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

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In the Matter of		
Deployment of Wireline Services Offering Advanced Telecommunications Capability	))))	CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-15, 98-78, 98-91 and CCB/CPD No. 98-15, RM-9244

OPPOSITION OF MCI WORLDCOM, INC.

MCI WorldCom, Inc. (MCI WorldCom), by its attorneys, hereby files its opposition to the petitions for reconsideration filed by Bell Atlantic and SBC Communications, Inc., in the above-captioned proceedings.[1]

I. INTRODUCTION AND SUMMARY

It is patently clear, with their instant petitions that follow the Commission's findings in the Memorandum Opinion and Order, and Notice of Proposed Rulemaking (Order or NPRM), Bell Atlantic and SBC are simply trying to hold hostage the deployment of advanced capabilities -- and the resulting benefits to consumers. These petitions are a bald attempt by these BOCs, on behalf of the incumbent local exchange carriers (ILECs), to control and eliminate competition in advanced capabilities by denying competitive local exchange carriers (CLECs) the essential facilities needed to compete in the provision of such capabilities.[2]

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[1] See Petition of Bell Atlantic for Partial Reconsideration or, Alternatively, for Clarification, CC Docket Nos. 98-147 *et al.* (Bell Atlantic Petition) (filed Sept. 8, 1998); see also Petition for Reconsideration of SBC Communications Inc., Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell, CC Docket Nos. 98-147 *et al.* (SBC Petition) (filed Sept. 8, 1998).

[2] This anticompetitive attitude is more than a bit incongruous when one considers that both Bell Atlantic and SBC have pending before the Commission merger applications in which they claim that they intend to bring full-blown competition to local markets.

In its Order, the Commission correctly determined that -- in keeping with the ILEC obligations under section 251(c) and in order to encourage the deployment of advanced capabilities -- ILECs must provide CLECs with interconnection and access to unbundled, xDSL-conditioned loops.[3] Indeed, contrary to petitioners' contentions, the Eighth Circuit did not overrule the Commission's finding that ILECs are obligated to provide local loops in a condition that permits them to be used for advanced services.[4] Moreover, because the ILECs are conditioning loops to provide xDSL services themselves, xDSL-conditioned loops cannot be deemed superior to what the ILECs provide themselves.

Further, the Commission rightly concluded that section 706 does not constitute an independent grant of forbearance authority.[5] Accordingly, all requests for forbearance from sections 251(c) and 271 must be evaluated in accordance with section 10 of the Act, to ensure that such requirements are not subverted or diminished prior to the ILECs opening their local markets.

Petitioners' sole purpose here is the perpetuation of the ILECs' fight to retain monopoly control over the local loop and all capabilities and services offered over that loop, including advanced capabilities. In order to encourage and not discourage the deployment of advanced

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[3] Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 98-147 *et al.*, FCC 98-188, Memorandum Opinion and Order, and Notice of Proposed Rulemaking (Order or NPRM) (rel. Aug. 7, 1998) at ¶¶ 52, 53.

[4] See Iowa Utilities Bd. v. FCC, No. 96-3321, 1998 U.S. App. LEXIS 1043 (8th Cir. Jan. 22, 1998) (writ of mandamus granted); Iowa Utilities Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), amended on reh'g, 1997 U.S. App. LEXIS 28652 (8th Cir. Oct. 14, 1997), cert. granted, 118 S. Ct. 879 (1998).

[5] See Order at ¶ 69.

capabilities, the Commission must reject the petitions. Access to unbundled elements and the critical loop necessary to provide advanced services will ensure that CLECs have a meaningful opportunity to compete in the provision of advanced capabilities.

II. CLEC ACCESS TO xDSL-CONDITIONED LOOPS IS NOT "SUPERIOR ACCESS"

CLECs are not seeking any more than the ILECs are already required to provide. There can be no question that the nondiscrimination requirement of section 251(c)(2) entitles CLECs to access to xDSL-conditioned loops when an ILEC is providing xDSL services itself over xDSL-conditioned loops, particularly because loops in a condition to support xDSL services already exist in the ILECs' current networks. Indeed, petitioners' argument makes sense if, and only if, ILECs are not providing xDSL services themselves. If they are (and in fact they are), then they must be conditioning loops that are not already xDSL capable. Thus, MCI WorldCom and other CLECs are not asking for superior access -- they are asking for nondiscriminatory access, the same access ILECs provide themselves for their own xDSL services.

