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June 18, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

Re: Petition of the Association for Local Telecommunications Services for Declaratory Ruling Regarding Section 706; CC Docket No. 98-78

Dear Ms. Salas:

Attached for filing in the referenced docket, pursuant to the procedural order in this proceeding, DA 98-1019 (released June 3, 1998), on behalf of LCI International Telecom Corp. ("LCI"), are the original and 12 copies of LCI's comments.

We have also submitted under separate cover a diskette containing the comments to Janice Myles of the Common Carrier Bureau.

If you have any questions, please contact me.

Respectfully submitted,

Linda L. Oliver

Linda L. Oliver
Counsel for LCI International Telecom Corp.

Enclosures

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JUN 18 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of	)	
	)	
Petition of the Association for Local Telecommunications Services for Declaratory Ruling Regarding Section 706	)))	CC Docket No. 98-78

COMMENTS OF LCI INTERNATIONAL TELECOM CORP.

LCI International Telecom Corp. ("LCI") 1/ hereby files its comments in support of the Petition of the Association for Local Telecommunications Services ("ALTS") for a Declaratory Ruling, filed pursuant to Section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 157 note, on May 27, 1998. 2/

Introduction

LCI strongly supports the ALTS request that the Commission declare what is already clear under the Communications Act: That the Act requires the incumbent local exchange carriers ("ILECs") to open their local networks for competition in the provision of *all* telecommunications services, whether data or voice, and regardless of the technology used. The plain language of the Act makes clear that the Act's local market-opening provisions, including Sections 251, 252,

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1/ LCI is a subsidiary of Qwest Communications Corp.

2/ Public Notice (Corrected), DA 98-1019, CC Docket No. 98-78, released June 3, 1998.

and 271, apply regardless of the nature of the technology used or telecommunications services provided by the ILEC.

Although this fact should be beyond dispute, given the plain language of the Act, 3/ it is essential that the Commission clarify the ILECs' obligations, because many ILECs are refusing to provide access to advanced capabilities of their local networks and are limiting the ability of competitors to employ network elements to provide high speed data and other advanced services. 4/ If the ILECs

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3/ Indeed, the RBOCs themselves, before this Commission, appear to acknowledge this fact, because their declaratory ruling petitions sought *forbearance* from application of Sections 251, 252, and 271 to advanced technology and services, and not a ruling that the Act did not apply to that technology or those services. See Petition of Bell Atlantic for Relief from Barriers to Deployment of Advanced Telecommunications Services, filed January 26, 1998, CC Docket No. 98-11; Petition of US West Communications, Inc. for Relief from Barriers to Deployment of Advanced Telecommunications Services, filed February 25, 1998, FCC Docket No. 98-26; Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Capability, filed March 5, 1998, CC Docket No. 98-32; Petition of Southwestern Bell Telephone Company, et al., filed June 9, 1998, CC Docket No. 98-91.

4/ See ALTS Petition at 11-17. Another example of ILEC resistance to competitive provision of advanced telecommunications services is shown by Bell Atlantic's position on use of network element combinations in New York. Bell Atlantic -- New York (BA-NY) has restricted the ability of competitors to use its "extended link" option (which combines loop and transport) to provision of "switched local exchange and associated switched exchange access services." See "Methods for CLEC Combination of Unbundled Network Elements," filed by BA-NY on May 27, 1998, in Proceeding on Motion of the Commission to Examine Methods by Which Competitive Local Exchange Carriers Can Obtain and Combine Unbundled Network Elements, NY Public Service Commission Case No. 98-C-0690, at 6. BA-NY also has limited the ability of competitors to use combinations of network elements (UNE-P) to provision of plain old telephone service (POTS) and basic rate ISDN. Prefiling Statement of BA-NY, filed April 6, 1998, in New York Public Service Commission Case No. 97-C-1271, at 9.

succeed in placing obstacles in the path of competitors seeking to provide advanced services, then competition will be limited to existing, voice grade services, and as the local network evolves, it will remain, as a practical matter, a monopoly -- particularly for residential and small business customers and customers located in less densely populated areas.

LCI White Paper on CLEC Access to xDSL Technology

LCI has actively participated in the debate about the meaning of Section 706 and the need for access by CLECs to xDSL 5/ capability in the ILEC network. 6/ LCI also has prepared a White Paper on this subject, entitled "CLEC Access to xDSL Technology: A Necessary Predicate for Widespread, Competitive Deployment of Broadband Telecommunications Services." 7/ A copy of this White Paper is attached to these comments. The White Paper addresses the legal, policy, and technical issues raised in the ALTS petition, and seeks the same Commission action that the ALTS petition seeks. LCI therefore relies on the attached White Paper as its comments in support of the ALTS petition.

