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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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 Telecommunication Act of 1996)

CC Docket No. 98-78

REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation (MCI) hereby submits its reply to the comments filed regarding the above-captioned petition filed by the Association for Local Telecommunications Services (ALTS).¹ MCI re-emphasizes that so long as incumbent local exchange carriers (ILECs) retain control of the local loop and other essential equipment, aggressive implementation and enforcement of sections 251 and 271-- without limitation -- will be critical to the facilitation of local market competition. If the Commission truly wants to see competition develop for traditional and advanced local services, it should reject the ILECs' attempts at creating an arbitrary distinction between facilities used to provide such services.

I. CONTINUED ENFORCEMENT OF SECTION 251 WILL BEST PROMOTE WIDESPREAD DEPLOYMENT OF ADVANCED CAPABILITIES

It is critical that the Commission reaffirm that section 251 applies to ILECs' facilities in order to permit competitive local exchange carriers (CLECs) to provide traditional local and

¹ Petition of the Association for Local Telecommunications Services for a Declaratory Ruling, CC Docket No. 98-78 (filed May 27, 1998) (ALTS petition).

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advanced capabilities and services.² The ILECs should not be permitted to determine which of their facilities their competitors need to enter the market. As the Commercial Internet Exchange stated, unbundling of the ILEC network is a key factor of the Telecommunications Act of 1996 (Act) goal to open the local market to competition.³ By affording CLECs the right to three entry methods -- construction of facilities, access to unbundled network elements, singly or in combination, and resale -- Congress recognized that facilities-based competition would take time to develop and would evolve as new entrants relied on access to unbundled and combined ILEC network elements and resale of ILEC retail services. Congress contemplated that during this period CLECs could cultivate enough market share to expand their facilities investments.

Congress and this Commission got it right. Unbundling local loops capable of voice and enhanced services, preserving existing regulatory safeguards on ILECs, and opening the local market to competition is what will drive the widespread deployment of advanced telecommunications. These suppositions, as well as provisions in the Act, hold for the provision of broadband capabilities just as they do for voice services. From both a legal and a public policy perspective, it is premature to consider regulatory forbearance or any other limitation on the application of section 251.

The requirement that ILECs unbundle their local networks, including copper loops, operations support systems, switching elements, and network capabilities such as DSL modems, for nondiscriminatory access by competitive carriers and innovative users is unquestionably a

² 47 U.S.C. § 251; see also Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 98-96 at ¶ 380 (rel. Aug. 8, 1996) (Local Competition Order).

³ Comments of the Commercial Internet Exchange Association at 3.

much better catalyst for local competition than granting a single monopoly provider regulatory carte blanche to exclude competitors from its broadband network. Enforcing the interconnection, collocation, unbundling and pricing requirements of section 251, and the in-region interLATA restrictions set forth in section 271, represents the most efficient means of ensuring the development of local competition. Proper enforcement of these sections will in turn facilitate the realization of the goals set forth in section 706. With nondiscriminatory access to all unbundled or combined network elements,⁴ CLECs can compete to provide broadband services to businesses and residences consistent with the Act's paradigm of providing new entrants with alternative ways to enter local markets.

It is inconsistent with the public interest to grant any exemptions or otherwise forbear from implementing these section of the Act. As MCI and other parties noted, the Commission may only forbear from regulation under section 251 and 271 when they have been fully implemented. ILECs deserve regulatory forbearance only when they first demonstrate compliance with the procompetitive provisions of the Act.⁵ The ILECs' have been desperately trying to undermine CLECs' right to gain access to all facilities through numerous court challenges and their respective section 706 petitions. The ILECs effectively control the equipment deployed as an integral part of a customer's xDSL service and thus the timing of its deployment. When a CLEC purchases xDSL equipment, it still has to address technical distance

⁴ Forcing competitors to take network elements on a disassembled basis when they are already combined in an ILEC's network imposes costs on new entrants that the ILECs would not incur, which violates the nondiscrimination requirement in section 251(c)(3). Further, such actions of the part of ILECs violate the requirements that unbundling be reasonable and cost-based.

