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June 25, 1998

RECEIVED

JUN 25 1998

Federal Communications Commission  
Office of Secretary

Ms. Janice Myles  
Federal Communications Commission  
Common Carrier Bureau  
1919 M Street, N.W., Room 544  
Washington, DC 20554

Re: Reply Comments of AT&T Corp. 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

Dear Ms. Myles:

Enclosed please find a diskette formatted in an IBM-compatible form using WordPerfect 5.1 for Windows software, in a read-only mode, containing the Reply Comments of AT&T Corp. that were filed today in the above-captioned proceeding.

Respectfully submitted,

*Ava B. Kleinman /ha*

Enclosure

cc: Magalie Roman Salas  
Secretary of the FCC

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**JUN 25 1998**

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

Federal Communications Commission  
Office of Secretary

In the Matter of )  
)  
Petition of the Association for Local ) CC Docket No. 98-78  
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 )

REPLY 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 Reply to the Comments filed on the Association for Local Telecommunications Services ("ALTS") petition for a declaratory ruling establishing the conditions that are necessary to promote deployment of data communications capability.<sup>1</sup> The Comments vividly illustrate the need for, and wisdom of, a ruling by this Commission that the pro-competitive provisions of sections 251, 252 and 271 of the Communications Act apply to the deployment of data communications networks, and that competitive local exchange carriers ("CLECs") have the same rights with respect to access to data networks as they have for conventional "POTS" and other telecommunications services and facilities.

I. THE COMMENTS CONFIRM THAT IT IS NECESSARY AND APPROPRIATE FOR THE COMMISSION TO DECLARE THAT SECTION 251 APPLIES TO DATA NETWORKS.

As AT&T noted in its Comments, declaratory relief under Section 1.2 of the Commission's rules is appropriate to terminate a controversy or remove uncertainty where the

<sup>1</sup> A list of commenters appears as Appendix 1.

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relevant facts are developed and essentially undisputed.<sup>2</sup> The Comments filed in this proceeding offer ample record evidence not only of the uncertainty surrounding the legal status of these services, but also of the tremendous, duplicative litigation efforts that CLECs must undertake to assert their lawful rights and the chilling effect that these burdensome processes are having on their ability to deploy these data communications services.<sup>3</sup>

First, there is no debate that xDSL and other packet-switched services are "telecommunications services" subject to Sections 251, 252 and 271 of the Telecommunications Act. The ILECs themselves tariff these services wherever they are offered,<sup>4</sup> and the very fact that four RBOCs have petitioned for forbearance from the requirements of the Telecom Act confirms their status as telecommunications services.<sup>5</sup> Further, as LCI explains, xDSL functionality falls squarely within the definition of "network element," which includes all "features, functions, and

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<sup>2</sup> 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).

<sup>3</sup> As a threshold matter, AT&T's announced acquisition of Telecommunications, Inc. ("TCI") does nothing to mitigate the need (and obligation) of the ILECs to open their local markets to competitors in accordance with Sections 251 and 252 of the Telecom Act. Notwithstanding this promising alliance, local competition is not here yet; the deal has yet to close and AT&T anticipates that it will not close until the first half of 1999. In addition to federal approvals, AT&T will need to gain various approvals from thousands of municipalities that currently regulate cable operations. And millions of dollars of investment have yet to be made to upgrade TCI's cable systems to accommodate telephony. Moreover, TCI reaches only 30 percent of the nation's households, leaving the majority of American homes out of reach to CLECs except through the facilities of ILECs. Thus ILEC compliance with their 251/252 obligations remains a critical cornerstone for local exchange competition.

<sup>4</sup> AT&T at 6, n.11.

<sup>5</sup> LCI at 3, n.5.

capabilities" of a "facility or equipment used in the provision of a telecommunications service" and "nothing in the definition of network elements or the Section 251(c) unbundling provisions would suggest that the availability of the 'features, functions, and capabilities' of ILEC network facilities or equipment is limited to voice services or to circuit-switching technology."<sup>6</sup>

Intermedia points out that the distinction between circuit-switched and packet-switched networks that the ILECs attempt to draw finds no basis in the way analog and digital technology is actually used:

In fact, there are not two separate networks, and there never were. Rather, there is a single ILEC network that, like the networks constructed by CLECs across the country, is evolving into a predominantly digital, packet-switched facility. . . . [A]long high-traffic routes, the majority of interoffice transmissions - including those carrying 'plain old telephone service' - are now carried over packet-switched, digital facilities. This same evolution is now taking place in the local loop. . . . Significantly, however, these developments will not result in a data network overlaying the existing circuit-switched network. Instead, existing facilities are being converted into packet-switched network extensions, making it possible to provide conventional voice telephony, as well as high capacity data services, over copper loops. As a technical matter, it is impossible to segregate the network into 'digital' and 'analog' components. As a practical matter, no regulatory structure could reasonably accord different treatment to digital and non-digital services and facilities.<sup>7</sup>

Illustrating the desperation of their position, the ILECs attempt to define xDSL and other packet-switched services as something other than local exchange services subject to the unbundling, interconnection and resale obligations of Section 251. These arguments, however, are simply silly. GTE, for example, claims (at 14-15) that ADSL-equipped loops provide

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<sup>6</sup> LCI (White Paper) at 12.13.

