

equivalent of 24 loops. IDLC-deployed loops are often used to serve remote locations or locations where the loop length presents problems for service quality. IDLC is also often used to serve new locations where new facilities are required to be built. Because individual IDLC loops are effectively part of the switch, certain incumbent LECs have argued that it is not technically feasible to provide NEXTLINK with access to the actual IDLC loops.

Such restrictions can significantly limit NEXTLINK's ability to compete because a substantial percentage of the loops in an incumbent LEC's network may use IDLC.^{33/} When NEXTLINK wins a customer that must be transferred from a digital loop carrier system, incumbent LECs often return the customer to the pre-existing copper cable plant that the incumbent LEC used before deploying the newer IDLC technology. This method of access may provide NEXTLINK with an inferior connection to that customer, which prevents NEXTLINK from providing service to the customer that is at parity with what that customer formerly received. This in turn leads to problems with service degradation such as an inability to transmit faxes, a reduction in voice quality, or slower data transmission speeds. NEXTLINK estimates that more than 50 percent of its orders that involve the use of these alternatives to IDLC create service quality problems for NEXTLINK's customers.

There are several options that NEXTLINK could use to gain access to IDLC-delivered loops. First, the incumbent LEC could offer NEXTLINK access to the loop at the point where

^{33/} For example, BellSouth presently provides 29 percent of the loops in its network using IDLC. Bell Atlantic deploys IDLC for 6.7 percent of its loops in Pennsylvania. Because Bell Atlantic will not provide NEXTLINK with specific information on which central offices and which loops use IDLC, NEXTLINK cannot determine what percentage of loops use IDLC in NEXTLINK's service area. The figure is likely to be higher than 6.7 percent because NEXTLINK's service area includes rural and remote locations that are ideal for IDLC deployment.

the copper loop is connected to the incumbent's IDLC facilities, which generally occurs at a frame somewhere between the incumbent's central office and the end user. Providing NEXTLINK with access at this point will avoid the problems associated with providing abandoned copper loops at the ILEC central office. ILECs could also unbundle the switch port and provide access to the loop at that location, which avoids splitting the IDLC or removing the loop from the IDLC.

Incumbent LECs could also provide NEXTLINK with access to the digital side of the incumbent's IDLC equipment. NEXTLINK could provision itself or purchase from the incumbent a T-1 line from its facilities to the digital side of the incumbent's IDLC equipment so that NEXTLINK could serve customers over copper loops connected to that IDLC equipment. This method of access would also provide NEXTLINK with parity of access to the existing service and would provide for minimal disruption of service. The incumbent LEC would be able to redirect an unbundled loop to NEXTLINK's T-1 line with a few keystrokes.

To the extent it is technically feasible, an incumbent LEC could provide access to IDLC equipment in its central office through partitioning. Depending on the model and generation of IDLC equipment, the incumbent could provide NEXTLINK and other competitive LECs with an opportunity to serve customers through its IDLC equipment.

As the Commission warned in its Local Competition Order, allowing an incumbent LEC to place restrictions on IDLC loop access may enable the incumbent to "hide" loops in IDLC simply to restrict their availability to competitors like NEXTLINK.^{34/} All customers deserve an equal opportunity to benefit from the ability to choose the provider of their telecommunications

^{34/} Local Competition Order, 11 FCC Rcd 15499 at ¶ 383 (1996).

services and restrictions on access to IDLC-delivered loops eliminate a choice of providers for those customers currently served by IDLC-delivered loops. The Commission has required incumbent LECs to provide competitors with access to loops even if they have chosen to use IDLC to deploy the loop.^{35/} The Commission should use this occasion to clarify that incumbent LECs are required to provision loops currently carried on IDLC through all technically feasible methods. There should be no loss in quality when a loop is unbundled that was previously integrated into an IDLC system, there must be no sacrifice in the timeliness of the delivery of that loop to the competitive LEC, and the incumbent LEC should not be able to impose special construction costs on the competitive LEC.

C. The Commission Should Require Incumbent LECs to Provide Competitive LECs With Access to Loops Served by Remote Switches.

The Commission previously identified the local loop as a network element that incumbent LECs must unbundle at any technically feasible point, but did not require incumbent LECs to unbundle sub-loop elements that would allow competitors to access the loop at the remote terminal.^{36/} Certain incumbent LECs are now attempting to use this distinction to deprive NEXTLINK and other competitive carriers of access to loops served by remote switches by arguing that competitive LECs may only access such loops if they are collocated at the remote switch. Collocation at a remote switching location, however, is neither required under the Commission's rules nor technically feasible.

^{35/} Id.

^{36/} Section 706 NPRM at ¶¶ 152-53 (citing the Local Competition Order, 11 FCC Rcd at ¶¶ 377-79).

From a technical perspective, a remote switching unit is different from other central offices because it is dependent on a host switch in another office for some of its switching intelligence. Although the remote switching unit provides some switching functionality, i.e. connecting calls between end users that both happen to be connected to that remote switching unit, it does not provide the full functionality expected of a local switch, which is provided by the host switch in the central office.

