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ILLINOIS COMMERCE COMMISSION

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Commission's Secretary
Office of the Secretary
Federal Communications Commission
1919 M St. N.W., Room 222
Washington, D.C. 20554

Re: Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147

Dear Ms. Salas:

Enclosed please find one original and four copies of the Illinois Commerce Commission's Comments in the above referenced docket submitted pursuant to the FCC's Notice of Proposed Rulemaking released on August 7, 1998. I would appreciate acknowledgment of the receipt of this filing by the return of a duplicate time stamped copy of this letter in the enclosed self addressed, stamped envelope. If you have any questions, please do not hesitate to call me.

Very truly yours,

Myra Karegianes
General Counsel
Illinois Commerce Commission

Encl.
Cc: International Transcription Services, Inc.
1231 20th Street, N.W.
Washington, D.C. 20036

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

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. Sec. 160 for ADSL Infrastructure and Service	)	CC Docket No. 98-91

COMMENTS OF
THE ILLINOIS COMMERCE COMMISSION

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SUMMARY

In its comments to the Notice of Proposed Rulemaking ("NPRM"), the Illinois Commerce Commission ("ICC") does not object to the adoption of minimum national rules for loop unbundling and provisioning, collocation, space preparation and construction intervals, to the extent (1) the Federal Communications Commission ("FCC") recognizes that the States have authority to set standards for those services, (2) the FCC preserves the States' ability to determine additional standards and (3) the FCC includes waiver provisions to address specific state and central office conditions.

Further, the ICC concludes that xDSL loops and digital loop carriers are subject to the unbundling requirements of Section 251(c) and that incumbent LECs bear the burden of proving that unbundling those elements is not technically feasible. The ICC also recommends that incumbent LECs be required to provide requesting competing LECs ("CLECs") detailed loop information, including loop wire gauge and size, and allow the collocation of CLEC digital subscriber line access multiplexers (DSLAMs) at the incumbent LEC remote terminal.

In addition, the ICC recommends that incumbent LECs bear the burden of proving that space is limited in the central office in the event they use space limitation as the basis for refusing to physically collocate a CLEC in the central office. The ICC also recommends that all CLECs be required to use Network Equipment and Building Specifications (NEBS) compliant equipment where the incumbent LEC uses such compliant equipment. Further, the ICC recommends that incumbent LECs be given the

flexibility to determine the type of security necessary for a particular central office to the extent such flexibility is not abused.

The ICC does not comment on the appropriateness of using a "de minimus exception" prior to designating the advanced services affiliate of an incumbent LEC as that incumbent LEC's assign pursuant to 251(h)(1) of federal Act when the incumbent transfers equipment used to provide advanced services to its affiliate. However, in the event the FCC concludes that de minimus exceptions are appropriate, the ICC recommends that those determinations be made on a case-by-case basis and the FCC should also seek State commission input. The ICC also recommends that the FCC consider the standards set forth in section 251(h)(2) in making a determination on whether or not the advanced services affiliate should be designated an incumbent LEC.

The ICC concludes that section 251(c) of the federal Act should not be imposed on advanced services affiliates to the extent that advanced service affiliates do not meet the definition of incumbent LECs under section 251(h). However, the ICC notes that the federal Act does not foreclose State commissions from imposing additional obligations on non-incumbent LECs as long as the additional obligations are consistent with the federal Act. The ICC further concludes that incumbent LEC advanced services affiliates should not be limited in their ability to resell telecommunications services or purchase unbundled network elements from the incumbent LECs, to the extent those wholesale services and unbundled network elements are made available to unaffiliated carriers at the same rates, terms and conditions as those made available to the affiliate.

Finally, the ICC seeks additional information on the types of advanced services the FCC seeks to allow Bell Operating Companies ("BOCs") to offer on an interLATA basis to or for elementary and secondary schools. The ICC recommends that small-scale changes to LATA boundaries be done on a case-by-case basis and the FCC should seek State commission input on those determinations.

I. INTRODUCTION AND OVERVIEW

The ICC submits its comments to the Federal Communications Commission ("FCC") in the above captioned proceeding. The ICC is the state regulatory body charged with the regulation of investor-owned telecommunications carriers in Illinois and has previously commented to the FCC in matters related to the regulation of telecommunications as they affect this industry in Illinois. This matter is of interest to the ICC due to the steps it has taken to promote local competition in Illinois, beginning in the late 1980s.

