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May 6, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M St., N.W.
Washington, D.C. 20554

Re: Petitions of Bell Atlantic Corp., US West Communications, Inc., and Ameritech Corp.; CC Docket Nos. 98-11, 98-26, and 98-32

Dear Ms. Salas:

Attached for filing in the referenced dockets, pursuant to the procedural orders in these proceedings, DA 98-513 (released Mar. 16, 1998) and DA 98-742 (released April 17, 1998), on behalf of LCI International Telecom Corp. ("LCI"), are three originals, each with 12 copies, of LCI's consolidated reply comments on each of the three proceedings referred to above.

We have also submitted under separate cover a diskette containing the reply comments to Janice Myles of the Common Carrier Bureau.

If you have any questions, please contact me.

Respectfully submitted,

Linda L. Olier

Linda L. Olier
Counsel for LCI International Telecom Corp.

Enclosures

cc: Attached service list

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

In the Matter of	)	
	)	
Petition of Bell Atlantic Corp. for Relief from Barriers to Deployment of Advanced Telecommunications Services	)	CC Docket No. 98-11
	)	
Petition of US West Communications, Inc. for Relief from Barriers to Deployment of Advanced Telecommunications Services	)	CC Docket No. 98-26
	)	
Petition of Ameritech Corp. to Remove Barriers to Investment in Advanced Telecommunications Capability	)	CC Docket No. 98-32

REPLY COMMENTS OF LCI INTERNATIONAL TELECOM CORP.

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May 6, 1998

SUMMARY

The nation's network of networks is evolving from a narrowband to a broadband telecommunications world. The petitioning RBOCs have seized on the laudable Congressional goal of promoting advanced technology as a pretext for asking the Commission to permit them to evade their statutory market-opening obligations. The Commission should decline to allow the RBOCs to fence off the network from competitors as that network evolves.

As greater numbers of businesses and consumers shift towards DSL technologies in search of low-cost, high bandwidth solutions and as ILECs deploy DSL technology, access to higher capacity loops will define the competitive landscape in the small-business and consumer markets. If the Commission were to grant the RBOC petitions, even in part, it would effectively assign competitors to a "horse-and-buggy" technology, granting the incumbent LECs an enduring and unshakable market power over the technology of the 21st century. Ironically, when the RBOCs obtain interLATA authority, they will have access to multiple interexchange networks with state-of-the-art technology. For the RBOCs, sharing technology is apparently a one-way street.

Most of the non-incumbent local exchange carrier commenters agree that the principles governing access to local exchange network by competing carriers apply equally to the higher capacity networks made possible by xDSL technology -- both as a competitive matter and as a policy matter.

In pleading for the right to evade the Section 271 preconditions for interLATA entry in connection with data networks, the petitioners ignore the fact

that it is the local exchange network, not the interLATA network, that is the real bottleneck to high speed telecommunications services. They also incorrectly contend that they alone are peculiarly qualified to satisfy demand for increased internet backbone capacity, even though other carriers can fill this need while the RBOCs do what they must to implement Section 271.

Nor do the RBOCs need additional incentives to deploy advanced telecommunications technologies. Many ILECs are planning to deploy xDSL technologies, and US West and GTE have already begun doing so. The RBOCs' claim that they will not invest in these technologies if they have to share them with competitors is nothing more than a request to continue earning monopoly rents on the local exchange network as it evolves. In effect, they seek the government's blessing for the right to corner the market on new services for consumers and businesses, charging these customers supracompetitive rates in exchange for the privilege of excluding competitors.

Grant of the petitions actually would impede, rather than promote, the goal of deployment of advanced telecommunications services. The best way for the Commission to ensure that advanced telecommunications services are deployed is to ensure that competition is all telecommunications markets develops and thrives, and that all potential innovators have access to the technology that would permit them to provide advanced services. It is the threat of competition, not the promise of continued monopoly power, that has led to innovation and technological advancement in the telecommunications industry.

