

to the extent that they are not the subject of a tariff, would be determined according to the rules set out in the *Accounting Safeguards Order*.³⁹ Separate books, records, and accounts must be maintained.⁴⁰ The affiliate and the ILEC must have separate officers, directors, and employees.⁴¹ The CLEC affiliate cannot enter into any financial transaction in which a creditor has recourse to the ILEC parent.⁴² The ILEC cannot discriminate or otherwise favor the affiliate in the provision of goods, services, facilities, information, or standards establishment.⁴³ Finally, the affiliate must obtain interconnection through tariffs or by negotiated agreement and the ILEC cannot favor the affiliate in the provision of network elements, facilities, interfaces, and operating systems.⁴⁴ The FCC contends that these requirements will ensure complete separation and provide for a level playing field between affiliated and unaffiliated CLECs. GST strongly disputes that conclusion and recommends that the FCC should impose additional requirements on the relationship between the ILEC and CLEC affiliate.

1. Prevention of Cross-Subsidies Through Tariff and Contract Filings

The FCC must establish rules that prevent any type of cross-subsidy between the

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

ILEC and the CLEC affiliate. While the rules in the *Non-Accounting and Accounting Safeguard Orders* ensure that the transactions between the affiliate and the ILEC are done at fair market value (when the service is not tariffed), this allows the ILEC to use good faith estimates of the fair market value.⁴⁵ GST does not believe that this will adequately protect unaffiliated CLECs. GST strongly recommends that all services provided to the CLEC by the ILEC be tariffed and thus subject to regulatory oversight including the suspension authority of state and federal regulators. Any other mechanism to review cost allocations does not provide sufficient protections against cross-subsidies.

If the FCC decides that it should not require the tariffing of all services provided to the affiliated CLEC, then the FCC should mandate that all contracts for services provided by the ILEC to its affiliated CLEC be filed publicly with the appropriate regulatory authorities. The contract filings then could be reviewed to ensure that the prices for goods and services were assessed at fair market value.⁴⁶

2. Determinations of DSL-Qualified Loops

As already pointed out, local loops must be qualified before DSL service can be provided. To offer an advanced data service such as DSL, a determination must be made concerning which specific local loops in an ILEC market are already DSL-capable. This often

⁴⁵ See 47 C.F.R. § 32.27(c).

⁴⁶ The ILECs could not contend that this requirement is onerous since the FCC proposes that all transactions be in writing and open to public inspection. NPRM at ¶ 96.

requires actual field-testing or inspection of the local loop thereby delaying a CLEC's ability to offer DSL service. To ensure that an affiliated CLEC does not gain any first-to-market advantage because it learns which loops are DSL-qualified before independent CLECs, the ILEC determination of loop qualification must be given simultaneously to all CLECs. In lieu of that coetaneous release of information, if an independent CLEC is told by the ILEC that loop qualification will take 30 days, the ILEC cannot or should not be allowed to provide a response to its affiliated CLEC's request in a shorter period of time. Similarly, if the ILEC-affiliated CLEC has access to real-time or virtually real-time information on which loops are DSL-qualified, independent CLECs must also have access to that same information. The FCC cannot permit the affiliated CLEC to have access to any information or systems that would permit it to be the first-to-market simply due to its relationship with the ILEC parent.

3. Availability of OSS

GST, like all CLECs, has numerous difficulties with the OSS of the ILECs. In particular, processes for taking and completing orders are often done manually not electronically. GST is particularly concerned that ILECs do not offer electronic processing of orders for DSL for its affiliated CLEC while still processing orders manually for independent CLECs. More importantly, the ILECs should not develop electronic ordering systems that contain proprietary technology to which only the CLEC affiliate would have access⁴⁷ Similarly, the ILECs should

⁴⁷ For example, Pacific Bell's electronic OSS for ordering utilizes proprietary software that makes it difficult for CLECs to utilize. *See, e.g., California Pub. Utils. Comm'n,* (continued...)

not be allowed to develop OSS in conjunction with their CLEC affiliates; any such process must include the participation of all CLECs. If the FCC permits the establishment of affiliated CLECs that have any advantage in obtaining OSS services, then these affiliates will have a competitive advantage in being able to offer service sooner and at a lower cost than independent CLECs. GST recommends that the FCC make an explicit requirement that the level and cost of OSS provisioning must be identical for all CLECs