⁵ See e.g., Comments of AT&T at 9-10.

limitations of the local loop, the cost and time interval for installation with collocation, and other technical deployment decisions.

Under these circumstances, MCI finds it genuinely puzzling how deregulated treatment would foster competition for deployment of advanced data capability as the ILECs claim. Indeed, granting regulatory forbearance now will only mean delaying the arrival of a competitive local market. Because there are no viable alternatives to the ILECs' xDSL offerings, CLECs will effectively be precluded from efficient and speedy entrance into the advanced services market. Unfortunately, consumers will be the ultimate losers. Consumers will be deprived of choice of broadband service providers, better quality and competitive pricing of those services, which will depend on the ability of competitors to access the xDSL capabilities in the ILEC networks. Moreover, consumers will not be able to reap the benefits of competition as technology advances if the ILEC can relegate competitors to using only the existing capabilities of the network, while reserving to themselves the newer capabilities.

II. THE PROCOMPETITIVE PROVISIONS OF THE ACT SHOULD APPLY TO ADVANCED CAPABILITIES AND SERVICES, AS NO DISTINCTION EXISTS BETWEEN VOICE AND DATA SERVICES

The ILECs' argument that the Commission should recognize a distinction between circuit-switched and packet-switched technology is a clear attempt to confuse and circumvent the law to be relieved of their obligations under the procompetitive provisions of the Act.⁶ As Intermedia correctly points out, the Commission cannot distinguish between the technical attributes of circuit-switched and packet-switched technology,⁷ especially since packet-switched

⁶ See Comments of BellSouth at 7; see also Comments of U S West at 11-12; see also Comments of SBC at 4-7.

⁷ See Comments of Intermedia at 2.

data networks permit the transmission of voice services. Equally important, section 251 makes no distinctions between facilities used to provide voice services and those used to provide data services. Nor is there any distinction made between traditional and so-called advanced services. Section 251 governs all telecommunications services including xDSL loops and any other advanced capabilities and data services.⁸ In addition, section 271's restrictions forbid Bell Operating Companies from offering both in-region interLATA telecommunications services and data services until the Commission grants ILECs authority to do so.⁹

Any distinction for regulatory purposes between traditional circuit-switched services and newer packet-switched technologies would simply be inaccurate and would lead to potential abuse by the ILECs, resulting in the loss of benefits to consumers that occur in a competitive market. U S West contends that it is not acting as an ILEC when it provides xDSL service and that section 251 requires a service-by-service reading to determine the duties of ILECs.¹⁰ US WEST's reading of the Act, however, is flatly wrong. As we know, traditional local services can be carried over either circuit-switched or packet-switched networks. Indeed, the same facilities -- the current local loop and local loop electronics -- are used for both voice and data traffic. Accordingly, MCI supports KMC's request that the Commission affirmatively conclude that existing interconnection agreements apply to xDSL services to prevent an ILEC from extending its monopoly of bottleneck facilities to encompass any data networks or facilities.¹¹

⁸ See Comments of AT&T at 4.

⁹ See Comments of NEXTLINK at 15.

¹⁰ See Comments of US WEST at 14.

¹¹ See Comments of KMC at 7.

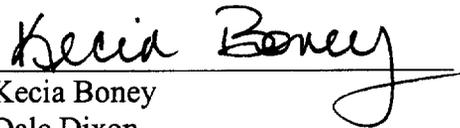
Maintaining and aggressively enforcing the provisions and regulations of the Act that prevent BOC and ILEC monopolization of networks and services is as important for both traditional local and advanced capabilities and services. Section 251 of the Act does not distinguish between ILEC provision of services on a packet-switched versus circuit-switched basis. Further, it does not make distinctions between elements or equipment for voice and data services. To accept the ILECs' artificial distinction would create an unworkable and legally unsubstantiated dichotomy that would permit the ILECs to buttress their monopoly of the local exchange networks through unregulated control of xDSL technology now, and other technologies in the future.

CONCLUSION

For the foregoing reasons, MCI urges the Commission to deny the petition filed by the SBC LECs.

Respectfully submitted,

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Dated: June 25, 1998

CERTIFICATE OF SERVICE

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