freedom from the Act's requirements and the exclusive control of the technology would give the BOCs the ability to pick the type and development of the technology and monopolize the market. In the past, the incumbent LECs used their bottleneck control to retard deployment of advanced technologies and have deliberately dragged their feet in expanding the use of technologies such as xDSL and ISDN. In the end, innovation will not be enhanced and will only be stymied if the BOCs are allowed to use their control over the local loop to limit subscribers' competitive alternatives.

IV. GRANTING THE BOCS INTERLATA RELIEF IS UNNECESSARY TO RELIEVE INTERNET CONGESTION AND WILL NOT OPEN THE LOCAL MARKET TO COMPETITION

The parties generally agree that the real issue is not whether to allow the BOCs into the interLATA market to build Internet backbones, but how to open the BOCs' local markets to competition. As MCI argued in its opposition,[26] the Commission should focus its efforts on facilitating local competition and allowing the requirements of sections 251 and 271 to be fully implemented before granting the BOCs any interLATA relief.[27] The BOCs should not be

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[26] MCI Opposition at 33.

[27] NJ Ratepayer Comments at 6-7 (arguing that the BOCs' compliance with section 251 is to be measured by section 271's 14-point checklist).

permitted to make an end-run around section 271 requirements.

In addition to the legal basis for denial of the BOCs' request, the record evidences strong disagreement with the BOCs' claims that, one, there is an unaddressed problem of congestion on the Internet backbone and, two, that such a problem could be alleviated by allowing the BOCs to provide interLATA backbone capacity.[28] The BOCs have not demonstrated that there is any lack of investment by current backbone providers to alleviate any such congestion. Rather, the BOCs rely on the weak support provided by Bell Atlantic in its petition. The declaration of Bell Atlantic's expert, Thomas Hazlett, relies on trade press to substantiate Bell Atlantic's position.[29] Not surprisingly, Bell Atlantic, tries to bolster its position by taking Kevin Werbach's statement that high-speed access to the Internet "will be meaningless if backbone networks cannot provide sufficient end-to-end transmission speeds"[30] out of context. Indeed, Werbach did not conclude that there is a problem.[31] In fact, Werbach outlined the steps already being taken by backbone providers to address problems of congestion that are inherent when demand is growing so rapidly. Existing providers are responding to demand and investing in additional Internet

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[28] AT&T Comments at 21; CIX Comments at 7.

[29] Bell Atlantic Petition, Attachment 1 at 6.

[30] Bell Atlantic Petition at 2, citing Kevin Werbach, *Digital Tornado: the Internet and Telecommunications Policy,* OPP Working Paper Series No. 29, FCC, at 29, March, 1997, which states that high-speed access to the Internet "will be meaningless if backbone networks cannot provide sufficient end-to-end transmission speeds."

[31] Interestingly, the thrust of the Werbach paper is at odds with the BOC petitions seeking special treatment through regulatory forbearance. Werbach explicitly states that "government should promote the Network, not networks. Rather than focusing on individual companies or industries, government should create a climate that maximizes social welfare." Werbach at p. iv.

capacity.[32] Most of the largest backbones now operate at 155 Mbps (OC-3) speeds and MCI has upgraded its backbone to OC-12 (622 Mbps) speed.[33]

New entrants and existing providers alike are increasing capacity. There is no special need for BOC deployment of an in-region interLATA backbone to resolve any congestion on the Internet. Nor is there any indication from the BOCs' petitions that the BOCs would improve the progress made by existing providers.[34] There are many potential suppliers of long-haul backbone capacity, including the BOCs, who are allowed to construct data networks out-of-region. The hundreds and thousands of participants in the Internet currently have the ability and incentive to invest in long-haul backbone capacity free of regulatory constraints. Further, there are no barriers to BOC deployment of backbones outside their regions, as evidenced by US West's extensive out-of-region data network.

Indeed, there is the greater danger that, if the BOCs were granted the forbearance they assert is necessary to deploy backbones, they would be able to use their bottleneck control over

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[32] Some service providers, such as @Home, a cable Internet access provider, use a combination of a "parallel Internet" (a private ATM backbone) and local "caching" servers which store copies of frequently-accessed content to avoid the congestion which occurs on the public Internet under the current "best-efforts" architecture. See http://www.home.net/corp/network.html.

[33] Hardware vendors are working to improve the speed and interoperability of their Internet routers and switches. Congestion on Internet facilities may also be alleviated by the development and implementation of technical protocols, such as HTTP version 1.1, IP multicasting, and RSVP, that facilitate more coordinated and efficient use of bandwidth. These technologies may allow for more differentiated levels of service quality, with associated differentiation in pricing. Werbach at pp. 53-54 (footnotes citing sources omitted).

