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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
In the Matter of	)	
	)	
Petition of U S WEST Communications, Inc. for Relief from Barriers to Deployment of Advanced Telecommunications Services	)	CC Docket No. 98-26
In the Matter of	)	
	)	
Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Capability	)	CC Docket No. 98-32

CONSOLIDATED REPLY COMMENTS OF AT&T CORP.

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SUMMARY

AT&T demonstrated in its Comments to each of the RBOC petitions that their requests for far-ranging regulatory forbearance to provide high-speed broadband services is entirely contrary to -- and foreclosed by -- the Telecommunications Act, which require the RBOCs to open their local markets to meaningful competition before they are permitted to provide in-region long distance services. As discussed in these Consolidated Reply Comments, other Commenters, representing hundreds of CLECs, ISPs and other leading-edge technology companies, overwhelmingly confirm that such a request not only is beyond the authority of the Commission to grant, but would stifle competitive entry into the local exchange, provide a "back door" for the RBOCs to offer long distance voice/fax services, and do nothing to alleviate the major source of "Internet congestion," which is the local loop already under the control of the RBOCs themselves.

The Comments consistently and correctly demonstrate that, as a threshold matter, the RBOC requests exceed the Commission's authority to grant, showing that Section 706 of the Act, which directs the Commission to encourage the deployment of advanced telecommunications services, is not an independent grant of authority. Rather, Section 10 of the Telecom Act -- to which Section 706 refers -- prohibits the Commission from granting forbearance from the very resale, unbundling and pricing requirements and interLATA restrictions that the petitioners seek relief from here. The Comments also confirm that Section 706 does not give the Commission authority to forbear from Section 272, as Ameritech requests, and that the Commission likewise does not have the "discretion" to define Ameritech's "data affiliate" as anything other than part of its ILEC operations.

The Comments also underscore the intent of the petitioners to rewrite the 1996 Act to exempt broadband services from the unbundling and resale obligations of Section 251 on the ground that the networks did not exist when the 1996 Act took effect. The Comments refute completely the notion that the 1996 Act was "frozen in time;" rather, they confirm that CLECs have an absolute right to obtain unbundled network element upon bona fide request, and to resell the ILECs' telecommunications services without qualification.

The Comments also confirm that, notwithstanding the existing statutory requirement that RBOCs unbundle their networks and provide the network elements and interconnection to CLECs at cost-based prices, the ILECs in general -- and the three RBOC petitioners in particular -- have steadfastly refused to comply with these mandates. The record is brimming with evidence from the CLECs that they are unable to purchase UNEs, as is their right, or obtain affordable collocation, as is also their right. These Comments demonstrate that if permitted to escape their statutory obligations, the RBOCs would control the pace, location and pricing of upgrades to their networks, timing deployment of advanced services to the competitive threats that they face.

Moreover, despite petitioners' claims that they need this broad relief to deploy advanced services in their home territories, the Comments make clear that such relief is not necessary to spur investment in these new generation services. Indeed, the petitioners are doing so now in selected urban markets. Thus their plea for in-region relief suggests to the Commenters that their real "need" for this relief is not to jump start their own investment in these new technologies, or to provide an economic incentive to serve rural customers (as US West claims), but instead to leverage their local monopolies into new services, including Internet services and long distance.

The Comments also conclusively demonstrate that the biggest choke point in the provision of Internet services is the local loop. The Comments show that the petitioners have misrepresented the amount of investment already being made in the Internet backbone. These comments list the billions of dollars in investment flowing into the Internet backbone by the existing interexchange providers as well as new entrants, and further confirm that to the extent there are current shortages of capacity, these are anticipated "growing pains" that backbone providers are adequately and enthusiastically addressing. No RBOC supporter has shown what value the RBOCs would add to the Internet backbone, and no RBOC supporter has seriously explained away the vast harms that would occur to the market in general if the competitive safeguards designed to promote local entry are abolished in favor of RBOC entry into the Internet backbone market.