<sup>7</sup> See also CIX at 8-9 ("Section 251 does not contemplate exemptions or exceptions from the ILEC's duty to interconnect with competing local networks that may carry data traffic. To the contrary, Section 251(b)(5) obligates the ILECs to establish 'compensation arrangements for the transport and termination of *telecommunications*,' which includes telecommunications of data traffic") (emphasis in original, citations omitted); MCI at 3-6.

functionality that is an "exchange access service" and not a local exchange service. GTE relies on the definition of "access service" as including "services and facilities provided for the origination or termination of any interstate or foreign telecommunication." *Id.* at 15-16. However, if this argument were credited, then there would be no such thing as a "local exchange service" because under GTE's broad reading even the analog local loop performs solely an "exchange access" function. A more reasonable approach to the classification of ADSL service is that it not only is functionally similar to an analog copper loop (which plainly provides connectivity for voice and data calls to the Internet and other interstate services as well as for a local services), but it is also no different than other local high-speed services such as ISDN (which, again, provides connectivity for local voice and data calls as well as for interstate calls and which is universally tariffed as a local exchange service).<sup>8</sup>

For its part, US West argues (at 11-17) that xDSL is neither a local exchange nor an exchange access service because such service does not constitute "the provision of two-way voice communications . . . over a circuit-switched network." US West goes on to conclude that xDSL services are also not "comparable" to traditional telephone exchange service. As to US West's first argument, the definition of xDSL service as something other than a local exchange service simply cannot be squared with the plain fact that such service is nothing more than

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<sup>8</sup> Moreover, GTE's attempt, in its recently suspended interstate DSL access tariff, unlawfully to bundle its xDSL service with its own frame relay service does not militate in favor of GTE's position. Clearly, if a monopoly LEC forces customers to purchase an xDSL service that must be connected to and used with that monopoly LEC's packet transport for termination at the customer's point of presence (in effect a "forced" Feature Group D service), such a bundled service does have the hallmark's of an access service. However, xDSL service -- taken alone -- has no such hallmarks, and is no different than any other local service that an end user would purchase for high-bandwidth capability from his/her home. See GTOC Transmittal No. 1148, filed May 15, 1998; and GTOC Transmittal No. 1148, CC Docket No. 98-79, Order, DA 98-1020, rel. May 29, 1998.

electronics added to the local loop, and the fact that the data portion of the traffic carried over an xDSL service may be diverted to a packet switch offers no rational basis to find that it is not a service that performs local exchange functions. Indeed, the voice traffic generated over an xDSL service continues to be routed and transported by the ILEC as a circuit-switched call.<sup>9</sup> As to US West's second argument, the notion that xDSL is not "comparable" to analog local service is belied by US West's own statement (in the very same paragraph) that "US WEST has committed not to market packetized voice services until it receives appropriate Section 271 authorizations." Id. at 16-17. Finally, in direct contravention to GTE's position above, US West (at 17) remarkably argues that xDSL is also not an "exchange access service" because "the backbone and xDSL services at issue have nothing to do with originating or terminating toll calls . . . and would not offer access to US WEST's circuit-switched [network]." Regardless of the merit of this last argument, it does not affect the obligations of the ILECs to provide UNEs, resale, collocation and interconnection for xDSL services.

The Commission should take this opportunity, once and for all, to put a stop to this posturing. By declaring xDSL functionality to be no different from a statutory and regulatory perspective than circuit-switched functionality offered over the local loop (and indeed no different than local ISDN services), the Commission would forestall the endless disputes that manifest themselves in interconnection negotiations and find their way into multiple, duplicative arbitrations throughout the country. If the Commission is serious about enforcing ILEC obligations under the Telecom Act, it can take an important step here to remove these endless

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<sup>9</sup> None of the selected Commission orders cited by US West (at p. 16, n.10) have any relevance to broadband services and offer no support whatsoever for a Commission finding that merely because xDSL services are packet-switched, they are not local services.

controversies, encourage the efficient utilization of all parties' resources, and clarify to the ILEC community that it can no longer avoid its statutory obligations as to data services.<sup>10</sup>

