MS. MATTEY: Are there any other questions? I see a hand in the front and one over in the back. We will get to you next time. I apologize.

MR. SRINIVASA: Again, for the record, my name is Nara Srinivasa with the Texas PUC. My question is directed to Mr. John Lenahan of Ameritech.

With respect to IDLC loops, does Ameritech provide sub-loop on an unbundled basis --

MR. LENAHAN: No.

MR. SRINIVASA: -- if a customer is served off of an IDLC?

MR. LENAHAN: No. We provide a copper alternative.

MS. MATTEY: Okay. I saw a hand back in that direction.

MR. JENKINS: Earl Jenkins, SHS Consulting. Question for the ILEC panelists.

In situations where we have IDLC and copper loops are not available and a CLEC orders an unbundled loop, how is that provisioned?

MR. POOLE: I would say to the extent that we do not have any copper alternative, I do not see how it can be provisioned without putting additional facilities in place.

MS. MATTEY: Okay. Any other questions from the audience? Teona?

MS. SUMMER: Hi. I would like to ask a question that is related to the question I asked before except this time not focusing on the cut over, but focusing after the cut over and as the service is being provided.

Is there any technical or functional difference between the ILEC that is doing the combining of the UNE platform versus having the CLEC doing their own combining through a virtual or physical collocation arrangement?

MR. POOLE: I think there could be a difference, and the reason I say that is that under the UNE platform arrangement, as I understand, which I am not real familiar with, what that does is it takes the existing service that the ILEC is provisioning, the existing port, the existing loop, and provides that on a combined basis.

Why I say it could be different is that with an unbundled arrangement, the CLEC has the alternative to take those elements and offer different services or to combine those in different manners that is different than the way the ILEC does it and perhaps have a new offering the ILEC does not.

MS. SUMMER: Excuse me. I realized that I asked the question in the wrong way. I am sorry.

Is there any difference between the ILEC doing the combining with the UNE platform and resale? That was my question. I am sorry.

MR. POOLE: No. As a matter of fact, that would be our position that if you have a UNE platform arrangement, you have an existing port. You have an existing loop. In a resale environment, that is what you are getting.

MS. MATTEY: Okay. One last question from the audience. Any last questions?

Okay. I think it is a good time to break for lunch. We will reconvene at 1:30 p.m. sharp.

(Panel excused.)

(Whereupon, at 12:06 p.m. the forum was recessed, to reconvene at 1:30 p.m. this same day, Thursday, June 4, 1998.)

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A F T E R N O O N S E S S I O N

1:33 p.m.

MS. MATTEY: Welcome back to everyone. This is the afternoon session.

As you know, earlier this morning we heard a lot of discussion about the electronic method for combining network elements known as the Recent Change process, which AT&T and other new entrants have argued is a technically feasible alternative to collocation.

In addition, new entrants have suggested other methods, alternative methods, to collocation for combining network elements. Such methods include direct access to the Bell company network and Bell company provision of combined elements for a separate charge.

This afternoon on this panel we are going to give the new entrants an opportunity to present the affirmative case for concluding that alternative methods are both legally required and technically feasible. Representing the new entrants' position this afternoon will be Len Cali from AT&T, Joseph Gillan on behalf of ComTel, and Don Davis with Intermedia.

Presenting the opposing point of view will be two representatives from Bell companies, Bill Stacy from BellSouth and Michael Glover with Bell Atlantic.

Thanks, and we will begin with Mr. Cali.

MR. CALI: Good afternoon. My name is Leonard Cali. I am a general attorney in AT&T's Law and Public Policy organization.

When the Eighth Circuit vacated Rule 315(b), it closed, at least as a matter of federal law, the most promising avenue for widespread competition in local markets. It did so, of course, for those CLECs that would exclusively use combinations of ILEC UNEs to provide service, but it did so as well for those CLECs that would use combinations of ILEC UNEs in conjunction with their own facilities.