Finally, the Comments reveal that the Commission should deny the petitions promptly. Several CLECs noted in their comments that the pendency of these petitions is already having a chilling effect on interconnection negotiations with the RBOCs, who are stonewalling the CLECs by taking a "wait-and-see" approach to the petitions. See , e.g., ACSI at 3. Thus, these petitions are already achieving, to some extent, their desired effect of stalling competitive access to the RBOCs' networks for the development of competitive services. The Commission has a duty to prevent this from continuing. The record in these proceedings conclusively demonstrates the lack of any basis to entertain these petitions. The competitive goals of the 1996 Act would be best served by their swift denial.

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CONSOLIDATED REPLY COMMENTS OF AT&T CORP.

Pursuant to the Public Notice released on March 16, 1998, AT&T Corp. ("AT&T") respectfully submits its Consolidated Reply Comments in opposition to the petitions of Bell Atlantic, US West and Ameritech to be relieved from the most critical statutory and regulatory requirements designed to ensure competition in the local exchange, purportedly in order to provide high-speed broadband services on both an intraLATA and interLATA basis. As discussed below, the Comments filed in response to the three petitions overwhelmingly and conclusively demonstrate that the requested relief

is beyond the Commission's power to grant, and would affirmatively frustrate the pro-competitive mandates of the Telecommunications Act of 1996 ("the 1996 Act").[1]

I. INTRODUCTION

The Comments filed in response to the three RBOC petitions by entities other than ILECs and their suppliers are consistent in their opposition to the petitions. They provide reasoned analyses of the limitations on the Commission's authority to grant the requests; they uniformly urge the Commission not to depart from its statutory mandate to pry open the local markets to competition as the only reasonable and authorized means to prompt innovation in the local exchange; they consistently demonstrate that the RBOCs must be held to their commitments under the 1996 Act before they are allowed into the interLATA market; and they debunk thoroughly the notion that "congestion" on the Internet is a problem that requires interLATA entry by the RBOCs.

In contrast to the picture of compliance that the petitioners seek to paint, the Comments filed by the competitive local exchange carriers ("CLECs") in particular demonstrate conclusively that the ILECs in general, and the three RBOC petitioners in particular, have not opened their networks to competitors, and are seeking to evade their statutory obligations of unbundling, collocation and resale. Against this weighty record, there can be no basis (even if the Commission had the statutory authority to do so, which it does not) to conclude that relief from the mandatory obligations and competitive safeguards of the 1996 Act can accomplish any public interest goal.

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[1] A list of commenters appears in Appendix A.

In Section II below, AT&T reiterates the consistent and persuasive arguments of the Commenters which show that the relief requested by the RBOC petitioners exceeds the Commission's authority. In Section III below, AT&T demonstrates that the record overwhelmingly confirms that if the petitioners were relieved from their unbundling, resale, interconnection obligations and the interLATA restrictions for "advanced" telecommunications services, they would be free to squash competition for both traditional and advanced services before it could even gain a foothold, and could do an "end run" around Section 271 to provide in-region long distance service without meeting the requirements of the competitive checklist. Thus the petitions would "undo" the statutory scheme adopted by Congress, which mandates that the RBOCs open their local networks to competitors before they obtain in-region interLATA relief.

In Section IV, AT&T shows that the Comments prove that the RBOCs do not need the requested relief to deploy advanced services on an intraLATA basis, and that the record strongly suggests that such in-region relief is requested in order to enable them to bundle their monopoly local services with long distance services, including Internet services, to the exclusion of competitive offerings. Finally, as discussed in Section V below, the Comments present a hefty record that there is no "congestion" problem in the Internet backbone, and certainly no problem that requires the extraordinary relief of interLATA RBOC entry to resolve. Rather, the Comments overwhelmingly confirm that any "congestion" problem is in the local exchange, which is the province of the RBOCs today, and that adhering to the 1996 Act' s mandates of open entry is the best way to spur innovation for local services that serve as the "on ramps" to the Internet.

II. THE COMMENTS CONFIRM THAT THE RELIEF REQUESTED BY THE THREE RBOC PETITIONERS EXCEEDS THE COMMISSION'S AUTHORITY.

All of the Commenters who addressed the issue of the Commission's authority to grant the requested relief with any degree of thoughtful detail reached the conclusion that the Commission has no authority to waive the statutory requirements of Sections 251(c) and 271. The Commission thus may not permit the RBOC petitioners to offer broadband services without regard to unbundling and resale requirements or the interLATA services restrictions, as the petitions seek.

