

ORIGINAL

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

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JUN 18 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

CC Docket No. 98-78

**COMMENTS OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"),¹ through undersigned counsel and pursuant to *Public Notice*, DA 98-1019 (released June 3, 1998), hereby supports the

¹ A national trade association, TRA represents more than 650 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications. TRA's resale carrier members, recognizing the need to provide their customers with a full range of products and services, have been in the vanguard of competitive providers seeking to enter the local telecommunications market, as well as to broaden their service portfolios to include advanced telecommunications services. A year ago, a third of TRA's resale carrier members reported that they were providing, or attempting to provide, competitive local exchange service, while an additional third reported plans to enter the local market within twelve months. At the same time, roughly a quarter of TRA's resale carrier members reported that they were providing digital and broadband services. While the vast majority of TRA's resale carrier members continue to provide service, at least in part, on a non-facilities basis, half are at least partially switched-base and roughly a third are making some use of unbundled network elements in their provision of local telecommunications service. A majority of TRA's resale carrier members provide telecommunications services to residential, as well as business customers; indeed, more than a fifth of the local service customers served by TRA's resale carrier members are residential users. Sources: Telecommunications Resellers Association, "1997 Reseller Membership Survey and Statistics," (October, 1997); Telecommunications Resellers Association, "Member Survey of Local Competition," pp. 2, 4 (April, 1998).

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Petition for Declaratory Ruling ("Petition") filed by the Association for Local Telecommunications Services ("ALTS") in the captioned proceeding on May 27, 1998. In its Petition, ALTS seeks a declaratory ruling that "the mandate of Section 706 of the 1996 Act, at this time, is best fulfilled by rules and policies that ensure the full and irrevocable implementation of the procompetitive provisions of Sections 251, 252 and 271."² Emphasizing the "[e]xcessive rates and unreasonably burdensome terms and conditions for collocation have become important barriers to competitive entry into data services markets," ALTS further urges the Commission to "exercis[e] 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."³ TRA agrees wholeheartedly with ALTS that "full implementation of the interconnection, collocation, unbundling and resale provisions of Sections 251, 252 and 271 of the 1996 Act are the fastest and surest means of achieving the goal of promoting the deployment of advanced telecommunications capability to all Americans, as mandated by Section 706,"⁴ and, accordingly, strongly urges the Commission to grant the ALTS Petition and take the actions recommended therein by ALTS to compel incumbent local exchange carriers ("LECs") to satisfy their interconnection, collocation, unbundling and resale obligations with respect to digital and broadband facilities and services.

Section 706 of the Telecommunications Act of 1996 ("Telecom Act") directs the Commission "to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."⁵ The question is how best to satisfy this statutory

² Petition at 46.

³ Id.

⁴ Id. at 45.

⁵ Pub. L. No. 104-104, 110 Stat. 56, § 706(a) (1996); 47 U.S.C. § 157 note.

mandate. Congress has empowered the Commission to "utiliz[e] 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 . . . [to] remove barriers to infrastructure investment."⁶ A number of Bell Operating Companies ("BOCs"),⁷ and organizations advocating on their behalf,⁸ have seized upon the reference to "regulatory forbearance," and argued that the Commission could best satisfy its Section 706 obligation by exempting digital and broadband facilities and services from Telecom Act provisions designed to compel/incent incumbent LECs to open the local exchange/exchange access market to competition -- principally Sections 251(c), 271 and 272.⁹ TRA agrees with ALTS that the better, indeed, the only long term, answer lies not in the perpetuation of monopoly, but in facilitating the emergence of alternative sources of supply and the market pressures competitive providers create.

As TRA emphasized in opposing the BOC Forbearance Petitions and the Alliance Petition, the BOCs' and other incumbent LECs' track records in deploying digital and broadband services has not been impressive. Deployment of Integrated Services Digital Network ("ISDN") by

⁶ Id.