In this regard, for example, a CLEC with its own switch may need to combine UNE loops with UNE transport facilities to extend the reach of its own facilities and use those facilities most efficiently and effectively.

Of course, that decision is on appeal, and we hope and trust the Supreme Court will reverse it. In the meantime, unless the state commissions step into the breach, we live in a world in which the CLECs may be left, as the Eighth Circuit put it, to combine the unbundled elements themselves.

At bottom, if we have to combine the elements then we ought to be able to combine them the way the ILECs do; in particular, by using the Recent Change capability inherent in the switch. As Bob Falcone discussed earlier, it is

feasible for the LECs to make this capability available to CLECs. Indeed, they have already made a very similar capability available to their CENTREX customers.

The legal authority for Recent Change is plain on the face of 251(c)(3). It requires ILECs to provide other carriers first with non-discriminatory access to unbundled network elements; second, with non-discriminatory access at any technically feasible point; and, third, with access in a manner that allows requesting carriers to combine such elements.

Recent Change meets all three criteria. It is the same method that ILECs use today to combine elements, it is accessible at a technically feasible point, namely the BOC OSS, and it allows a CLEC to combine multiple elements. It is the very method that the Texas Commission in its Section 271 Order released this week has ordered SBC to provide.

Of course, the ILECs object to the approach. They claim that the Section 251(c)(6) collocation requirement somehow trumps the express duties of (c)(3) and limits all CLECs to only one point of access; that is the collocated space in or adjacent to an ILEC's central office.

The argument just does not hold together. The FCC expressly rejected the theory in the Local Competition Order, and the Eighth Circuit upheld Rule 321, which requires the ILECs to provide any technically feasible

method of access and expressly says it is not limited to collocation.

The plain language of the Act makes clear that the duty to provide collocation is in addition to the duty to provide access at any technically feasible point, and the legislative history makes clear that Congress explicitly required physical collocation because of the D.C. Circuit's Bell Atlantic case.

The collocation duty, however, is not a limitation on, but an expansion of, the CLECs' right of access to the ILECs' networks. That would include both direct physical access to the MDF, as well as access to the software that we are calling Recent Change.

Now, you heard a little this morning about the takings issues, but I would suggest that those claims overlook the difference between a permanent physical occupation, such as collocation, and a regulatory restriction on the use of property, which is permitted and does not rise to the level of a taking.

In all events, even if they did rise to a level of a taking, we believe (c)(3) clearly authorizes the Commission to authorize that entry, and in all events Recent Change involves no physical invasion at all and would not raise a taking concern.

Without any credible statutory challenge, the

ILECs have raised a series of objections, but they really just boil down to this, and these are objections to Recent Change. It is not painful enough for us. It does not raise our cost or harm our customers enough. It does not really create sufficient entanglement with unnecessary, expensive and complicated ILEC processes. In short, it does not kill UNE competition as effectively as collocation would.

But then the question arises who said foisting gratuitous cost and risks on a competitor is a virtue? Certainly Congress did not, nor did the Eighth Circuit. Now, there is language that the Bells point to very often in the Eighth Circuit decision noting the Court's expectation that the combinations would impose costs and risks that resale does not, but Recent Change clearly fills that bill.

Also, and here is a distinction between Recent Change and resale because I know that question has come up this morning. Recent Change will put customers out of service, and it does require CLECs to own, operate and maintain provisioning processes to recombine the elements and put those customers back in service. That is something that is just not the case with resale.

Sure, the costs and risks are lower than collocation, but they are just as real. In addition, unlike collocation, Recent Change holds out at least the possibility of competing using UNE combinations, and the

Eighth Circuit expected we would. They recognize that the Act intended for rapid introduction of competition using ILEC facilities.

As to the claim we heard earlier that the Government has already conceded, and in fact AT&T has already conceded in the Supreme Court papers, that the Eighth Circuit requires physical separation, that is just simply not right.

We read the Government's papers as drawing a distinction between physical separation, and there we do not draw a distinction between mechanical and electrical, but rather physical separation as distinct from the economic or pricing separation that the word unbundled as actually or typically means.

