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STATE OF FLORIDA

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Public Service Commission

September 23, 1998

BY AIRBORNE EXPRESS

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: CC Docket 98-147 - Deployment of Wireline Services Offering Advanced Telecommunications Capability; and subsequent docckets 98-11; 98-26; 98-32; CCB/CPD No. 98-15; 98-78; and 98-91.

Dear Ms. Salas:

Enclosed are an original and 12 copies of the Florida Public Service Commission's Comments in the above-referenced docket. Please date stamp one copy and return in the enclosed self-addressed envelope.

A copy of the comments are also being furnished by diskette to Janice Myles of the Common Carrier Bureau and to the Commission's copy contractor, International Transcription Service.

Sincerely,

Cynthia B. Miller
Senior Attorney

CBM:jmb
Enclosure
cc: Janice Myles
International Transcription Services, Inc.
Parties of Record

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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matters of:	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability.	)	CC Docket No. 98-147
Petition of Bell Atlantic Corporation For Relief from Barriers to Deployment of Advanced Telecommunications Services.	)	CC Docket No. 98-11
Petition of U S WEST Communications, Inc. For Relief from Barriers to Deployment of Advanced Telecommunications Services.	)	CC Docket No. 98-26
Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Technology.	)	CC Docket No. 98-32
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.	)	CCB/CPD No. 98-15 RM 9244
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
Southwestern Bell Telephone Company Pacific Bell, and Nevada Bell Petition for Relief from Regulation Pursuant to Section 706 of the Telecommunications Act of 1996 and 47 U.S.C. § 160 for ADSL Infrastructure and Service.	)	CC Docket No. 98-91

SUMMARY OF FLORIDA PUBLIC SERVICE COMMISSION COMMENTS

In summary, the NPRM is premature and appears to prejudge the need for actions to encourage deployment of advanced services pursuant to Sec. 706 of the Act. If the FCC wishes to pursue allowing ILECs to offer advanced services through a separate affiliate, all transactions should be nondiscriminatory, at arm's length, and public.

FLORIDA PUBLIC SERVICE COMMISSION COMMENTS

On August 7, 1998, the Federal Communications Commission (FCC) released a Memorandum Opinion and Order, and Notice of Proposed Rulemaking (NPRM) pursuant to Sec. 706 of the Telecommunications Act of 1996 (the Act). This NPRM was in response to several petitions that were filed earlier this year, including several by Bell Operating Companies seeking relief from Sections 251, 252, and/or 271 requirements, and one by a competitive carrier association in response to those petitions. Concurrently, the FCC issued a Notice of Inquiry (NOI), pursuant to statutory mandate in Sec. 706. Both of these Notices focused on the deployment of advanced telecommunications services. The Florida Public Service Commission (FPSC) respectfully submits its comments on the FCC's NPRM.

The FPSC believes that the NPRM is premature. It appears to the FPSC that the FCC's NPRM is a natural extension of a prospective finding (that it has not yet reached) from its companion NOI that advanced telecommunications services are *not* being deployed in a reasonable and timely fashion. We believe that this conclusion cannot be made until the record of the NOI is submitted and analyzed. We believe that there is a significant likelihood that the evidence submitted in response to

the FCC's NOI will show that advanced telecommunications services are being deployed adequately. Studies to date in Florida have shown that advanced services deployment is more a function of price than it is availability of facilities. As a result of these ongoing studies, Florida's staff is currently investigating whether the capacity for advanced services should be included in basic telecommunications access.

If evidence that advanced services are being deployed adequately is produced, then the premise of this NPRM is refuted and no direct FCC action in this regard is necessary. In any case, the issuance of this NPRM appears to prejudge another FCC proceeding, which we believe is inappropriate.

The FPSC views Section 706 as a "safety net" for the deployment of advanced services in the event that they do not reach all Americans quickly enough as a result of the FCC's universal service policies. Section 254(b) requires that advanced telecommunications and information services be available at affordable rates to all Americans. Section 706 merely reinforces this concept, and we believe it is meant to act as insurance against advanced services "getting lost" in the greater universal service picture. Since the FCC's universal service policies have not even been completely implemented, it is again

premature to decide that advanced services need regulatory intervention to be deployed in a reasonable and timely fashion.