The suggestion of Ameritech and others that Section 272 should be weakened for their interLATA data services heads in completely the wrong direction, as do suggestions that the existence of a Section 272 or similar affiliate would justify deregulation under Section 251 or 271 for advanced network technology. As LCI pointed out in its January 22 "Fast Track" petition, only if the RBOC's affiliate truly stands in the shoes of an unaffiliated CLEC would it be appropriate to permit an RBOC affiliate to escape the Section 251(c) unbundling and resale requirements. LCI's petition proposed a full wholesale/retail separation with public ownership of the retail affiliate in exchange for reduced regulation of that affiliate and speedy Section 271 approval.

Finally, as many parties pointed out in their comments, the Commission simply lacks the legal authority to forbear from applying Section 251(c) and 271 until both of those sections are "fully implemented." The nation is far from seeing an end to the market power necessitating the Section 251(c) requirements.

In sum, the Commission should deny the RBOC petition and instead devote its resources to vigorous enforcement of the Act's market-opening provisions. It should also pursue the LCI "Fast Track" proposal as a path for RBOCs to follow if they wish to obtain deregulated status for their investments in advanced telecommunications technology.

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REPLY COMMENTS OF LCI INTERNATIONAL TELECOM CORP.

LCI International Telecom Corp.("LCI"), by its counsel, hereby files its reply comments in the referenced proceedings.

I. THE RBOCS CANNOT BE ALLOWED TO EXTEND THEIR CONTROL OVER THE LOCAL BOTTLENECK FROM THE NARROWBAND TO THE EMERGING BROADBAND TELECOMMUNICATIONS WORLD.

The Petitions here directly threaten the competitive options that will be available to consumers as the nation evolves from a "narrowband" to a "broadband" telecommunications network of networks. The Petitions propose to fence off broadband technology from the pro-competitive requirements of the Telecommunications Act of 1996. In doing so, they propose actions that violate the

legal mandates of the Act and put new barriers in the way of companies that are developing plans to offer broadband services to their customers.

Many firms, including many commenting parties, are building 21st century superhighways capable of providing transport to handle the high speed voice, data and video services that business and residential customers increasingly will demand. 1/ Critically, their customers and potential customers will not have access to the advanced telecommunications services that they intend to provide except over the ILECs' ubiquitous network facilities, including emerging enhancements to those networks. Unfortunately, however, as the RBOCs prepare to deploy long available xDSL technology in the local network to connect with that interexchange transport, they are trying to take advantage of their unique position in the local network, including their control of end office space and other inherent advantages. The RBOCs recognize that in a broadband world, their narrowband loops will no longer be acceptable to anyone: customers, carriers, or other service providers.

The RBOCs cannot resist trying to extend their narrowband monopoly into the developing broadband age. These petitions represent the RBOCs' first attempt to fence off access to local broadband network elements for themselves alone -- leaving competitors to make do with "horse and buggy" technology from

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1/ LCI, one of the nation's largest interexchange carriers, provides its customers long distance and local telephone service, Internet access, and, for its business customers, a full range of voice and data services, including frame relay. It provides these services over a single, integrated network of owned and leased facilities that employs both circuit-switched and packet-switched technology.

the narrowband telecom era that is drawing to a close. It is striking, but not surprising, that the RBOCs are asking the Commission to extend their broadband market power at the very time that the Telecom Act is supposed to be breaking that bottleneck down. These petitions go directly to the question of whether a local exchange bottleneck will continue in the broadband age of the next century. It is not too much to say that if the Commission were to grant these petitions, it would unlawfully grant RBOCs indefinite market power in the next stage of the information society ahead of us.

If RBOCs were only in the carrier's-carrier network business, there probably would be no issue here. RBOCs would have every incentive to deploy xDSL technology in their local networks to meet growing broadband demand, and to recover their costs and profits from all of the parties that require such capacity. However, as LCI has explained in its "Fast Track" proposal, RBOCs instead face inherent conflicts of interest. Even though they could operate successful businesses enhancing local networks for all, they perceive a greater corporate advantage in capturing monopoly rents on the services side. 2/

The Commission must stand firm against these entreaties. In these reply comments, LCI strongly supports other parties who explain why RBOCs must not be allowed to dominate the broadband telecom age as they have the narrowband age of the past. These matters are discussed in more detail below.

