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

In the Matter of	)	
	)	
Petition of Bell Atlantic for Relief from Barriers to Deployment of Advanced Telecommunications Service	)	CC Docket No. 98-11
	)	
Petition of U S West for Relief from Barriers to Deployment of Advanced Telecommunications Services	)	CC Docket No. 98-26
	)	
Petition of Ameritech for Relief from Barriers to Investment in Advanced Telecommunications Capability	)	CC Docket No. 98-32

REPLY COMMENTS OF THE COMMERCIAL INTERNET EXCHANGE ASSOCIATION

The Commercial Internet eXchange Association ("CIX") hereby replies to the above-captioned Petitions for Relief of Bell Atlantic, U S West, and Ameritech. CIX is also expressly authorized to report that the eight Internet Service Provider Organizations, listed on Attachment 1 hereto, also support and join in on these reply comments.

In reply, CIX reemphasizes its strong support for the development of new telecommunications services that offer all Americans innovative and diverse methods of accessing the Internet. As was demonstrated by CIX and other commenters, investment and advances in Internet technologies are occurring at an extraordinary rate. It continues to be providers (many of which are CIX members) that are not Bell companies who are leading the development and deployment of these innovative new Internet technologies.

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As demonstrated in the CIX comments and by the overwhelming number of commenters who filed in opposition to the Bell Companies, the approaches suggested by the Petitioners are contrary to Congressional and Commission law and policy, and will not further the provision of advanced services. If granted, the Bell Company Petitions would eliminate competitive safeguards, eliminate effective access to telecommunications services, and significantly hamper competition that exists among Internet service providers. Likewise, the Bell Companies do not need regulatory relief as they already have begun widely deploying ADSL.[1]

Some commenters suggest that the Petitions should be conditionally granted in exchange for guarantees that the Bell companies will meet certain advanced service "build out" requirements.[2] Such "build out" provisions would, in theory, obligate the Bell Company either to provision a specific number of in-region ADSL enabled access lines or to offer ADSL services in a geographic region by a set timetable. CIX opposes such a scheme as it would (a) completely fail to address the elimination of critical competitive safeguards, (b) raise intractable enforcement issues, and (c) stifle further developments in xDSL technology, contrary to spirit of Section 706 of the 1996 Act.

The adoption of a DSL benchmark would fail to address the fundamental issues raised by the Petitions: the avoidance of key competitive safeguards embodied in the FCC rules and the 1996 Act. Specifically, build out requirements would not in any way address the underlying public interest concern that the Bell Companies should not use their control over the local access market as leverage to dominate the data services market. In addition, the competitive safeguards allow competing providers to employ the ILEC network in ways that can offer the American consumer new and diverse service choices. In fact, benchmarks may further exacerbate this

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1 In fact, U S West announced a 50% growth in its provision of data services in the past fiscal quarter in large part resulting from its ADSL offerings. See, http://www.uswest.com/com/insideusw/news/042498.html.

2 See, e.g., Comments of Compaq Computer Corporation, CC Dkt. No.s 98-11, 98-26, 98-32, at 14.

monopolistic activity because it would create even greater incentive for the Bell Company to exclude other providers from the DSL market in order for it to meet its regulatory build-out criteria. Such a result is certainly contrary to the emphasis of Section 706 for the promotion of local competition.

U S West's comments further exemplify the Bell Company's monopolistic perspective on data access services, and why the Commission should deny the Petitions. U S West asserts that it cannot "split" the frequencies of voice telephone exchange service from the DSL service on a customer's access loop.[3] According to U S West, "the entity providing DSL to a customer must also provide voice service to that customer."[4] Thus, U S West appears to conclude that the incumbent LEC is best positioned to offer an integrated voice and DSL service, and that a CLEC offering DSL using ILEC lines should also be obligated to offer both voice exchange service. This is plainly contrary to the Commission's unbundling rules.[5] Diminished CLEC competition would, in turn, stifle competitive DSL services for independent ISPs and their customers. U S West's position would also be at odds with Computer III safeguards ensuring that independent ISPs have access to the same underlying telecommunications as employed by the U S West-affiliated ISP.[6]

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3 Comments of U S West, CC Dkt. No.s 98-11, 98-26, at 6.

4 CIX is unclear as to U S West's technical assessment of current DSL technologies because, at some point, the data traffic will be split from the voice traffic. Further, Diamond Lane Communications, a provider of ADSL hardware, claims their product, "does not impair voice-frequency services that can co-exist on the same pairs." http://www.dlcc.com/products.html.

5 Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Dkt. No. 96-98, 11 FCC Rcd. 15497, ¶ 292 (Section 251(c)(3) prohibits ILEC from imposing restrictions or limitations on UNE provisioning that would interfere with provider's intended offering), ¶ 278 (ILEC has a duty to unbundle to the fullest extent technically feasible) (1996) (subsequent history omitted).

Surprisingly, U S West also states that it is committed to "offer their data communications services in a manner which is completely friendly to competing information service providers."[7] Respectfully, CIX cannot agree with U S West's perspective that its proposed monopoly-based provision of DSL would best serve the ISP market. Instead, it appears that U S West fully intends to leverage its existing in-region monopoly for voice services, and its monopoly over access lines, to monopolize data services, including Internet access.

