

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
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF AT&T CORP.

Pursuant to the corrected Public Notice released on June 3, 1998 (DA 98-1019), AT&T Corp. ("AT&T") respectfully submits its Comments in support of the petition filed by the Association for Local Telecommunications Services ("ALTS") 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 competitive local exchange carriers ("CLECs") have the same rights with respect to access to advanced data networks as they have for conventional "POTS" and other telecommunications services and facilities. As discussed below, the ALTS petition raises legitimate concerns about CLECs' ability to gain access to the critical network elements and services that will allow them to provide advanced services, in particular access to both the DSL-capable loops and the electronics needed to provide xDSL services and the need for more explicit collocation policies. A prompt and clear ruling from this Commission that the ILECs are required to comply with their statutory obligations to open their monopoly facilities, regardless of whether those facilities support traditional or advanced telecommunications services, is crucial to ensure that the ILECs do not create for themselves a new "digital" monopoly to replace the "analog" monopoly that they are only begrudgingly (if at all) making available to their competitors.

AT&T Corp.

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INTRODUCTION

In its petition, ALTS thoroughly described the nationwide network expansion of CLECs, which it maintains have to date constructed over 78,000 route miles in more than 300 markets. ALTS states that this facilities deployment includes 331 data switches across the country, underscoring the CLECs' goal "to offer advanced DSL services to millions of Americans." According to ALTS, CLECs are converging on markets that include small cities such as Anchorage, Bozeman, Fargo and Sioux Falls. ALTS notes that "[c]ustomers in these 'on net' locations have ready access to advanced telecommunications capabilities *today*, through the efforts of CLECs - not the traditional local telephone monopolies."¹

However, CLECs cannot replicate entirely ILEC networks -- not in scale, not in market coverage, and certainly not in the last mile to the home. For this reason, it is critical that CLECs get access, as is their right, to the advanced data network elements and services that the ILECs are constructing for their own use. ALTS has documented evidence from all over the country, and from many ILECs (including the three RBOCs that have filed petitions for forbearance to provide advanced local data services free of the very unbundling, resale, collocation and interconnection obligations for which ALTS is seeking a declaratory ruling here) which illustrates the CLECs' inability to break into the local markets because of the foot-dragging and affirmative "bad acts" of the ILECs.² Indeed, many of the examples cited by ALTS relate not

¹ Petition at 7 (emphasis in original).

² See, e.g., Petition at 12 (Ameritech's refusal to negotiate frame relay interconnection agreements with one major CLEC); id. at 13 (Bell Atlantic's refusal to provide 56 Kbps loops to CLECs as UNEs, even where it provides 56 Kbps digital data services to its own customers); id. at 17 (US West's failure to deliver multiplexing equipment within its committed time frame).

just to access to advanced services elements and services, but illustrate the CLECs' troubles in getting access to unbundled network elements ("UNEs"), collocation and resale for traditional telecommunications service as well.

The Commission in fact has scores of filings and other public records which document the efforts of the ILECs to stymie CLEC attempts to gain access to UNEs, collocation, resale and interconnection for both traditional and advanced services. AT&T has filed extensive comments on this issue in the context of the three RBOC petitions for forbearance under Section 706.³ The ALTS petition cites to FCC and state commission proceedings in which the ILECs refused, for example, to interconnect with CLECs for data services,⁴ provide nondiscriminatory access to operational support systems ("OSS"),⁵ and turn up inter-office trunking for interconnection with CLEC facilities.⁶

³ Comments of AT&T Corp., In the Matter of Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-11, filed April 6, 1998 ("Bell Atlantic 706 Petition"); Comments of AT&T Corp., In the Matter of Petition of U S WEST Communications, Inc. for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-26, filed April 6, 1998 ("US West 706 Petition"); Comments of AT&T Corp., In the Matter of Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Capability, CC Docket No. 98-32, filed April 6, 1998 ("Ameritech 706 Petition").