4. Application of Open Network Architecture Rules

Interoperability is critical to interconnection and not just with respect to OSS. If an ILEC can grant its CLEC affiliate access to new network developments of the ILEC network prior to that of competing independent CLECs, the affiliated CLEC will have a competitive advantage in performing the needed engineering analysis and design, procuring the necessary equipment to provide interoperability, and installing the modifications to the network. This access would be particularly troublesome since the ILEC affiliate is unregulated and does not need to negotiate an interconnection agreement with unaffiliated CLECs.

The FCC faced the identical problem when it considered the appropriate structure for allowing RBOCs to provide enhanced services and adopted the open network architecture

⁴⁷(...continued)

Telecomm. Div., *Initial Staff Report on Pacific Bell (U-1001-C) and Pacific Bell Communications Notice of Intent to File Section 271 Application for InterLATA Authority in California* 18-19 (Rel. July 10, 1998).

requirements ("ONA").⁴⁸ ONA requirements ensured that the RBOCs could not create proprietary changes in their networks that would prevent unaffiliated enhanced service providers from offering service over the RBOC network. GST opines that the FCC's rationale for adopting ONA requirements applies with equal force to the creation of ILEC-affiliated CLECs. GST recommends that the FCC mandate compliance with the ONA requirements for any ILEC that establishes an affiliated CLEC. This would ensure that unaffiliated CLECs and affiliated CLECs would obtain ILEC network development plans at the same time under the same terms and conditions.

5. Negotiation of Interconnection Agreements

Other issues of preferential timing may give an affiliated CLEC a competitive advantage. In particular, an affiliated CLEC may be able to negotiate an interconnection agreement for DSL service⁴⁹ more quickly than an unaffiliated CLEC. This would enable the CLEC to offer advanced data services before GST or some other independent CLEC. GST urges the FCC to adopt two recommendations to remedy this problem. First, while ILECs can complete negotiations with their affiliates at any time, the affiliated CLEC cannot offer service through its interconnection agreement until such time as an independent CLEC has attempted to negotiate, mediate, or arbitrate and, ultimately, entered into and signed an interconnection

⁴⁸ *Filing and Review of Open Network Architecture Plans*, 4 FCC Rcd 1 (1988)

⁴⁹ GST's interconnection agreements, like those of most CLECs, do not contain provisions for interconnecting packet-switched networks.

agreement.⁵⁰ Second, ILECs, irrespective of whether they establish an affiliated CLEC or not, must be required to revisit existing interconnection agreements with CLECs so that they can be amended to include DSL or other packet-switching services. Absent this reopening, independent CLECs will have to await expiration of existing agreements or to negotiate new agreements while the ILEC commences offering the service. The FCC cannot permit the ILEC to have this first-to-market advantage.

VI. FCC Needs to Revise its Rules to Improve Collocation in ILEC Central Offices

As the FCC has recognized since 1992,⁵¹ one of the critical elements for promoting competition in the local exchange market is physical collocation of CLEC equipment in ILEC central offices. The FCC's policy was codified in § 251(c)(6) of the Telecommunications Act. The FCC then adopted rules governing the collocation of equipment in its *Local Competition Order*.⁵² These rules should have resolved the difficulties faced by CLECs in collocating their equipment. However, GST's experience shows that significant problems still remain with collocation.

⁵⁰ This requirement should act as an incentive for the ILEC to negotiate an interconnection agreement with all deliberate speed and in good faith in order to avoid the delays associated with state regulatory commission arbitration proceedings. Independent CLECs would have no incentive to delay the negotiations through an arbitration proceeding because the ILEC, could, of course, simply eliminate its separate subsidiary and begin offering DSL service directly to the public.

⁵¹ *Expanded Interconnection with Local Telephone Company Facilities*, First Report and Order, 7 FCC Rcd 7369 (1992).

⁵² 11 FCC Rcd at 15,782-811 (1996).