⁷ See Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-11 (filed January 26, 1998) ("Bell Atlantic Petition"), Petition of US WEST Communications, Inc. for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-26 (filed February 25, 1998) ("U S WEST Petition"), Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Capability, CC Docket No. 98-32 (filed March 5, 1998) ("Ameritech Petition"), Petition of Southwestern Bell Telephone Company/Pacific Bell/Nevada Bell, CC Docket No. 98-91 (filed June 9, 1998) ("Southwestern Bell Petition") (collectively, the "BOC Forbearance Petitions").

⁸ Petition of the Alliance for Public Technology Requesting Issuance of Notice and Inquiry and Notice of Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act, CCB/CPD 98-15, RM No. 9244 (Feb. 18, 1998) (the "Alliance Petition").

⁹ 47 U.S.C. §§ 251(c), 271 & 272.

the BOCs and other incumbent LECs has not only been slow and, until recently, geographically and demographically limited, but has proven to be exceedingly expensive for consumers. The technologies underlying such advanced telecommunications services as Digital Subscriber Line (“xDSL”) service have been available for three decades. Yet it was not until competitors began entering the local market that BOCs and other incumbent LECs finally began making such services broadly available to consumers; indeed, no incumbent LEC offered xDSL service prior to last year.¹⁰ The aggressive service deployment schedules, ambitious network construction plans and substantial facilities investment commitments announced by various BOCs and other incumbent LECs for advanced technologies and services have all post-dated market entry by competitive providers into the local market. In other words, actual and potential competition is driving, and will continue to drive, the deployment of advanced telecommunications capabilities. As succinctly stated by ALTS, “[h]eated competition in the data market holds the most promise for accelerating the deployment of advanced data services . . . [T]he Commission can best ‘encourage’ the deployment of advanced data services by doing all it can to facilitate such open and unbridled competition.”¹¹

TRA submits that ALTS has it right. Regulatory efforts should be focused on fostering local competition through elimination of the many remaining obstacles to the competitive

¹⁰ See, e.g., Bell Atlantic Petition at Att. 2, p. 12 (“The next generation digital technology is Digital Subscriber Line (xDSL). *With appropriate relief*, Bell Atlantic plans to deploy a variation of this technology -- asymmetric DSL, or ADSL -- that will offer speeds up to six megabits per second (Mbps) to its customers. . . . Bell Atlantic has completed *market trials* in Northern Virginia, and plans on rolling out commercial ADSL service to residential customers *beginning in mid-1998*. Bell Atlantic is also looking to deploy other varieties of xDSL *in the future*.” (emphasis added, footnotes omitted); U S WEST Petition at 7 (“U S WEST recently announced the most aggressive roll-out of digital subscriber line services of any carrier in the country. . . . Sales of these services will begin *in April*.” (emphasis added)); Ameritech Petition at 30 (“Ameritech has also *recently* entered the retail data telecommunications marketplace -- although in a limited way -- with sophisticated new capabilities such as ADSL.” (emphasis added)).

¹¹ Petition at 3.

provision of local exchange/exchange access service, thereby generating the market forces that will ensure the broad availability of advanced telecommunications services. As the Commission has long recognized, competition, among other things, "promot[es] innovation and the efficient deployment and use of telecommunications facilities, . . . generat[es] increased research and development, and . . . positively affect[s] the growth of the market for telecommunications services."¹² As Congress declared, the Telecomm Act was intended to "provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans *by opening all telecommunications markets to competition.*"¹³ Thus, Congress "enacted . . . sweeping reforms" to "open local telecommunications markets to previously precluded competitors"¹⁴ in order to facilitate the competitive provision of not only basic, but advanced, telecommunications services.

While competitive LECs have prompted and driven the increasing availability of advanced communications services, their efforts in this regard are being hampered by incumbent LEC obstructionists tactics. If competitive LECs are to continue to provide, and to expand their provision of, advanced telecommunications services, they must have unbundled access to the network elements necessary to do so, as well as unrestricted access at wholesale rates to the advanced services provided by incumbent LECs. As the Commission has recognized, "the ability

¹² Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, 11 FCC Rcd. 18455, ¶ 10 (1996), *pet. for recon pending, pet. for rev pending sub nom. Cellnet Comm. v. FCC*, Case No. 96-4022 (6th Cir. Sept. 18, 1996).