2/ See LCI Fast Track Petition. In LCI's initial comments in this proceeding we discussed how adequate separation of the RBOCs' network and retail service operations could ameliorate these conflicts.

II. COMMENTERS RECOGNIZE THAT RBOCS SHOULD NOT BE THE BOTTLENECK TO CONSUMERS IN THE BROADBAND AGE.

Non-ILEC commenters in this proceeding generally agree that the statutory principles of the Telecom Act apply equally to both narrowband network capacity and to the higher capacity networks made possible by DSL technology. The commenters recognize that DSL-based technology will define the local exchange network of the future. Consumers will expect and demand higher-bandwidth capability.

The ILECs attempt to rewrite the Telecom Act with an argument that does not pass the proverbial red-faced test. They suggest that there are two networks, one for data and one for voice, or one for circuit-switched traffic and one for packet-switched traffic. However, these distinctions are artificial and divorced from network realities. As demonstrated by many parties in this proceeding, packet-switched networks can be used for voice, and voice networks can be used for data. Many of the same network facilities are used in common to transmit packet-switched and circuit-switched messages. As Intermedia noted in its comments:

> [T]here is no bright line between packet switched and circuit switched networks and services. In fact, "plain old telephone service" is routinely provided over packet switched data networks as well as circuit switched networks. Moreover, a single telephone call can originate on the circuit switched network, be transported over a packet switched data network, and terminate back on a circuit switched network. 3/

3/ Comments of Intermedia, Summary at 1.

The false distinctions advanced by the petitioners are geared to enable them to freeze in time their obligations to carry out the Act's unbundling and resale provisions, to avoid satisfying Section 272, and nothing more.

The Telecom Act, however, is technology neutral because Congress recognized that local exchange technology would evolve. Thus, Section 251(c)(3) makes ILEC network elements -- broadly defined -- available to any competitor. The resale provisions of Section 251(c)(4) similarly require that any ILEC service be available for resale at rates reflecting the ILECs' cost-savings when selling its retail services to carriers.

Even leaving aside the law, it is clearly premature for the Commission to erode the rights granted CLECs by the Act to make use of the ILEC network. Two years after the Act's passage, competition in the local exchange remains focused in limited geographic areas and at the high end of the consumer ladder. The broad availability of competing telecommunications services for consumers will depend on the use by competitors of the incumbent LEC network elements. This fact does not change just because the network technology and capability changes. If anything, if more sophisticated technology is fenced off from access by competitors, the market will become less competitive, rather than more so, as the network evolves. As greater numbers of businesses and consumers shift towards DSL technologies in search of low-cost, high bandwidth solutions, access to higher capacity loops will define the competitive landscape in the business and consumer markets.

Broadband RBOC bottlenecks would harm consumers in two interrelated ways in the evolving "broadband" age. First, end user local exchange customers may have no competitive choice when they need broadband transmission service to originate communications with third party locations. LCI will not discuss here the many obstacles RBOCs already put in the way of those competitors who want to use their networks for narrowband voice and data. Suffice it to say that the same policies supporting customer choice for local exchange service apply whether the customer requires limited or high capacity loops.

Second, broadband bottlenecks harm consumers by limiting the ability of third parties to terminate to these consumers. The nation is in the midst of an explosion of new broadband communications applications made possible by computer processing advances and related developments. But those applications should not be held hostage to RBOC decisions regarding how and at what price they will make available broadband loops (whether to end users or other carriers). In a broadband information society, it is dangerous as well as anticompetitive to permit RBOCs to be broadband gatekeepers controlling access to customers.

The history of ISDN foreshadows the dangers of the RBOC Petitions. Overpriced, unattractive ISDN services have deterred use of ISDN by business and residential consumers. And the failings of the RBOC ISDN services have effectively interfered with the ability of third parties to access end users and exploit the potential of ISDN with new service applications. As xDSL technology advances, these problems will only intensify.