5/ Put simply, "DSL" or "xDSL" is a technology that employs electronics to boost the capacity, speed, and capability of existing telephone lines. See Attached LCI White Paper at Appendix D for a detailed discussion of xDSL technology. Appendices B and C set forth diagrams of the local exchange network configurations for xDSL.

6/ LCI filed comments in opposition to the Bell Atlantic, US West, and Ameritech Section 706 petitions. LCI incorporates those comments by reference herein. See Comments of LCI in CC Docket Nos. 98-11, 98-26, and 98-32 (filed April 6, 1998); Reply Comments (filed May 6, 1998).

The White Paper makes the following points:

- CLEC access to xDSL technology is essential if consumers are to have a choice of broadband service providers.
- xDSL is simply a manifestation of the natural evolution of the network to higher speeds and greater digital capabilities.
- Regulators must preserve the three entry strategies created by Congress as the network evolves.
- There is no legal basis for fencing off access to ILEC xDSL capability.
- xDSL electronics are an integral part of the subscriber loop.
- Competitors cannot cost-justify providing their own xDSL electronics and interoffice facilities on a broad basis.
- Access to xDSL capability by ILEC competitors will help ensure a competitive environment for Internet Service Providers (ISPs).
- Fencing off access to ILEC data networks will likely create a dominant LEC in both data and voice in the future.
- ILECs already have strong incentives to invest in broadband technology.

Specific Comments on ALTS Petition

LCI also wishes to make several specific observations about the ALTS petition.

First, the ALTS petition shows that the need for access to ILEC advanced network capabilities exists across the spectrum of entrants. No matter

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7/ "CLEC Access to xDSL Technology: A Necessary Predicate for Widespread, Competitive Deployment of Broadband Telecommunications Services," LCI White Paper, June 1998 ("LCI White Paper").

what an entrant's business plan -- whether or not the entrant owns or plans to invest in local facilities; whether the entrant plans to focus on broadband/data services or has more comprehensive goals (e.g., to provide packages of voice, data, and broadband services); and whether the entrant serves targeted geographic areas and central offices, or instead serves customers everywhere -- all entrants need access to the advanced capabilities of the ILEC network.

Second, the ALTS petition asks the Commission to make clear that entrants have a right to employ loops that are xDSL-equipped (if the ILEC has deployed xDSL technology in the relevant central office), rather than simply having the right to employ unbundled loops that are conditioned to be attached to a competitor's xDSL electronics (the digital subscriber line access multiplexer or "DSLAM"). 8/ While competitors certainly have the option of installing their own DSLAM equipment in the ILEC central office, they also have the option of obtaining, as network elements, loops that are *already equipped* with xDSL electronics. 9/ The ILECs will have a sure means to defeat, as a practical matter, their competitors' ability to compete in the provision of broadband

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8/ See ALTS Petition at ii, 15-16, and Attachment A at 3.

9/ As we point out in the White Paper, the electronics attached to the loop are an integral part of that loop and are included in an unbundled loop. See LCI White Paper at 14-18.

telecommunications services if they can force competitors to install collocated DSLAM equipment in every central office in which they seek to serve customers. 10/

Third, although the ALTS petition does not specifically mention it, the Commission should make clear that it is not just the xDSL-equipped loops that must be made available as network elements; it also is essential that competitors have access to the ILECs' switching and interoffice transport used for broadband telecommunications services. 11/ While some entrants may already have interoffice transport facilities and local packet switches that would enable them to pick up traffic from the ILEC unbundled xDSL-equipped loops and take that traffic to their packet networks, many entrants (such as LCI) will need to employ the ILEC's packet switching and interoffice transport in order to bring the traffic to LCI's own network. Without competitive access to the ILEC interoffice local network for xDSL traffic, consumers will, as a practical matter, be deprived of competitive choice of broadband service providers because of the prohibitive cost of constructing or

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10/ Even if the ILECs were to reduce the costs of collocation by adopting modifications to or alternatives to physical collocation, the need to install DSLAM equipment, and the costs entailed with that activity, is likely as a practical matter to severely restrict the ability of competitors to serve customers over a broad geographic area, and to compete for residential and small business customers -- the very customers who are less likely to be served by non-copper broadband facilities (ILEC or CLEC). See LCI White Paper at 18-31.