A. The Comments Confirm That Section 706 Of The 1996 Act Does Not Confer On The Commission The Extraordinary Authority That The Petitioners Contend.

First, the Comments uniformly and correctly point to Section 10 of the 1996 Act, which gives the Commission authority to forbear from applying provisions of the Communications Act, provided that certain standards are met.[2] Section 10(d) explicitly limits that authority, prohibiting the Commission from forbearing "from applying the requirements of section 251(c) or 271 under subsection (a) of this section until it determines that those requirements have been fully implemented."[3] Thus, as the

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[2] 47 U.S.C. § 160.

[3] 47 U.S.C. § 160(d).

Commenters consistently note, this provision unequivocally precludes the Commission from granting the relief sought in the petitions.[4]

The Commenters also uniformly point out that Section 271 itself includes a "complementary prohibition" on Commission action that would permit RBOC in-region interLATA entry prior to the RBOC's compliance with the competitive checklist. Section 271(d)(4) states that "the Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist." Thus the Commission is not empowered to allow the RBOCs to provide interLATA service on any showing different or less than the proof demanded in Section 271.[5]

The Comments also overwhelmingly and consistently rebut the RBOCs' contention that Section 706's grant of forbearance authority is "independent" of Section 10. They note that Section 706 says merely that the Commission shall utilize "regulatory forbearance" as one of its "regulating methods" to remove barriers to infrastructure investment, and does not by itself either define "regulatory forbearance" or otherwise grant the agency the independent, extraordinary power to nullify a statutory requirement.[6] And Commenters further point out that the Conference Report makes clear

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4 See, e.g., Excel at 3-4; CIX (Bell Atlantic) at 23-24; CompTel at 9; Joint Commenters at 5; LCI at 19; Sprint at 4; Teleport at 5; TRA at 8; XCom at 10.

5 See, e.g., ASCI at 8-0; CompTel at 10; Joint Commenters at 6-7; MCI (Ameritech) at 27.

6 See, e.g., Cablevision at 7-9; CIX (Bell Atlantic) at 25-26; CompTel at 11 ("Congress' reference to 'regulatory forbearance' is just that - a reference"); ITAA (Bell Atlantic) at 3-6; Joint Commenters at 5; Teleport at 5-6.

that the Commission is instructed specifically to engage in an inquiry of the reasonableness and timeliness of deployment of advanced telecommunications capabilities to schools and libraries, and not to exercise any new, extraordinary forbearance authority.[7] No such definition or grant of authority was necessary, moreover, because the 1996 Act otherwise defined "regulatory forbearance" under Section 401 of the 1996 Act, which is the section of that Act that added Section 10 to the Communications Act.[8]

Indeed, as commenters point out, Section 706 is not even codified in the Communications Act, or anywhere else in the United States Code.[9] It would be unprecedented for Congress, having already codified Section 10's carefully circumscribed forbearance authority within the Act, to then leave uncodified the far more sweeping authority to waive any and all statutory requirements that the RBOCs claim Section 706 confers. To the contrary, Section 706 was left uncodified because it did not grant the Commission any additional powers, but merely directed it to conduct a specific inquiry

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[7] See, e.g., APK at 8-9; CompTel at 12-13 ("It is the inquiry, not the authority, that Congress mandated in Section 706"); Level 3 at 5; MCI (Ameritech) at 24; TRA at 6.

[8] Several Commenters also note that if Section 706 accords the Commission the broad forbearance authority that the petitioners contend, the Commission would also have the authority to mandate TELRIC pricing, require combinations of UNEs and proscribe other pro-competitive actions, and challenges to the Commission's authority such as the Iowa Utilities Board decision, Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir., 1997), on rehearing, 1998 U.S. App. LEXIS 1043, cert. granted, 118 S. Ct. 879 (1998), would be moot. See, e.g., CompTel at 12-13; Level 3 at 6. And such an expansive reading of Section 706 would also confer on state commissions broad authority to override federal mandates. See CompTel at 13.

[9] See, e.g., CompTel at 10-11; WorldCom at 26-27.

within 30 months and then to utilize, if necessary, the existing regulatory tools already established by other, codified provisions.