[34] Minnesota PSC Comments at 9 ("the FCC should suspect that [US West] will be as unlikely to place facilities in such areas as other providers have been."); NJ Ratepayer Comments at 9.

the local loop to undermine competition for all local services. The Act's unbundling requirements will allow companies to leverage the existing network to provide new high-bandwidth data capabilities.[35] AT&T is correct:[36] as long as the BOCs retain their dominant position in the local market, BOC provision of in-region interLATA services would impede, rather than foster, competition. The absence of appropriate regulatory measures will allow the BOCs to bundle Internet services with both advanced and traditional local services and foreclose CLECs from competing with any viable offerings.

V. THE COMMISSION LACKS THE LEGAL AUTHORITY TO FORBEAR FROM APPLICATION OF MARKET-OPENING PROVISIONS OF THE ACT

As MCI and other parties noted in their comments, the Commission does not have the authority to grant the regulatory forbearance requested by the BOCs.[37] Commentors filing in support of the BOC petitions provided no substantiation to rebut this conclusion. Generally, the parties highlight the legal limitations that prohibit the Commission from granting the requested forbearance.

Despite the BOCs' arguments to the contrary -- and as MCI explained in its opposition -- section 706 is not an independent grant of forbearance authority.[38] Rather, section 706 empowers the Commission to use a panoply of tools to encourage the deployment of advanced capabilities. Regulatory forbearance is just one of the enumerated tools that the Commission can utilize to

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[35] Werbach at 83.

[36] AT&T Comments at 27.

[37] See, e.g., MCI Comments to Ameritech Petition at 23-33.

[38] See, e.g., MCI Comments to Ameritech Petition at 27-28.

encourage the deployment of such capabilities. However, any and all forbearance authority exercised by the Commission under section 706 must comply with the strict limitations on forbearance contained in section 10 of the Act. Under section 10(d), the Commission does not have authority "to forbear from applying the requirements of sections 251(c) or 271 . . . until it determines that those requirements have been fully implemented."[39] 47 U.S.C. § 160(d). Accordingly, granting the requested regulatory forbearance under section 706 would permit the BOCs to make an end run around the prohibitions in section 10(d), thereby eviscerating the procompetitive provisions of the Act and allowing the BOCs to enter the in-region interLATA market without complying with the competitive safeguards enacted by Congress.

The BOC requests for forbearance from price cap requirements must also be denied. As a general matter, price cap regulation applies to all noncompetitive services. The ILECs' local exchange services and facilities are not subject to competition. As new entrants seek to enter the local market, bottleneck services must be regulated in order to ensure competition develops in the local market. The Commission has already determined what services are subject to price cap regulation.[40] Further, as CIX noted in its comments, the plain language of section 706 authorizes the Commission to impose price cap regulation, not to eliminate it.[41] 47 U.S.C. §

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[39] Id.; see also Transwire Communications, LLC ("Transwire") Comments at 12-15; see also AT&T Comments to Bell Atlantic Petition at 4-8; see also AT&T Comments to Ameritech Petition at 6; see also American Communications Services, Inc. ("ACSI") Comments at 2-8; see also Sprint Comments at 4-9.

[40] Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786, 6810 (1990).

[41] See CIX Comments at 23 n. 44 ("Indeed, price cap regulation is specifically intended to encourage BOC innovation, as compared with rate of return pricing regulation. In addition,

706(a). Price cap regulation is specifically intended to encourage BOC innovation. Forbearance from price cap requirements would be inconsistent with the objectives of ensuring the deployment of innovative services.

Moreover, the Commission must not give credence to the BOCs' unpersuasive arguments requesting forbearance from the separate affiliate safeguards of Section 272. Indeed, as MCI noted previously, in the BOC Forbearance Order, the Commission stated that it lacks authority to grant forbearance from the application of the separate affiliate requirements of Section 272 for those services for which Section 271 authority is necessary.[42] It is therefore impossible to believe that removal of these safeguards prior to a BOC receiving 271 authority would be consistent with the public interest.

VI. THE ARGUMENT THAT REGULATIONS DESIGNED FOR CIRCUIT-SWITCHED TECHNOLOGY SHOULD NOT APPLY TO PACKET-SWITCHED TECHNOLOGIES AND SERVICES PRESENTS A FALSE DICHOTOMY

Ameritech incorrectly based much of its argument for granting the BOCs' forbearance requests on the notion that regulations designed for a circuit-switched telecommunications world

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the pricing of UNEs and other local telecommunications services is largely a matter of state jurisdiction, as established in Bell Atlantic's strident court challenge to the Local Competition Order.").