II. THE COMMENTS ALSO CONFIRM THE PROPRIETY OF DEFINING XDSL FUNCTIONALITY AS AN UNBUNDLED NETWORK ELEMENT.

The Comments overwhelmingly confirm the propriety of, and critical need for, a Commission ruling that CLECs are entitled to obtain, as a single UNE, xDSL functionality over whatever facilities and equipment are used by the ILEC to provide such functionality to itself. As LCI explains in detail in its White Paper, it is inappropriate under the Telecom Act for the Commission to limit its definition of a local loop to the physical copper pair of wires between the customer's premises and the central office. Rather, "[t]he electronics necessary to transmit signals

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<sup>10</sup> The arguments of ILECs such as GTE (at 6) that a declaratory ruling is unnecessary because the CLECs have the statutory right to have their claims arbitrated is disingenuous at best. A declaratory ruling is appropriate to put to rest the controversy that arises in multiple jurisdictions around the country. It is precisely because a declaratory ruling would end these disputes and enable timely resolution and implementation of interconnection agreements that ILECs such as GTE oppose them.

Further, GTE's suggestion (at 6-7) that "incumbent LECs are fully complying with the terms of the Act" is frivolous. The evidence presented by GTE from a paper prepared by the National Economic Research Associates ("NERA") provides scant evidence that the ILECs are "providing competitors with the tools necessary to compete effectively." Specifically, while GTE states that the largest ILECs have spent more than \$4 billion to open their markets, AT&T alone has spent over \$3 billion on local entry and has yet successfully to penetrate the local market. AT&T has also invested \$11 billion in the acquisition of Teleport in order to gain entry into the local market. The figure cited by GTE -- which encompasses the ILEC industry in total -- pales in comparison. Further, GTE states that by October 1997 the ILECs (excluding Ameritech) have supplied approximately 1,147 collocation cages and 3.805 NXX codes. These statistics are meaningless. Considering that there are over 20,000 central offices nationwide -- and that multiple collocation cages are resident in the same central office -- this demonstrates at most a paltry five percent penetration rate. Similarly, the number of NXX codes purportedly made available by ILECs represents only two percent of the available codes, and offers no demonstrable evidence of the competitiveness of the local market.

over that wire are an integral part of the loop and are included in what a carrier is entitled to purchase as a network element."<sup>11</sup> This is especially critical where those electronics are deployed not in the central offices, but in remote terminals which are not accessible at all to CLECs. Such denial of access (which the ILECs claim to be their right today) forecloses CLECs from serving customers who are served with loops traversing these remote facilities -- which make up between 20 and 30 percent of customers nationwide.<sup>12</sup> Indeed, the widespread problems encountered by the CLECs in obtaining access to the remote feeder plant in order to deploy their own electronics necessary to provide advanced services are detailed by many Commenters.<sup>13</sup>

Moreover, even where the customer is not served via a digital loop carrier facility, it may not be economical for a CLEC to deploy electronics in a central office absent a critical mass of customers served at that end office. Thus access to the electronics as part of the xDSL loop in those instances is imperative for CLECs as they build up their customer base.<sup>14</sup>

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<sup>11</sup> LCI (White Paper) at 14-15.

<sup>12</sup> Id. at 15-18.

<sup>13</sup> NAS at 3; Nextlink at 1-13.

<sup>14</sup> LCI (White Paper) at 18-21. See also CIX at 3-5 ("The ILEC also effectively controls the electronics deployed as an integral part of a consumer's xDSL service, as a result of technical distance limitations on xDSL services, control and limitations over collocation space for competing providers, and technical deployment decisions. If left with no duty to offer the underlying UNEs (including electronics used in the xDSL service) to competing providers, the ILECs stand ready to monopolize data access in the same way (and, indeed, using much of the same equipment) as they now control the local telephony business"); NAS at 2-4; Nextlink at 9-13; TRA at 7-8 ("without access to xDSL electronics, it is virtually impossible for competitive LECs to provide xDSL services utilizing unbundled DSL-compatible loops"); TCG at 4-6 ("The ability of an xDSL compatible loop to carry high speed data is an 'embedded feature,' functionally inseparable from the physical xDSL-conditioned copper loop, which is expressly a UNE under the Local Competition First Report and Order. . . . [T]he ILEC must be required to offer, as a UNE, access to the functionality of the xDSL services it is offering to its customers").