The Comments also echo AT&T's showing that the petitioners' argument that the Commission can "modify" LATA boundaries by recognizing a "global LATA " for data services is wrong. They note correctly that the Commission has already rejected an identical argument in the U S WEST LATA Boundary Proceeding.[10] There, the Commission held that its authority over LATA boundaries arose from Sections 3(25) and 251(g) of the Communications Act and Section 601 of the 1996 Act. And it noted that in Section 3(25) Congress expressly gave the Commission power to "modify" LATA boundaries. The Commission nevertheless held that Section 10(d) prevented it from exercising its authority under those other provisions to approve a change to LATA boundaries that would have the effect of circumventing Section 271. "Thus, Section 10(d) limits the manner in which the Commission may exercise its sole and exclusive authority to approve the establishment of or modification to LATA boundaries."[11] Moreover, "[t]he Act expressly prohibits the Commission from abstaining in any way from applying the requirements of Section 271 until those requirements have been fully implemented."[12]

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[10] Petition for Declaratory Ruling Regarding U S WEST Petitions to Consolidate LATAs in Minnesota and Arizona, 12 FCC Rcd. 4738 (1997). See, e.g., ASCI at 9-10; ALTS at 4-5; ITAA (Bell Atlantic) at 6-8.

[11] 12 FCC Rcd. at 4751.

[12] Id. See Level 3 at 8 ("If the Commission could simply define the entire world as a single LATA for data services, then it could (at least in theory) do the same for voice service as well, and effectively repeal Section 271").

Furthermore, the argument that data services are offered on a more "global" basis than traditional telephony services, justifying releasing the petitioners from their Section 271 obligations, is not only conclusively foreclosed by the statute and case law, it also plainly ignores the fact that even in the world of new generation data services, those services utilize the incumbent local exchange carriers' ("ILECs") existing local facilities. Thus, as the Commenters point out, the LATA concept, which defines the "home" territories of the RBOCs where their ownership and control of bottleneck facilities confer on them monopoly power and require that the RBOCs make their local facilities and services available to competitors to promote competitive entry, is no less relevant and critical to the development of advanced data services than it is for traditional services. For example, CIX notes that

> "[w]hile Ameritech contends that LATAs should not apply to their Internet services because 'a LATA is meaningless in the packet-switched world' (Petition at 12), this argument fails to recognize that LATAs and the LATA restrictions of Section 271 do properly apply in this proceeding because Ameritech will employ its own monopoly local network as part of the Internet service."[13]

Finally, the Comments confirm that Section 706 does not give the Commission authority to forbear from Section 272, as Ameritech requests.[14] Section 10's prohibition on forbearance from Section 271 plainly includes a prohibition on forbearance from Section 272, since compliance with that section is a prerequisite of Section 271

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[13] CIX (Ameritech) at 24-25. See also Sprint at 6.

[14] See, e.g., ALTS at 22-25; CIX (Ameritech) at 29-32; MCI (Ameritech) at 29-31; Teleport at 11-13.

fulfillment. This was recently confirmed by the Commission in its Non-Accounting Safeguards Order.[15] CIX cautions that

> "[b]ecause Ameritech maintains its market dominance over the very access lines that are a practical necessity for wireline xDSL service, it has every incentive to engage in exactly the sort of activity that Section 272 is meant to proscribe. Given this, it is difficult to discern how forbearance of Ameritech's Section 272 obligations, even in the form of a diminished separations regime, would promote local competition."[16]

The Comments further confirm that Ameritech's proposal to substitute the Section 272 separation requirements with the more lenient separations requirements of the Competitive Carrier proceeding was rejected by the Commission in the Non-Accounting Safeguards Order,[17] and that separation as mandated under Section 272 is an absolute prerequisite to any determination of non-dominance for an ILEC, including an absolute obligation prior to any affiliate being treated as a local carrier separate from the ILEC.[18] ALTS rightly notes (at 24) that the Commission may not take Ameritech up on its invitation to "clarify" Section 251(h) to read out of that Section an ILEC's "data affiliate"

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[15] BellSouth Petition for Forbearance from Application of Section 272 of the Communications Act of 1934, as Amended, to Previously Authorized Services, CC Docket No. 96-149, Memorandum Opinion and Order (rel. Feb. 6, 1998), ¶¶ 22-23 ("prior to their full implementation we lack authority to forbear [under Section 10] from application of the requirements of section 272 to any service for which the BOC must obtain prior authorization under section 271(d)(3)").