On more than one occasion GST has been denied the ability to physically collocate, generally ILECs contend that the particular central office does not have any available space. And if GST or other CLECs are denied space for physical collocation so should the ILEC-affiliated CLEC. At that juncture, GST has two equally unpalatable choices. First, it can elect to litigate the dispute in an appropriate forum (either before the FCC or a state commission). This imposes substantial transaction costs on GST -- depleting scarce resources that GST could better devote to construction of its facilities-based network. Even if GST wins the litigation battle, it could lose the competitive war because resolution of the dispute delays the point when GST can offer service. In the alternative, GST can accept virtual collocation while it litigates the issue or awaits ILEC provision of space in its central offices which may take six months or more. Virtual collocation, as the FCC has recognized since its *Special Access Interconnection Order*, is not as procompetitive as physical collocation. GST must rely on the ILEC for maintenance services and the ILEC, not surprisingly, often places its own operational needs ahead of those of GST. Furthermore, when physical collocation becomes possible, GST must expend additional resources in converting from a virtual collocation environment to a physical collocation environment -- an expense that could have been avoided if the ILEC would have provided physical collocation when originally requested. Given this experience, GST believes that it is necessary to adopt strengthened national collocation standards.⁵³ Only with

⁵³ There is little doubt that the FCC has the authority to adopt national collocation standards. The FCC's collocation rules and their applicability to state commission approval of
(continued...)

strong national collocation rules will GST be able to focus its resources on building its network, providing service, and vigorously competing with ILECs -- the goals envisioned by the authors of the Telecommunications Act. These strong national rules also have the additional benefit of complying with another statutory objective of the Telecommunications Act -- removal of barriers to entry by small businesses.⁵⁴

A. Enforcement of National Collocation Rules

GST has three options when it seeks to litigate a collocation dispute. First, it can file a complaint at the FCC, either under the normal complaint procedures or through the recently-adopted accelerated complaint processes.⁵⁵ Second, GST can seek redress through state commissions since approval of the interconnection agreements constitutes enforceable orders of the state regulatory bodies. Third, GST can seek redress in federal court under the Communications Act and pendent state contract claims

Of the three options, GST would prefer to utilize state commissions since they would be most familiar with the central offices of the ILECs that they regulate. However, GST cannot always rely on state commissions for a fair and quick resolution of its disputes. Some state commissions, such as the Washington Utilities and Transportation Commission, have

⁵³(...continued)

interconnection agreements were upheld in *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 818 (8th Cir. 1997), cert. granted sub. nom., *AT&T Corp. v. Iowa Utils. Bd.*, 118 S. Ct. 879 (1998).

⁵⁴ See 47 U.S.C. § 257.

⁵⁵ CLECs can obtain enforcement of interconnection obligations by the filing of complaints at the FCC. *Local Competition Order*, 11 FCC Rcd at 15,564.

adopted specific and accelerated procedures for resolving interconnection disputes.⁵⁶ Other states, such as California, have extremely cumbersome administrative procedures that would not lead to a timely resolution of collocation disputes.⁵⁷ Finally, other state commissions appear to be biased in favor of the CLECs or have an animus to FCC rules or a combination of both. Therefore, GST is not particularly sanguine about obtaining enforcement of collocation rules in a consistent manner at the state level.

GST recommends that the state commission be the primary forum for resolving collocation disputes. The state commission clearly will be the most convenient forum⁵⁸ but only if it has some special procedure for resolving interconnection and collocation disputes in a timely manner. If a state commission does not have such a procedure, the FCC should resolve the dispute under its accelerated complaint process. This election of the speediest forum will ensure that CLEC disputes are resolved in no more than 60 days which is still too long in the rapidly

⁵⁶ Wash. Admin. Code § 480-09-350 (establishing rules for petitions for enforcement of interconnection agreements)

⁵⁷ Three years after initiating a rulemaking and investigation on establishing rules for competitive entry in the local exchange market and nearly two years after the FCC authored its rules on local competition, the CLEC industry awaits a decision by the California Commission on such basic issues as costs for obtaining OSS and the type of OSS that ILECs will make available to CLECs

⁵⁸ *Cf. Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 256 (1981); *Koster v. Lumbermen's Mut. Cas. Co.*, 330 U.S. 518, 527 (1947) (forum non conveniens rule enables federal courts to transfer litigation to more appropriate venue for convenience of parties or more efficient adjudication of dispute).

changing telecommunications marketplace but shorter than the six months it often takes ILECs to find space for CLEC collocation.

