RECEIVED

MAY 27 1998

Federal Communications Commission
Office of Secretary

KELLEY DRYE & WARREN LLP
A PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

1200 19TH STREET, N.W.
SUITE 500
WASHINGTON, D.C. 20036

(202) 955-9600

NEW YORK, N.Y.
LOS ANGELES, CA.
MIAMI, FL.
CHICAGO, IL.
STAMFORD, CT.
PARSIPPANY, N.J.

BRUSSELS, BELGIUM
HONG KONG

AFFILIATED OFFICES
NEW DELHI, INDIA
TOKYO, JAPAN

FACSIMILE
(202) 955-9792

WRITER'S DIRECT LINE
(202) 955-9664

WRITER'S E-MAIL
jcanis@kelleydrye.com

DOCKET FILE COPY ORIGINAL

May 27, 1998

98-178

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

Re: Petition of the Association for Local Telecommunications Services for a Declaratory Ruling

Dear Ms. Salas:

Enclosed for filing on behalf of Association for Local Telecommunications Service, please find an original and four copies of a Petition for Declaratory Ruling. Also enclosed please find a duplicate of the Petition, please date-stamp and return in the envelope provided.

Respectfully submitted,

Jonathan E. Canis

ORIGINAL
RECEIVED
MAY 27 1998
Federal Communications Commission
Office of Secretary

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

In the Matter of	)
	)
Petition of the Association for Local Telecommunications Services (ALTS) for a Declaratory Ruling Establishing Conditions Necessary to Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996	)

To: The Commission

PETITION OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES FOR A DECLARATORY RULING

ASSOCIATION FOR LOCAL
TELECOMMUNICATIONS SERVICES

Richard J. Metzger
Emily Williams
ASSOCIATION FOR LOCAL
TELECOMMUNICATIONS SERVICES
888 – 17th Street, N.W.
Suite 900
Washington, D.C. 20006
(202) 969-2583

By: Brad E. Mutschelknaus
Jonathan E. Canis
John J. Heitmann
KELLEY DRYE & WARREN LLP
1200 – 19th Street, N.W.
Fifth Floor
Washington, D.C. 20554
(202) 955-9600

Its Attorneys

Dated: May 27, 1998

TABLE OF CONTENTS

Page

Summary i

Introduction 2

I. CLECs are bringing advanced telecommunications capability to the public today 6

II. FULL IMPLEMENTATION OF ILEC INTERCONNECTION, COLLOCATION, UNBUNDLING AND RESALE OBLIGATIONS WITH RESPECT TO DIGITAL AND BROADBAND NETWORKS IS REQUIRED TO ACHIEVE THE GOAL OF SECTION 706 10

A. The Unavailability of Data Interconnection, Collocation, Unbundling and Resale Under the 1996 Act are the Largest Impediment to the Deployment of Advanced Telecommunications Capabilities 11

1. The Commission Should Clarify that CLECs Must be Allowed to Interconnect For Data Services 12

2. CLECs Must Have Unbundled Access to Advanced Data Facilities 14

3. CLECs Must Receive Access to Multiplexing Equipment at a Much Quicker Pace 17

4. New Federal Collocation Rules are Required to Ensure Just, Reasonable and Nondiscriminatory Access to ILEC Data Facilities 18

5. Nondiscriminatory Access to OSS is Critical to the Development of Data Services Competition 22

6. CLEC NXXs Must be Loaded Into ILEC Switches Without Lengthy Delays 24

7. CLECs Must Recognize Prompt Provisioning of End Office and Tandem Trunking 25

8. ILECs Are Using Litigation, and the Uncertainty it Creates, to Delay Implementation of the Act 26

B. Sections 251(c) and 271 are Necessary Conditions to Achieving Section 706 32

III. THE COMMISSION SHOULD PRESERVE AND ENHANCE PROCOMPETITIVE RULES AND POLICIES ADOPTED BY STATE COMMISSIONS 36

A. Section 706 Jointly Assigns Jurisdiction to the FCC and State Commissions 36

B. The Commission Must Not Unilaterally Take Action Under Section 706 That Will Disrupt State Regulatory Initiatives Established Under the Act, or Other Sources of Authority 38

TABLE OF CONTENTS
(continued)

Page

1. State-Specific Rules Governing the Combination of UNEs Are Critical to Deployment of CLEC Data Services 39
2. State Decisions Requiring Sub-Loop Unbundling Facilitate the Expansion of xDSL Services 41
3. RBOC Commitments to Provide Digital Unbundled Loops Must be Preserved 44
4. State Actions Regarding Performance Measurements and Standards Should be Sustained 45

Conclusion 45

Summary

The Association for Local Telecommunications Services ("ALTS") hereby petitions the Commission to issue a declaratory ruling and take related action required to achieve full implementation of the procompetitive provisions of Sections 251-252 of the Communications Act as the single most important means of promoting the introduction of advanced telecommunications services to the American people, as mandated by Section 706 of the Telecommunications Act of 1996 ("1996 Act"). By the following petition, ALTS identifies a series of actions that the Commission should take *now* to promote deployment of advanced telecommunications capabilities, including:

> *Issue a Declaratory Ruling*: The FCC should declare that the interconnection, collocation, unbundling and resale requirements of Sections 251, 252 and 271 of the 1996 Act apply fully to digital and broadband services and facilities. The Commission also should declare that achievement of the goals of Section 706 of the Act can be accomplished only by ensuring that CLECs have the same rights under Sections 251, 252 and 271 for advanced telecommunications services as they have for conventional "POTS."
>
> *Fix Collocation*: Excessive rates and unreasonably burdensome terms and conditions for collocation have become important barriers to competitive entry into data services markets. The Commission should address this problem by exercising its authority under Section 251(c)(6) of the Act to re-open CC Docket No. 91-141 and establish new rules and rates for collocation.
>
> *Confirm that Interconnection Applies to Digital Facilities and Services*: Expansion of CLEC data networks is being delayed by ILEC contentions that new digital technologies and the services they make possible are exempt from the interconnection requirements of the 1996 Act. The Commission should resolve this unnecessary and burdensome dispute by clarifying that Sections 251-252 of the Act are fully applicable to digital and broadband facilities and services.

Confirm that Unbundling Applies to Digital Technology: CLECs are having extreme difficulty obtaining digital loops and functionality as unbundled network elements ("UNEs"). The Commission should help jump-start expansion of CLEC data networks by clarifying that digital technology is subject to the unbundling requirements of the 1996 Act.

These actions are required to enable CLECs to continue their pioneering role in the deployment of advanced technologies and introduction of innovative new data services. CLECs were the first to deploy fiber ring networks, and have been leaders in the introduction of new technologies such as asynchronous transfer mode, frame relay, synchronous optical network and digital subscriber line into the national telecommunications infrastructure, and continue to deploy such advanced technologies at a dramatic pace.

Thus, CLECs have led the way in bringing advanced services to the public. As importantly, the competitive pressure exerted by CLECs has prompted ILECs to begin embracing new technologies and upgrading their networks as well. Despite claims that they require deregulatory incentives to deploy advanced technologies such as xDSL, the ILEC's already are investing billions of dollars in such technology – prompted by a need to compete with CLECs that have been developing digital networks for years. For the Commission to promote the availability of advanced services to the American public, it must ensure that CLECs are able to continue as engines of technological change in the industry.

To enable CLECs to realize their full potential in deploying technology for advanced services – and in stimulating ILECs to do the same – the Commission must ensure that the procompetitive provisions of Sections 251, 252 and 271 are fully and irrevocably implemented. As demonstrated in proceedings before this Commission and State regulators across the country, ILEC failures to implement the procompetitive provisions of the 1996 Act have prevented

CLECs from expanding the reach of their digital networks, and have been the largest impediment to the deployment of advanced telecommunications capabilities. ILECs have failed to interconnect their data networks with CLEC data networks, have denied CLECs reasonable access to critical data facilities as unbundled UNEs, and have refused to combine data-related UNEs as required for CLECs to use them to deliver advanced services. ILEC failure to provide timely access to multiplexing, operations support systems, tandem trunking and loading, and testing of NXX codes also have proven to be major barriers to the expansion of CLEC data networks.

It is clear that further Commission action is required if the procompetitive provisions of Sections 251, 252 and 271 are to be implemented with respect to digital and broadband services. The Commission should therefore issue a declaratory ruling that the mandate of Section 706 can best be met by ensuring that the interconnection, collocation, unbundling and resale requirements of the 1996 Act are met in full. The Commission must also initiate proceedings which can help assure implementation of Sections 251-252 with respect to advanced services, such as the reopening of its CC Docket No. 91-141 to establish additional rules governing collocation arrangements.

Finally, the Commission must make certain that any action it may take under Section 706 is consistent with interconnection rules and policies adopted by State commissions. Section 706 jointly assigns jurisdiction to both the FCC and to State commissions. Since the passage of the Act, State commissions have been conducting nonstop proceedings to implement the pro-competitive mandate of the Act, and have established many innovative and effective rules and policies. These include State rules and policies governing the combination of UNEs, providing sub-loop unbundling, specifying alternative collocation arrangements, eliciting ILEC

commitments to provide digital unbundled loops, and establishing performance measurements and standards. All of these State initiatives are of vital importance to CLEC deployment of advanced services, and the Commission must take care to preserve them.

For all these reasons, ALTS respectfully urges the Commission to issue a declaratory ruling confirming that full implementation of Sections 251, 252 and 271 of the Act is the most effective means to promote the universal availability of advanced telecommunications capabilities under Section 706, and take all action required to implement the pro-competitive requirements of those sections with respect to digital and broadband telecommunications services.