On August 7, 1998, the FCC issued an NPRM regarding the deployment of high-bandwidth services. It is seeking comments on various provisions and requirements associated with the provision of advanced services by wireline carriers. The FCC also makes several tentative conclusions to promote these services in a competitive manner.

II. PROVISIONS OF SECTION 706

A. Provision of Advanced Services through a Separate Affiliate

1. Advanced Services Affiliates

a. Circumstances Under Which an Advanced Services Affiliate Would Not Be an Incumbent LEC

The FCC seeks comment on its conclusion that under section 251(c), obligations to unbundle and offer resale at wholesale rates apply only to incumbent LECs, as defined in section 251(h) and attempting to apply those obligations on non-incumbent LECs would violate section 251 of the Act. Accordingly, to the extent an incumbent LEC's advanced services affiliate is not designated as an incumbent LEC, said affiliate will not be subject to

the obligations under section 251(c). NPRM at ¶ 94. The ICC concurs that section 251(c) obligations should not be imposed on advanced services affiliates to the extent that advanced service affiliates do not meet the definition of incumbent LECs under section 251(h). However, it is the ICC's position that the federal Act does not foreclose the State commissions from imposing additional obligations on non-incumbent LECs as long as the additional obligations are consistent with the federal Act.[1]

The FCC seeks comment on whether an advanced services affiliate should be limited in its ability to either resell telecommunications services offered by the incumbent LEC or to purchase unbundled network elements from the incumbent LEC. NPRM at ¶ 101. It is the ICC's position that the advanced services affiliate should not be limited in its ability to resell telecommunications services or purchase unbundled network elements from the incumbent LECs.. However, those wholesale services or network elements should be made available to the advanced services affiliate by the incumbent LEC through tariffs or interconnection agreements. Further, the rates, terms and conditions at which the affiliate receives wholesale services and network elements should be made available to unaffiliated advanced services providers. This will prevent the incumbent LEC from favoring its affiliate over unaffiliated providers.

The ICC notes that it has in place tariff review processes that allow parties to lodge complaints regarding the rates, terms and conditions in an incumbent LEC's tariffs and

[1]This position is consistent with that taken by the ICC in its comments to the FCC in the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, May 16, 1996, pp. 18-20. The ICC acknowledges that the FCC in its First Report and Order determined that states are precluded from imposing additional obligations on non-incumbent LECs. See, First Report and Order at paragraph 1248. The ICC filed comments as part of the Ohio PUC's Petition for Reconsideration and Clarification which asked the FCC to reconsider its position. To date, the ICC is not aware of an FCC ruling on the Ohio PUC's Petition.

seek State commission action. Unaffiliated providers could utilize that process to address any rates, terms and conditions included in the incumbent LEC's tariff that discriminates against those providers relative to the incumbent LEC's affiliate. Further, Section 252(e) provides State commissions with the authority to reject agreements adopted by negotiation between incumbent LECs and competing telecommunications carriers if the agreements are discriminatory or not in the public interest. 47 U.S.C. §252(e)(2)(A). This vehicle would allow unaffiliated providers to analyze the agreement negotiated between the incumbent LEC and its affiliate before it goes into effect and notify the ICC of any discriminatory provisions included therein. The ICC could then reject the agreement or have the negotiating parties modify the agreement to address problems associated with it.

b. Transfers from an incumbent LEC to an Advanced Services Affiliate

The FCC seeks comment on how particular transactions between incumbent LECs and their advanced services affiliates should affect the regulatory status of the affiliates. Specifically, the FCC seeks comment on whether the advanced services affiliate of an incumbent LEC should be considered an assign of the incumbent LEC if it acquires facilities on its own, and not by transfer from the incumbent LEC. NPRM at ¶¶ 104-105. The ICC declines to comment on this issue because many factors, in addition to the transfer of facilities, can contribute to whether an affiliate is deemed to be an assign or successor of an incumbent LEC. Further, Section 251(h)(2) of the federal Act sets forth the standards for treating a local exchange carrier as an incumbent LEC. Specifically, Section 251(h)(2)(A) states that a LEC (or a class or category thereof) will