⁴ See, e.g., Petition at 12-20.

⁵ Id. at 22-24.

⁶ Id. at 25-26. The proposed BA-NY 271 compliance steps now before the NYPSC do not refer to xDSL services, and AT&T, and other CLECs have opposed that aspect of the proposed statement. See Bell Atlantic Section 271 Prefiling Statement before the NYPSC, filed April 6, 1998. AT&T has also pointed out that the 271 statement must incorporate Bell Atlantic's obligations under the interconnection agreements that Bell Atlantic has already arbitrated, including AT&T's agreement which does include access to xDSL services. This is yet another example where the RBOC is seeking to

(footnote continued on following page)

I. SECTION 251 CLEARLY APPLIES TO ADVANCED DATA NETWORKS, AND THE COMMISSION SHOULD ENSURE PROPER IMPLEMENTATION OF THOSE REQUIREMENTS AS TO DATA NETWORKS.

Declaratory relief under Section 1.2 of the Commission's rules is appropriate to terminate a controversy or remove uncertainty where the relevant facts are developed and essentially undisputed.⁷ As described above, the petition accurately describes the ILECs' efforts to undermine CLECs' lawful rights to gain access to traditional as well as advanced services (and to undermine the Commission's authority to enforce those rights) in court challenges, even as they petition this Commission for forbearance.⁸ These actions are having a chilling effect on CLEC efforts to obtain UNEs and services from the ILECs. The ALTS petition is an appropriate and justifiable response to the uncertainty created by the ILECs, and a declaratory ruling on the petition would go far to end this uncertainty, in particular as to advanced telecommunications services.⁹

(footnote continued from previous page)

negotiate away compliance with its obligation to provide access to advanced services in accordance with Sections 251 and 252 as a prerequisite to 271 compliance.

⁷ In the Matter of BellSouth's Petition for Declaratory Ruling or, Alternatively, Request for Limited Waiver of the CPE Rules to Provide Line Build Out (LBO) Functionality as a Component of Regulated Network Interface Connectors on Customer Premises, 6 FCC Rcd 3336, 3342 (1991); In the Matter of American Network, Inc. Petition for Declaratory Ruling Concerning Backbilling of Access Charges, 4 FCC Rcd 550, 552 (1989).

⁸ Petition at 26-28.

⁹ The Commission may also deem it appropriate to institute further Notices of Proposed Rulemaking, where needed, to implement ALTS' requests, in particular for defining which advanced services functionalities constitute UNEs and for adopting more specific collocation policies.

It cannot be seriously doubted that Sections 251, 252 and 271 of the Telecommunications Act apply to advanced data networks and services. Section 251(c)(3) obligates the ILECs to "provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis. . . ." "Network element," in turn is defined broadly in Section 3(a)(45) as "a facility or equipment used in the provision of a telecommunications service" (including "features, functions, and capabilities that are provided by means of such facility or equipment"). And "telecommunications service" is defined in relevant part as "the offering of telecommunications . . . regardless of the facilities used," with "telecommunications" meaning "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." Thus the statute on its face applies to all telecommunications services and facilities, including data networks and services, and does not carve out any exceptions for new, broadband, data, or any other telecommunications services, which is precisely what xDSL and other advanced data services are.¹⁰

¹⁰ As to resale, Section 251(c)(4)(A) on its face similarly applies to "any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." The Commission has interpreted the plain meaning of Section 251(c)(4)(A) as a general obligation on the ILECs to make all of their retail services available at wholesale rates, and accordingly has required ILECs to "establish a wholesale rate for each retail service that: (1) meets the statutory definition of a 'telecommunications service;' and (2) is provided at retail to subscribers who are not 'telecommunications carriers.'" In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98 and 95-185, First Report and Order, FCC 96-325 (rel. August 8, 1996) ("Local Competition Order"), ¶ 871 (citations omitted).