[16] CIX (Ameritech) at 29-30.

[17] In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, 11 FCC Rcd. 21905, 21977-21978, (1996) ("Non-Accounting Safeguards Order").

[18] CIX (Ameritech) at 30-31.

because the Commission has already determined that such a designation can only be made upon compliance with the mandates of Section 272.[19]

B. The 1996 Act Does Not Distinguish Between Voice And Data Services.

The Comments underscore the intent of the petitioners to rewrite the 1996 Act to exempt broadband services from the unbundling and resale obligations of Section 251. For example, BellSouth (at 10-11), in support of the RBOC petitions, claims that "the language in Section 251(c) is silent on whether the obligations imposed therein apply to the incumbent LEC networks only as those networks existed when the 1996 Act became effective, or to new technology deployed subsequent to that date as well." This line of argument is specious. The Commission has already rejected BellSouth's argument.[20] Indeed, BellSouth's suggestion that the statue is "silent" on the matter is tantamount to suggesting that the nondiscrimination requirement of Section 202(a) applies only to the services and facilities offered in 1934.

As to sale of UNEs, AT&T and other Commenters explain that Section 251(c)(3) obligates the ILECs to "provide . . . nondiscriminatory access to network element on an unbundled basis. . . ." "Network element," in turn is defined in Section 3(a)(45) as "a facility or equipment used in the provision of a telecommunications

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[19] In the Matter of Regulatory Treatment of LEC Provision of Interexchange Services, CC Docket Nos. 96-149 and 96-61, Second Report and Order and Third Report and Order, FCC 97-142 (rel. April 18, 1997), ¶¶ 85-92.

[20] See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 96-98 and 95-185, First Report and Order, FCC 96-325 (August 8, 1996) ("Local Competition Order"), ¶ 246.

service." Thus the statute on its face applies to all telecommunications services, including new UNEs required to provide advanced telecommunications services, and does not allow for the limitations suggested by BellSouth.[21]

As to resale, Section 251(c)(4)(A) on its face similarly applies to "any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." The Comments make clear that the Commission has interpreted the plain meaning of Section 251(c)(4)(A) as a general obligation on the ILECs to make all of their retail services available at wholesale rates, and accordingly has required ILECs to "establish a wholesale rate for each retail service that: (1) meets the statutory definition of a 'telecommunications service;' and (2) is provided at retail to subscribers who are not 'telecommunications carriers.'"[22] There is no dispute that the advanced services which are the subject of the RBOCs' petitions (including ISDN and xDSL services) are "telecommunications services." They do not possess any of the elements of "information services" and, to the extent that they are offered today, they are consistently provided under state tariffs by the ILECs.[23] Moreover, the Commission has

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[21] See AT&T (Bell Atlantic) at 10-11; CIX (Ameritech) at 22; Teleport at 9-10; WorldCom at 30; XCom (Bell Atlantic) at 7.

[22] See Local Competition Order, ¶ 871 (citations omitted). See generally CIX (Ameritech) at 22, Sprint at 5; XCom (Bell Atlantic) at 9.

[23] See, e.g., US West Advanced Communication Services Tariff (Utah), effective September 2, 1997, Section 8, p. 1 (xDSL service); Southwestern Bell Telephone Company Integrated Services Tariff (Texas), effective May 22, 1996, Section 3 (Digiline Service).

determined that xDSL and other broadband services are indeed telecommunications services, and that conditioned loops capable of transmitting xDSL, ISDN and other advanced services must be made available under Section 251.[24] Thus the Commission has already declined to carve out an exception from the requirements of Section 251(c) for these telecommunications services, and the building blocks of such services, as BellSouth suggests that it can do.