be treated as an incumbent LEC if "such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1)." Further, Section 251(h)(2)(C) states that incumbent LEC treatment of a local exchange carrier is warranted where "such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section." The ICC notes that the affiliate's position in the market would not be impacted by the manner in which the affiliate attained its facilities, and that classifying the affiliate as a non-incumbent LEC merely because the affiliate acquires its own facilities may be improper and may stifle additional competition. Specifically, if the advanced services affiliate is the sole provider of advanced services in a given market, such affiliate may be occupying a position in the market that is comparable to that occupied by an incumbent LEC. Further, there may be public interest considerations that impact whether or not the advanced services provider should be designated an incumbent LEC. These issues would need to be addressed on a case-by-case basis.

The FCC seeks comment on its tentative conclusion that any transfer of local loops from an incumbent LEC to an advanced services affiliate would make the affiliate an assign of the incumbent LEC and subject to section 251(c) with respect to those loops. NPRM at ¶¶ 107-108. The ICC agrees with the FCC's tentative conclusion on this issue. A central purpose of section 251(c) was to open up the local exchange monopoly to competition, which required imposing certain duties on the incumbent LECs, including unbundling network elements and making them available to competing carriers. If the incumbent LEC

were allowed to transfer local loops to its advanced services affiliate and section 251(c) obligations were not imposed on the affiliate, the incumbent LEC could gradually transfer the loops associated with its desirable customers to the affiliate thereby making these customers unavailable to competing carriers. This outcome would not further the goals of section 251(c). Further, this problem is intensified if the incumbent LEC transfers loops that are currently being leased by a competing telecommunications carrier to its advanced services affiliate because the affiliate is under no obligation to continue offering those loops on an unbundled basis. Accordingly, the competing carrier could potentially lose access to those unbundled loops and hence its retail customers.

The FCC tentatively concludes that, if an incumbent LEC sells or conveys central offices or other real estate in which equipment used to provide telecommunications services is located to an advanced services affiliate, that would make the affiliate an assign of the incumbent. NPRM at ¶ 113. For the reasons set forth above, the ICC agrees with the FCC's tentative conclusion on this issue.

The FCC seeks comment on whether there should be a de minimus exception under which a limited transfer of equipment (used specifically to provide advanced services) would not make an advanced services affiliate an assign of the incumbent LEC. The FCC also seeks comment on what should be deemed a "de minimus transfer of equipment." Further, the FCC seeks comment on whether it should apply de minimus exceptions to transfers of equipment that the incumbent LEC purchased and installed, or to equipment that the incumbent LEC has ordered but not installed. In

addition, the FCC seeks comment on whether there should be a time limitation associated with any de minimus exceptions. NPRM at ¶¶ 108-109.

The ICC declines, at this time, to provide an opinion regarding the appropriateness of de minimus exceptions as they relate to the transfer of equipment used to provide advanced services from an incumbent LEC to its advanced services affiliate. However, to the extent the FCC concludes that a de minimus exception is appropriate, the ICC recommends that the FCC examine any determinations associated with a de minimus exception on a case by case basis. It is a practical impossibility to anticipate the manner in which the various incumbent LECs will structure transfers of equipment utilized to provide advanced services. Further, it is a practical impossibility to anticipate the type of equipment that those transfers will entail given the speed at which advanced services evolve. Instead, the ICC recommends that the FCC develop a mechanism whereby the FCC works with State commissions to address specific proposals by incumbent LECs to transfer equipment used to provide advanced services to their advanced service affiliates. The FCC should also seek State commission input on whether designating the advanced service affiliate as an assign to the incumbent LEC is warranted.

The Illinois Public Utilities Act contains requirements according to which incumbent LECs must seek approval prior to transferring assets to its affiliates. Specifically, 220 ILCS 5/7-101 of the Illinois Public Utilities Act requires an incumbent LEC (public utility) to seek the ICC's approval prior to transferring assets to its affiliate. Further, 220 ILCS 5/7-102 of the Illinois Public Utilities Act requires incumbent LECs to

seek ICC approval of asset transfers in excess of $300,000. In addition to Illinois' requirements, the FCC could also set requirements in place for asset transfers amounting to less than $300,000 if it concludes that transfers smaller than this amount necessitate an examination into the incumbent LEC status of an advanced services affiliate.