RECEIVED

MAY 27 1998

Federal Communications Commission
Office of Secretary

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

In the Matter of	)
	)
Petition of the Association for Local Telecommunications Services (ALTS) for a Declaratory Ruling Establishing Conditions Necessary to Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996	)

To: The Commission

PETITION OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES FOR A DECLARATORY RULING

The Association for Local Telecommunications Services ("ALTS"), by its attorneys, and pursuant to Section 1.2 of the Commission's rules and Section 706 of the Telecommunications Act of 1996 ("1996 Act")[1] hereby petitions the Commission for a declaratory ruling that the pro-competitive provisions of Sections 251, 252 and 271 of the Communications Act apply to the deployment of advanced data networks, and that CLECs have the same rights with respect to access to advanced data networks as they have for conventional "POTS" and other telecommunications services.

[1] Pub. L. 104-104, Title VII, § 706 [hereinafter *"Section 706"*]. *See* 47 U.S.C. § 157 nt.

Introduction

Section 706(a) provides that the Commission shall "*encourage* the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."[2] America's need for advanced telecommunications services is acknowledged by everyone – the Commission, Congress, the Administration, incumbents, and new entrants. If unnecessary regulations discourage investments in advanced technologies, ALTS fully supports identifying and eliminating them. But the Commission should not "get the cart before the horse." Identifying regulations that are unnecessary and counter-productive for the deployment of advanced data services by incumbents cannot be done until requirements intended to assure the availability of advanced data services by new entrants have been fully implemented.

By this petition, ALTS identifies a series of actions that the Commission should take *now* to promote deployment of new technologies and the innovative services they make possible, including:

> *Issue a Declaratory Ruling*: the FCC should declare that the interconnection, collocation, unbundling and resale requirements of Sections 251, 252 and 271 of the 1996 Act apply fully to digital and broadband services and facilities. The Commission also should declare that the achievement of the goals of Section 706 of the Act can be accomplished only by ensuring that CLECs have the same rights under Sections 251, 252 and 271 for advanced telecommunications services as they have for conventional "POTS."
>
> *Fix Collocation*: Excessive rates and unreasonably burdensome terms and conditions for collocation have become important barriers to competitive entry into data services markets. The Commission should address this problem by exercising its authority under Section 251(c)(6)

[2] *Section 706(a)* (emphasis added).

of the 1996 Act to re-open CC Docket No. 91-141 and establish new rules and rates for collocation.

Confirm that Interconnection Applies to Digital Facilities and Services: Expansion of CLEC data networks is being delayed by ILEC contentions that new digital technologies and the services they make possible are exempt from the interconnection requirements of the 1996 Act. The Commission should resolve this unnecessary and burdensome dispute by clarifying that Sections 251-252 of the Act are fully applicable to digital and broadband facilities and services.

Confirm that Unbundling Applies to Digital Technology: CLECs are having extreme difficulty obtaining digital loops and functionality as unbundled network elements ("UNEs"). The Commission can jump-start expansion of CLEC data networks by clarifying that digital and broadband technology is subject to the unbundling requirements of the 1996 Act.

ALTS herein specifies the particular regulatory requirements pertaining to advanced data services that must in its view be operative and enforceable *prior* to conducting any inquiry into forbearance from other regulations. Heated competition in the data market holds the most promise for accelerating the deployment of advanced data services, and ALTS respectfully submits that the Commission can best "encourage" the deployment of advanced data services by doing all that it can to facilitate such open and unbridled competition.

Petitions recently filed by three regional Bell operating companies ("RBOCs") claim to offer accelerated deployment of advanced technologies in exchange for freedom from the pro-competitive safeguards of Sections 251-252 of the 1996 Act. These RBOC petitions raise the fundamental issue of whether the Commission should choose the model of competition or monopoly to best effectuate the goal of Section 706. Is it more likely that advanced telecommunications services will be deployed in an environment of robust competition between myriad service providers, or by deregulated monopoly suppliers? Should the Commission's primary concern be to promote the unbundling and interconnection required to create a

competitive local services market, or to accede to dominant carrier threats that they will refuse to deploy efficient new technologies in their networks unless they are largely deregulated? ALTS submits that the Commission should establish policies which foster competition in advanced services, and that vibrant competition is the proper antidote to such failures as may currently exist in the deployment of advanced technologies.

CLECs need to obtain the full measure of interconnection, collocation, UNEs and resale mandated by Sections 251-252 of the 1996 Act if they are to realize their full potential as competitors in advanced data services. Identifying the list of pro-competitive requirements that are necessary for effective competition in the advanced data services markets does not, of course, require the Commission to impose all of these requirements itself. In several instances the States have created or currently are creating these regulations, and in others incumbents have agreed to them in the context of Section 251 negotiations and arbitrations, and in seeking Section 271 approval from the States. The task for the Commission is first to create the list, and then to assume leadership on those items within its control, such as the collocation provisions of Section 251(c)(6).