AT&T also used it similarly in our papers, as well as using it to identify instances illustratively where physical separation would be appropriate. For instance, the NID from the loop, as far as I know, can only be at this time separated physically, but that is a different element. There are two sets of elements.

In all events, we do not believe the Eighth Circuit could have required physical separation. Not all network elements are subject to physical separation, and that is why we think the ILECs are talking of physically separating only some, but not all, network elements.

At bottom, the ILEC insistence on manually disconnecting and reconnecting the loops is anachronistic. It is inconsistent with today's networks where networks or connections are made in fractions of sections. The ILECs insist we use manual methods that have been engineered by their lawyers. That will take days or months to arrange in advance, degrade service and guarantee significant customer outage. We do not believe that is what Congress intended nor what the Eighth Circuit requires.

Thank you.

MS. MATTEY: Thank you.

Mr. Gillan?

MR. GILLAN: Yes. I am actually here on behalf of the Competitive Telecommunications Association, which is not a single carrier or a single business plan, but is instead an association that represents a broad range of entrants from the largest facility based entrants down to the smallest resellers.

To speed things up, I am not going to read my prepared remarks. I wrote them. They are printed, and those who would like to know what I would have said if I read it can read it. Instead, I want to just make four basic points. I have given each one of these a little bit of a name, and I will come back and explain them further.

The first point is called an ugly dog is an ugly

things. Much like the collocation proposals in this proceeding, the bottom line, no matter how she dressed it up it was an ugly dog.

Well, all of the collocation proposals being advanced by the ILEC essentially at root are ugly dogs because they are inherently discriminatory, and they require that the entrant incur costs that the ILEC avoids and engage in manual processes that are both gratuitous and completely unnecessary.

Second point. History repeating itself. There is a natural progression here to which I think the Recent Change process is the culminating point, and that is opening up the local switch to a multi-vendor competitive environment.

The first step in that process was taking a small part of the functionality of that switch, opening it up for long distance competition, the functionality that supported the routing of long distance calls, equal access. When that was introduced, we first heard claims that it was not technically feasible or, alternatively, would cost billions of dollars, yet we now recognize making that part of the functionality available for competition was absolutely critical.

Later that functionality was expanded in several states to include intralata pre-subscription, and at the

dog. The second point is perhaps for the first time in my professional career we are not seeing history repeat itself. The third point I am going to make deals with two very obscure maxims or bodies of thought. It is Okum's Razor and Moore's Law. The fourth point I want to make is that a pick axe is not a shovel, even if they both have handles.

Now, as to the first --

MS. MATTEY: Thank you for livening up the afternoon session.

MR. GILLAN: You know, it seemed to me that this is --

MS. MATTEY: Right after lunchtime you really need to have something to get people's attention.

MR. GILLAN: It also explains why I am never invited back.

The ugly dog point. When our daughter was much younger, we had a Sharpei. For those of you who do not have a dog, I recommend you get a Sharpei because they are an incredibly ugly dog, and they have the advantage that when you come home at night, no matter how bad you look you are not the worst looking thing in the house.

At any rate, as a young child would want to do, periodically she would dress this dog up. She would put it in a baseball uniform. She would put it in a dress. She would put a little hat on it. The poor dog wore a lot of

time that that broadening of the functionality occurred those involved in state proceedings heard it was not technically feasible or it would cost billions of dollars.

The Recent Change process is a culmination of that process because what it does is it opens up to the entrant the full functionality of the switch as envisioned by this Commission's definition, and I think the reason I say perhaps history is not repeating itself is thus far, at least, I have not heard anyone argue that this is not technically feasible. The points have been we do not want to do it, you should not make us do it, you cannot make us to do it, but nobody has argued that it cannot be done, at least so far.

Third point, which will test your knowledge of these obscure properties, Moore's Law and Okum's Razor. Moore's Law, which is the better known of the two, is the one that says that the capability of a microprocessor doubles every whatever it is, 15 minutes now.