In the event that the FCC still wishes to pursue this matter, the FPSC has the following comments on some of the FCC's proposals in its NPRM. First, the FPSC agrees that all ILEC provisioning of advanced services is subject to the nondiscriminatory access, unbundling, and resale provisions of Sec. 251 and 252 of the Act. This includes all services, such as xDSL service, as well as all facilities used in provisioning the services.

Second, The FPSC has several concerns with the FCC's proposal to allow the ILECs to offer advanced services through an unregulated affiliate. As previously stated, this proposal assumes that advanced services are not presently being deployed at an acceptable rate. It also assumes that ILECs will not or can not deploy advanced services on an integrated basis. The FPSC believes that these conclusions have not been supported.

Moreover, the FPSC questions why an ILEC would choose to offer these services through an affiliate unless the primary purpose was to escape interconnection, unbundling, and resale requirements as well as other regulatory requirements. Because advanced services in general, and xDSL services in particular, are so intertwined with the ILEC's existing network, significant

economies of scope and scale will be lost by offering the services through a structurally separate affiliate.

Allowing ILECs to set up unregulated affiliates appears fraught with problems. ILECs may devise ways to move facilities into these affiliates to escape regulation. Other states have already reported that strange relationships have formed among ILECs and their affiliates. It is not inconceivable that an ILEC affiliate could deploy facilities on an unregulated basis, and sell capacity on those facilities to the ILEC, which would then turn around and sell the service to the end user. Competitors might be "locked out" of these services; even if the ILEC is somehow forced to offer these service for resale, the affiliate is under no obligation to provide the same facilities as UNEs or offer similar prices to the competitors.

Affiliate transactions rules are difficult to develop, and even more problematic to enforce. Even if rules are put in place to discourage the activities just described, violations are very difficult to discover and police.

Because xDSL is a packet-switched service, it is logical that ILECs would seek ways to move all packet-switching facilities to an unregulated affiliate. This could ultimately include Signaling System 7 or its successor. Much as the computer world is dependant on the operating system of its

machines, the public switched network is dependent on Signaling System 7 as its "operating system." The ILECS could ultimately seek to move these facilities out of the regulated arena as well. We believe the FCC's proposal could end up with exactly these unintended results.

The FPSC agrees that ILECs will be much more eager to deploy advanced services and facilities if they are allowed to do so without offering such services or facilities for resale or as unbundled elements, or without other regulatory encumbrances. However, the FPSC does not believe this was the intent of the 1996 Act.

We also agree that allowing ILECs to deploy advanced services through a separate affiliate might be appropriate, if it is first established that advanced services are not being deployed at reasonable rates and that no other measures will advance their deployment. However, we do not agree that such a point has been reached.

If separate affiliates are nonetheless authorized, the FPSC believes that the most important requirements for transactions between ILECS and affiliates are that they be nondiscriminatory, at arms' length, and public. This would include the public dissemination of all contracts and agreements, equal access on like-terms by all competitors, and it would not allow

unreasonable requirements such as to effectively limit the transaction to the ILEC and its affiliate (e.g., a requirement that a volume level that could only be reached by the ILEC is required for purchase).

We also believe it is important to emphasize that Sec. 706 of the Act gives independent authority to state commissions regarding deployment of advanced telecommunications services. It states:

> The Commission and each state commission with regulatory jurisdiction over telecommunications service shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms). . .

We urge that the FCC continue to refrain from "occupying the field" and that it recognize the states' independent authority in this area.

In summary, the NPRM is premature and appears to prejudge the need for actions to encourage deployment of advanced services pursuant to Sec. 706 of the Act. If the FCC wishes to pursue allowing ILECs to offer advanced services through a separate affiliate, all transactions should be nondiscriminatory, at arm's length, and public.

Respectfully submitted,

CYNTHIA B. MILLER
Senior Attorney

FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
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DATED: September 23, 1998

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Comments of the Florida Public Service Commission has been served on the following parties of record this 23rd day of September, 1998.

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