BellSouth's claim (at 11-12) that the Commission has the discretion, under Section 251(d)(2), to exempt network elements from the unbundling requirements is simply wrong. The Commission's limitation to existing facilities in ¶ 451 of the Local Competition Order merely clarified, at the request of small ILECs, that ILECs are "not required to construct new [interoffice transmission] facilities to accommodate new entrants." (Emphasis supplied.) The Commission did not depart from the basic tenet of the 1996 Act that to the extent that an ILEC has facilities which it uses for its own services, it must make those same facilities available to CLECs in accordance with Section 251. Similarly, the Commission's deferral of a ruling that packet switches constitute network elements (id., ¶ 427) does not mean that, upon a bona fide request that packet switches be made available as separate network elements, the ILECs can refuse to do so, or the Commission can exercise any discretion to refrain from requiring those UNEs to be

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[24] See Local Competition Order, ¶ 380 (the definition of unbundled loops must include loops "conditioned to . . . provide services such as ISDN, ADSL, HDSL, and DS1-level signals").

made available. Moreover, that paragraph lends no support whatsoever to the petitioners' request that they not make advanced services available for resale.[25]

III. THE COMMENTS OVERWHELMINGLY CONFIRM THAT THE REQUESTED RELIEF WILL STIFLE, RATHER THAN PROMOTE, INVESTMENT IN COMPETITIVE SERVICES.

A. The Comments Confirm That The Petitioners Must Remain Subject To The Act's Unbundling Rules.

In its Comments, AT&T demonstrated that, for at least the foreseeable future, the only path to broad competition for virtually all residence and most business customers is the ILEC's local network.[26] CLECs will need full and fair access to those ILEC facilities if broad competition is to emerge. This is the case not only for traditional telephony services, but for advanced services as well, because the building blocks of advanced services such as ISDN and xDSL include the very same ILEC local loop and

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[25] The fact that the RBOCs are already affirmatively ignoring their 251 obligations in this regard was illustrated by Intermedia in its separate Comments on the APT petition, where Intermedia described (at 14-15) Ameritech's refusal to honor its interconnection obligations for frame relay service, arguing (unsuccessfully) that frame relay is not an "exchange service" as defined by the 1996 Act.

[26] The Comments confirm that currently there is no viable competitive alternative to the local service offerings of the ILECs, and that emerging services such as cable modems are not commercially available to any significant degree. See, e.g., CCIA at 3 ("Many of the widely touted high-bandwidth technologies (*e.g.*, fixed and mobile wireless, truly interactive cable, the delivery of voice and data services over the electric grid) may take years to be deployed on a wide scale; copper twisted-pair is virtually ubiquitous and may serve to support some high-bandwidth services today").

ILEC local switch (for routing of voice calls over the PSTN) that are used for today's telephone services.[27]

Over one dozen individual CLECs and CLEC organizations filed Comments expressing strong opposition to the three RBOC petitions.[28] These companies collectively represent the promise of the 1996 Act. They are the new entrants that will spur innovation through competitive choice and, in fact, as their Comments demonstrate, they are attempting to do so today.[29] Contrary to the claims of the petitioners that the CLECs are not interested in serving residential customers (and thus the Commission should grant their requested relief so that the petitioners can do so exclusively), many CLECs emphasized their commitment to entering the residential market.[30] Their Comments confirm that although they must have access to the ILECs' local networks to develop and deploy competitive local services, they are foiled at every turn in gaining access to those facilities.

Virtually every CLEC Commenter provided proof that the ILECs in general, and the three petitioners in particular, have affirmatively denied them access to the network elements that they require to create their own traditional, as well as high-

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[27] See AT&T (Bell Atlantic) at 13. In fact, these "advanced" services are merely the integration of modem technology into an ILEC local service.

[28] See ACSI, ALTS, AT&T, Covad, DSL, Joint Commenters, Intermedia, LCI, Level 3, MCI, Omnipoint, Teleport, TransWire, WorldCom, XCom.

[29] See, e.g., DSL at 4.