¹³ S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 113 (1996) ("Joint Explanatory Statement") (emphasis added).

¹⁴ Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan (Memorandum Opinion and Order), 12 FCC Rcd. 20543, ¶ 13 (1997).

of new entrants to use unbundled network elements is integral to achieving Congress' objective of promoting competition in the local telecommunications market."¹⁵ "Resale," as the Commission has noted, "will . . . be an important entry strategy for small businesses that may lack capital to compete in the local exchange market by purchasing unbundled network elements."¹⁶

TRA agrees with ALTS that if a wide array of advanced telecommunications capabilities are to be made broadly available at affordable rates in the foreseeable future, strong Commission action is required now. As recommended by ALTS, the Commission should declare 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."¹⁷ Moreover, the Commission should address specific impediments to provision by competitive LECs of advanced telecommunications services by clarifying the nature and extent of incumbent LEC obligations under Section 251(c) as they apply to advanced telecommunications services.

To this end, the Commission should confirm that the Telecom Act's resale requirements apply with full force to advanced telecommunications services. Like all other telecommunications services, advanced telecommunications services offered at retail by incumbent

¹⁵ Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina (Memorandum Opinion and Order), CC Docket No. 97-208, FCC 97-418, ¶ 195 (released Dec. 24, 1997), *appeal pending sub nom. BellSouth Corporation v. FCC*, Case No. 98-1019 (D.C. Cir. Jan. 13, 1998).

¹⁶ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499, ¶ 907 (1996), *recon.* 11 FCC Rcd. 13042 (1996), *further recon.* 11 FCC Rcd. 19738 (1996), *further recon.*, FCC 97-295 (Oct. 2, 1997), *aff'd in part, vacated in part sub. nom. Iowa Utilities Board v. FCC*, 120 F.3d 753 (1997), *modified* 120 F.3d 820 (8th Cir. 1997), *cert. granted sub. nom. AT&T Corp. v. Iowa Utilities Board* (Nov. 17, 1997), *pet. for rev. pending sub. nom., Southwestern Bell Telephone Co. v. FCC*, Case No. 97-3389 (Sept. 5, 1997), *pet. for cert. pending.*

¹⁷ Petition at iii.

LECs must be made available for resale at wholesale rates in accordance with Section 251(c)(4) of the Telecomm Act.¹⁸ Advanced telecommunications services meet the statutory definition of “telecommunications service.”¹⁹ As the Commission has recently made clear, the provision of raw transmission capacity, even if used to provide an information services, constitutes the provision of a “telecommunications service.”²⁰ And the Commission has described “ADSL (Asynchronous Digital Subscriber Line) . . . [as] a transmission path that facilitates 6 Mbps digital signal downstream and 640 kbps digital signal upstream, while simultaneously carrying an analog voice signal.”²¹

The Commission should further confirm that incumbent LECs are required to make available to competitive LECs as unbundled network elements (i) loops certified to support DSL services, and (ii) associated xDSL functionalities. As to the former, the Commission has made clear that the “loop element” includes “two wire and four-wire loops that are conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL, and DS-1-level signals.”²² As to the latter, the Telecomm Act defines an unbundled network element to incorporate “the facility or equipment used in the provision of a telecommunications service.”²³ As ALTS correctly points

¹⁸ 47 U.S.C. § 251(c)(4).

¹⁹ 47 U.S.C. § 153(48), (51).

²⁰ Federal-State Joint Board on Universal Service (Report to Congress), CC Docket No. 96-45, FCC 98-67, ¶¶ 66 - 72 (April 10, 1998).

²¹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499 at ¶ 380, fn. 823.

²² Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499 at ¶ 907.