The second one, Okum's Razor, says that if you are confronted with a choice of something very complicated and cumbersome and something very simple and elegant, you always choose the simple, elegant solution.

Now, the combination of those -- no pun intended -- is that when you look at how entrants are to comply with the Eighth Circuit's Order, you look to establish the

simplest, easiest, most cost effective, most efficient manner possible because if you do not, what will suffer is competition.

The reality here is that we live in an electronic age, and imposing combination processes that are manual and require physical changes and network components is irrational. We are going to end up limiting competition to those few users for whom handcrafted phone service makes sense.

Final point is the one that a pick axe and a shovel are different. There are real fundamental differences between network element platform and resale. Resale is taking a single service offered by the ILEC and re-offering it under your label. Network elements is the purchase of all those facilities, facilities that can offer multiple services and giving you the opportunity to offer those multiple services.

Those are the real differences here that need to be preserved. Artificial differences by attempting to make that which could be easy as hard as possible should be avoided.

In sum, the ILECs I believe are both legally required to do this in the most efficient way, the way asked for by requesting carriers, and it is technical feasible.

Thank you.

MS. MATTEY: Thank you.

Mr. Davis?

MR. DAVIS: I am going to read my statement because I am used to RBOC proceedings where if I vary by one or two words there is an objection from somewhere and legal arguments.

Good afternoon. I am Don Davis, and I am an Assistant Vice-President for Intermedia Communications. With recent industry mergers, Intermedia is the largest independent CLEC in the country. As such, we are fundamentally concerned with obtaining cost based access to unbundled loops and other network elements in a timely and the most effective manner possible.

To date, we have experienced two primary impediments to our ability to use these unbundled loops. One is the ILECs are interpreting the decision of the Eighth Circuit Court to mean that they have no obligation to connect any unbundled elements under any conditions and that the CLECs must physically collocate at every point in the network where one network element connects to another.

The second problem is the cost of collocation. This is the reason that the ILECs' interpretation of the Eighth Circuit Court is so harmful. When you include the cost of our equipment and collocation space, you are to a typical cost of $200,000 to $500,000. It is simply

impossible to justify that type of collocation in every central office in the country.

The importance of alternatives to physical collocation cannot be overstated. As things stand today, the excessive cost of collocation means that the CLECs can only justify collocating in end offices that serve customer bases that generate substantial revenues; in other words, big businesses.

If we can significantly avoid collocation costs or significantly reduce them, CLECs will be able to provide services to smaller groups of customers and customers with smaller volumes of traffic. This does include residential or mass market customers.

In addition, if a CLEC is obligated to collocate in every ILEC end office, it will be effectively forced to adopt the geographic layout of the ILEC's network as its own and will be forced to mirror the technology used by the ILEC. Eliminating or significantly reducing the collocation obligation will not only stop imposing wasteful costs on the CLECs; it will free them to more efficiently develop networks based upon 1990s technology.

The bottom line here is that the ILECs should not be allowed to use collocation to require CLECs to adopt the distributed switch architecture, interoffice transport mechanisms and rate boundaries mandated by the technology

they deployed in the 1940s, 1950s and 1960s.

Our solution lies in defining the UNEs. Fundamentally, the ILECs' interpretation of the Eighth Circuit Court as allowing ILECs to refuse to interconnect the UNEs at any time must not be allowed to stand. The quickest and easiest way to fix this within the Commission's discretion is simply to redefine or expand UNE definitions to include the functions that CLECs critically need.

As the Eighth Circuit Court acknowledged, the FCC and state regulators have the jurisdiction to define the UNEs. Regulators thus have the power to define a UNE, a single UNE, that provides functionality required by CLECs.

For example, let's look at the loop, central office multiplexing and interoffice transport functions that make up the extended link service described earlier today. In the copies of my statement that were outside and previously supplied to the Commission I have included a diagram that shows a typical extended link arrangement.