The FCC seeks comment on the types of transfers an incumbent LEC may wish to make to its advanced services affiliate and whether these transfers should make advanced services affiliates assigns of incumbent LECs The FCC recommends that commenters consider, among other things, transfers of customer accounts, employees, brand names and customer proprietary network information In addition, the FCC seeks comment on whether, and to what extent, transfers of funds from an incumbent LEC's corporate parent to the incumbent LEC's advanced services affiliate should affect the affiliate's regulatory status as a non-incumbent LEC. NPRM at ¶ 113. The ICC cannot comment on these issues due to their interrelationship with issues being addressed in pending ICC Dockets 97-0344 and 98-0385.

The FCC tentatively concludes that, if it adopts a de minimus exception for transfers of network elements, it should adopt an analogous exception for any transfers of other assets. It also tentatively concludes that if it adopts any exception from the nondiscrimination requirement for transfers of network elements, it should adopt an analogous exception for transfers of other assets The FCC seeks comment on its tentative conclusions. NPRM at ¶ 115. The ICC is not in a position to comment on the appropriateness of a de minimus exception. However, the ICC recommends that, to the

extent the FCC concludes that de minimus exceptions are appropriate, the FCC consider requests for de minimus exceptions on a case by case basis and seek the input of State commissions on this issue.

B. Measures to Promote Competition in the Local Market

1. Collocation Requirements

a. Adoption of National Standards

The FCC seeks comment on the extent to which it should establish additional national rules for collocation pursuant to sections 201 and 251. NPRM at ¶ 123. It tentatively concludes that any adopted standards in this proceeding would serve as minimum requirements and that states would continue to have the flexibility to adopt additional requirements that respond to issues specific to that state. NPRM at ¶ 124. The ICC supports the concept of minimum national standards conditioned on (1) the recognition of State authority over these items, (2) the continued flexibility of the states to determine and impose additional standards for technical, demographic or geographic reasons, and (3) the continued flexibility of states to consider and impose additional interconnection standards in order to promote efficient competition in the local exchange market. Also, the ICC recommends that the FCC make available a waiver provision to allow State commissions to deviate from minimum national standards if needed.[2]

In addition, the FCC seeks comment on any measures it can take to aid enforcement of its collocation requirements. The ICC notes that Illinois enforces

[2]This position is consistent with that taken by the ICC in its comments to the FCC in CC Docket No. 96-98, May 16, 1996, pp. 18-20.

collocation requirements, among other things, though the processes contained in sections 13-514 through 13-516 of the Illinois Public Utility Act, 220 ILCS 5/13-514 - 13-516. These sections set forth an expedited 60-day complaint process against carriers that engage in activities that impede the development of competition. Specifically, "pursuant to these sections the Commission may impose directions and a deadline for correction of any violation." 220 ILCS 13-515(d)(7).

b. Collocation Equipment

In its *Local Competition Order*, the FCC concluded that new entrants may collocate transmission equipment, including optical terminating equipment and multiplexors, on incumbent LEC premises. The FCC further concludes that incumbent LECs need not permit the collocation of other types of equipment, including switching equipment and equipment used to provide enhanced services. NPRM at ¶ 127 (citing *Local Competition Order*, 11 FCC 96-325 at ¶581). However, with the advancement in technology, the FCC is now considering whether it needs to revisit any of these rules established in that Order. The FCC seeks comment on various issues associated with collocation. NPRM at ¶¶ 128-134. The ICC is limited in its ability to comment on collocation issues due to pending ICC Docket 98-0191.