B. Changes Must be Made to the Collocation Rules that will Improve CLEC Network Development and Ensure that all CLECs Compete on a Level Playing Field

Current FCC rules prohibit the collocation of switching equipment in the ILEC central office because that equipment provided functions other than purely interconnecting with the ILEC network or providing the CLEC with access to unbundled network elements.⁵⁹ However, technological advances, as the FCC correctly notes, are making the distinctions between switching equipment and other devices increasingly irrelevant.⁶⁰ GST urges the FCC to adopt its tentative conclusion and permit CLECs to collocate any equipment related to the provision of telecommunication services in the ILEC central office. GST then will be able to engineer its network in the most efficient manner possible using the latest electronic combinations of equipment. In turn, this will conserve scarce GST capital that can be utilized in other means -- to expand its facilities-based network and provide true competition to the ILECs.

Once the equipment is collocated, some ILECs often impose restrictions on CLEC ability to interconnect its own equipment collocated in the central office or interconnect that equipment with other CLECs. Despite the fact that CLECs interconnecting with each other might have equipment located only a few feet from each other in an ILEC central office, the

⁵⁹ NPRM at ¶ 127 & n.236.

⁶⁰ *Id.* at ¶ 128.

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ILEC restriction forces the CLECs to expend resources (both technical and financial) in finding another point at which to interconnect. The only logical reason for the imposition of this requirement is to increase the cost of CLEC service. This restriction becomes even more problematic should the ILEC allow its CLEC affiliate to cross connect equipment in the central office or interconnect with other CLECs. GST urges the FCC to remove this arbitrary restriction and allow all CLECs to cross connect their own equipment or interconnect with other CLECs collocated in the ILEC central office for any purpose and without delay. ILECs may place reasonable restrictions on these cross-connects and interconnects but only as they relate to safety requirements and electrical code compliance.

Ideally, the ILECs should not have to impose any other restrictions on the collocation of equipment. However, GST and other independent CLECs do not operate in an ideal world. GST recognizes that ILEC central offices contain real space limitations.⁶¹ GST recommends that the FCC permit ILECs to impose reasonable restrictions on the size of equipment that can be collocated in a central office. These size restrictions must apply equally to all CLECs -- including any CLEC affiliated with the ILEC. These size restrictions will ensure

⁶¹ GST's complaint about ILEC space limitations is not with an actual space limitation but artificial space limitations in which the ILEC contends that insufficient space exists for physical collocation when that simply is not the case. GST concurs with the FCC that CLECs denied collocation space should be permitted to examine the central office floor plans, or in lieu thereof, be permitted to perform an in-person examination of the central office to determine whether an actual lack of space exists.

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that no CLEC, but especially an affiliated CLEC, can collocate sufficient amounts of large equipment that eliminates available space for collocation by other CLECs.

A necessary corollary to collocation of switching equipment is the requirement that ILECs do not develop proprietary network technologies that make it impossible or extremely costly for CLECs to collocate advanced switching or other equipment in ILEC central offices. The FCC should impose an ONA requirement on ILECs to ensure that CLECs can obtain and collocate equipment that will operate with the ILEC network.

Nor should the ILECs be able to impose restrictions on independent CLECs limiting the equipment that can be collocated in their central offices to that equipment which satisfies Bellcore or other national standards if the ILEC or its affiliates are permitted to install equipment that does not meet these standards. This may give the ILEC or its affiliated CLEC a competitive advantage (the cost of equipment that does not meet standards may be less expensive or create interoperability problems with the ILEC network). At a minimum, the FCC should require that ILECs list the standards for and the types of equipment that can be placed in the ILEC central office. The list would cover the ILEC, affiliated CLECs and independent CLECs. A better solution would be for the FCC to adopt GST's recommendation of imposing ONA requirements on all ILECs so that network engineering and planning becomes transparent for the CLEC industry rather than a guessing game between independent CLECs and ILECs.