The term extended link refers to the combination of a local loop with multiplexing and interoffice transport for the purpose of delivering traffic from an end user to the CLEC's point of interconnection. It may involve BSO or voice grade loops with DS-1 interoffice transport, or it may involve DS-1 loops with DS-3 interoffice transport.

The term originated in New York where the New York

Public Service Commission, prior to the Telecom Act, required NINEX to tariff this application.

Similar to New York, the FCC is empowered under the Act to define these functions as a single UNE. Doing so would effectively short circuit the ILEC's ability to use the Eighth Circuit Court decision as an excuse for refusing to link the network components the CLECs need and would eliminate the need for the CLEC to collocate in every end office.

Widespread implementation of extended link would greatly expand the CLECs' addressable customer base, greatly increase the number of the Americans that have a competitive choice in local services. Furthermore, it would allow CLECs to utilize 1990s technology and 1990s architectures. By utilizing the economies that are involved in these technologies, it will drive competition to a lower and lower level.

To some extent, ILEC combinations of this type are already provided under existing UNE definitions. Most unbundled loops that are now being provided by ILECs are made up of a series of discrete functions: The feeder cable that runs from the ILEC's end office to a concentration device in the field; the concentration or digital loop carrier device into the field or XDSL equipment in the field or ISDN equipment.

From that concentration equipment, you then have a distribution plant that goes out to the curb. From the curb you then have a drop that goes to the house. The drop ties into the NID. Each one of these is a discrete physical element, but is typically defined in a combined manner as a loop.

Some state commissions have mandated that individual elements like a NID be provided. Some particular commissions have ordered sub-loop unbundling to make it available at the point of concentration, but they have also made the whole thing available as well.

We feel the FCC is empowered to expand this to include the interoffice facility to bring that back to our switch. What we are looking for is a functional loop that is a loop from our switch to the customer end user.

In short, nothing in the Act requires that UNEs must be defined as the smallest functional component of the network. In fact, the opposite is the case. The Act expressly prohibits ILECs from taking functions that are currently offered to CLECs and unbundling them into separate UNEs.

Further support for this position is offered in that the requirement to provide UNEs, and this is Sections 251(c)(3) and 271(c)(2)(B)(ii) --

MS. MATTEY: We just call it Checklist (ii).

MR. DAVIS: Checklist (ii). -- is separate from the checklist requirement to provide access to local loop transmission, Checklist (iv).

Other steps. Even with limited combinations such as extended link, there is still a need to collocate. Other panelists have discussed methods of reducing the cost of collocation, including cageless collocation and the use of virtual collocation to connect UNEs.

Intermedia strongly supports recent actions to consider such alternatives taken by this Commission and by the numerous state commissions across the country.

MS. MATTEY: Thank you.

I will turn it over now to Mr. Stacy.

MR. STACY: Good afternoon. I also am going to read at least part of my prepared statement because, unlike Joe, I do not have an ugly dog.

My name is Bill Stacy. I am here to discuss the issues surrounding how BellSouth makes unbundled network elements available to competing local exchange carriers. First let me assure you that BellSouth not only is willing to provide unbundled elements, but indeed is providing them, and the methods we currently offer are those you heard about this morning. We offer physical collocation either with or without a cage and virtual collocation.

Using those methods, we provide the UNEs to the

CLEC, and the CLEC can combine them themselves with their facilities or equipment to create services, or they can combine only the UNEs they obtain from BellSouth to create services. In addition, BellSouth has offered to negotiate other arrangements for combining UNEs with the CLECs.

Second, it has been BellSouth's experience in the debate over recombination of unbundled elements that the issue generally is one of pricing rather than technical feasibility. You heard that several times this morning.

Most CLECs want unbundled elements combined in a manner that looks just like a service that can be obtained through total service resale. I refer to that in my comments as sham unbundling, and you heard that this morning.

The difference, of course, is that for unbundled elements the CLECs pay cost based rates, while for resale the charge is the retail service price less the wholesale discount. The question is about the price. It is not about what the services do.