Despite ILEC non-compliance with pro-competitive requirements of the 1996 Act, ALTS' CLEC members have responded to market demands by being extremely aggressive and innovative in deploying new technologies and introducing new services. CLECs were the first to introduce fiber ring networks and synchronous optical network ("SONET")-based services, and are at the forefront in deploying new digital subscriber line ("xDSL") technologies. Accepting the invitation and challenge of the 1996 Act, CLEC investors have risked enormous amounts of capital, and supported CLEC efforts to deploy these advanced services in hundreds of markets in only a few years' time.

Feeling the pressure of market forces for the first time in their existence, ILECs have begun to react to these actions taken by their new competitors. They have responded with both obstruction and construction: obstruction in the form of a near uniform and steadfast refusal to comply fully with the requirements of Sections 251, 252 and, where applicable, 271; and construction in the form of long overdue infrastructure investment. As numerous commenters observed in the RBOC Section 706 proceedings, ILECs finally are investing in xDSL and other advanced technologies, but only in *response* to competitive pressures brought on by the CLEC industry.[3] To increase and accelerate such investment, the Commission needs to ensure that a market structure which is best suited to breeding full and robust local competition is implemented fully.

ALTS submits that the goals of Section 706 can best be achieved by the Commission's grant of this Petition and issuance of a declaration that it intends for digital and broadband services to be fully subject to the local competition provisions of the 1996 Act. With local markets fully and irrevocably open to competition, ILECs will need not only respond to competition, they will need to anticipate it. ILECs will innovate and accelerate advanced telecommunications infrastructure deployment because they must do so to compete, not because they cut a deal to preserve their bottlenecks. In short, the best way for the Commission to ensure widespread and rapid deployment of advanced telecommunications infrastructure is to facilitate CLEC data competition by issuing a declaratory ruling that full implementation of Sections 251, 252 and, where applicable, 271 is necessary to achievement of the goals of Section 706.

---

[3] *See, e.g.,* Consolidated Opposition of ACSI, CC Docket Nos. 98-11, 98-26, 98-32 (RBOC Section 706 Petitions), at 14-15; Comments of Transwire Communications, LLC, CC Docket Nos. 98-11, 98-26, 98-32 (RBOC Section 706 Petitions), at 10-11; Sprint Comments, CC Docket Nos. 98-11, 98-26, 98-32 (RBOC Section 706 Petitions), at 10-11.

Correspondingly, the Commission should make clear that any action it might take in the future pursuant to Section 706 will be consistent with the procompetitive rules and policies adopted by the States. Section 706 jointly assigns jurisdiction to the FCC and its State commission counterparts. The Commission should clarify that it will not take unilateral action under Section 706 that will disrupt procompetitive State regulatory initiatives established under the Act or other sources of authority. Indeed, the Commission should consider incorporating many of the pro-competitive actions undertaken by State commissions into its own arsenal for enhancing competition in data and broadband services.

I. CLECs are bringing advanced telecommunications capability to the public today

Section 706 requires the Commission and State regulators to "encourage" the deployment of advanced telecommunications capability. CLECs need no such encouragement. From their beginnings, CLECs have viewed the replacement of antiquated ILEC analog facilities – and ILECs' reluctance to deploy advanced telecommunications technologies – as a market opportunity. In response to previously unmet consumer demand, CLECs designed their local networks to support the very advanced telecommunications services that Congress had in mind. Typically, CLECs enter a market by constructing SONET-based broadband fiber ring networks that connect to ILEC central offices, IXC points of presence ("POPs"), office buildings, office parks, apartment complexes, college campuses and other locations with substantial communications needs. These CLEC networks are capable of supporting the most advanced telecommunications applications available – including asynchronous transfer mode ("ATM") backbone technology, frame relay and xDSL – to provide a full compliment of digital voice, data and Internet access services.

Importantly, the reach of CLEC broadband networks has expanded exponentially. Prior to enactment of the 1996 Act, true facilities-based competitors existed in only a few markets, with only 21,414 route miles of fiber in place[4] reaching only 9,003 customer buildings.[5] Powered by the 1996 Act and market-opening initiatives thereunder, CLEC network expansion has been explosive. By year-end 1997, CLEC broadband networks covered 78,506 route miles (an increase of 110% over 1996)[6] and connected more than 60,400 buildings[7] in more than 300 markets.[8] To provide data services over these networks, CLECs have deployed 331 data switches across the country. As new-generation CLECs enter the market with xDSL technology and collocation-focused business plans, their goal is to be able to offer advanced DSL services to millions of Americans. Indeed, over 41 percent of the nation's basic trading areas ("BTAs") are served currently by CLEC data facilities,[9] including numerous small markets such as Anchorage, Bozeman, Fargo, Montgomery, Sioux Falls, Columbia, Appleton and Manchester. Customers in these "on net" locations have ready access to advanced telecommunications capabilities *today*, through the efforts of CLECs – not the traditional local telephone monopolies.