GST pays ILECs to build collocation cages for security and network protection. These collocation cages often have more space in them than GST requires at the time of initial

collocation. However, at some future time, GST may require more space within the collocation cage built for GST and paid for by GST. Yet, GST often has to pay additional "preparation" fees for use of what is essentially its own space within the central office. The FCC should prohibit ILECs from charging these "preparation" fees and allow the CLECs with additional space in their collocation cages to utilize all of that space without any additional charges.⁶²

C. The FCC must Adopt Rules that Maximize Utilization of Space within Central Offices but Adequately Protect the Security of CLEC Equipment

The FCC recognizes that there are real constraints on the available space in ILEC central offices and expansion of those offices cannot be accomplished in a timely manner for CLECs to compete in the marketplace.⁶³ The FCC suggests that any of three alternatives -- shared collocation cages with or without locked cabinets, elimination of minimum cage size, and cageless collocation -- will reduce the central office capacity problem. GST concurs with the FCC that alternative arrangements to the standard collocation cage should be permissible.

Of the three alternatives, GST prefers those that provide it with optimal security from the ILEC and other CLEC competitors. GST has no problem sharing a collocation cage or other enclosure with another carrier as long as GST's equipment is securely separated from the

⁶² Of course, to the extent that ILECs incur additional costs associated with the placement of more equipment within GST's collocation cage, they will be able to recoup those actual costs.

⁶³ *Id.* at ¶ 137

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other carriers equipment in the cage or enclosure.⁶⁴ In fact, manufacturers are offering equipment with locked cabinets or multiple locked slots so that carriers can share cabinets without concern about their network security.

If GST needs a collocation cage that is 5 feet by 5 feet by 5 feet, GST sees no reason why it has to pay an ILEC to prepare a collocation cage twice that size. Such an arrangement can be particularly problematic when an ILEC constructs a new central office or expands its existing central office and builds a collocation cage much larger than necessary to accommodate the request of its affiliated CLEC. Independent CLECs then will be denied space for physical collocation and then will have to utilize virtual collocation -- a method that has substantial competitive drawbacks. The FCC should prohibit ILECs from mandating that collocation cages be of certain minimum sizes or from allowing its CLEC affiliate to reserve more space than absolutely necessary for collocating its equipment. Absent these restrictions, unaffiliated CLECs will not have a reasonable probability of obtaining physical collocation space.

GST also supports the rights of other CLECs to utilize cageless collocation. While GST may not want to utilize this service due to potential security issues, GST sees no reason why other CLECs should be denied the ability to collocate their equipment in the ILEC central office without cages. And in some situations, GST may want the ability to utilize

⁶⁴ To the extent that GST enters into an interconnection arrangement with another CLEC that involves sharing the collocation cage space, GST will negotiate the appropriate security arrangements with that CLEC.

cageless collocation. Therefore, the FCC should mandate that cageless collocation be permitted in ILEC central offices.

D. Reopening of Interconnection Agreements

As GST has already noted, its interconnection agreements generally do not cover packet switching technologies. GST already has recommended that the FCC permit reopening of the interconnection agreement negotiation process to take account of these new services. This fresh look is particularly important since any ILEC-affiliated CLEC will be negotiating interconnection agreements under these new rules and the independent CLECs will be operating under outmoded interconnection agreements. GST sees no reason to allow only affiliated CLECs to obtain the benefit of new national collocation rules. Therefore, GST recommends that the FCC authorize all CLECs a 270-day period to negotiate new collocation arrangements in their interconnection agreements that incorporate these new national standards.⁶⁵ This 270-day period would begin upon the completion and execution of an ILEC-affiliated CLEC agreement containing terms and conditions for access to DSL-qualified network elements and collocation.

VII. The FCC must Ensure that CLECs have Access to DSL-Qualified Unbundled Loops on Terms and Conditions that Do Not Provide a Competitive Advantage to the ILEC or ILEC-affiliated CLEC

⁶⁵ GST does not believe this process will be particularly time-consuming especially if the FCC adopts the recommendation that no affiliated CLEC can offer service until an unaffiliated CLEC has an interconnection agreement that covers these new rules. *See supra* Part V.D.6.