Contrary to the claims of the ILECs such as Bell Atlantic who argue that access to their xDSL electronics is not "necessary," and that the failure to provide access to electronics would not "impair" the ability of requesting carriers to provide service, the Comments prove just the opposite.<sup>15</sup> Specifically, access to the ILECs' electronics attached to the local loop -- in particular when they are deployed at remote huts that are out of bounds to CLECs -- is not only necessary, it is mandatory if CLECs are to be able to obtain nondiscriminatory access to the xDSL loop and to offer advanced services to the same customers as are available to the ILECs themselves. Moreover, the Comments also demonstrate that the failure of the ILECs to provide xDSL-equipped loops; *i.e.*, that include the electronics embedded in the loop facilities, undoubtedly impairs the ability of CLECs to provide service. The Commission should therefore promptly initiate a further rulemaking to define, as a separate UNE, xDSL-functional loops, including the embedded electronics.<sup>16</sup>

### III. THE COMMENTS OVERWHELMINGLY SUPPORT FURTHER COMMISSION ACTION TO STRENGTHEN ITS EXISTING COLLOCATION POLICIES.

The Comments also demonstrate the critical need for the Commission to revisit its existing collocation rules and provide more specific rights of CLECs, including the establishment of new rules governing physical and virtual collocation, as well as more practical alternatives such as "cageless" collocation and cage sharing. The Commission has ample evidence on the record here of the hard stand taken by the ILECs since the Iowa Decision, where the ILECs have been requiring CLECs to collocate in every end office, tandem, and other location where currently

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<sup>15</sup> See CIX at 4-5; LCI at 18-20; Sprint at 4.

<sup>16</sup> In addition, the record confirms the need to identify packet switching and packet transport as separate UNEs. See LCI at 6.

defined UNEs must be connected.<sup>17</sup> These Comments substantiate the Chairman's concern that the Commission "tighten up" its collocation policies.<sup>18</sup>

### CONCLUSION

The ALTS petition is a "wake up call" for the industry, and should be heeded by the Commission. 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 pre-condition to long distance entry under Section 271) just as they are obligated to do so with their traditional circuit-switched networks will put an end to at least one controversy that currently hamstrings the CLECs in their efforts to provide advanced services to customers, and would forestall the endless arbitrations surrounding this issue at the state level -- arbitrations that will only be repeated as interconnection agreements expire and new ones need to be negotiated. There is no rational basis not to issue this specific ruling as requested by ALTS. Indeed, as many Commenters point out, such a ruling would validate and support the numerous state initiatives that favor competitive deployment of data services. As discussed above, the Commission should promptly initiate further rulemaking proceedings where appropriate to define additional UNEs and additional collocation requirements.

Finally, the Comments of the ILECs in this proceeding lend credence to ALTS' request that the Commission make clear that it will not grant ILEC forbearance requests predicated on Section 706 of the Act unless and at least until the requesting carrier has met its unbundling, resale, collocation and interconnection obligations under Sections 251 and 252. The ILEC

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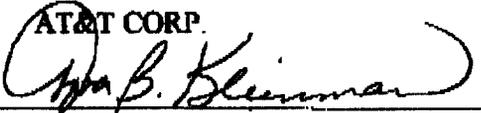
<sup>17</sup> See, e.g., e.spire at 6-8; Intermedia at 5-6; KMC at 6; LCI (White Paper) at 21-27; MCI at 6-7; Nextlink at 16-18.

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

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Comments contain statements that the ILECs are already opening their networks to competitors<sup>19</sup> -- statements that stand in stark contradiction to the ILECs' actual, miserable performance over the past two years, as CLECs have sought access to ILEC networks to provide POTS. Given their track record, there is no credible basis for the Commission to believe the ILECs that they will keep their promises now, or to rely on such promises as a pre-condition for the forbearance that the ILECs request. By taking the actions recommended above, the Commission would send a strong signal to the industry that it is serious about enforcing the pro-competitive mandates of the Telecom Act, and that it will not tolerate vague promises of compliance in exchange for deregulation of the ILECs' next generation networks.

Respectfully submitted,

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By   
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Its Attorneys

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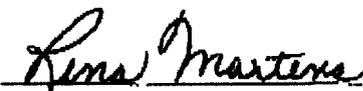
<sup>19</sup> See, e.g., Bell Atlantic at 9-12; US West at 7.

List of Commenters

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Competitive Telecommunications Association ("CompTel")  
e.spire Communications, Inc. ("e.spire")  
GTE Service Corporation ("GTE")  
Hyperion Telecommunications, Inc. and USN Communications, Inc. ("Hyperion")  
Independent Telephone & Telecommunications Alliance ("ITTA")  
Intermedia Communications Inc. ("Intermedia")  
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New York State Department of Public Service ("NYDPS")  
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Sprint Corporation ("Sprint")  
Telecommunications Resellers Association ("TRA")  
Teleport Communications Group Inc. ("TCG")  
United States Telephone Association ("USTA")  
U S West, Inc.  
WorldCom, Inc.

**CERTIFICATE OF SERVICE**

I, Rena Martens, do hereby certify that on this 25<sup>th</sup> day of June, 1998, a copy of the foregoing "Reply Comments of AT&T Corp." was served by U.S. first class mail, postage prepaid, to the parties on the attached Service List.

  
Rena Martens

AT&amp;T Corp.

June 25, 1998

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