It is the incumbent LEC's decision to deploy a particular loop technology, whether that is a single copper loop, a combination of copper and fiber, or a loop that passes through a remote switch. Whichever facilities the ILEC chooses to deploy, however, it must provide a requesting CLEC with an unbundled loop network element that meets the Commission's definition of an unbundled loop.^{37/} The loop in this situation runs from the end user premise (or Network Interface Device, if applicable) to the main distribution frame ("MDF") in the central office of the host switch. It is inconsistent for an incumbent LEC to claim that NEXTLINK must take access to some loops at what is essentially a sub-loop point (the remote switching unit) and deny NEXTLINK such access at other similarly situated sub-loop points (such as the feeder-distribution interface point).

It is not technically necessary for NEXTLINK to collocate at the remote switch in order to gain access to a loop served by that switch. NEXTLINK could acquire special access transport from the central office in which it is collocated to the remote switch office and the incumbent would only have to provide a cross-connect to the facilities at the remote switch.

^{37/} The Commission has defined an unbundled loop as "a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and an end user customer premises." 47 C.F.R. § 51.319(a).

Several incumbent LECs have in fact provided NEXTLINK with such access.

Finally, it is not technically feasible for CLECs to collocate at every remote switch. Many remote switching units simply are too small and are provisioned so that it would be impossible for NEXTLINK to collocate in order to access unbundled loops there. These same practical limitations apply equally to virtual collocation. It is also an economic impossibility to collocate at every remote switch. Remote switching units typically serve fewer than 1,000 customers. NEXTLINK generally will already have paid the incumbent hundreds of thousands of dollars to establish collocation space in the central offices and it will be forced to pay additional charges in order to collocate at a remote switch, assuming it is even physically possible for NEXTLINK to do so. NEXTLINK would also be required to pay recurring charges each month for use of each space, no matter how few customers it serves from the switch in issue. NEXTLINK simply cannot justify spending this much capital to serve only 1000 potential loops, even if NEXTLINK immediately could win all of the customers served by those loops. (In reality, NEXTLINK would be incurring such costs to serve only a few customers.) This restriction therefore effectively prohibits competitive LECs from serving the customers served by remote switches, especially in the rural areas where such switches are usually deployed.

The refusal of incumbent LECs to permit NEXTLINK to access unbundled loops served by remote switching units unless it collocates at the remote switch limits NEXTLINK's ability to compete. The Commission should therefore clarify that a competitive LEC does not need to collocate at a remote switch in order to gain access to unbundled loops served by the remote switch if the competitive LEC is collocated at the central office of the host switch for that remote switch. Instead, the incumbent LEC should be required to provide competitive carriers with access to unbundled loops, including multiplexing, cross-connects, and transport to the

competitive LEC's collocation premises at the central office of the remote switch. If the Commission does not require an incumbent LEC to permit a competitive LEC to use such methods to access loops served by a remote switch, then the Commission, at a minimum, should require the incumbent LEC to provide alternative access to the loops served by a remote switch if collocation is impossible due to space or other limitations.

IV. THE COMMISSION SHOULD DECLINE TO "MODIFY" LATA BOUNDARIES

In the Section 706 NPRM, the Commission denied the BOCs' requests to create a single global LATA for packet-switched services. As the Commission recognized, creating such a LATA would be functionally the same as forbearing from section 271 and would "effectively eviscerate section 271 and circumvent the procompetitive incentives for opening the local market that Congress sought to achieve."^{38/} The Commission, however, tentatively concluded that "some" modification of LATA boundaries may be necessary to provide customers in rural areas with high speed Internet access. Having correctly decided not to forbear from section 271,^{39/} or to make broad changes in LATA boundaries,^{40/} the Commission should continue to act prudently by declining to modify rural LATA boundaries.

Any authority the Commission may have to affect LATA boundaries comes from section 3(25)(B), which authorizes the Commission to grant BOC requests for LATA modification.^{41/}

^{38/} Section 706 NPRM at ¶¶ 81-82.

^{39/} Section 706 NPRM at ¶ 77. The Commission correctly concluded that it lacked the statutory authority to do so. Id. at ¶ 69.

^{40/} Section 706 NPRM at ¶¶ 81-82.

^{41/} 47 U.S.C. § 153(25). Section 3(25) defines a LATA as "a contiguous geographic area" established before the 1996 Act or "established or modified by a Bell operating company ... and (continued on next page)

The relief sought here, however, amounts to an impermissible LATA waiver, not a mere “modification.” There are important differences between “waiving” and “modifying” a LATA boundary and those differences have serious legal and policy implications. LATA boundaries are borders demarcating a “contiguous geographic area,”^{42/} similar to a border between two states. A LATA boundary may be “modified,” thereby altering the shape, size, or contours of the area it contains. On the other hand, a boundary is “waived” when it is effectively eliminated either for a specific service or for all services. While the Commission may have the power to modify a rural LATA to include some people who currently reside in adjacent LATAs, it has no authority to waive, or eliminate, the boundary between two rural LATAs so as to create a single “super LATA.”^{43/}

When the Commission has exercised its authority to modify LATA boundaries, moreover, it has proceeded cautiously, following the model set by the courts.^{44/} In the ELCS Order, for example, the Commission built on precedent established in earlier court decisions

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approved by the Commission,” which implies that the Commission has some authority to grant BOC requests to modify LATA boundaries.