In paragraph 135, the FCC seeks comment on whether competitive LECs should be required to use Network Equipment and Building Specifications (NEBS)-compliant equipment where the incumbent LEC uses NEBS-compliant equipment for equivalent functions. NPRM ¶135. The ICC recommends that all competing local exchange carriers (CLECs) should be required to use NEBS compliant equipment where the

incumbent LEC uses such compliant equipment Using the NEBS compliant equipment will ensure safety standards are not compromised. The risk of collocating noncompliant equipment by CLECs is a risk that should not be taken in the name of "enhanced competition."

c. Allocation of Space

The FCC tentatively concludes that incumbent LECs should be required to offer collocation arrangements to both new entrants and any advanced services affiliate to minimize space needed by competitors in order to promote deployment of advanced services. NPRM at ¶ 137. The FCC suggests possible alternative collocation arrangements, including "cageless" collocation In general, the ICC would support minimum national standards with regard to the allocation of collocation space, as long as, the FCC standards are minimum standards, recognize that States have authority to set standards for those services, and do not interfere with the States flexibility to impose additional standards as the States may deem necessary. Finally, the FCC's standards should provide for waivers if needed

Further, the FCC seeks comment on whether incumbent LECs should be allowed to require escorts for CLEC technicians; whether concealed security cameras or badges with computerized tracking systems would provide sufficient protection; whether security measures should vary, or be allowed to vary, by central office (CO); and what security measures are appropriate for unstaffed offices in remote areas. NPRM at ¶141. The ICC takes the position that incumbent LECs should have the flexibility to determine the type of security necessary for a particular CO. Each CO,

although similar in some respects, can be quite unique as well. Since all COs are not identical, security measures should, in fact, be allowed to vary by CO. For example, COs in remote areas where escorts may not be available at all times, security cameras and/or badges with tracking capabilities could be utilized. As long as the incumbent LEC does not preclude CLECs from entering the CO, or unduly place burdens upon the CLECs for movement within the facilities, the decisions regarding security should be those of the incumbent LEC. However, if a CLEC in Illinois is opposed to an incumbent LEC's security provisions , it may utilize the complaint process established in the Illinois Public Utilities Act.

In the event that the FCC concludes that escorts for CLEC technicians are needed, it should only impose that requirement under certain conditions. First, the ICC recommends the incumbent LEC should not use the escorts as a reason to deny CLECs access to the CO. Therefore, if escorts are required for CLECs to enter the CO, they should be made available by the incumbent LEC on demand . Furthermore, the escorts should not hinder the CLEC technician's access to necessary equipment.

In paragraph 142, the FCC seeks comment on whether there should be any uniform standards that would apply on a national level with regards to collocation given that space preparation and construction times vary greatly depending on location. NPRM at ¶142. The ICC supports the concept of minimum national standards as long as the ability of States to provide standards in this area is recognized and the flexibility of States to determine additional standards is preserved, and as long as waiver provisions are available to address specific state and central office occurrences.

d. Space Exhaustion

In paragraph 146, the FCC seeks comment on the following tentative conclusions:

a) An incumbent LEC that denies a request for physical collocation due to space limitations should continue to provide the state commission with detailed floor plans and should allow any competing provider that is seeking physical collocation at the LECs premises to tour the premises.

b) State commissions will be better able to evaluate whether a refusal to allow physical collocation is justified if competing providers can view the LECs premises and present their arguments to the state commission.

The ICC agrees with the FCC's tentative conclusion that State commissions are in a better position to evaluate issues associated with space allocation in an incumbent LEC's central offices. The ICC recommends that, in the event an incumbent LEC refuses to allow physical collocation to a competing provider due to space limitation, that the incumbent LEC take the competing provider on a tour of the central office to verify that space limitation is an issue. In the event the competing provider is not satisfied with the incumbent LEC's demonstration, it could file a complaint with a State commission requesting independent verification. Whereupon the incumbent LEC would be required to provide the State commissions, upon request, with explicit floor plans detailing the reasons for denial. The ICC notes that this type of arrangement has been included in several negotiated agreements filed with the ICC.

e. Effects of Additional Collocation Requirements

In paragraph 150, the FCC seeks comment on whether any of the FCC's tentative conclusions or proposals might affect existing negotiated and arbitrated interconnection agreements, existing state requirements, or pending state proceeding. NPRM at ¶150. The ICC notes that a number of interconnection agreements which it has approved, state that switching equipment cannot be collocated. Many, but not all, of these agreements contain provisions that would allow the carriers to the agreement to adjust their terms based on regulatory changes. If the FCC were to allow switching equipment to be collocated, some, but not all, carriers may need to modify their interconnection agreements.