Even the RBOCs concede that these services are telecommunications services: where they offer them, they do so under tariff.¹¹ Indeed, the very fact that the RBOCs have requested forbearance confirms that without such relief these services (and their underlying facilities and functionalities) are subject to the Act's unbundling, resale, collocation and interconnection rules.

The Commission has also confirmed the applicability of the Section 251 to advanced data networks. For example, the Commission has ruled that the definition of the local loop network 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 DS1-level signals."¹² The Commission also considered defining packet switching as a separate network element, and declined, "[a]t [that] time," to do so only because the record was "insufficient for us to decide whether packet switches should be defined as a separate network element."¹³ The Commission has before it, moreover, an overwhelming record in the three RBOC 706 proceedings, the APT

¹¹ See, e.g., US West Advanced Communication Services Tariff (Utah), effective September 2, 1997, Section 8, p. 1 (xDSL service); Southwestern Bell Telephone Company Integrated Services Tariff (Texas), effective May 22, 1996, Section 3 (Digiline Service). See also GTOC Transmittal No. 1148, filed May 15, 1998 (establishing a new GTE interstate access service for xDSL service), Description and Justification, p. 3 ("ADSL Service as provided by GTE is a transmission and transport service only"). The GTE tariff was suspended for one day and set for investigation, GTOC Transmittal No. 1148, CC Docket No. 98-79, Order, DA 98-1020, rel. May 29, 1998. Pacific Bell filed a similar interstate access tariff for ADSL service, see SBC Transmittal No. 1986, filed June 15, 1998.

¹² Id. at ¶ 380 (footnote omitted).

¹³ Local Competition Order, ¶ 427.

706 proceeding,¹⁴ and the records cited extensively in the Comments therein confirming the applicability of the Section 251, 252 and 271 requirements to xDSL and other packet-switched services.

In addition, the Commission has confirmed its authority to identify additional network elements, including "features, functions and capabilities" of digital facilities, in the Local Competition Order. In that Order, the Commission specifically acknowledged the critical importance of "retain[ing] our ability to revise rules as circumstances change . . . otherwise, our rules might impede technological change and frustrate the 1996 Act's overriding goal of bringing the benefits of competition to consumers of local phone services."¹⁵ In the context of packet switching itself, the Commission confirmed that "[w]e will continue to review and revise our rules, but at present, we do not adopt a national rule for the unbundling of packet switches."¹⁶

For these reasons, it is clear that Sections 251, 252, and 271 apply to advanced data networks, and that the Commission has defined at least some of the UNEs associated with such networks. The Commission should reaffirm these findings in a declaratory ruling here.

Further, the Commission should continue the work begun in the Local Competition order, and, as anticipated in that order, initiate a further rulemaking to define packet switching as a network element, and define any other appropriate UNEs. In this regard, it is especially critical to make clear as part of the declaratory ruling or a rulemaking proceeding that,

¹⁴ Petition of Alliance for Public Technology Requesting Notice of Inquiry and Notice of Proposed Rulemaking To Implement Section 706 of the Telecommunications Act of 1996, File No. CCB/CPD 98-15, filed February 18, 1998 ("APT 706 proceeding").

¹⁵ Local Competition Order, ¶ 246.

¹⁶ Id. at ¶ 427.

where a CLEC requests an xDSL functionality from the ILEC, it is entitled to whatever facilities, equipment, features, functions, and capabilities the ILEC employs to create that functionality, including both the DSL-capable loop and the network electronics. If the CLEC chooses to provide its own electronics, it would request -- and be entitled to receive -- a DSL-capable loop (e.g., without load coils or bridged taps that interfere with the transmission of digital signals), which is a network element already defined and required under the Local Competition Order. Further, if the CLEC chooses, it may obtain the full features, functions, and capabilities of the xDSL loop, including the network electronics, whether those electronics are deployed at remote distribution facilities or in the central office.¹⁷

II. IT IS APPROPRIATE FOR THE COMMISSION TO STRENGTHEN ITS EXISTING COLLOCATION POLICIES.

AT&T agrees with ALTS that actual experience reveals that the ILECs are thwarting CLEC efforts to be collocated in accordance with the existing FCC rules, and that more specific requirements and enforcement are needed from the FCC to close the loopholes that ILECs are creating as a barrier to practical and affordable collocation opportunities.