^{42/} 47 U.S.C. § 153(25).

^{43/} The Commission itself has recognized that creating such super-LATAs would contravene the provisions and purpose of the 1996 Act and have a deleterious effect on competition in the local market. Petition for Declaratory Ruling Regarding US WEST Petitions to Consolidate LATAs in Minnesota and Arizona, 12 FCC Rcd 4738 at ¶¶ 27-28 (1997).

^{44/} See Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations, 12 FCC Rcd 10646 (1997) (“ELCS Order”) (granting 23 out of 24 requests for boundary modifications to permit calls within certain extended local calling service areas to be treated as intraLATA).

granting the BOCs waivers of the AT&T Consent Decree.^{45/} The court granted such waivers where they would affect only a small number of access lines, there was a strong community of interest, and the effect on competition would be minimal.^{46/} The court was careful to grant waivers only for flat-rate, non-optional ELCS plans that were unlikely to affect toll traffic, and not for services that were similar to the toll services provided by interexchange carriers. Finally, the court was wary of expanding the limited circumstances justifying a waiver for fear that it “could lead to a ‘piecemeal dismantling’ of the prohibition on the BOCs’ provision of interLATA service.”^{47/}

Broad waivers of LATA boundaries would be inconsistent with the foregoing principles and would render section 271 meaningless. The BOCs’ continuing attempts to exploit the Commission’s limited authority under section 3(25)(B) are part of a concerted effort to engage in

^{45/} Many, if not all, of the AT&T Consent Decree decisions involved waivers, not modifications. See, e.g., United States v. Western Elec. Co., No. 82-0192, slip op. at 13 (D.D.C. Apr. 28, 1995) (“The question, therefore, is whether the Court should grant the waiver for those areas where there is genuine evidence of competition.” (emphasis added)). Matters previously subject to the AT&T Consent Decree are now governed by the 1996 Act. ELCS Order at ¶ 9; Pub. L. 104-104, § 601(a)(1). As set forth above, the Communications Act does not provide the Commission with any waiver authority and the Commission therefore lacks the authority to replicate the court’s decisions and issue LATA waivers. Nevertheless, the court decisions provide a useful guide for the Commission to follow when deciding boundary modification issues.

^{46/} ELCS Order at ¶ 7 (citing United States v. Western Elec. Co., No. 82-0192 (D.D.C. Jan. 31, 1985); United States v. Western Elec. Co., No. 82-0192 (D.D.C. Dec. 3, 1993); United States v. Western Elec. Co., No. 82-0192 (D.D.C. Dec. 17, 1993)). The court found that a strong community of interest justifying a waiver existed where (1) poll results indicated that customers in the affected area were willing to pay higher rates to be included in an expanded calling area; (2) usage data indicated a high level of calling between the affected exchanges; and (3) narrative statements demonstrated that the two exchanges were part of one community and a lack of local calling between the exchanges caused problems for residents.

^{47/} ELCS Order at ¶ 8 (citing United States v. Western Elec. Co., No. 82-0192, slip op. at 4 (D.D.C. May 15, 1993)).

precisely the type of “piecemeal dismantling” the court cautioned against. The Commission should not reward such tactics.

Rather, the Commission should ensure that whatever modifications it allows do not provide the BOCs with impermissible, premature LATA relief that would hamper the development of local competition.^{48/} Even with the incentive of section 271, the BOCs have been slow to make the critical investments necessary to open up their networks to competition. Allowing the BOCs to transport traffic across LATA boundaries before they have met their obligations under section 271, even in selected areas, will only further diminish their incentive to open their local networks to competition.^{49/} If the BOCs truly want to enter the in-region, interLATA data services market, they must comply with the requirements of section 271. The Commission should reconsider its tentative conclusion and decline to “modify” LATA boundaries.

CONCLUSION

The Commission should carefully consider whether its proposal to permit incumbent LECs to provide advanced services through a separate affiliate provides adequate protection given the incentive that incumbents have to discriminate against competitive LECs. The Commission should ensure that sufficient protections are in place before it implements this

^{48/} For example, if the BOCs are allowed to enter the in-region interLATA markets for data services prematurely, they will have substantially reduced incentives to negotiate and implement access and interconnection agreements that provide new entrants with a meaningful opportunity to compete, in violation of the pro-competitive goals of the 1996 Act.

^{49/} The Commission should not assume that the risk can be diminished by eliminating LATA boundaries for only one class of service. Once the barrier is broken, it will be very difficult to control the services offered on a modified-LATA basis. This is especially true because advanced (continued on next page)

proposal. The Commission should also adopt national collocation rules in order to remove barriers to entry and speed the deployment of advanced services, and grant NEXTLINK's suggestions for improving the ability of new entrants to gain access to loops necessary to provide advanced services.

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September 25, 1998

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services are capable of carrying both voice and data. Thus, a waiver of the LATA rules for advanced services would effectively open the long distance market for voice as well.