[42] See, e.g., MCI Comments to Ameritech Petition at 29-31 (citing In the Matters of Bell Operating Companies Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities, CC Docket No. 96-149, DA 98-220 (rel. February 6, 1998) at ¶ 22); see also ACSI Comments at 10 (noting that because Congress determined that Section 272's safeguards would be necessary for 3 years after a BOC obtains Section 271 authority, it is impossible to conceive that removal of the Section 272 safeguards would serve the public interest or promote competitive market conditions).

have no meaning in the packet-switched realm of advanced services and technologies.[43] Maintaining the central provisions and regulations of the Act that prevent BOC monopolization of networks and services is as important for advanced capabilities and services as it is for traditional circuit-switched technologies.

The procompetitive provisions of the Act do not distinguish between BOC provision of interLATA services on a packet-switched versus circuit-switched basis. Indeed, as AT&T explains in its comments, advanced data services are provided over the same monopoly LEC loops as circuit-switched voice services.[44] To accept the distinction presented by Ameritech would create an unworkable system that would permit the BOCs to buttress their monopoly of the local exchange networks through unregulated control of xDSL and other new network upgrades.[45]

Intermedia Communications points out in its comments that any distinction for regulatory purposes between traditional circuit-switched services and newer packet-switched technologies would be inaccurate, would lead to potential abuse by the BOCs and would result in the loss of consumer choices.[46] Traditional local services can be carried over either circuit-switched or packet-switched networks. The two types of networks can serve many of the same functions.

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[43] See Ameritech Comments at 5-6.

[44] See AT&T Comments to Ameritech Petition at 9.

[45] See also WorldCom Comments at 32-33 (noting that the distinction between packet-switched and circuit-switched technologies -- as argued by the BOCs -- refers simply to the "medium" by which services are provided and not to the "message" or type of service provided via such a technology).

[46] See Comments of Intermedia Communications Inc. ("Intermedia") at 5-11.

Indeed, the current circuit-switched voice network has supported data transmission via analog modems and ISDN for nearly 20 years. The voice or circuit-switched POTS infrastructure is no longer well-suited to meet many users' requirements for continuous and/or high-speed data transmission; however, the new data networks and technologies are capable of carrying voice services. To grant the requested regulatory relief would allow the ILECs to expand their monopoly over voice infrastructure to cover data infrastructure as well.[47]

Technologies that transmit voice over the Internet are being deployed by many carriers, including Qwest, Level 3, and ITXC. If the Commission grants the requested forbearance before there are competitive alternatives to the BOCs' local loops, the BOCs will be able to provide both traditional local and data services, which would also enable the BOCs to restrict CLEC access to the unbundled conditioned local loops, xDSL equipment, collocation space, combinations of elements, and resale needed to efficiently provide data services. Consequently, only a small subset of customers would have real choice for both data and voice services.[48] Accordingly, as happens with BOC monopoly control over any network or service, competition would be stymied and the BOCs would control completely the development and availability of

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[47] Although, the BOCs have been vague regarding the services they wish to offer via their proposed advanced technology networks, US West for example, has stated that it plans to provide voice communications through xDSL technology. One must assume that the BOCs are seeking regulatory relief in an effort to buttress their monopoly of the local exchange through unregulated control of xDSL and other new network upgrades. See Sprint Comments at 8 (citing US West Enterprise press release, "Cisco's Acquisition of NetSpeed to Complement US WEST !NTERPRISE Networking's National Data and DSL Rollout," March 10, 1998).

[48] See Intermedia at 10 (explaining that the BOCs, if given the requested forbearance, would be able to price the unregulated services at any level, causing consumers to pay vastly different rates for similar services based solely on the nature of the facilities that serve their locations).

advanced capabilities.

All of the pieces of the advanced technology puzzle -- e.g., ADSL, ATM, and telephony -- are in place to permit the BOCs to further assure their monopoly of the local exchange networks through unregulated control of xDSL and other new networks. The BOCs would like nothing more than to dominate this technology for their own monopoly gains for the coming century, just as they have monopolized the traditional local service technology for most of this century. If the Commission grants the requested regulatory relief, the BOCs will convert their captive consumers to the new "advanced services" network, free from procompetitive regulations.

CONCLUSION

For the foregoing reasons, MCI urges the Commission to deny the BOCs' petitions and avoid taking any action pursuant to section 706 that undermines the broader competitive goals of the Act.

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CERTIFICATE OF SERVICE

I, Mellanese Farrington, hereby certify that on this 6th day of May, 1998, I served by first-class United States mail, postage prepaid, a true copy of the foregoing Reply Comments, upon the following:

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