GST has expended substantial resources in developing its facilities-based network throughout the western United States. However, GST, like every other CLEC, cannot hope to match the ubiquity of the ILEC's local loop. Congress and the FCC recognized that a competitive level-playing field would not be possible without access to unbundled local loops.⁶⁶

A. CLECs Need Non-Discriminatory Access to DSL-Qualified Unbundled Loops or Unbundled Sub-Loops

Access to the unbundled local loop is a necessary element to the ability of GST and other CLECs to offer service -- especially DSL. In most cases, GST's facilities-based network is fiber-based. DSL is a metallic-based technology that is incompatible with fiber technology. Therefore, simple interconnection with the ILEC network is insufficient for GST to offer DSL broad-based and efficiently-deployed advanced data services. GST and other CLECs must obtain timely and nondiscriminatory access to unbundled DSL-qualified loops to compete with the ILEC or an ILEC-affiliated CLEC.

GST concurs with the FCC tentative conclusion that a CLEC which requests access to unbundled loops free of loading coils, bridged taps, amplifiers, or other electronic impedances, must be given access to those DSL-qualified loops.⁶⁷ Furthermore, GST does not believe that there is any situation in which technical limitations prevent an ILEC from providing a CLEC with DSL-qualified loops.

⁶⁶ See 47 U.S.C. § 251(c)(3); *Local Competition Order*, 11 FCC Rcd at 15,689-90.

⁶⁷ NPRM at ¶ 152.

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Not only must there be access but it must also be nondiscriminatory. Any type of DSL loop that the ILEC provides to itself or an affiliated CLEC also must be provided to independent CLECs. Any other result violates the Telecommunications Act prohibition against an ILEC providing to itself superior network elements than that provided to competitors.⁶⁸

GST, as it has in these comments with respect to collocation and the establishment of affiliated CLECs, strongly recommends that the FCC require ILEC preparation of ONA plans for DSL loops. The ONA requirements will ensure transparency in network planning to all competitors and prevent discrimination based on some competitors, particularly affiliated CLECs, obtaining earlier access to ILEC network data.

The ILEC should not impose restrictions on GST's use of the unbundled loop. If GST wishes to use the unbundled loop for providing voice or data or a combination of both services, GST should be permitted to do so. This would give GST the same decisionmaking authority over the local loop that the ILEC has concerning the services that it will deliver over the unbundled loop. Any other result would amount to the ILEC providing itself with preferential network facilities in violation of § 251(c)(2) of the Telecommunications Act.

GST also should be permitted to share that unbundled loop with another carrier or carriers. For example, GST may be interested in providing data transmission over some of the frequencies in the DSL unbundled loop. The other available frequencies then can be used by another carrier or carriers to provide data transmission or voice transmission. GST should be

⁶⁸ See 47 U.S.C. § 251(c)(2)(C).

permitted to enter into contractual arrangements with other carriers who wish to share GST's unbundled loop. The contracts will address various issues including which party to the agreement would manage the frequency division multiplexing equipment used for DSL service. Absent a contractual provision for managing the frequencies, the party that first obtained the unbundled loop would control the frequency division multiplexing.

Nondiscriminatory access also means that GST has the ability to resell at wholesale rates, the unbundled loop or the ILEC DSL service. The ILEC must ensure that the bit rate speed available for resale by GST and other unaffiliated CLECs is the same bit rate speed that it provides itself for retail sales or grants to an affiliated CLEC.

B. Competitive Equality Requires that the FCC Provide for Sub-Loop Unbundling

Most ILECs use remote concentration devices to collect individual copper lines for interconnection with their fiber-optic trunks for transmission to the central office. As already noted, DSL services are metallic-based and incompatible with fiber-optic trunks. A direct connection between the metallic loop and the fiber trunk is not possible. To overcome this problem, ILECs offering DSL service generally place a digital subscriber line access multiplexer ("DSLAM") at the remote concentration device.