What remains to be done is to connect customer locations which are not "on net" to CLEC broadband backbone and distribution networks. Because CLECs' access to capital and

---

4 Connecticut Research, *7th Annual 1995-96 Local Telecommunications Competition,* at II-3 (figures for 12 month period ending July 1995).

5 *Id.*, at II-6.

6 New Paradigm Resources Group and Connecticut Research, *1998 Annual Report on Local Telecommunications Competition*, 9th Ed., at Table 4 (ch. 2, at 2).

7 *Id.*, at Table 9 (ch. 2, at 13).

8 *Id.*, at ch. 8 (Competitive Providers by State and City chart – 300 market figure arrived at by counting all markets listed with an "Opr." or operational status).

9 "1997 CLEC Data," The Strategist Group.

their ability to construct is not adequate to replicate the bottleneck facilities in the hands of incumbents, interconnection with ILEC digital and broadband facilities, unbundling of ILEC data networks, and resale of ILEC data services, pursuant to Sections 251 and 252, and where applicable, Section 271, remains critically important to this competitive carrier effort.

ILECs already have embarked on an ambitious rollout plan for xDSL and other advanced technologies, and the new services they make possible. For example, U S West has announced plans to roll-out advanced high speed copper loop technologies such as ADSL on an aggressive schedule to 5.5 million customers in forty cities throughout its fourteen state services territory.[10] Bell Atlantic recently announced plans to invest $1.5 billion in broadband networks in its service territory.[11] BellSouth has promised a 30 market roll-out of ADSL services.[12] And GTE recently filed a tariff proposing xDSL-based services in cities across its service territory.[13]

The ILEC xDSL deployment plans discussed above were made *without* any expectation that the ILECs would be exempt from the interconnection, collocation, unbundling and resale

---

10 Intermedia Communications Inc. Comments Opposing Deregulation of Incumbent Local Exchange Carrier Data Networks and Services, CC Docket Nos. 98-11, 98-26, 98-32 (RBOC Section 706 Petitions), at 18-19 (citing *U S West Brings Lightning Fast Internet Access to Homes in 40 Cities by June 1998*, rel. Jan. 16, 1998, http://www.uswest.com/com/insideusw/news/012998.html).

11 Consolidated Opposition of ACSI, CC Docket Nos. 98-11, 98-26, 98-32 (RBOC Section 706 Petitions), at 15; Bell Atlantic Selects Vendors for Data Network, *Comm. Daily*, Mar. 31, 1998, at 1-2.

12 BellSouth to Offer High-Speed Internet Access Service, *New York Times*, May 20, 1998 at D2.

13 ALTS notes that it has opposed this GTE tariff filing. Association for Local Telecommunications Services Petition to Reject or to Suspend and Investigate, filed in opposition to GTOC Trans. No. 1148 (May 22, 1998). As the ALTS filing discusses in detail, ALTS opposes GTE's filing because it is a transparent attempt on GTE's part to circumvent the finding of this Commission that access charges may not be applied to Internet access calls. GTE's filing also is an attempt to circumvent rulings by 17 state public utility commissions that GTE and other ILECs must pay mutual compensation for local calls to Internet service providers terminated on CLEC networks. ALTS does not otherwise oppose GTE's deployment of xDSL technology, and in fact, welcomes this development.

requirements of Section 251(c). These investments were made in response to consumer demand and the fact that ILEC competitors have demonstrated a willingness and ability to meet consumer demand where ILECs fail to do so. Both the existence of actual competition where CLECs are present, *and* the threat of potential competition where they are not, are driving ILECs to upgrade their networks. In short, ILECs are now feeling the same market pressures which have driven the CLEC industry all along, and they are beginning to respond to it.

It is critical to the achievement of the objectives of Section 706 that CLECs obtain access to xDSL and other broadband facilities deployed by ILECs on an unbundled and nondiscriminatory basis. CLECs are aggressively providing digital services throughout the nation using xDSL and other technologies.[14] However, as detailed hereafter, their efforts to expand these offerings have been impeded greatly by ILEC refusals to provide interconnection to xDSL technology on reasonable terms.

Since it is the threat of competition, and *not* the promise of deregulation, which already has prompted ILECs to accelerate deployment of advanced technologies, ALTS submits that the Commission should focus squarely on what must be done to preserve and enhance the level of local competition – particularly the areas which will speed deployment of advanced data services. As discussed below, many obstacles remain on the road to true local competition. The same ILECs that seek regulatory relief under Section 706 are forestalling the full implementation of Sections 251 and 252 of the Act with respect to advanced telecommunications services. Yet, the best way to achieve the goals of Section 706 is to assure full implementation of Sections 251, 252 and 271 of the Act for these very services and allow the resulting competitive forces to do their work.