Although 251(c)(3) requires that BellSouth provide access to its network elements, it is our belief that we are not required to provide combinations of network elements to comply with the checklist. The Eighth Circuit examined the FCC Order and rules and determined that BellSouth has no obligation to provide combinations that replicate retail

services.

The Court vacated 51.315(c) through (f) and found that that same section cannot be squared with (c)(3). They go on to say that while the Act requires incumbent LECs to provide elements in a manner that enables the competing carriers to combine them, unlike the Commission we do not believe that this language can be read to levy a duty on the incumbent LECs to do the actual combining. Certainly if rebundling is not a requirement under the Act, it cannot be a checklist requirement.

Furthermore, we believe that a plain language interpretation of the term combined is all that is needed to determine the intent of Congress regarding a CLEC's use of unbundled network elements, so the Eighth Circuit's decision in 251(c)(3) supports BellSouth's position that physical separation is not necessary in order for those items to qualify as unbundled network elements.

CLECs may combine the various unbundled network elements which they request and are provided by BellSouth, but that combining requires action on their part to reverse what BellSouth has uncombined, so the CLEC must take action to achieve the combinations that create services.

To date, we found that the only viable method by which BellSouth can fulfill the requirements of the Telecommunications Act and satisfy network security and

reliability requirements are physical and virtual collocation.

The first report and Order at Paragraph 198 makes it quite clear that some arrangements, while technically possible, are not technically feasible. That paragraph includes this statement. "Specific, significant and demonstrable network reliability concerns associated with providing interconnection or access at a particular point, however, will be regarded as relevant evidence that interconnection or access at that point is technically infeasible," so arrangements which by their nature reduce network reliability fall into the category of being technically infeasible.

Although I am not a lawyer, and I say thank heavens for that sometimes. My lawyers have heard me say that. I also note that my understanding of the decision in the Iowa Utilities Board v. FCC at Paragraph 22 is that BellSouth is not required to provide a CLEC with unbundled access to a network element merely because it is technically feasible.

While to date only physical collocation and virtual collocation are found to be technically feasible, we have been and remain open to exploring other methods. We have talked about several of those this morning. I am going to go through a couple of them very quickly.

We have talked, despite some conversation this morning, extensively with at least one CLEC about the use of the Recent Change method. We have talked about direct access to central office frames. We have talked about third party personnel performing Recent Change or direct access work.

We have talked about the switch translation capability that BellSouth CENTREX customers have that allows the end user some level of control over their translations in the switch, and we have talked about the use of BellSouth technicians to perform the work on behalf of the CLEC for a negotiated fee.

Let me quickly talk about why those methods fail. Direct access, supervised access, third party access and Recent Change introduce a significant reduction of network reliability and network security and thus are contraindicated by the technical feasibility standards that the Act itself laid out.

Let me give two brief examples. If direct access were given to a CLEC's technicians or third party to come into a BellSouth central office and perform work on a frame, all of the subscriber's services on that frame in that office are subject to any error on the part of the CLEC, whether it is workman error, record errors, simple human error, and yet the CLEC has no reliability or responsibility

for the service interruption that might occur.

It is all too easy to envision a CLEC error where one wrong jumper is listed off and a DS-1 going to an E-911 PSAP is dropped, and they have no responsibility for it. In an even more serious scenario, let's talk about direct access to Recent Change. If direct access were provided, you can take down a frame serving 1,000 subscribers, 1,024, or you can take down a central office.

Now, can those things be worked around given time? Yes. Do they present risk to the end users and to the network as a whole? Yes, they do, and they seem to clearly fall into the category envisioned by the Commission's technically infeasible definition that I referred to earlier.

In addition, the Recent Change method is simply not a method of combining unbundled network elements as the loop or port, but is simply a means of temporarily interrupting customer service.

At least one CLEC believes that simply interrupting service for a customer and then reinstating that service somehow constitutes a form of combining network elements, but as Mr. Lauria pointed out this morning, and he used the words Recent Change is nothing more than suspending and restoring the service, which is exactly what total service resale is. This is not unbundling in any way, shape