2. Local Loop Requirements

a. Adoption of National Standards

In paragraph 154, the FCC seeks comment on the extent to which it should establish additional national rules for local loops pursuant to sections 201 and 251 in order to remove barriers to entry and speed the deployment of advanced services. NPRM at ¶154. The ICC believes that the FCC should only adopt minimum national rules for local loops, while recognizing that the States have authority to adopt standards for local loops, and that States should continue to have the flexibility to adopt additional loop provisioning requirements. The States are in a better position to address specific issues associated with incumbent LEC loop provisioning.

The ICC currently requires interconnection and sub-loop unbundling pursuant to 83 Illinois Administrative Code Part 790. (Attached hereto as Exhibit A). Code Part

790 requires incumbent LECs to offer sub-loop unbundling to the extent it is technically feasible and will not harm the network or cause the services of another carrier to be degraded as a result of the interconnection. This rule also allows competing providers to request sub-loop unbundling through a bona fide request process. The LEC can petition for a waiver of the requirements if it can prove that the request is not technically feasible or contrary to the public interest. Based on the policies set forth in that Code Part, it is the ICC's position that interconnection, at any technically feasible point, in the loop should be available to competing providers to the extent it does not harm the incumbent LEC's network or alternative provider's ability to offer service. This would include access to xDSL equipment. Further, the ICC takes the position that the term "technical feasibility" should also include the ability of the incumbent LEC to adequately distribute the costs for the interconnection and use of the interconnected equipment. The ICC utilizes technical interconnection standards for sub-loop connections as specified in 83 Illinois Administrative Code 305-Construction of Electrical Power and Communications Lines (Attached hereto as Exhibit B). The ICC recommends that the FCC adopt those standards.

b. Loops and Operations Support Systems

In paragraph 157, the FCC tentatively concludes that incumbent LECs should provide requesting CLECs with sufficient detailed information about the loop so that CLECs are able to determine whether the loop is capable of supporting the xDSL. NPRM at ¶157. It seeks comment on whether its existing operations support system rules adequately ensure that CLECs have access to necessary information about

loops. Id. The ICC supports the FCC's tentative conclusion. Also, in order to provide requesting CLECs with sufficient information, the ICC recommends that incumbent LECs make the loop wire gauge and size available to alternative advanced service providers because they are important components in the determination of the speed and feasibility of advanced service offerings over a loop.

c. Unbundling Loops Passing through Remote Terminals

In the FCC's Memorandum Opinion and Order, it granted ALTS' request for a declaratory ruling that incumbent LECs are required to provide loops capable of transporting high-speed signals where technically feasible. Order at ¶52. Further, the FCC tentatively concludes that the incumbent LEC shall bear the burden of demonstrating that it is not technically feasible to provide requesting carriers with xDSL compatible loops. NPRM at ¶167. The ICC concurs with the FCC's tentative conclusion and notes that the FCC's tentative conclusion that the burden of proof should be placed on the LECs is consistent with Illinois' rule contained within Code Part 790. See, 83 Ill. Adm. Code 790.320(e).

In paragraph 171, the FCC seeks comment on its tentative conclusion that CLECs may request any "technically feasible" method of unbundling the DLC-delivered loop, and that the incumbent LEC is obligated to provide the particular method requested, unless the incumbent LEC demonstrates that the method(s) requested are not technically feasible in which case the incumbent LEC may offer another unbundling method that would provide the CLEC with a loop of equal quality and functionality as the incumbent LEC's loop. NPRM at ¶171. The ICC agrees with the FCC's tentative

conclusions. Also, the ICC believes that CLECs should be allowed to have access to the unbundled loop at the remote terminal. The ICC's recommendation is consistent with Illinois' rule contained within Code Part 790. See, 83 Ill. Adm. Code 790.300-320.

The FCC seeks comment on whether it needs to extend the concept of loop unbundling to sub-loop elements in order to further the pro-competitive goals of the Act, and whether it should require incumbent LECs to unbundle sub-loop elements and provide CLECs access to the remote terminal so that CLECs can provide advanced services. NPRM at ¶173. The ICC contends that CLECs should be allowed to collocate digital subscriber line access multiplexers (DSLAMs) at the remote terminal. This would help ensure that advanced services are provided in a DLC environment. Allowing collocations at the terminals would also seem to be consistent with the sub-loop unbundling philosophy. In regard to the issue of security for access into the units, the incumbent LECs should be allowed to set those requirements as long as they do not impede the development of competition.