---

14 *E.g.,* Comments of the DSL Access Telecommunications Alliance ("DATA"), CC Docket Nos. 98-11, 98-26, 98-32 (RBOC Section 706 Petitions), at 4-7.

The requirements of the 1996 Act should be underscored, not scaled back. Indeed, given the ILECs' lethargic pace in actually deploying advanced technologies in the past, the Commission's primary goal should be to ensure that as many CLECs as possible are able to provide their data services in local markets without restriction. Therefore, ALTS requests that the Commission issue a declaratory ruling reaffirming the rights of CLECs providing data services to interconnect with ILECs pursuant to Sections 251-252 of the 1996 Act, and making clear that *full* and *irrevocable* implementation of these requirements is a necessary condition to any deregulatory relief under Section 706.

II. FULL IMPLEMENTATION OF ILEC INTERCONNECTION, COLLOCATION, UNBUNDLING AND RESALE OBLIGATIONS WITH RESPECT TO DIGITAL AND BROADBAND NETWORKS IS REQUIRED TO ACHIEVE THE GOAL OF SECTION 706

Section 706 requires that the Commission, in conjunction with its State counterparts, "encourage" the deployment of advanced telecommunications infrastructure. Specifically, Section 706(a) provides that:

> The Commission and each State commission with regulatory jurisdiction over telecommunications services *shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans* (including, in particular, elementary and secondary schools and classrooms) *by utilizing, in a manner consistent with the public interest, convenience, and necessity,* price cap regulation, regulatory forbearance, *measures that promote competition in the local telecommunications market,* or other regulating methods that remove barriers to infrastructure investment.[15]

[15] *Section 706(a)* (emphasis added).

In short, Congress has charged the Commission with establishing and maintaining a regulatory environment best suited to maximizing incentives for investment in and deployment of advanced telecommunications technologies.

ALTS respectfully submits that the optimal regulatory environment for encouraging the deployment of advanced telecommunications infrastructure is one that subjects RBOCs and other ILECs to – and does not shield them from – full competition in all service markets. To accomplish this, the Commission must reaffirm and declare that ILECs are *not* exempt from the obligations contained in or otherwise outside the scope of Sections 251, 252, and, in the case of the RBOCs, 271, with respect to digital and broadband services.

A. The Unavailability of Data Interconnection, Collocation, Unbundling and Resale Under the 1996 Act are the Largest Impediment to the Deployment of Advanced Telecommunications Capabilities

As explained above, the surest way to encourage deployment of advanced telecommunications services universally is to ensure that Sections 251, 252 and, where applicable, 271 of the 1996 Act are able to do their work. The requirements of these sections are the cornerstone of local competition. When fully implemented, these requirements will ensure a level playing field in the local market that will enable CLECs to extend their advanced services to reach many more consumers. In turn, this will spur ILECs to accelerate their own advanced network deployment. But ILECs today are doing all they can to forestall the workings of Sections 251 and 252. At every juncture – the courts, the negotiating table, or the central office, ILECs are making local interconnection as difficult, expensive and slow as conceivably possible. Until their foot-dragging on implementation of the 1996 Act's interconnection, collocation, unbundling and resale requirements ends, ALTS submits that ILEC regulatory relief would be inconsistent with the goals of Section 706 and should be placed strictly "off-limits."

1. The Commission Should Clarify that CLECs Must be Allowed to Interconnect For Data Services

The ability of CLECs to interconnect with existing local data networks and facilities is essential to the widespread deployment of broadband capabilities. The ILECs, however, are refusing CLEC attempts to interconnect with existing ILEC local data networks and facilities at the same time that hey are seeking Section 706 relief for their next generation data networks. Invoking a laundry list of pretextual explanations for their refusals – *i.e.,* "interconnection" does not encompass data services, frame relay is not an "exchange service," and existing interconnection agreements do not cover data facilities – ILECs are attempting to rewrite the 1996 Act to exclude data services. This pattern of anticompetitive conduct is frustrating CLEC attempts to deploy and expand their own local data offerings.

Ameritech, for example, refused last year even to negotiate frame relay interconnection arrangements with one major CLEC. Ameritech claimed that frame relay services are not "exchange services" as defined by the 1996 Act and, thus, are not subject to the requirements of Section 251. Only after the CLEC sought arbitration of the issue in three states,[16] *and* an Illinois Commerce Commission ALJ issued an proposed decision rejecting Ameritech's position,[17] did Ameritech agree to interconnect its frame relay network with the CLEC's.