11/ There is, of course, no legal or other basis for selecting only certain capabilities of the ILEC network as subject to Section 251(c)(3). As pointed out in the LCI White Paper at 12-14, the definition of "network element" in the Act is broad and includes the "features, functions, and capabilities" of any ILEC "facility or equipment" used to provide telecommunications services. 47 U.S.C. § 153(29).

leasing a duplicate interoffice network -- just as they would be for voice traffic if denied access to the interoffice circuit-switched network. 12/

Fourth, it bears emphasis that modern, digital loop carrier (DLC) technology is incompatible with a model that would require CLECs to deploy DSLAMs in ILEC central offices as the only means to compete for xDSL-based services. The length of a copper loop is a major factor in whether xDSL is workable at all for a particular subscriber, and is relevant to what type of xDSL technology can be used (in general, the shorter the loop, the higher the bandwidth capability). 13/ DLC technology permits an ILEC, in effect, to shorten the length of a copper loop by moving electronics out to a remote site. 14/ If the ILEC were permitted to deny competitors access to the DLC loop with its xDSL electronics, and instead were permitted to force competitors to pick up an unbundled copper loop (stripped from the DLC) at the central office, then competitors would have difficulty competing for those xDSL subscribers, given the longer loop length and poorer loop

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12/ See LCI White Paper at 28-29 (discussing the costs of interoffice switching and transport facilities and the analogy to the need for access to unbundled local switching and shared interoffice transport for circuit-switched telecommunications).

13/ See Appendix A to LCI White Paper (describing loop length limitations associated with various types of xDSL technology).

14/ ILECs have put in DLC technology for a number of years as a means to improve the quality of loops and to avoid having to replace an entire copper loop. DLC technology is in place today on upwards of 20 percent of loops nationwide, a number that is likely to grow significantly in the future. See LCI White Paper at 27.

quality. It is critical, therefore, that CLECs have access to unbundled loops with their electronics included; any other result would be unworkable. 15/

Fifth, ALTS has sought a declaratory ruling on several distinct points. 16/ It is critical that the Commission grant the petition on all these points -- because the success of competition in advanced, broadband services will depend on ILEC compliance with every one of the market-opening provisions of the Act, and not just some. 17/ Thus, it will not be enough if the Commission makes clear that interconnection for data networks is required and orders improvements in collocation options -- it is also essential that the Commission clarify that entrants have a right to employ any ILEC local network capability as network elements -- whether xDSL-equipped loops or the interoffice switching and transport of data traffic.

Finally, LCI supports the ALTS request that the FCC permit state commissions to protect and expand upon the rights of requesting carriers. 18/ We simply emphasize what should be obvious -- that the state commissions do not have the power to contract the rights of competitors that have been established by the FCC, and that the FCC is empowered by Congress, pursuant to Sections 251(c)(3)

15/ See ALTS Petition, Attachment A, at 3; LCI White Paper at 15-17, 27.

16/ See ALTS Petition, Summary at i-ii.

17/ See LCI White Paper at 3-10.

18/ ALTS Petition at 39-45.

and 251(d)(2), to establish, by rule or by declaratory ruling, the ILECs' obligations to provide network elements and access to those elements.

Conclusion

The Commission should immediately grant the ALTS petition for declaratory ruling, making clear that any ILEC network capability must be made available to competitors pursuant to Section 251(c), regardless of the nature of the technology used or the services provided. This action is necessary to ensure that ILECs will comply fully with their statutory market-opening obligations and that consumers will have a choice of broadband service providers.

Respectfully submitted,

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June 18, 1998

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I, Barbara E. Clocker, hereby certify that on this 18th day of June, 1998, a copy of the Comments of LCI International Telecom Corp. filed in CC Docket No. 98-78 was hand delivered to the parties listed below.

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CLEC Access to xDSL Technology:

A Necessary Predicate for Widespread, Competitive Deployment of Broadband Telecommunications Services

LCI International Telecom Corp.

June 1998

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EXECUTIVE SUMMARY

The technology is now available to enable customers -- in particular, residential and small business customers -- to obtain high-speed access to corporate networks and the Internet over the same twisted pair of copper wires that now provides them with telephone service and relatively low speed Internet access. The potential of such technology -- generically referred to as "digital subscriber line" or "xDSL" -- is great. For that potential to be fully realized, however, it is essential that the local market-opening provisions of the Communications Act continue to apply as the local exchange network evolves to a broadband capability.

The Section 706 Petitions

Three regional Bell operating companies (RBOCs) have asked the Federal Communications Commission to forbear from applying the unbundled network element and resale provisions of the Communications Act to their investments in xDSL technology. They argue that such forbearance is necessary to provide them the appropriate incentives to invest in such network improvements, even though each of them is already making such investments. The Association for Local Telecommunications Services (ALTS) also has filed a petition under Section 706, asking the FCC to make clear that the Act's market-opening provisions make no distinctions on the basis of the nature of technology used, or whether the local network is used to provide voice or data services.