[30] See, e.g., Covad at 4-5; DSL at 4-5; Level 3 at 9 n.4.

speed services, including both the loops and the switches. For example, Covad notes (at 2-3) that "Covad's experience with Ameritech, Bell Atlantic and U S West regarding physical collocation practices and availability of DSL-compatible unbundled loops in those regions reveals that ILECs have failed to comply with and fully implement the 1996 Act, especially as it relates to broadband services." DSL states that "despite the FCC's and Act's requirements, the ILECs can employ a variety of tactics to deny essential facilities to potential competitors for DSL services. As a result, DSL-capable loops are regularly 'unavailable' to competitors. Similarly, DSL competitors are regularly rebuffed in their attempts to obtain collocation."[31] Numerous CLECs recite a litany of instances in which they have been unreasonably and unlawfully denied access to critical network elements at the hands of the three petitioners.[32]

The Comments also confirm that that the CLECs have been demanding, and are entitled to obtain, access to the ILECs' critical electronics that they are placing on the conditioned loop to provide advanced services such as xDSL. For example, TransWire states (at 20-21) that in order to provide Consumer Digital Modem ("CDM")-

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[31] DSL at 16. DSL supported these statements with sworn affidavits. See Attachments 1 and 2 to DSL's Comments.

[32] See, e.g., ALTS at 25-26; AT&T (Bell Atlantic) at 16-19; AT&T (US West) at 7-9; AT&T (Ameritech) at 10-11; Joint Commenters at 17-20; Intermedia at 22-26; WorldCom at 18-25.

based services, they require access not only to the copper wire underlying the voice networks but to the equipment associated with the traditional voice switch as well.[33] MCI argues (at 12) that "[r]equiring the BOCs to unbundle their local networks, including copper loops, operations support systems, switching elements and network enhancements such as DSL modems, to competitive carriers is a much better catalyst for local competition than a requirement that carriers collocate at thousands of end offices."

This evidence conclusively rebuts the petitioners' claims that their markets are open to competitors, and that the statutory safeguards from which they seek relief are not necessary to encourage and maintain competitive entry into their local markets. The Comments of these CLECs make clear that if emerging competitors are forced to replicate the ILECs' networks from scratch -- especially when they start with no embedded customer base -- they will never be able to enter the market with competitive offers and competitive prices.[34] Thus it is critical that the Commission ensure that the requirements of the Telecom Act are implemented, not evaded. The 1996 Act, and the Orders adopted by the Commission implementing the pro-competitive mandates of the 1996 Act, require the RBOCs to open their local monopolies to competition before they are allowed to provide interexchange services. The Commission must force compliance with these statutory and regulatory mandates in order to bring the benefits of competition to the market.

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[33] See also MCI (Bell Atlantic) at 12 ; AT&T (Bell Atlantic) at 16-19.

[34] See, e.g., TransWire (Bell Atlantic) at 20.

In addition to the persuasive, well-documented evidence provided by the CLEC Commenters of recalcitrance on the part of the ILECs, the Internet Service Providers ("ISPs") also emphasize in their Comments the critical need that they have for competitive alternatives to ILEC local services."[35] Moreover, the ISPs express concern that if the petitioners are granted the requested relief, the RBOCs will be able to foreclose competition in the information services market as well, by offering bundled offers (combined with local service) that the ISPs could not match.[36] These concerns are legitimate. Ameritech's April 16th announcement of a high-speed Internet access service using ADSL indicates that "[t]he new service offers one-click access to Ameritech.net(sm); in addition to the extremely high-speed access to the Internet, the service provides a dedicated connection, so customers can get online anytime, day or night, without having to dial in."[37] It is not clear from this announcement whether a similar arrangement is being made available to non-affiliated ISPs.

Finally, the Comments also confirm that despite the RBOCs' claims that they have a very small market for Internet access services, they provide local services to virtually 100 percent of the customer base. AOL states (at 4-5) that "it is this bottleneck control of the local service markets and the underlying network componentry that cause

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[35] See, e.g., CIX (US West) at 1-2.

[36] See, e.g., CIX (US West) at 17-18.

[37] See "New High-Speed Service Makes Downloading Matter of Minutes, Not Hours," PR News Wire via Dow Jones, April 16, 1998.

ISPs to remain overwhelmingly dependent on incumbent carriers such as Bell Atlantic, Ameritech and US West for local access to their customers." Thus, the petitioners' potential competitors in the information services market are rightly concerned that the petitioners could undermine competition with their control of the customer base and with relief from competitive safeguards as requested. Such a result is directly contrary to the statutory goal that competitive players in the local market -- including information service providers -- are not unfairly disadvantaged by the abuse of monopoly power by the ILECs.