It is not difficult to understand the frustrations of top executives in the personal computing and data networking industries. The capacity of the local loop is perhaps the last obstacle to widespread use of broadband networks by small businesses and consumers, who currently employ voice-grade modems to access the Internet or corporate networks. At present, such modems provide only low-speed access to data networks, with hypothetical top speeds of only 56 kbps. "There's one big problem - - telecommunications bandwidth" says Andy Grove of Intel.4 "Bandwidth bottleneck. No question, that's the biggest obstacle," adds Bill Gates.5 The personal computer industry, the processor industry, the software industry, and Internet Service Providers all look to the extent of bandwidth in the local loop to determine their future growth and the provision of services to consumers.6 It is not surprising, therefore, that Microsoft, Intel, and Compaq are currently working with regional telephone companies to develop DSL standards for a technology that will provide a high bandwidth solution for small businesses and consumers.7

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4 Cited in WWW.ADSL.COM (web page of The ADSL Forum).

5 Interview in Fortune, June 1996, cited in WWW.ADSL.COM (web page of The ADSL Forum).

6 See statement of Ellwood R. Kerkeslager, Vice President of Technology and Infrastructure, AT&T Corporation, before the Subcommittee on Communications, Committee on Commerce, Science, and Transportation, United States Senate, April 22, 1998.

7 See Glenn Zorpette, *A New Fat Pipe: A Powerful Consortium Pushes a New Path to the Internet*, Scientific American, April 1998.

DSL is an *enabling technology* that re-employs existing telecommunications network infrastructure and whose cost is within the reach of most small businesses and many consumers. It reflects the continued natural evolution of the local telecommunications network to higher bandwidth, digital technologies. Like earlier network advances -- such as fiber optic technology, digital switching, and out-of-band signaling, DSL marks another stage in the capacity and efficiency of the telephone network.

The ILEC commenters argue that there is a shortage of Internet backbone capacity that justifies the Commission in allowing the RBOCs into the interLATA market before satisfying the requirements of Section 271. These parties do not explain, however, why it is the RBOCs alone that can satisfy this demand for added capacity, or how it could be worth giving the RBOCs more local market power for such a small gain in competition in the already competitive interLATA data market.

These parties also fail to explain why other companies will not step in to satisfy the demand when there are at least five nationwide interexchange networks in place and many other companies able to construct additional capacity. If there is a demand for additional capacity, there are companies poised to provide it.

The RBOCs, moreover, hold the keys to their own entry. All they have to do is satisfy the requirements of Section 271 and they can build interLATA

networks. Their goal is simply to gain entry without meeting those checklist items -- thus keeping their markets effectively closed.

III. THE RBOCS DO NOT NEED ADDITIONAL INCENTIVES TO DEPLOY ADVANCED TELECOMMUNICATIONS TECHNOLOGIES.

Neither the Petitions nor the comments in support provide any justification for the notion that RBOCs need incentives -- beyond marketplace incentives -- to deploy advanced technology. The real problem is the RBOCs' incentive to prevent competitors from providing broadband telecommunications services too.

In fact, xDSL technology already is being deployed and offered commercially by the RBOCs and GTE, without regard to Section 706 of the 1996 Act. The group of U.S. telephone companies, known collectively as the Joint Procurement Consortium (all RBOCs except Bell Atlantic) has plans to deploy more than 2 million ADSL lines over the next five years.8 US West, which filed comments in support of the Ameritech and Bell Atlantic petitions, will be the first to do so. It announced recently that it has prepared 236 central offices in its 14-state region (covering 5.5 million access lines) to provide ADSL offerings by June 1998.9 It already has a DSL offering in Phoenix. For residential customers, USWest is offering DSL services with 192 kbps access (under the brand MegaHome)

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8 See *Frequently Asked Questions*, WWW.ADSL.COM; see also David Kopf, *Anticipating ADSL*, America's Network, August 15, 1997.

9 See statement of Joseph R. Zell, President USWest Interprise Networking Service, before the Subcommittee on Communications, Committee on Commerce, Science, and Transportation, United States Senate, April 22, 1998.

for merely $40 per month plus a $215 installation fee.10 For telecommuters and small businesses, it is providing 320 kbps access (under the brand MegaOffice) for $65 per month plus a $215 installation fee.11 USWest has also announced plans to offer similar products with higher bandwidths in the near future.