As this White Paper shows, the ability of consumers to reap the fruits of competition in the local exchange, and to have a choice of providers of broadband telecommunications services (as well as Internet service providers), will depend on the ability of competitors to access the xDSL capabilities in the ILEC network.

xDSL as the Next Step in the Evolution of Technology that Boosts Network Capability

All of the RBOCs and GTE have announced the commercial roll-out of xDSL-based services for small business and residential customers. This technology represents the next step in a natural evolution of improvements that boost the capability and speed of the existing network. Over time, telecommunications networks have moved from analog to digital transmission, from in-band to out-of-band signaling (SS7), from copper to fiber optic facilities, and from circuit-switched to packet-switched transmission systems. xDSL is just another step in this natural progression. It involves the use of electronics on the existing copper wires to increase the capacity of those wires -- just as ISDN services and T-1 lines (using HDSL electronics) have been provided.

Three Entry Strategies

The Communications Act makes available three paths for entry into the local exchange market: (1) competition by construction of new local facilities and interconnecting with the incumbent; (2) lease of the ILEC's network elements (in whole or in part) to provide competing service; and (3) resale of the ILEC's retail

services at a wholesale rate. The RBOC petitions attempt to deny competitors the ability to employ the second and third strategies when it comes to xDSL capability.

Requiring competitive local exchange carriers (CLECs) to provide their own xDSL electronics and to collocate at central offices if they wish to provide xDSL services contradicts the letter and purpose of the Act. The Act allows neither regulators nor ILECs to decide when and where it is cost-effective to construct facilities in lieu of using ILEC network elements. By allowing new entrants to take full advantage of incumbent LECs' scale and scope economies, the Act enables competition to proceed more rapidly and to reach more broadly, to include customers that cannot be economically served by competitors if they must construct new facilities.

No Legal Basis to Fence Off xDSL Technology

The Act's forbearance provisions do not permit the FCC to forbear from applying the unbundling and resale provisions of Section 251(c) until that section is "fully implemented." The Commission therefore lacks authority to forbear. Section 706, upon which the RBOCs rely, does not confer additional forbearance authority on the FCC. Rather, Section 706 simply encourages the FCC and state commissions to use any of a number of tools they already possess to encourage the spread of advanced technologies. One of those tools, in fact, is the promotion of local competition -- a goal that would be thwarted by grant of the RBOCs' petitions.

In seeking forbearance, the RBOCs implicitly concede that the Section 251(c) unbundling and resale obligations apply to xDSL technology, and properly so.

The Act's definition of "network element" is broad, and includes all "features, functions, and capabilities" of a "facility or equipment used in the provision of a telecommunications service." 47 U.S.C. § 153(29). Nothing in the definition of network element or in the Act limits this provision to existing technology, to voice services, or to circuit-switching technology.

Loops equipped with xDSL electronics, and the local switching and transport associated with xDSL transmissions, are squarely within the definition of a network element. It would be incorrect to define a loop without regard to the electronics attached to the loop, which make the loop capable of transmission. The deployment of digital loop carrier (DLC) electronics in remote terminals is but one example of the integral role of electronics in enabling the loop to function.

The High Costs Facing Competitors to Deploy Duplicate xDSL Technology

In their petitions, the RBOCs claim to need extra incentives to deploy the large investment required to provide on a broad basis xDSL-based services. Yet they also claim that their competitors, who begin with virtually no local market share, should be required to make this same investment before serving a single customer, even though such competitors, by definition, do not have the volumes necessary to justify collocating DSLAM electronics in every central office and creating a duplicate, high capacity interoffice network that could haul the xDSL traffic back from every central office to the competitor's packet switch.

US West claims that it will not serve the less densely populated central offices without the extra incentive of being able to shield its investment in xDSL technology from competitors. But if US West can barely afford to serve those areas, it is clear that competitors, who can expect to gain much smaller volumes, will not economically be able to provide service in those areas (as well as in other more dense areas). The consequence of forcing competitors to install their own xDSL electronics, switching and local transport will be that few consumers will have a competitive choice of broadband telecommunications service providers.