Bluntly put, if GST were to obtain unbundled loops from the remote concentration device to the end-user customer it would be impossible to provide service. The cost for GST to

place its own DSLAMs at all remote concentration points is simply prohibitive.⁶⁹ Thus, access to the remote concentration device, while potentially useful in some circumstances, simply does not provide a practical means for GST to offer DSL service through interconnection with the ILEC network.

To ensure that competition will occur in the provisioning of DSL service, the FCC must mandate that the DSLAM itself must be an unbundled network element and that GST can gain access to the ILEC DSLAM at the remote concentration point. This will enable GST to connect our fiber to the DSLAM at the remote concentration point.

Access to the DSLAM at the remote concentration device also is insufficient for GST to efficiently provision DSL service. GST also must be able to purchase, as an unbundled network element, access to the ILEC multiplexer at the central office. If GST can obtain access to the multiplexer, GST then could interconnect its fiber optic rings at the ILEC central office multiplexer and provide DSL service without accessing the DSLAM at the remote concentration device. This represents the most efficient and economical method for GST to provide DSL service. GST urges the FCC to require the unbundling of ILEC central office multiplexer or other equipment that it uses in the central office to provide DSL service.

C. National Standards For Loop Unbundling and Connecting Electronic Equipment to those Loops

⁶⁹ Congress recognized that it would be impossible in the foreseeable future for CLECs to replicate the ubiquity of the ILECs' networks. *See* Joint Managers' Statement, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 113 (1996). This rationale for authorizing interconnection also applies to the placement of DSLAMs throughout an ILEC network.

GST already has noted that uniform national standards reduce the costs associated with interconnection and allow it to focus resources on network development. Without national standards, ILECs may develop proprietary DSL loop technologies for unbundling and interconnection. In turn, GST and other CLECs that operate in multiple states will not be able to procure equipment in volume but will have to obtain ILEC-specific equipment. This will increase CLEC costs, reducing their competitiveness as the FCC notes.⁷⁰ The only way to prevent the development of proprietary standards is for the FCC to implement national technical standards for unbundling of local loops and the attachment of electronic equipment at the central office.

D. Any Resolution of the Spectrum Interference from DSL Loops must not Disadvantage Independent CLECs

Depending upon the power and, therefore the bit-rate transmission speed, DSL loops can create interference with other DSL loops or even plain old telephone service. This crosstalk can be combatted in one of two ways. First, sufficient space can be placed between the DSL loops so that the interference problem is eliminated. In the alternative, limits can be placed on the power (and therefore the bit rate of access) for each DSL loop. Of the two approaches, GST opines that power restrictions will be the more competitively neutral solution.

If the FCC adopts a spacing requirement, then those carriers that have first access to conduits, risers, etc. will be able to provide DSL service and later carriers will not. More

⁷⁰ NPRM at ¶ 163

importantly, to the extent that the ILEC or an ILEC-affiliated CLEC obtains space in the conduits and maximizes bit rates (and therefore power) it could eliminate a substantial number of competitors from gaining access to the conduit. In short, spectrum management problems may limit the number of available DSL lines given the available space. Independent CLECs will be at a competitive disadvantage because they will not be able to obtain DSL lines for their customers. Therefore, GST strongly recommends that the FCC establish power limitations on DSL-qualified loops.⁷¹ Technological developments should ensure that DSL bit rates can be increased without necessarily increasing the amount of power needed for DSL transmissions.⁷²

GST opines that the FCC should not overlook quality of service in the quest for unbridled speed. Unrestricted power limits also will affect the quality of service. By limiting power along DSL loops, the FCC will ensure that all end-users, not just those who obtain the service first, will obtain high-quality transmissions with little if any crosstalk. As technology improves, the FCC can revisit this issue.

If the ILEC can offer access speeds between its central office and the customer of 1.5 Mbps over a DSL line, a competing CLEC must be able to gain access at the same bit rate.

⁷¹ GST does not believe that the drops in bit rate access will be particularly significant for the vast majority of customers. Almost all of them still will see dramatic increases in the bit rate speeds for Internet access.

⁷² In fact, the power restrictions should spur the development of new modulation technologies to increase the bit rate access while satisfying regulatory objectives. GST expects that DSL technology will undergo the same evolutionary process that modems for personal computers have shown.