---

16 Illinois Commerce Commission, *Petition by Intermedia Communications Inc. for Arbitration with Ameritech-Illinois Pursuant to the Telecommunications Act of 1996*, Ill. CC Docket No. 87-AB-002 [hereinafter "*Ill. CC Intermedia/Ameritech Arbitration*"]; Indiana Utility Regulatory Commission, *Petition by Intermedia Communications Inc., for Arbitration with Ameritech-Indiana Pursuant to the Telecommunications Act of 1996*, In. URC Cause No. 40787-INT-01; Ohio Public Utilities Commission, *Petition by Intermedia Communications Inc. for Arbitration with Ameritech-Ohio Pursuant to the Telecommunications Act of 1996,* Oh. PUC Case No. 97-285-TP-ARB.

17 *Ill. CC Intermedia/Ameritech Arbitration,* Hearing Examiner's Proposed Arbitration Decision, at 5-6.

The same ILEC intransigence is encountered when CLECs attempt to order high speed data loops on an unbundled basis. CLECs have largely been unable to obtain 56 and 64 kbps data loops as UNEs, despite repeated attempts over the past year. SBC, for example, argues that its 56 kbps data service is an "access service," rather than an "exchange service," and contends that this somehow insulates it from providing 56 kbps data loops as UNEs.[18] As recently as last month, SBC's witness in the Texas PUC's Section 271 proceedings testified that "[5]6 and 64 kbps loops are not among the loops that have been set up [as UNEs] and approved in contracts and prices established for [sic]."[19]

SBC is not alone in its stonewalling. Bell Atlantic also has refused to provide 56 kbps loops to CLECs as UNEs, despite that fact that it provides 56 kbps digital data services carried over identical loops to its retail customers. During Section 271 proceedings before the New York PSC, for example, a Bell Atlantic witness agreed that 56 kbps loops are analogous to "private line design services that are provisioned in the retail sector,"[20] but restated its refusal to provide the same loops to CLECs.

---

18 Texas Public Utility Commission, *Commission Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market, Hearing on the Merits – Transcript,* ¶¶ 775-782, 812-820 (SBC acknowledges that "[5]6 and 64 kbps loops are not among the loops that have been set up [as UNEs]," but admits that it provides similar ISDN and DS1 loops both as UNEs and as access services) (Apr. 21-25, 1998) [hereinafter "*Tex. PUC Section 271 Proceeding Tr.*"]; *see also* Letter from Teofilo (Ted) Moreno, Account Manager, Southwestern Bell Telephone, to Julia Strow, Intermedia Communications Inc., Mar. 6, 1998, at 2 ("On January 21, 1998, I advised you, via electronic mail (e-mail), that the 56-64 Kbps digital loop(s) which ICI wanted to request under the BFR process, was not a Network Element(s) offered as UNEs; as such services were classified as an Access Service under SWBT's FCC Number 73 Tariff. This classification would disqualify such digital loops as Network Elements that are required to be provided, by SWBT, under the Act.").

19 *Tex. PUC Section 271 Proceeding Tr.*, ¶ 775.

20 Minutes of New York State Public Service Commission Technical Conference, *In the Matter of Petition of New York Telephone Company for Approval of Its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996 and Draft Filing of Petition for InterLATA Entry*

(continued)

As described in the next section, ILEC attempts to forestall data interconnection now have spilled over into next-generation data facilities as well, as ILECs are now refusing to provide xDSL functionality as UNEs.

Interconnection of competing service providers is equally important to the development of data competition as it has been to competition in local voice services. Continued difficulty in obtaining data interconnection with ILECs at cost-based rates is sure to impede both the scope and scale of CLEC data services. ALTS asks that the Commission resolve this dilemma by stating unequivocally that CLECs have a right to request interconnection with ILECs for data services pursuant to Sections 251-252 which is at least equivalent to the interconnection provided for voice services.[21]

2. CLECs Must Have Unbundled Access to Advanced Data Facilities

In the apparent hope of favorable action on pending Section 706 petitions, ILECs already are stonewalling State commission attempts to require unbundling of xDSL facilities. Each pending RBOC Section 706 petition asks the Commission to forbear from imposing the interconnection and unbundling requirements of Sections 251, 252 and 271 on xDSL and other new data technologies. The fact that RBOCs are seeking such forbearance necessarily implies that, absent deregulatory action by the Commission, these new technologies *are* subject to the procompetitive requirements of the 1996 Act. Yet in proceedings conducted by State commissions across the country, RBOCs contend that they are not obligated to provide

---

Pursuant to Section 271 of the Telecommunications Act of 1996, NY PSC Case No. 97-C-0271, at 1579 (Dec. 3-5, 1997) [hereinafter "*NY PSC Section 271 Proceeding Min.*"].

21 In requesting clarifications of interconnection rights for data services pursuant to Sections 251-252, ALTS in no way seeks a waiver of any similar requirements imposed on incumbents pursuant to the Commission's Computer III rules.

interconnection to xDSL equipment, or to offer xDSL functionalities as UNEs.