C. Limited InterLATA Relief

In paragraph 191, the FCC seeks comment on the scope of this authority as it relates to BOC provision of advanced services. In section 271(g)(2) of the Act, BOCs are permitted to provide "two-way interactive video services or Internet services over dedicated facilities to or for elementary and secondary schools." The FCC states that this section clearly allows the BOCs to provide certain advanced services to or for elementary and secondary schools. (emphasis added) NPRM at ¶ 191. The ICC

recommends that the FCC clarify what advanced services are included when it stated that *certain* advanced services are to be provided regarding section 271(g)(2).

The FCC seeks comment on the criteria that it should use to evaluate LATA boundary modification requests. NPRM at ¶ 192. The ICC concurs with the FCC's decision to decline requests for large-scale changes in LATA boundaries. However, the ICC also realizes that it is likely that many companies will file for interLATA boundary waivers. The ICC is concerned about an influx of companies alleging a need for boundary waivers and, therefore, stresses that the FCC require detailed information be included in the waiver petition. The ICC recommends that waiver requests be reviewed on a case-by-case basis and that State commissions be given the opportunity to comment in waiver proceedings.

The FCC also seeks comment, in paragraph 192, on whether additional relief beyond the incidental interLATA authority set forth in section 271(g)(2) would help ensure that elementary and secondary schools and classrooms have adequate access to advanced services. The ICC is sympathetic to rural concerns, however, it is worried about the effect boundary modification requests may have on the universal service fund.

III. CONCLUSIONS

The ICC supports the FCC's efforts to ensure that the marketplace for advanced services is conducive to investment, innovation and meeting the needs of consumers. The ICC appreciates this opportunity to convey its comments on yet another issue that will further the goals of the federal Act.

Respectfully submitted,

MYRA L. KAREGIANES
General Counsel
Special Assistant Attorney General
SARAH NAUMER
Special Assistant Attorney General
Illinois Commerce Commission
160 North LaSalle St.
Suite C-800
Chicago, IL 60601-3104

TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER b: PROVISIONS APPLICABLE TO MORE THAN ONE KIND OF UTILITY

PART 305
CONSTRUCTION OF ELECTRIC POWER AND COMMUNICATION LINES

Section	
305.10	Policy
305.20	Scope and Incorporation by Reference of Portions of the National Electric Safety Code (NESC)
305.30	General Rules
305.40	Application
305.50	Certificates of Public Convenience and Necessity
305.60	Notification Procedure for Applications
305.70	Advance Notice and Cooperation
305.80	Interchange Data
305.90	Coordinated Locations of Lines
305.100	Overbuilding or Underbuilding
305.110	Exceptions and Additions to NESC Provisions
305.120	Intent
305.130	Exemption
305.Table A	Vertical Separation of Crossarms Carrying Conductors

AUTHORITY: Implementing Section 8-505 and authorized by Section 10-101 of the Public Utilities Act (Ill. Rev. Stat. 1991, ch. 111 2/3, pars. 8-505 and 10-101) [220 ILCS 5/8-505 and 10-101].

SOURCE: Effective June 1, 1963; rules repealed at 8 Ill. Reg. 19750, effective October 1, 1984; new Part adopted at 8 Ill. Reg. 19943, effective October 1, 1984; amended at 9 Ill. Reg. 11803, effective July 25, 1985; amended at 16 Ill. Reg. 6180, effective April 25, 1992; amended at 17 Ill. Reg. 22043, effective February 15, 1994.

Section 305.10 Policy

The purpose of this Part is the practical safeguarding of persons during the installation, operation, or maintenance of electric supply and communication lines and their associated equipment. It contains minimum requirements considered necessary for the safety of employees and the public.

Section 305.20 Scope and Incorporation by Reference of Portions of the National Electric Safety Code (NESC)

a) This Part shall apply to electric utilities and those telecommunications carriers subject to Section 8-505 of the Public Utilities Act (Ill. Rev. Stat. 1991, ch. 111 2/3, par. 8-505) [220 ILCS 5/8-505].