GTE, which also filed comments in support of the petitions, also has unveiled plans to offer ADSL in approximately 300 central offices in portions of 16 states by June 1998.12 Its target monthly price range is $30 to $250 per month, excluding one-time installation ($60 to $140) and monthly modem lease costs of roughly $12. GTE's ADSL offering will be available to both businesses and consumers.

In sum, xDSL technology is here today, and is being deployed by a number of RBOCs. It is the technology which consumers will demand, and it is likely to become the standard very soon. The RBOCs' claims that no other forces are driving them to continue to invest in new, high-band width technologies are simply not credible .

The petitioners and supporting commenters also offer no evidence to support their claim that RBOCs will not invest in advanced networks, or will invest at a slow rate, if they have to make those network capabilities available to competitors, just as they do existing network capabilities. The CLECs employing

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10 See Sandra Guy, *DSL Comes to Main Street*, Telephony, February 2, 1998.

11 Id.

12 See *GTE to Offer Ultra-Fast Internet Access*, WWW.GTE.COM.

these capabilities will compensate the RBOCs fully for this, including any risk-adjusted cost of capital. What the RBOCs actually are seeking is the right to continue earning monopoly rents on the local exchange network as it evolves. They would prefer to have consumers effectively subsidize deployment of advanced technology, by paying artificially high prices, than to compete for consumer's business with other service providers.

In short, the real incentive problem is the incentive of the RBOC to leverage its control of the ubiquitous local netowrk to discriminate against rvivals and prevent them from offering advanced services too. The RBOCs are seeking the right to relegate competitors to an outdated, low-capacity network that cannot support the type and range of services that consumers will demand. In effect, they seek the government's blessing for the right to corner the market on new services for consumers and businesses, charging these customers supracompetitive rates in exchange for the privilege of excluding competitors. They are asking the federal government to bribe them to invest in network technology that consumers are likely to demand anyway. If the RBOCs have their way, CLECs will find themselves shut out of a significant portion of the small-business and consumer markets in the emerging world of broadband networking, and most small businesses and consumers will face a monopoly provider of broadband access.

IV. GRANT OF THE PETITIONS WILL ACTUALLY IMPEDE, RATHER THAN PROMOTE, THE GOAL OF DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS SERVICES.

As US West, BellSouth, and USTA point out in their comments in support of the petitions, the basis for seeking to avoid statutory obligations designed to promote competition is the assumption that those obligations somehow stand in the way of RBOC deployment of advanced technology and telecommunications services. Nothing could be further from the truth.

On the contrary, the best way for the Commission to ensure that advanced telecommunications services are deployed is to ensure that competition in all telecommunications markets develops and thrives, and that all potential innovators have access to the technology that would permit them to provide advanced services. It is the threat of competition, not the promise of continued monopoly power, that has led to innovation and technological advancement in the telecommunications industry.

Another fallacy lies at the heart of the RBOCs' petitions: that innovation is in the network investment, and not in the development of services that ride over that network. Companies such as LCI are poised to take advantage of the potential for broadening the capacity of the last leg of the network -- the local exchange. The ability of LCI and others to provide innovative, high capacity services to business and residential customers will depend upon those companies' ability to reach customers over a high capacity local pipe. The ability to innovate

(and to apply competitive pressure to the RBOCs) will be squelched if the RBOCs are allowed to preserve their monopoly over that high-capacity pipe.

Put another way, there are a number of high-technology, 21st century networks that will be halted at the local exchange by horse-and-buggy technology. In comparison, when the RBOCs obtain interLATA authority, they will have access to multiple interexchange networks with state-of-the-art technology. For the RBOCs, sharing technology apparently is a one-way street.

The RBOCs are not, moreover, themselves the sole source of innovations in the development of DSL technology. DSL is an already proven technology, which is largely off-the-shelf at this point, and which has been created not by the RBOCs but by their equipment suppliers. This is not a situation akin to the need to provide an inventor with patent royalties in order to reward the innovation. The real innovation will be in the services that competitors design to take advantage of these networks, the value added and the applications that will stimulate that technological investment.

