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FEDERAL COMMUNICATIONS COMMISSION
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July 21, 1998

Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

ORIGINAL

Re: Notification of Ex Parte Presentation

Petition of the Association for Local Telecommunications Services for a Declaratory Ruling Establishing Conditions Necessary to Promote Deployment of Advanced Telecommunications Capability Under 706 of the Telecommunications Act of 1996
CC Docket No. 98-78

Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services
CC Docket No. 98-11

Petition of Ameritech Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services
CC Docket No. 98-32

Petition of U S West Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services
CC Docket No. 98-26

Petition of the Alliance for Public Technology Requesting Issuance of Notice of Inquiry and Notice of Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act
RM No. 9244

ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICE EX PARTE STATEMENT REGARDING NECESSARY INQUIRY INTO STRUCTURE OF SEPARATE ILEC DIGITAL SUBSIDIARIES

Dear Ms. Salas:

Pursuant to Section 1.1206(b)(1) of the Commission's Rules, the Association for Local Telecommunications Services ("ALTS"), by its undersigned counsel, hereby submits a written *ex parte* statement in the above-captioned docketed proceedings, to address issues relating to the establishment of separate ILEC data subsidiaries that may be subject to lesser degrees of regulation. ALTS submits an original and two (2) copies of this *ex parte* notification for inclusion in the public record of each proceeding referenced above.

Within the last year, two ALTS members have engaged in arbitration against incumbent local exchange carriers ("ILECs"), arguing that the ILECs failed to provide interconnection to their digital facilities, and the unbundling of digital network elements, pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 ("Act"). Both of these ILECs had established separate data subsidiaries that offered advanced data services and held switching equipment to support the provision of those services, and both had argued that the establishment of these data subsidiaries allowed the ILECs to circumvent their §§ 251 and 252 obligations to interconnect and to unbundle their digital networks.

Below, ALTS discusses briefly one of these cases – Intermedia Communications Inc.'s ("Intermedia's") arbitration against Ameritech in Illinois.

HISTORY

On March 11, 1997, Intermedia filed petitions for arbitration against Ameritech in Illinois, Ohio and Indiana, asserting that Ameritech had refused Intermedia's request to provide

interconnection to its Frame Relay facilities. Hearings were held during March and May of 1997, and discovery was undertaken as part of those proceedings. On June 16, 1997, the Administrative Law Judge in the Illinois proceeding issued a proposed decision in Intermedia's favor, and, in light of that decision, Ameritech settled the arbitrations in all three states. By the terms of the settlement, and of the nondisclosure agreements that governed the discovery process, Intermedia is not permitted to divulge the materials discovered during the hearings. The discussion of the relationship between Ameritech and its data subsidiary below reflects information made in publicly available filings in the three arbitration proceedings.

THE RELATIONSHIP BETWEEN AMERITECH AND AMERITECH ADVANCED DATA SERVICES

Ameritech created a wholly-owned subsidiary called Ameritech Advanced Data Services ("AADS"), which, among other things, owned all of the frame relay switches used by Ameritech. Both Ameritech and AADS provide Frame Relay service. Ameritech offered Frame Relay as a service offering tariffed on both the state and federal level. AADS filed a federal Frame Relay tariff, but withdrew the tariff before it started offering service. AADS apparently provided Frame Relay service on a contract basis.

Both Ameritech and AADS used the frame relay switches owned by AADS. Ameritech purchased frame relay switching from AADS at rates charged by AADS, which were not disclosed in the record of the proceeding. Conversely, AADS purchased transport from Ameritech, which it used to provide its own Frame Relay service.

AMERITECH'S INITIAL ARGUMENTS REGARDING THE APPLICABILITY OF §§ 251 AND 252 TO ITS FRAME RELAY SERVICES

In discussions with Intermedia prior to the arbitrations, and during the course of the proceedings, Ameritech raised a number of arguments regarding the applicability of §§ 251 and 252 of the Act. ALTS briefly summarizes some of the most important Ameritech arguments below. Note that these arguments were made at different times during the various arbitration proceedings, and reflected changes in Ameritech's position as the proceedings progressed. As a result, the arguments summarized below may not be internally consistent.

1. Frame Relay is not an "exchange service" or "exchange access" within the definition of the Telecommunications Act, and so the obligations of § 251(c) do not apply to it.

2. Because Ameritech did not own the Frame Relay switches – AADS did – Ameritech was not obligated to allow Intermedia to interconnect to them. At the same time, AADS is not subject to §§ 251 and 252 of the Act.

3. Because AADS deploys the switches in its own facility outside of Ameritech central offices, Intermedia must pay Ameritech for transport to the AADS facility as part of the price for interconnection.

4. When Ameritech pays AADS for use of the AADS frame relay switches, the price Ameritech pays to AADS is Ameritech's "actual cost." Therefore, if Ameritech "resells" the AADS frame relay switching function to Intermedia at the same rate it pays to AADS, Ameritech has complied fully with the incremental pricing standard of § 252(d) of the Act.

INQUIRIES THAT THE COMMISSION MUST UNDERTAKE TO ENSURE AGAINST ANTICOMPETITIVE CONDUCT BY ILEC DATA SUBSIDIARIES

To the best of ALTS' information and belief, at least several of the Tier 1 ILECs have separate subsidiaries that own such facilities as internet routers and other internet equipment, frame relay switches and related equipment, and xDSL equipment. The Commission should issue the following inquiries to determine the nature of the relationship that currently

exists between the ILECs and these subsidiaries.

1. Which ILECs currently have such subsidiaries?

2. What services does the ILEC subsidiary provide? If telecommunications services, are they provided by tariff or by contract?

3. Does the ILEC purchase services or functionalities from any subsidiary? If so, are these purchases made by contract or by tariff?

4. If the ILEC purchases from the subsidiary by contract, did the subsidiary respond to a public request for proposal? Were there other bidders for the contract?

5. How were the prices for the subsidiary's services or functions established? Do the prices comply with § 252(d)? With the Commission's Price Cap rules? Are prices that the ILEC pays its own subsidiary included in the costs that form the basis for any of the ILEC's tariffed rates?

6. What services or functions does the subsidiary purchase from the ILEC?

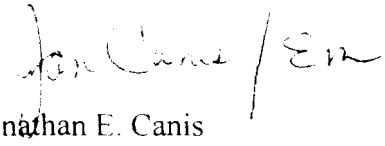
7. Does the subsidiary have an interconnection agreement with the ILEC? Does it share building space, conduit space, pole space, rights of way, electrical power, or any other facility in common with the ILEC? If so, how does the subsidiary compensate the ILEC for the use of such facility?

8. For ILECs with internet subsidiaries (such as BellSouth.net, swbell.net, Bell Atlantic.net, Ameritech.net, US WEST.net), does the ILEC provide transport service for the subsidiary? If so, at tariffed rates, or by contract? If by contract, how are the rates established?

9. Do the ILEC internet subsidiaries purchase interLATA transport from other carriers? If so, identify them? Is such transport purchased pursuant to tariff or contract? If contract, how are the rates established? Does the subsidiary share revenues with the transport provider? Does the subsidiary's internet subscriber have a choice of the carrier that provides the interLATA transport? Are interLATA transport charges listed as separate line items on the customer's bill?

Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,



Jonathan E. Canis

cc: William E. Kennard, Chairman,
Harold Furchtgott-Roth, Commissioner
Susan B. Ness, Commissioner
Michael K. Powell, Commissioner
Gloria Tristani, Commissioner,
Kathy Brown, Chief, Common Carrier Bureau
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