Witnesses representing Bell Atlantic in New York, SBC in Texas and BellSouth in Tennessee all have stated on the record that they will not provision unbundled loops that contain xDSL electronics to CLECs.[22] All three RBOCs have stated that they will provide CLECs only with conditioned copper wire, even if it requires construction of new loop facilities – with the CLECs bearing the full cost of the special construction – rather than provide access to a circuit that employs xDSL electronics.[23]

In recent SBC Section 271 proceedings in Texas, for example, SBC's witness was asked directly whether CLECs which succeed in winning existing SBC customers served by HDSL loops could order the same HDSL loop as a UNE. SBC's answer was an emphatic "no," claiming that existing interconnection agreements do not cover xDSL functionality. SBC stated that it:

> [w]ould be a matter of negotiation for something that is currently not in the [interconnection agreement], for an entirely new service that's not there, because no we're no longer talking about a loop conditioned for HDSL or ADSL, but for the electronics and all the stuff that goes with it. So it would be a negotiation process to determine . . . the appropriate rates, terms and conditions.[24]

---

22 For example, BellSouth's proposed statement of generally available terms and conditions ("SGAT") in Tennessee lists the availability of HDSL and ADSL loops as unbundled network elements. *Tenn. RA Section 271 Proceeding Tr.*, at v. II-E, p. 266. These loops, however, do not contain any of the electronics that are necessary to provide DSL service over these facilities. *Id.* at. 269. Yet, without the necessary electronics, it would be difficult, if not impossible, for competing carriers to provide HDSL and ADSL service utilizing the unbundled ADSL/HDSL-capable loops.

23 *See, e.g., NY PSC Section 271 Proceeding Min.*, at 1405.

24 *Tex. PUC Section 271 Proceeding Tr.*, ¶¶ 780-81.

Therefore, unless the CLEC agrees to SBC's price, SBC strips the *existing* xDSL equipment off the loop before providing it to the CLEC as a UNE.[25] ALTS further illustrates and discusses this issue in *Attachment A*, which is appended to this petition.

Predictably, SBC also contends that xDSL functionality is not a UNE, and, thus, the cost-based pricing standards of Sections 251-252 do not apply. This approach, of course, is patently unreasonable. It imposes exorbitant and unreasonable costs on both ILECs and CLECs. The stripping of existing loops or the construction of new copper loops for the sole purpose of avoiding interconnection with an ILEC's equipment cannot be justified on technical, economic or policy grounds.

The ILEC position presents an even more onerous problem for CLECs looking to purchase unbundled loops over 18 kilofeet. The refusal to permit interconnection with xDSL equipment effectively prevents CLECs from providing xDSL-based services on a substantial number of loops, even if the CLEC provides its own terminating electronics. This is because xDSL-based services are distance limited – many forms of xDSL technology cannot be used in loops over 18,000 feet long.[26] ILECs can circumvent this limitation by connecting xDSL or similar electronics at the end of the loop in the end office and at a mid-point along the loop to generate the signal. By refusing to provide CLECs with loops that contain such electronics, ILECs prevent CLECs from using the functionality of the mid-loop electronics. This effectively precludes CLECs from providing xDSL service over unbundled ILEC loops, no matter what kind of electronics a CLEC attaches to the end of the loop at the ILEC end office. ALTS further illustrates and explains this issue in *Attachment A*.

---

25 *Id.* ¶ 782.

26 For some xDSL applications, the distance limitation is an even shorter 12,000 feet.

Similarly, xDSL does not work over the sizeable proportion of loops equipped with load coils or that have excessive bridge taps. Yet ILECs have uniformly refused to disable such load coils and bridge taps in response to CLEC requests, or even to provide pre-ordering processes which identify for CLECs which loops are encumbered in this way.[27] The importance of having access to preordering functions that identify xDSL-capable loops is further discussed in *Attachment A*.

Of course, by taking these positions, ILECs appear to be pre-judging the outcome of Commission action on petitions for deregulation under Section 706. In the hope that Section 706 relief ultimately will excuse their noncompliance, they are unilaterally refusing to comply with Sections 251-252 of the 1996 Act. ALTS requests that the Commission send a clear signal that ILEC hopes of using Section 706 to void their unbundling obligations for advanced technologies are misplaced, and should not be relied upon to delay providing unbundled access to xDSL functionalities.

3. CLECs Must Receive Access to Multiplexing Equipment at a Much Quicker Pace

Similar to the trunking delays cited above, CLECs often experience significant delays by ILECs in the deployment of proper multiplexing equipment used in conjunction with collocation to deliver advanced telecommunications services to customers. CLECs routinely face six to ten month delays by ILECs in installation and operational readiness of multiplexing equipment, and such delays often are well past confirmed service availability dates or commitments made. For example, in Boise, Idaho, one CLEC's network deployment was delayed more than ten months due to U S West's failure to deliver multiplexing within a reasonable and committed time-frame.

[27] AT&T Comments, CC Docket Nos. 98-11, 98-26, 98-32 (RBOC Section 706 Petitions), at 19 n.37.