The RBOCs have a long history of promising to invest in the network only if they are given specified regulatory benefits. For example, some ILECs argued several years ago that the only thing preventing them from investing in fiber-to-the-curb technology and other bandwidth-increasing technology (such as ADSL) was the telco/cable cross-ownership ban. That ban was struck down several years ago, yet the ILECs have not invested significantly in video technology. Now they blame yet other regulatory provisions as the reason why they are not investing

in bandwidth enhancing technology. The ILECs claims are not credible. The Commission should not give away the store in exchange for such empty promises.

Nor would it be appropriate for the Commission to extract pledges of a given rate of investment in exchange for forbearance. Such a step would be the height of market management by government and regulatory interference with the natural development of the network. The FCC does not own the necessary crystal ball, moreover. It is impossible to predict what technologies will be most useful and cost-effective, and what technologies are destined to be replaced by other, better, technologies.

In sum, while the goal of promoting advanced telecommunications services is laudable, the RBOC petitions are not the way to accomplish it. If the RBOCs truly believe that they will not invest in new technology if they have to share it with competitors, then they should opt for the LCI "Fast Track" plan, which will enable them to invest in new technologies *on the same basis as any other CLEC:* without Section 251(c) obligations, but also without the special relationship that goes with being a part of the RBOC. 13/ Fast Track also would give them the speedy interLATA entry authority that they seek. We urge the Commission to pursue that path, and not grant the give-away the RBOCs seek here.

V. A SEPARATE SUBSIDIARY FOR ILEC INVESTMENTS IN ADVANCED TECHNOLOGY WILL NOT ELIMINATE COMPETITIVE PROBLEMS UNLESS THE AFFILIATE IS IN THE IDENTICAL POSITION AS ANY OTHER CLEC – AS IN LCI'S "FAST TRACK" PROPOSAL.

13/ See LCI Fast Track Petition at 20, 47-49.

Ameritech's petition also asks the Commission to amend the structural separation requirements of Section 272 as applied to an RBOC's interLATA data services, applying instead the weaker Fifth Report and Order scheme, which would allow an RBOC to provide data services on an integrated basis with its local exchange entity, and would eliminate the nondiscrimination provisions of Section 272 as applied to data services. US West, in its comments, substantially supports Ameritech's request. The FCC Chairman and other officials also have publicly discussed the possibility of giving RBOCs deregulation of new technology investments in the local network in exchange for separate affiliate requirements. 14/

As LCI stated in its initial comments, a structural separation scheme such as the LCI "Fast Track" proposal, which truly puts the RBOC affiliate in the same position as any unaffiliated CLEC, could form the basis for a decision by the FCC that the affiliate's operations are not subject to the Section 251(c) obligations of the ILEC. 15/ In contrast to the complete separation of network and retail activities contemplated by the LCI proposal (which included substantial public ownership of the retail affiliate), none of the existing separate affiliate models -- including Section 272, Computer III, and Fifth Report and Order -- begins to go far enough to address the underlying competitive concerns that Sections 251 and 272

14/ Speech of Chairman William E. Kennard to USTA Inside Washington Telecom, April 27, 1998, at 5; Comments of Larry Strickling, Deputy Chief, Common Carrier Bureau, Telecommunications Reports, March 2, 1998, at 29.

15/ LCI Comments at 4-6, 9-12. See also LCI Fast Track Petition at 20, 47-49.

are meant to address. The Commission should reject the RBOCs' backdoor efforts to avoid the market-opening provisions of the Act by making their investments in network upgrades, and their introduction of new services, through an affiliate that is operating independently.

The Commission also must reject the arguments of US West, in its comments, and Ameritech, in its petition, that the ILECs do not have certain obligations under the Act with respect to data telecommunications. In its comments on the Ameritech petition, for example, US West asks the Commission to make clear that:

> A company is an incumbent LEC only to the extent that it is providing telephone exchange services. The advanced data and telecommunications services described in the Petitions are not telephone exchange services; hence, the rules do not apply to them. 16/

This novel theory does not pass the proverbial "red-face" test. By its own terms, Section 251(c)(3) requires ILECs to make available network elements to requesting carriers for the provision of a "telecommunications service" -- not "telephone exchange service." Section 251(c)(4), similarly, requires ILECs to permit resale at wholesale rates of any "telecommunications service" it provides at retail to non-carrier customers -- not just "telephone exchange service." The Commission should reject US West's attempt to narrow the Act in this manner.