AT&T recommends that the Commission institute an NPRM to address the critical collocation issues identified by ALTS (p. 21), including requiring ILECs to allow virtual collocation; provision for "cageless" and shared collocation space; mandate cross-connects to other collocated CLECs; and eliminate restrictions on CLECS' ability to collocate remote

¹⁷ Id. at ¶ 380. Moreover, this is consistent with the Commission's decision to decline to identify distribution components of the loop as individual network elements. By defining the loop -- including the electronics resident in the loop distribution network - - as a single UNE, the CLECs can obtain the entire loop functionality necessary to provide xDSL services with no degradation in network reliability vis-à-vis the ILECs' own services. Id. at ¶¶ 390-391.

switching modules, xDSL electronics, Internet routers and other equipment essential for the establishment of competitive advanced data services. Such a proceeding is consistent with the Chairman's stated concern that "we may need to tighten up our collocation policies as well [as ensure that all competitors will have the same quality of access to the existing copper loops owned by incumbents]."¹⁸

CONCLUSION

AT&T agrees with ALTS that the situation "in the field" demonstrates a relentless pattern of ILEC recalcitrance in meeting their critical obligations to open their local markets to competition, and that the endless litigation and foot-dragging on the part of the ILECs has had an enormous chilling effect on the deployment of competitive services. To the extent that the Commission affirms, via a declaratory ruling, that the ILECs are indeed obligated to open their advanced data networks in accordance with Sections 251 and 252 (and, where applicable, as a precondition to long distance entry under Section 271) just as they are obligated to do so with their traditional circuit-switched networks, such a ruling would forestall much of the useless and time-consuming litigation and ensuing uncertainty in the states.

Where further facts are required to put "teeth" into such requirements -- such as the extent of the functionalities that would be included to comply with CLEC request for features and functions and the specific expanded collocation policies that the Commission should adopt, AT&T urges the Commission to conduct such fact-finding efforts expeditiously.

Finally, AT&T wholeheartedly agrees that the Commission should make clear that it will not grant ILEC forbearance requests predicated on Section 706 of the Act unless and at

¹⁸ Remarks by William Kennard, Chairman, Federal Communications Commission to USTA's Inside Washington Telecom, April 27, 1998, p. 5.

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least until the requesting carrier has met its unbundling, resale, collocation and interconnection obligations under Sections 251 and 252. As AT&T stated in its separate Comments on the three RBOC and APT petitions, the petitioners have it backwards -- there is no statutory or policy basis to relieve ILECs of their obligations to open their networks to competition before they have provided meaningful competitive opportunities. To do so would only cement the ILECs' existing monopoly position in the traditional local market, and enlarge that monopoly by sweeping in advanced services for voice and data (and interLATA services, if the RBOC requests were granted) as well. The Commission should use this opportunity to send a clear signal to the industry that it stands behind the statutory plan established by Congress in the Telecommunications Act -- that regulatory (including interLATA) relief is appropriate only where the ILEC has demonstrated that it has irreversibly opened its local market to competition in accordance with the Act's requirements, and that such competition has taken root.

Respectfully submitted,

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June 18, 1998

AT&T Corp.

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CERTIFICATE OF SERVICE

I, Rena Martens, do hereby certify that on this 18th day of June, 1998, a copy of the foregoing "Comments of AT&T Corp." was served by U.S. first class mail, postage prepaid, to the parties listed below.

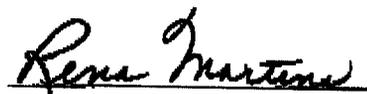
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