In addition to eliminating competition access for DSL offerings, granting of the Petitions subject to benchmarks would pose tremendous enforcement difficulties. First, it is entirely unclear that an adequate remedy could be fashioned if the Bell Companies were to fail to meet a benchmark obligation. Monetary penalties are unlikely to serve as an effective deterrent, and discontinuation of the service is such a harsh anti-consumer result that it is unlikely to be imposed. It is also highly speculative to set DSL benchmarks to be met years from now when the market for such services is largely untested and the technology is still in the developmental stages. As recently experienced with both local telephone number portability and CALEA benchmark requirements, specific Commission deadlines for future industry implementation of developing technologies often raise complex and significant compliance issues. In fact, some commenters already are suggesting that "carriers would be free to request extensions upon a showing of changed circumstances."[8]

Finally, benchmarks could significantly interfere with the Section 706 policy goal of encouraging the deployment of advanced technology. In this case, a mandatory build-out of a specific technology proffered today by the Bell Companies would likely "lock" them into specific technologies, and limit their willingness to accept innovative technologies. Likewise, a

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6 Third Computer Inquiry, Report and Order, 104 F.C.C. 2d 958, 1019-20, 1026 (1986) (subsequent history omitted).

7 Comments of U S West, CC Dkt. No.s 98-11, 98-26, at 5.

8 Comments of Compaq Computer Corporation, CC Dkt. No.s 98-11, 98-26, 98-32, at 14.

build-out requirement would create artificial demand for hardware and software production of existing technologies, and distort market incentives that otherwise would have been devoted to further research and development. This regulatory result would be especially unwise considering the rapid advances occurring in the Internet and computing arenas. Already more advanced technologies are being deployed. As recently as April 20, U S West announced plans to deploy VDSL, which it claims to be the most advanced implementation of any DSL technology yet.[9] Alternatively, a open-ended benchmarks without designation of specific technologies would only invite additional enforcement problems.

For the reasons stated above and as described at length in the Comments of CIX, the Petitions should be denied.

Respectfully submitted,

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May 6, 1998

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9 http://www.wired.com/news/news/business/story/11795.html.

Appendix 1

Commercial Internet eXchange Association
<http://www.cix.org>

The Commercial Internet eXchange Association (CIX).CIX, founded in 1991, is the oldest ISP trade association in the world. CIX promotes and encourages the growth of the public data communications internetworking industry around the world. Its mission is to assure fair and open business environments and to encourage commercial uses of the Internet. CIX also supplies an exchange point, co-located with the Digital Internet Exchange in Palo Alto, California, to facilitate member connectivity.

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Arizona Internet Access Association
<http://www.az-iaa.org>

The Arizona Internet Access Association (AIAA) is a non-profit organization with members that are companies with Internet Service provider operations based or operated in the state Arizona. The organization was formed in 1996 by a group of 10 ISPs to provide a forum for discussing and working on issues relevant to the ISP industry.

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Florida Internet Service Providers Association
<http://www.fispa.org>

The Florida Internet Service Providers Association (FISPA) is a not for profit association of ISPs in the State of Florida. For further information on FISPA please contact:

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Internet Providers Association of Iowa
<http://www.ipai.org/>

IPAI's mission is: To grow and enhance the Internet industry throughout Iowa; To increase public awareness of the positive role the Internet plays in business and our community; To influence public policy for the benefit of the industry and the community at large; To develop uniform and accepted Internet industry standards and practices for Iowa; To serve as an informational resource for members (i.e. IPAI Newsletter); To provide educational opportunities for Internet professionals.

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Internet Service Providers' Consortium
<http://www.ispc.org>

Formed in June of 1996, the ISP/C is an international, not-for-profit trade association composed of individuals and organizations that functions to implement cooperative services to assist ISPs. As of March 1998, the ISP/C has 165 dues-paying members representing 42 states and 10 international countries. On behalf of its members, the ISP/C provides a unified voice on legislative issues, vendor relationships and other business issues impacting the operation of an ISP. The ISP/C provides a range of services, including hardware, software and support

discounts, to ISPs. The group also offers a forum for the maintenance of an open global market for ISPs.

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Mississippi Internet Service Provider Association
<http://www.mispa.org>

The Mississippi Internet Service Provider Association was founded in August, 1997 to facilitate discussion and educate the public about the importance of the Internet industry. MISPA members-acting together-have a mission to offer and support implementation of quality standards and practices for Internet Service Providers and all Internet related businesses. It is imperative that we work to create a single voice presenting the concerns of the Internet industry.

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Texas Internet Service Provider Association
<http://www.tispa.org>

The Texas Internet Service Providers Association (TISPA) began formation in January 1995 to oppose anti-ISP terms in proposed Texas telecom law. Since then TISPA has gained strength, winning critical victories for Internet service providers across the state..

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Coalition for Utah Independent Internet Service Providers
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Washington Association of Internet Service Providers
<http://www.waisp.org>

WAISP, founded in 1996 has 33 ISP members, who serve over 550,000 customers in Washington.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments was this 6th day of May, 1998 hand delivered or mailed, postage prepaid, to the following:

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