²³ 47 U.S.C. § 153(45).

out, without access to xDSL electronics, it is virtually impossible for competitive LECs to provide xDSL services utilizing unbundled DSL-compatible loops.²⁴ The unavailability of xDSL functionalities as unbundled network elements will have a particularly harsh impact on smaller carriers with limited financial resources. As the Commission has recognized, “the ability to offer various digital loop functions in competition with incumbent LECs may be particularly beneficial to small entities by allowing them to serve niche markets.”²⁵

TRA also agrees with ALTS that the Commission should require incumbent LECs to reform their collocation practices. Specifically, if the goals of Section 706 are to be realized, competitive LECs must be provided with more cost-effective and rapid collocation solutions. Traditional, “cage-based” collocation is unnecessarily costly and burdensome, particularly for smaller providers, and results in artificial space constraints. TRA, accordingly, endorses “cage-less” collocation, which can be implemented far more quickly than, and at a fraction of the cost of, “caged-based” collocation. To the extent “cage-less” collocation is not permitted, TRA agrees with ALTS that significant modifications to “cage-based” collocation should be made, including providing for substantially smaller collocation cages, and authorizing the sharing of, and the establishment of cross-connects between, collocation cages. Either way, the Commission should remove restrictions on the collocation of switching equipment to permit the deployment of competitive LEC packet-switching equipment in incumbent LEC central offices. Finally, the Commission should sanction the use of virtual collocation arrangements to combine unbundled network elements.

²⁴ Petition at 14 - 17, Att. A.

²⁵ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499 at ¶ 380.

As the Commission has recognized, incumbent LECs have the “incentive and capability to impede competitive entry” through strategic manipulation of collocation opportunities and requirements.²⁶

Finally, TRA agrees with ALTS that the Commission should work cooperatively with the States in encouraging the deployment of advanced telecommunications capabilities. As ALTS points out, Section 706 looks to both the Commission and the various state regulatory authorities to realize this end.²⁷ Accordingly, any unilateral forbearance action by the Commission with respect to incumbent LEC provision of advanced telecommunications services would be contrary to Congressional directives, as well as counterproductive. As ALTS points out, a number of States have developed innovative rules and policies “that hold the promise for promoting competition for local services and the deployment of advanced technologies.”²⁸ The wisest policy course in such a circumstance, as the Commission has recently recognized, is not “to undermine the work states have done . . . , but rather to build upon it and inform it, where necessary and helpful.”²⁹

TRA does not mean to suggest that Commission leadership in this area will not continue to be critical. National policy guidance will always be an essential element of any regulatory scheme designed to promote local telecommunications competition. Such authority, however, should be exercised judiciously. As the Commission has acknowledged, “Congress did not intend for . . . [the Commission] needlessly to disrupt the procompetitive action[s] . . . [taken by]

²⁶ Id. at ¶ 585.

²⁷ Petition at 36 - 37.

²⁸ Id. at 38.

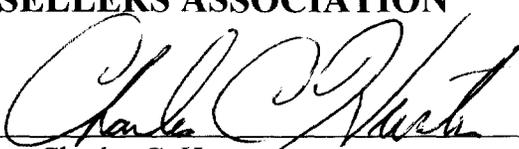
²⁹ Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance (Notice of Proposed Rulemaking), CC Docket No. 98-56, RM-9101, FCC 98-72, ¶ 26 (released April 17, 1998).

states."³⁰ Here, exempting digital and broadband services from the interconnection, collocation, unbundling and/or resale requirements of Section 251(c) or the interLATA restrictions of Section 271 would undermine both federal and state initiatives to facilitate local exchange/exchange access competition, as well as to encourage the deployment of advanced telecommunications services.

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to issue, as requested by the Association for Local Telecommunications Services, a declaratory ruling that "full implementation of the interconnection, collocation, unbundling and resale provisions of Sections 251, 252 and 271 of the 1996 Act are the fastest and surest means of achieving the foal of promoting the deployment of advanced telecommunications capability to all Americans, as mandated by Section 706,"³¹ and, consistent herewith, to take such actions as are necessary to ensure compliance by incumbent LECs of their interconnection, collocation, unbundling and resale obligations with respect to digital and broadband facilities and services.

Respectfully submitted,

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³⁰ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499 at ¶ 62.

³¹ Id. at 45.

CERTIFICATE OF SERVICE

I, Catherine M. Hannan, hereby certify that a true and correct copy of the foregoing document has been served by United States First Class Mail, postage prepaid, to the individuals listed below, this 18th day of June, 1998:

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