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INDEPENDENT
TELEPHONE & TELECOMMUNICATIONS
ALLIANCE

June 18, 1998

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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: 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. CC Docket No. 98-78.

Dear Ms. Salas:

This letter is to advise you that the Independent Telephone and Telecommunications Alliance (ITTA) is submitting the attached Comments in the above-referenced proceeding. One original and nine copies of the Comments are attached for filing with your office in accordance with rule 1.419 of the Commission's regulations. Please contact me if you have any questions regarding this matter.

Respectfully submitted,

David W. Zesiger
Executive Director

Enclosures

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JUN 1998

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	)	CC Docket No. 98-78

Comments
of the
Independent Telephone & Telecommunications Alliance

Section 706 asks, "How can we encourage deployment of advanced telecommunications services?" The ALTS Petition asks, "If such services are deployed, how can I get a piece of them under Section 251?" Because these are fundamentally different issues, the ALTS Petition must labor to manufacture causal linkage between section 251 and section 706 of the 1996 Act. The Petition's goal is to get the Commission to answer the second question, favorably to a select group of competitors, as though it were answering the first question, to the benefit of everyone.

Though nominally cast as a section 706 issue, the ALTS Petition is, at best, only secondarily concerned with encouraging the development and deployment of advanced telecommunications capability. It is primarily concerned with insuring that CLECs get access to such advanced technology – *if any* – as the ILECs may deploy in the future.

Rather than address congressional and Commission concerns for enlarging the scope and availability of the advanced technology pie, the Petition is concerned solely with ensuring that CLECs will get a pre-reserved share thereof – even if that course discourages the expansion of the pie in the first place. The Petition subordinates competition in favor of the interests of one group of competitors, and thereby discourages the very innovation which section 706 seeks to foster.

The Independent Telephone & Telecommunications Alliance (ITTA), on behalf of its incumbent LEC members, urges the Commission to decline the Petition's invitation to confuse these two sections of the 1996 Act. As demonstrated herein, no cause and effect relationship exists between section 251 and section 706, and none should be artificially created.

1. The historical record recited in the Petition demonstrates that no connection between sections 251 and 706 exists.

As the ALTS Petition makes clear, history does not establish any relationship between sections 251 and 706. The Petition asserts that CLECs "have lead the way in bringing advanced services to the public." They "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." They "continue to deploy such advanced technologies at a dramatic pace."[1]

According to the rest of the Petition this was all accomplished "[d]espite ILEC non-compliance with the pro-competitive requirements of the 1996 Act,"[2] ILECs "today are doing all they can to forestall the workings of Sections 251 and 252." "At every

[1] Petition at ii.

juncture – the courts, the negotiating table, or the central office, [sic] ILECs are making local interconnection as difficult, expensive and slow as conceivably possible."[3]

In other words, the dramatic CLEC investment in technologically advanced facilities recited in the Petition occurred essentially without or in spite of, not because of, section 251. ITTA agrees. The basic themes of the Petition demonstrate the absence of any basis for implying a linkage between 251 interconnection rights and the deployment of advanced technology – CLEC or ILEC.

Apparently recognizing this absence, the Petition endeavors to create such linkage, not from the record, but from a three-part argument. First, the Petition asserts that ILECs won't invest in the development and deployment of advanced telecommunications capabilities unless there is a threat of competition. Second, the Petition posits that the only effective threat of competition emanates from section 251. Therefore, third, the Petition concludes that extensive regulatory prescription must be invoked to extend interconnection rights, under 251, to the advanced technology issues addressed under 706. This argument is contradicted by the recitations in the Petition, as noted above, and fails to address the public policy purposes of section 706, discussed below.

2. ILECs invest for reasons other than competitive pressure.

The Petition modestly argues that only "competitive pressure exerted by CLECs has prompted ILECs to begin embracing new technologies and upgrading their networks as well."[4] This assertion is a recognizable form of *post hoc, ergo propter hoc* argumentation: because ILECs have made investments after the emergence of CLECs, they made those investments because of the emergence of CLECs. Like Marx trying to

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[2] Petition at 4.
[3] Id. at 11.

explain the history of the world solely in terms of economic determinism, this CLEC syllogism explains too much with too little.

To the contrary, ILECs continually and continuously have upgraded their networks, both before and after CLECs materialized in the industry, for a variety of reasons. For example, and often with the support of this Commission and the many state commissions, ILECs have had long-standing infrastructure enhancement programs directed to quality of service, service expansion, and network upgrading. Such programs reduce cost of service through innovation and efficiency, and thus reward consumers and shareholders alike. These programs expand revenues by improving the quality and range of offerings to the consumer, thus stimulating sales and consumer welfare while providing the cash flow basis for further innovative investments. These motivations coexist with but are clearly independent of competitive pressure, and will continue to influence ILEC innovation into the indefinite future with or without injecting section 251 issues into section 706 determinations.

3. Section 253, not section 251, is the key source of competitive pressure.

Certainly, competition is an additional spur to technological innovation. But the overhang of competition creating that spur arises from section 253, not 251. If section 251 did not exist, section 253's abolition of local barriers to entry – the true key to congressional reform and the end of the local exchange monopoly – would continue to provide the incentive to ILEC innovation in advanced telecommunications which the Petition seeks to transfer to section 251.