B. The Comments Also Establish That The Requests, If Granted, Would Improperly Open The Door For InterLATA Voice/Fax And Other Services, And Destroy Any Incentive For The RBOCs To Comply With The Competitive Checklist.

AT&T demonstrated in its Comments that the petitioners' forbearance requests extend well beyond Internet services, and will include voice, fax, data and any other service and application carried over traditional local exchange technology as well. This is because the high-speed access connection to the home or business that is the subject of the petitions is entirely capable of carrying all of a customer's traffic, including voice and fax. Because these higher bandwidth connections utilize the customer's existing loops, there is simply no need for the customer to retain (or purchase) standard phone lines for the customer's existing telephony applications.[38] AT&T's concern is echoed by many Commenters, including many CLECs who recognize that grant of these petitions would allow the RBOCs to provide all forms of telephony outside of the 1996 Act's

[38] See AT&T (Bell Atlantic) at 15-16.

unbundling and resale requirements, and to do so also absent compliance with the competitive checklist under Section 271 -- a central prerequisite for interLATA relief under the 1996 Act.[39]

Indeed, the Comments underscore the universal concern that allowing the RBOCs to circumvent the requirements of Section 271 would destroy any incentive on the part of the RBOCs to open their local markets.[40] This would gut the central goal of the Telecom Act, leaving the monopolists free to decide the timing of the deployment of these services not on the basis of market demand and competitive choice, but on their own, self-serving timetables, and to offer the services that they want, at the prices that they want, unconstrained by competitive pressures. For example, ITAA (at 12-13) notes that

> "Unfortunately, Bell Atlantic's history of deploying advanced telecommunication services in the local markets in which it has long operated is not an impressive one. The carrier was slow to make ISDN available, and has threatened not to deploy any advanced local telecommunications services unless information service providers are required to use them, rather than existing offerings."[41]

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[39] See, e.g., CompTel at 7-8; Intermedia at 6-10; LCI at 14; MCI (Bell Atlantic) at 29; Sprint at 10; WorldCom at 11-16 ("The RBOCs could easily use this enormous loophole to move voice traffic to packet-switched networks and evade altogether their Section 271 obligations, and other pricing and nondiscrimination safeguards"). See also PSCW at 4.

[40] See, e.g., APK at 5-6; Cablevision at 2-3; CIX (Bell Atlantic) at 31; WorldCom at 11-12.

[41] As CIX (Bell Atlantic) notes (at 9), "the ILECs' slow rate of ISDN deployment may be a harbinger of ILEC xDSL service roll-out." See also MCI (Bell Atlantic) at 16-17; WorldCom at 35-36.

IV THE COMMENTS ALSO STRONGLY CORROBORATE THAT THE PETITIONERS DO NOT NEED THE REQUESTED RELIEF TO DEPLOY ADVANCED DATA SERVICES ON AN INTRALATA BASIS.

The Comments also underscore the fact that the RBOC petitioners do not need the extraordinary relief that they request in order to deploy broadband services in their LATAs. Several Commenters point out that the RBOCs -- including the three petitioners -- are already investing heavily today in broadband networks, in selected markets.[42] For example, Bell Atlantic recently announced that it is investing $1.5 billion in broadband networks in its territory.[43] Ameritech has announced high-speed Internet Service in the Royal Oak, Michigan metropolitan area, using xDSL technology.[44] And US West has announced plans to deliver an integrated digital television programming and high-speed Internet service over existing home phone lines using xDSL technology in the Phoenix area and other selected markets.[45] US West has also confirmed that "it is currently rolling out advanced high-transmission copper-loop technologies such as

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[42] See Cablevision at 2; CIX (Ameritech) at 11; LCI at 6-9.

[43] "Bell Atlantic Steps Up Deployment of High-Speed, Broadband Data Network," March 30, 1998, www.ba.com.

[44] See "New High-Speed Service Makes Downloading Matter of Minutes, Not Hours," PR News Wire via Dow Jones, April 16, 1998.

[45] See "US West Confirms New Internet, TV Service," Dow Jones Newswires, April 20, 1998. US West is facing emerging competition from Cox Communications in the Phoenix metropolitan area.