16/ US West Comments on Ameritech Petition at 7.

Ameritech also observes, incorrectly, that "[f]or the same reasons that a BOC affiliate that provides local exchange services is not an incumbent LEC, a BOC affiliate that owns its own broadband data facilities (or leases such facilities from an unaffiliated entity) is not an incumbent LEC." 17/ Ameritech also maintains that "to the extent a BOC retained ownership and control of its circuit-switched network -- the so-called bottleneck that the Act was intended to address -- the affiliate could not be said to have "substantially replaced" the ILEC. 18/ Put differently, Ameritech attempts, like US West, to redefine the scope of the Act's central market-opening requirements, applying them only to voice telecommunications.

As LCI stated in its petition, if an RBOC wants to shield its new investments from the unbundling and resale provisions of the Act, it can only do so by creating a separate affiliate that truly stands in the shoes of an unaffiliated CLEC. Otherwise, if the RBOC chooses to construct network facilities through its Section 272 affiliate, or deploy services through those facilities, it will remain subject to Sections 251(c), because in that respect, the affiliate is simply an alter ego ILEC. 19/ In short, US West and Ameritech are wrong to suggest that they can

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17/ Ameritech Petition at 25.

18/ Id.

19/ Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, 11 FCC Rcd 21905, 22055, ¶ 312 (1996), recon., FCC 97-52 (rel. Feb. 19, 1997), second recon., 12 FCC Rcd 8653 (1997), pet. for review denied sub nom. Bell Atlantic v. FCC, No. 97-1432 (D.C. Cir. Dec. 23, 1997); pet. for review pending sub nom. SBC Communications v. FCC,

avoid their Section 251(c) obligations simply by shifting their network investment to their interLATA affiliate.

VI. THE COMMISSION LACKS THE LEGAL AUTHORITY TO FORBEAR FROM SECTION 251(C) AND 271 UNTIL THOSE REQUIREMENTS ARE FULLY IMPLEMENTED.

None of the commenters supporting the petitioners is able to correct the central legal defect of the forbearance petitions: that the Commission lacks the authority to forbear with respect to both Section 251(c) and Section 271 before those sections are "fully implemented." 20/ Obviously, no RBOC has satisfied Section 271 yet, and the record developed in many proceedings before the FCC and state commissions demonstrates that the RBOCs are far from fully implementing Section 251(c), and the nation is far from seeing an end to the market pwoer necessitating the Section 251(c) requirements. As a legal matter, then, the FCC lacks power to forbear. As many parties pointed out in their initial comments, the RBOCs' argument that Section 706 confers additional forbearance authority on the FCC is unfounded.

The Commission would also sacrifice its most important tools to pry open the local market if it were to grant any measure of what the RBOCs seek in these petitions. Their competitors have absolutely no bargaining power in

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No. 97-1118 (D.C. Cir. filed Mar. 6, 1997) (held in abeyance pursuant to court order issued May 7, 1997); further recon. pending.

20/ Of course, even after these sections are fully implemented, the Commission cannot forbear without satisfying the three part test in Section 10 of the Act.

obtaining the essential inputs that allow them to compete with the RBOCs. Their only power comes from absolute insistence by the Commission in full implementation of the local competition provisions of the Act. Local competition has developed slowly, and only for small customer segments, precisely because of the RBOC's resistance to meeting their obligations to competitors under the Act. The only incentive they have to open the local markets is to obtain Section 271 relief. The Commission should not give away this carrot.

It also should be obvious that it is grossly premature to consider deregulating the RBOCs when their record is still so inadequate in opening their local markets. If the Commission grants these petitions in any manner, it will be, in effect, rewarding the RBOCs for their recalcitrance by allowing them to fence off important advances in local network capability long before their competitors even have access to the existing capability of that network.