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Federal Communications Commission
Washington, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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	)	CC Docket 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

COMMENTS OF OPTEL, INC.

OpTel, Inc. ("OpTel"), submits these comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-referenced proceeding.

OpTel now has approximately 400,000 passings and over 200,000 video subscribers in eleven major U.S. cities. These systems are providing much needed competition in the local video programming markets, which have long been dominated by the incumbent franchised cable operators. In addition, using the same microwave network architecture, OpTel bundles its video services with private telephony, data, Internet access, and other enhanced services. OpTel soon will offer facilities-based residential telephone competition to the ILEC in each of its major markets.

Although the NPRM is far-reaching in scope, OpTel, for purposes of its initial comments, will limit its discussion to one critical issue — whether the Commission should affirm its tentative conclusion that ILECs should be required to unbundle sub-loop elements.[1] OpTel supports that conclusion. Requiring competitive providers to acquire network elements on an uneconomic scale has slowed competitive entry and undermined the pro-competitive goals of the 1996 Act.

DISCUSSION

I. The Development Of Facilities-Based Residential Telephone Competition Has Fallen Short Of Expectations, In Part Because Of ILEC Abuses With Regard To The Establishment Of The Demarcation Point In MDUs.

Two-and-a-half years after passage of the 1996 Act, actual competitive entry into residential telephone services is scarce or nonexistent in most markets. It is certainly not even approaching the level at which CLECs can begin to provide a competitive check on the ILECs. Although the limited deployment of CLEC facilities can be attributed to a variety of factors, the continued foot-dragging of the ILECs with respect to the establishment of the telephone demarcation point in MDUs is one concern that OpTel confronts on a regular basis.

Substantially all of the MDUs OpTel serves are campus-style or garden-style complexes (i.e., complexes comprised of several buildings). OpTel enters into service

[1] NPRM ¶¶ 173-175.

agreements with MDU property owners and ownership associations to provide services to the residents of the MDU. As part of its agreements, OpTel often upgrades and maintains all telecommunications architecture on the inside wiring side of the demarcation point, including premises wiring and campus distribution.

In the vast majority of cases, OpTel brings its telephone services to MDUs at the request of the MDU ownership or management, normally because of their dissatisfaction with the quality of service provided by the ILEC. In other cases MDU owners and managers are seeking to offer the choice of a less expensive telephone service as an incentive to potential tenants. OpTel has found, however, that many MDU networks, virtually all of which were installed or designed by ILECs, have been configured so as to create a barrier to entry for new competitors.

For example, BellSouth designs MDU networks so that it can control the customer at the BellSouth switch, obviating the need to dispatch a crew for many service calls, and also effectively foreclosing access by a competitor that does not wish to collocate at the BellSouth switch. BellSouth's position, accordingly, is that the demarcation point for each unit in an MDU is at the first jack in each individual unit. Collocation, however, is expensive and inefficient, requiring a CLEC to buy loops from the ILEC rather than use its own facilities.

Thus, when the demarcation point is located at the wall jack for single line customers in multi-customer buildings, as BellSouth maintains, CLECs seeking to provide residential service at an MDU have only one choice — they must install an entirely redundant and duplicative system in the MDU. This entails substantial excavation, wall and conduit opening, and rewiring to overbuild facilities throughout the property and to each unit. Not only is such overbuilding cost prohibitive, often infeasible and always disruptive, it simply is not an acceptable approach for property owners.

Overbuilding in this context also involves an inefficient use of competitive resources. Once a CLEC overbuilds the existing ILEC network, the inside wire line installed by the ILEC would remain in the walls unused — a dead wire — following the resident's switch to CLEC service. Likewise, should the resident ever switch back to the ILEC for any reason, the overbuilt facilities would be superfluous. Any future competitor presumably would have to again overbuild the entire MDU complex to provide service.

In most states in which OpTel competes, the ILECs simply have refused to reconfigure their networks to accommodate new entrants. Further, even in markets in which state authorities have required ILECs to reconfigure their MDU networks to accommodate competitive entry, the ILECs have engaged in deliberate foot-dragging and insisted that the new entrant seeking to provide service pay (in advance) for network modifications necessary to allow competition.

By contrast, when OpTel configures or reconfigures an MDU network, it often is required by state law to bring all inside wiring on the premises to a single demarcation point so that others (including the ILEC) can have non-discriminatory access to the MDU. Indeed, even in states in which OpTel is not required to do so, it uses a single demarcation point configuration.

The tactics of the ILECs with respect to the establishment of a demarcation point in MDUs impede the development of competition by raising the cost of providing service beyond the point at which it is practical. OpTel's ability to provide dependable and timely telephone service has been severely damaged, and its credibility and reputation adversely affected by these behaviors.

II. Mandatory Sub-Loop Unbundling Would Promote Competitive Entry.

OpTel is poised to make the necessary investment to bring facilities-based residential telephone competition to end-user customers in MDUs. Unfortunately, as explained above, the ILECs' practices with respect to the establishment of the demarcation point often make it cost prohibitive or otherwise impracticable for CLECs to provide residential telephone service in MDUs.

Under the Commission's current rules, the establishment of the telephone demarcation point is left largely within the discretion of the ILECs.[2] OpTel has asked the Commission to revisit and reconsider this demarcation point policy.[3] Specifically,

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[2] 47 C.F.R. § 68.3 (in most existing MDUs, the demarcation point is to be determined in accordance with the ILECs "reasonable and non-discriminatory standard operating practice"; in new installations, the ILECs "may establish a reasonable and nondiscriminatory practice of placing the demarcation point at the minimum point of entry").

[3] See Letter from Louis Brunel, President & CEO of OpTel, to Chairman William Kennard, FCC (Aug. 11, 1998); In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-146, Comments of OpTel, Inc. (filed Sept. 8, 1998).

OpTel has suggested that the FCC require all LECs to establish a single demarcation point at the minimum point of entry in any MDU of more than 50 units, which should normally be the closest practical and accessible point to where the telephone company's wire crosses the property line.

Another means of addressing the same concern is through sub-loop unbundling. In order for new entrants to gain access to the market, CLECs should have access to the minimum physical facilities that are required to provide competitive service. It has been a favorite anticompetitive tactic of the ILECs, as in the case of the establishment of demarcation points, to make network elements available to competitors only in increments that are cost-prohibitive to smaller service providers. This not only stifles competition in those instances in which a provider declines interconnection because of the cost, but it leads to wasted assets in those cases in which a competitive provider proceeds even in the face of the requirement that it take more of the element than it needs.

OpTel has, on several occasions in the past when it has sought to provide service to an MDU where no single demarcation point has been established, requested access ILEC sub-loop elements such as street cabinets, splicing cages, etc., at which lines (i.e., twisted pair) dedicated to individual residential units terminate. The ILECs uniformly have refused these requests, not on the basis of technical or legal objections, but simply because the FCC does not require sub-loop unbundling.

The Commission should, therefore, in combination with reconsideration of the federal demarcation point requirements, require ILECs to make sub-loop elements

dedicated to a customer's premises available to requesting carriers on an unbundled basis.

Respectfully submitted,

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