This point is separately confirmed by the network expansion activities of rural and midsize companies. Section 251(f) of the 1996 Act insulates rural telephone companies

[4] Id.

and 2% carriers from the full effects of section 251 interconnection.[5] Nonetheless, these carriers have invested substantial sums in network upgrades, which include significant advanced technological capabilities. As Chairman Kennard recently observed:

> I visited a small rural telco not too long ago and what I saw was a first-rate telecommunications operation. I didn't see anything that was broken and I had no desire to offer any fixes.[6]

Under the Petition's premise, such innovation should not be occurring, since rural and midsize carriers are largely immune from the 251/271 competitive overhang. They are not immune from section 253. The Petition's argument is again contradicted by the facts.

CLECs tend to ignore section 253 (the Petition does not appear to make any reference to 253 whatsoever) precisely because it focuses on competition instead of competitors. Section 253 offers CLECs no special advantages over ILECs; it merely provides both with fair and open entry. Even the antitrust laws recognize that competition is separate from individual competitors and should not be used to shield a select group:

> The antitrust laws are designed to "safeguard general competitive conditions, rather to protect specific competitors."[7]

The Petition's deliberate focus on competitors does not reflect an altruistic concern for maximizing competition. Rather, it seeks to put the Commission in the position of having to prove the success of competition by the existence and number of competitors:

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[5] The Petition also acknowledges that the Section 10(d) forbearance provisions recognize section 251(f) as an exception to the forbearance limitations attaching to sections 251 and 271. Petition at 33, n. 70.
[6] Remarks by William Kennard, Chairman, Federal Communications Commission, to USTA's Inside Washington Telecom, at 1 (April 27, 1998)(as prepared for delivery)(Chairman Kennard Remarks).
[7] *Alaska Airlines, Inc. v. United Airlines, Inc.*, 948 F.2d 536, 540 (9th Cir. 1991), quoting *Oahu Gas Service, Inc. v. Pacific Resources, Inc.*, 838 F.2d 360, 370 (9th Cir. 1988).

> Second only to the temptations on regulators to show results in the form of quick rate reductions is the temptation to produce some competitors, even competitors less efficient than the incumbents, by extending to them special preferences or protections and restraining efficient responses by the incumbents.[8]

This is the wrong yardstick. Success should be measured by consumer (not competitor) benefit and welfare. Increases in productivity and declines in cost are the hoped-for results of deploying advanced technologies. The Petition deliberately deflects this focus by trying to recast private benefits as public ones.

4. Where none exists in law and logic, the Commission should not manufacture a prescriptive link between 251 and 706.

In many respects, the Petition's recitations amount to little more than a rehash of competitive carrier dissatisfaction with incumbent carrier conduct under the 1996 Act. Dissatisfaction flows both ways, but this matter is irrelevant to the purpose of section 706, deployment of advanced telecommunications. Interconnection disputes lack no fora or processes for resolution, as the Petition's lengthy footnotes demonstrate.

The Petition's more relevant showing is that innovation is doing fine without the prescription of the artificial linkages requested in the Petition. Less regulation, not more, is the indicated course for maintaining that innovation. As Chairman Kennard noted:

> I, for one, am not afraid of seeing wireline telephone providers have a first mover advantage – if you make investments to get to the market first and provided that you do not use your control of the local network to stop or hinder others from investing and trying to be the first to market.[9]

[8] Kahn, Alfred E., Deregulation: Micromanaging the Entry and Survival of Competitors, at 5 (Edison Electric Institute 1998).
[9] Chairman Kennard Remarks at 4.

The Petition demonstrates how admirably and successfully CLECs have invested and been the first to market in a wide range of technologies. These accomplishments did not rely on section 251 in the past, and are not dependent upon that section in the future.

Rather than artificially graft section 251 onto section 706, the Commission should seek ways to induce investment in the kind of advanced infrastructure Congress hoped to promote. Midsize companies, as Commissioner Powell has noted, offer an excellent resource for implementing new deregulatory initiatives in this area:

> Specifically, I believe the experiences of mid-size independents comprise a growing factual record that will both demonstrate the benefits of competition, deregulation and innovation and will serve as compelling evidence that our existing regulatory scheme will impede. if not prevent, the delivery of such benefits to customers.[10]

A midsize company incentive program directed to advanced technology and service deployment fits well with this concept and with the goals of section 706.

As an "encouragement" to development, such a midsize company approach contrasts favorably to the Petition's invocation of section 251, which is merely a ploy to gain access to advanced infrastructure developed through the investment of others. Noticeably absent from the Petition is any offer by CLECs to permit reciprocal access to their extensive, highly advanced networks – an offer truly in the public interest. If it accedes to the Petition's demands, the Commission will be assuming a significant risk of unknown dimensions. Any retarding of the deployment of advanced technologies and services can only exacerbate the current public disappointment flowing from unmet expectations under the 1996 Act.

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[10] "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 (National Chapter) at 2 (Washington, D.C., May 7, 1998)(as prepared for delivery).

Conclusion

ITTA recognizes and applauds the efforts of competitive carriers to bring innovative technologies and advanced telecommunications services to the marketplace. These efforts can and will continue because under section 253, CLECs can and will enter all phases of local exchange activity. We know this from the Petition, since "[f]rom their beginnings, CLECs have viewed the replacement of antiquated ILEC analog facilities – and ILECs' reluctance to deploy advanced telecommunications technologies – as a market opportunity."[11] Section 253 ensures their ability to do so and provides the competitive overhang which the Petition vainly strives to attribute to section 251. Linking sections 251 and 706 will clearly benefit CLECs. No other result, including deployment of advanced technology by those most capable of doing so, is clear. The Commission should decline to link these two provisions, and should address section 706 issues in their own context and on their own merits.

Respectfully submitted,

INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

By: _____
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[11] Petition at 6.