An ILEC or its CLEC affiliate will have an obvious competitive advantage if it can provide greater access speeds than an independent CLEC since the primary selling point of DSL service is speed.⁷³ Therefore, the FCC must ensure that an independent CLEC, such as GST, must be able to offer its customers the same bit rate access that the ILEC or its CLEC affiliate can offer.

VIII. The FCC Must Issue a Further Notice of Proposed Rulemaking

This NPRM, like many of the FCC's notices of proposed rulemaking, is extremely lengthy with hundreds of questions. Commenting parties could devote an entire comment filing to just one question, especially those related to the development of technical standards. Instead of the FCC identifying the problem, designing potential solutions to the problem, and then seeking public comment as required by the Administrative Procedure Act,⁷⁴ the FCC in this NPRM is essentially asking the regulated community to design the solutions to the identified problem of how ILECs can offer advanced data services. In short, the FCC is shifting burdens that Congress delegated to it onto the regulated community.

GST simply does not have the resources, legal and technical, to expend on analyzing numerous theoretical questions posed by the FCC, determine a range of possible

⁷³ An ISP customer of the ILEC that can promise the ISP end-user access 768 kbps for \$50 per month will have a distinct competitive advantage over an ISP customer of a CLEC that can only promise its end-user customer access at 256 kbps for \$50 per month. ISP customers will gravitate toward those that offer better service (faster access) for the same price. As the end-user customers seek other ISPs, the ISPs will seek solutions to reselling faster access and they will do so by seeking to obtain service from the ILEC or its affiliate.

⁷⁴ See, e.g., *Bowen v. American Hosp. Ass'n*, 476 U.S. 610, 643 (1986); *City of Brookings Mun. Tel. Co. v. FCC*, 822 F.2d 1153, 1169 (D.C. Cir. 1987).

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solutions, analyze which solutions will be most beneficial to GST, and then cogently report these findings in comments within the seven weeks provided by the FCC. Nor does GST have the resources to devote to an analysis of the comments filed in this proceeding to determine whether any particular standard mentioned in the initial round of comments and subject to possible adoption by the FCC could create potential problems for GST.⁷⁵ Finally, GST, unlike many ILECs and larger IXCs, does not have a Washington, DC office whose personnel are dedicated to meeting with and presenting, on an ex parte basis, a particular point of view to the Common Carrier Bureau staff and the Commissioner's legal advisors.

GST appreciates the FCC's significant regulatory responsibilities and limited resources. However, Congress in enacting the RFA in 1980 and strengthening it in 1996 with the passage of the Small Business Regulatory Enforcement Fairness Act mandated that, as between federal agencies and small businesses, the federal government was to bear the burden of regulatory analysis. GST opines that the FCC, to accomplish the mandates of Congress, particularly concerning effective participation by small business in the rulemaking process,⁷⁶ should issue a subsequent rulemaking notice on those issues that require the promulgation of specific technical standards rather than simple framework regulations. For example, GST would appreciate the opportunity to comment on any FCC proposal concerning power limitations or

⁷⁵ This exercise in contingency analysis may intrigue Defense Department planners. However, GST's engineers have to deal with real-life situations such as ensuring proper functioning of GST's network. They do not have the time for idle regulatory speculation.

⁷⁶ See 5 U.S.C. § 609.

conduit spacing requirements of DSL-qualified loops. In contradistinction, GST does not feel it is necessary for further comment on issues such as permitting collocators to use the entire space in their collocation cage without incurring additional fees.

IX. Conclusion

GST appreciates the FCC's desire to ensure that Americans have access to advanced wireline services, especially data services. GST is at the forefront of developing an integrated network solution for providing voice and data transmission services to its customers, especially small and medium-sized businesses. However, the NPRM raises the distinct possibility that the efforts of the Telecommunications Act to level the playing field between ILECs and competitors will be undone in a misguided effort to allow ILECs, and in particular, the RBOCs, to provide in-region InterLATA data services before they have fully complied with their obligations under the Telecommunications Act of 1996. GST strongly urges the FCC to prevent ILECs from gaining any more of a competitive advantage than they already have in the provision of advanced data services by adopting the recommendations made in these comments.

Respectfully submitted,



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