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Before the
Federal Communications Commission
Washington, D.C. 20554

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JUN 1 - 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Competitive Telecommunications Association, Florida Competitive Carriers Association, and Southeastern Competitive Carriers Association	)	CC Docket No. 98-39
	)	
Petition to Define Certain Incumbent LEC Affiliates as Successors, Assigns, or Comparable Carriers Under Section 251(h) of the Communications Act	)	

REPLY COMMENTS OF ALLTEL COMMUNICATIONS, INC.

ALLTEL Communications, Inc. ("ALLTEL")[1] hereby submits its reply comments in the above-captioned matter (the "Comptel Petition").[2] In support thereof, the following is set forth.

ALLTEL concurs with ITTA's comments. In particular, ALLTEL notes that the Comptel Petition sweeps with too broad a stroke. It cuts across the spectrum of incumbent local exchange carriers and encompasses a multitude of factual situations

[1] ALLTEL Communications, Inc. is the subsidiary of ALLTEL Corporation through which CMRS, long distance, and other competitive telecommunications services are provided to subscribers. Other affiliates and subsidiaries of ALLTEL Corporation provide wireline local exchange service in various states. ALLTEL Corporation's wireline affiliates meet the definition of both a company with less than 2% of the nation's access lines and a rural telephone company for purposes of Section 251(f) of the Communications Act.

[2] The date for filing replies in this matter was extended to June 1, 1998 by order dated May 8, 1998 of the Chief, Policy and Program Planning Division, Common Carrier Bureau. See, Order Extending Time to File Reply Comments, DA 98-867 (released May 8, 1998).

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within the different iterations of the relief requested.[3] Although some parties acknowledge the different status of small, rural, and mid-size companies,[4] the fact of the matter remains that there is currently no factual predicate or record which justifies the relief sought or the imposition of such draconian new rules on any small, rural or mid-sized ILEC affiliated CLEC so long as it continues to abide by the requirements of the Telecommunications Act of 1996 and the Commission's recent orders.[5] This is particularly true in the case of smaller ILECs because they lack the motives to engage in the alleged conduct upon which Comptel bases its requests and do not possess the regional market power or economies of scale of large ILECs [6] (or large IXCs for that matter.) Rather, these companies are, as noted by Commissioner Powell, the true engine of competition seeking to deliver new infrastructure and services in competition with the RBOCs and other CLECs alike. Aside from perpetuating "Big Guy Myopia", the Comptel Petition stands in stark contrast to the notion that the benefits of allowing mid-sized companies to provide new, competitive services outweighs the largely

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[3] See Comments of Independent Telephone & Telecommunications Alliance ("ITTA") at page 3; Ameritech Corporation Opposition at n. 1. For example, and as noted by Ameritech, Comptel seeks to obtain relief in situations ranging from any transfer of resources from an ILEC to its affiliated CLEC to such transfers involving only personnel, common financial resources and brand name.

[4] See in this connection the Comments of KMC Telecom, Inc. at page 2 (".... Commission action is necessary to prevent the major LECs -- the BOCs, GTE and Sprint/United -- from evading their section 251(c) statutory obligations....")

[5] Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, 11 FCC Rcd 21905 (1996) (the "Non-Accounting Safeguards Order.")

[6] See ITTA Comments at pages 3-6.

unproven potential for anticompetitive conduct. [7] Viewed in the context of their application to small, rural and mid-size companies, the situations presented by the Comptel Petition and those supporting it range from the purely theoretical to the paranoid.[8]

The relief sought by Comptel and its supporters would effectively derail the efforts of smaller ILECs to engage in competitive activities both within and without their service territories on a unified and converged basis through a competitive CLEC affiliate. The net result would be to deprive customers of the opportunities for one-stop shopping, new service and pricing packages, and the infrastructure supporting new services and technologies.

Neither the Commission's rules nor the Communications Act requires that an entire corporate family be hamstrung in the competitive marketplace by the mere presence of an ILEC affiliate. The underlying policy of the 1996 Act is to promote competition, not for its own sake or the benefit of a particular class of competitors, but

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[7] See generally, "Working Toward Independents' Day: Mid-Size Carriers as the Special Forces of Deregulation," Remarks of Michael K. Powell, Commissioner, Federal Communications Commission, before the Independent Telephone Pioneer Association, Washington, D.C., May 7, 1998.