Using the Dallas/Forth Worth LATA as an example, it becomes clear that with the typical charges now levied for physical collocation of DSLAM equipment, a new entrant the size of LCI could not economically serve the vast majority of central offices in that LATA. Even if physical collocation were made less expensive, or if alternatives to physical collocation were pursued, the result still is that many central offices are not likely to be served. Such calculations do not even take into account the huge cost disadvantages faced by entrants to duplicate the existing interoffice transport network of the ILEC, and does not consider the higher per-line costs faced by CLECs -- including, for example, the cost of hiring and dispatching technicians; engineering the network; maintenance, repair, and remote testing; and coordinating with the ILEC for installation. It also does not consider the delay and cost of negotiating, arbitrating, and resolving disputes with the ILEC.

Consistency with the Future

Providing CLECs with access to xDSL technology also should help to ensure a competitive environment for Internet Service Providers (ISPs), because they would not face a potentially monopolistic provider of broadband telecommunications services. As pointed out by the Commercial Internet Exchange Association, the market-opening provisions of the Act are critical to ensuring the healthy development of a competitive market for ISPs.

It also would be both legally and technically unsustainable to attempt to create a more liberal regulatory regime for packet-switched networks and data services. The Act does not make such distinctions, and it is likely that voice will eventually be provided over broadband data networks. Regulators should refrain from drawing lines on the basis of technology and cost assumptions that will necessarily become obsolete as technologies develop and cost characteristics change.

No Added Incentives Needed

The RBOCs do not need the added incentive of deregulated treatment of advances in technology. All the RBOCs and GTE have announced major commercial rollouts of xDSL based services, and will likely continue to expand such efforts. Deregulated treatment would mean, instead, that the ILECs would extend their current dominance in the local exchange into the future.

Enforcing the Act's market-opening provisions equally for all technologies and services is the best way to ensure wide deployment of advanced technology and the broad availability of competitive choices in advanced telecommunications services for all consumers.

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INTRODUCTION

A number of RBOCs have asked the Federal Communications Commission (FCC) to forbear from requiring them to make available to their competitors the advanced capabilities of their incumbent local exchange networks. In particular, they seek to shield from competitors access to "xDSL" technology, which increases the capacity and speed of existing copper subscriber loops. 1/ These RBOCs (Bell Atlantic, US West, and Ameritech) rely on Section 706 of the 1996 Telecommunications Act, which prompts the FCC to take appropriate action to encourage the broad deployment of advanced technology, and requires it to conduct an inquiry this summer into that subject. 2/

The Association for Local Telecommunications Services (ALTS) also recently filed a petition under Section 706.3/ In that petition, ALTS urges the

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1/ Petition of Bell Atlantic for Relief from Barriers to Deployment of Advanced Telecommunications Services, filed January 26, 1998, CC Docket No. 98-11; Petition of US West Communications, Inc. for Relief from Barriers to Deployment of Advanced Telecommunications Services, filed February 25, 1998, FCC Docket No. 98-26; Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Capability, filed March 5, 1998, CC Docket No. 98-32.

2/ 47 U.S.C. § 157(note). In this paper, we limit our discussion to the availability of xDSL technology to competitors, and do not address the RBOCs' requests for interLATA relief for their data services or their other requests for forbearance from important regulatory requirements.

3/ Petition of the Association for Local Telecommunications Services for Declaratory Ruling Establishing Conditions Necessary to Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996, filed May 27, 1998, with the Federal Communications Commission.

Commission to make clear that the Communications Act requires the incumbent local exchange carriers ("ILECs") to open their local networks for competition in the provision of *all* telecommunications services, whether data or voice, and regardless of the technology used. Such competition, ALTS correctly points out, is what will form the basis for competition and consumer choice in broadband telecommunications services.

In their petitions, in contrast, the RBOCs contend that the only way to create incentives for them to develop technologically advanced networks is to permit them to fence off network improvements from competitors and to relieve the RBOCs of regulatory requirements that are intended to protect the public from their exercise of market power. In essence, these RBOCs ask the Commission to allow them to evade the critical local competition provisions of the Act by freezing the local exchange network in time, relegating competitors to use of inferior technology, depriving competitors of the ability to compete as the network evolves, and robbing consumers of the chance to enjoy the benefits of competition in broadband-network-based services. 4/

4/ Under the RBOCs' plans, they would be free to: (1) offer new or advanced services without providing other carriers access to the underlying facilities needed to provide those services, contrary to the pro-competitive unbundling requirements of Section 251(c)(3); (2) deny competitors the ability to resell those services pursuant to Section 251(c)(4); (3) construct and use interLATA transmission facilities without first complying with the local market-opening requirements of Section 271, and (4) engage in these activities without the protections of the structural separation requirements of Section 272. 47 U.S.C. §§ 251(c)(3), 251(c)(4), 271, 272.