[8] See in this latter connection the Comments in Support by the Association For Local Telecommunications Services ("ALTS") at pages 5- 6. ("Where the regulated incumbent is owned by an unregulated holding company, that holding company can provide an instant "AAA" credit rating to such a company, as well as secret orders to the regulated affiliate to give its CLEC as much undetected preferential treatment as possible."(emphasis added). The upshot of this bare and objectionable allegation is to accuse ILECs of blatantly violating the law. No evidence of "secret orders" or other such clearly illegal activity by any ILEC, let alone a mid-size company, has been proffered by ALTS. As noted in its comments, neither ITTA nor its member companies condone any unlawful evasion of legal duties arising under section 251(c) of the Act. (ITTA Comments at page 3.) Further, and in view of the merger and acquisition activity in the CLEC arena, ALTS does not indicate why the alleged evil of an unregulated holding company's credit rating does not apply with equal force when a non-ILEC affiliated CLEC is acquired by a large IXC.

rather for the benefit of consumers. To this end, the Act, as noted by many parties,[9] provides that bottleneck local exchange assets be made available to competitors either through the purchase of unbundled network elements ("UBEs") or through resale subject to section 251(c). There is no restriction on the ability of an ILEC's CLEC affiliate from obtaining UBEs or resold services so long as it obtains them on the same basis as any other competitor. Nor is there any obligation on a CLEC affiliate to convey to a competitor those network elements which the competitor could obtain from the ILEC directly. In such situations, the ILEC affiliated CLEC is neither a successor or assignee of the ILEC, but rather simply a purchaser similarly situated to other competitors in the market. This basic notion is supported by the Commission's decision in the Non-Accounting Safeguards Order that an ILEC affiliate could be considered an assignee only if the ILEC transferred to it ownership of network elements subject to the requirements of section 251(c).[10]

In ALLTEL's view, this approach applies as well where a corporate parent funds the acquisition of facilities by the CLEC affiliate. So long as these offerings are financed and controlled independently of the ILEC and they do not encompass bottleneck facilities, no section 251(c) obligations should attach. Those arguing otherwise continue to seek little more than a free ride by forcing ILEC affiliates to provide them with new service and technologies constructed in a competitive environment and apart from the existing ILEC network. In this connection, it should

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[9] See for example, Ameritech Corporation Opposition at pages 3-4.

[10] See for example, Ameritech Corporation Opposition at 6-9.

be noted the incentive to construct facilities-based competitive networks was every bit as much a basic policy tenet of the 1996 Act as was opening bottleneck local exchange facilities to competitors. And, if the demand for new technology and service offerings is to be met, carriers must be able to reap the benefit of their investment in competitive network infrastructure without having to turn the benefit of that investment over to the competition.

As noted by ITTA, the Comptel Petition would unduly restrict the mid-size companies inasmuch as they do not serve regions, but rather, small discrete local exchange service territories. These territories do not coincide with an affiliated CLECs' service area which often extends into the adjoining territory of a larger regional ILEC.[11] Forcing the CLEC affiliate of such companies to open its network not only contravenes the statutory rights of the small, rural and mid-sized ILECs[12], but subjects them to the same competitive disadvantages section 251(f) was intended to ameliorate. As noted by Chairman Kennard, small ILECs with rural service territories are disproportionately impacted when a major multi-line subscriber is lost.[13] Were the relief sought in the Comptel Petition to be granted, a competitor would have a distinct

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[11] See ITTA Comments at page 5. In this connection, ALLTEL notes that for mid-sized companies the distinction of "in-region services" vs. "out of region services" is of no value.

[12] See ITTA Comments at page 6. ALLTEL concurs with ITTA that the Commission cannot by rule limit the relief provided for mid-sized companies under section 251(f), yet such would be the result were the Comptel petition to be granted. The 1996 Act explicitly acknowledged the different competitive status of small, rural and mid-size companies; the judgment of the Congress in that regard must be preserved.

[13] See generally, "Keeping America Connected" Remarks by William Kennard, Chairman, Federal Communications Commission to the Organization for the Promotion and Advancement of Small Telephone Companies, January 12, 1998.

competitive advantage over an ILEC affiliated CLEC, which would be limited in its competitive response by the new constraints Comptel seeks to impose.

ALLTEL shares Commissioner Powell's and ITTA's preference for policing conduct and making regulatory decisions on the basis of real facts and not speculative dangers.[14] The Commission is currently vested with ample power to police interconnection and resale abuses and should do so on a case by case basis[15] rather than by broad declarations or rules.

In conclusion, in ALLTEL's view, if facilities based competition is to emerge, mid-sized companies must be liberated from onerous regulation and not further subjugated by it as the Comptel Petition urges. While parties may continue to ask the rhetorical question as to why an ILEC needs an affiliate to provide service,[16] the answer for small, rural and mid-sized companies is obvious: to compete.

Respectfully submitted,

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[14] See ITTA Comments at page 9, citing "Technology and Regulatory Thinking - Albert Einstein's Warning," Remarks of Michael K. Powell, Commissioner, Federal Communications Commission, before the Legg Mason Investor Workshop, Washington, D.C. March 13, 1998 at pages 5, 6.

[15] See ITTA Comments at pages 8-9; USTA Comments at page 10.

[16] See Comments of Worldcom, Inc. at page 3.

CERTIFICATE OF SERVICE

I, Glenn S. Rabin, do certify that on June 1, 1998 copies of the foregoing Reply Comments of ALLTEL Communications, Inc. were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

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