A. Bell Atlantic and SBC Misinterpret the Eighth Circuit's Decision

Contrary to the arguments of Bell Atlantic and SBC, ILEC provision of interconnection and unbundled access to xDSL-capable loops to CLECs, even if conditioning is required to make the loops xDSL-capable, does not give CLECs interconnection or access that is superior to the quality of interconnection and access ILECs provide themselves. Actually, an xDSL-capable loop is an existing plain copper pair capable of transmitting a broadband signal, stripped of loading coils, bridged taps and other electronics that interfere with the loop's ability to transmit broadband signals. Indeed, xDSL technology simply permits carriers to deploy advanced

capabilities and services over the same local loop that is currently used for traditional voice service, and the ILECs are already required to unbundle network elements and condition the local loop for CLECs.[6] Accordingly, the ILECs' provision of xDSL-capable loops to CLECs is not "superior" at all and falls squarely within the ILEC unbundling obligations upheld by the Eighth Circuit.

Access to the existing loop -- not an unbuilt superior one -- is exactly what new entrants are seeking. Indeed, the Eighth Circuit expressly endorses the notion that interconnection and access to UNEs includes modifications to ILEC infrastructure to accommodate these requirements, and the court states that the ILECs acknowledge this fact. .[7] Further, contrary to petitioners' arguments, Ameritech stated in its comments to the Commission's NPRM that it provides nondiscriminatory access to xDSL-capable loops. Moreover, Ameritech stated that the Commission's finding requiring conditioning is consistent with the Local Competition Order, and conditioning is "reasonable modification" under the Act.[8]

Bell Atlantic and SBC misinterpret the Eighth Circuit's decision regarding superior quality service. When the ILECs provide CLECs with the xDSL-capable loops necessary to deploy advanced capabilities, they are not providing CLECs with superior quality interconnection and unbundled access to those loops, even if conditioning is necessary to make

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[6] First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325 (Local Competition Order) (rel. Aug. 8, 1996) at ¶¶ 377-84.

[7] See 120 F.3d at 813 n.33.

[8] See Comments of Ameritech, CC Docket No. 98-147 (filed Sept. 25, 1998) at 10-12.

some loops as xDSL-capable as others in the ILECs' networks. The network used to provide xDSL capabilities is not an unbuilt superior network. Indeed, one of the key details of xDSL service is that it makes use of the existing loop plant.

Further, in the Universal Service Order the Commission defined the loop as including voice grade access, based on a loop design that does not include loading coils or otherwise "impede the provision of advanced services."[9] As a result, ILECs should already be providing loops that meet this requirement in order to continue receiving universal service funds. Simply stated, CLECs are asking for access to that existing -- not a superior -- loop.[10] Indeed, ILECs are currently provisioning, without complaint, conditioned loops similar to those utilized in xDSL services, including the loops used to provide Basic Rate ISDN, Group 3 fax and even 28.8/33.2 modem services.

Moreover, the Commission's decisions regarding the definition of "technically feasible" and the interpretation of the "necessary" and "impairment" standards were upheld by the Court of Appeals.[11] Specifically, the Eighth Circuit expressly rejected the ILECs' argument that giving competing carriers unbundled access to the ILECs' networks would drastically reduce the ILECs' incentive to innovate.[12] As the Commission recognized in the Local Competition

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[9] Universal Service Order at ¶ 250.

[10] See Rural Electrification Loan Restructuring Act of 1993, Pub. L. No. 103-129 (codified as amended at 7 U.S.C. § 935 (1993)) (requiring rural LECs that receive federal grants to deploy a basic local loop "able to receive . . . data at a rate of at least 1,000,000 bits of information per second").

[11] 120 F.3d at 809-12.

[12] Id. at 812, 816.

Order,[13] just the opposite is true: competition is the best way to promote innovation. Monopolists making supracompetitive profits from T1 data service may well choose not to develop a competing technology that could provide this same service at a lower cost. The best way to assure that xDSL service is deployed is to allow competitors access to the copper loop that makes xDSL service possible.

B. Granting the Petitions would Permit the ILECs to Control Innovation and Impede the Timely Deployment of Advanced Capabilities and Services

In their attempts to manipulate the Commission, petitioners present conflicting arguments: (i) the Commission must act to encourage reasonable and timely deployment of advanced capabilities; and (ii) CLECs should not receive access to xDSL-capable loops until the ILECs decide to offer advanced capabilities. In effect, Bell Atlantic and SBC are unilaterally attempting to dictate the terms of competition in advanced capabilities.

To the extent that the ILECs are implying that they will slow or even stop deployment of their own advanced capabilities if they are required to honor their existing obligations under section 251(c) to provide CLECs with reasonable access to network elements including xDSL-conditioned loops, the Commission should not be deterred from enforcing section 251(c). All of the ILECs are deploying xDSL services and have publicized plans to accelerate and expand this deployment. If the ILECs believe that it is in their business interests to provide these services, they will do so, and nothing in the Telecommunications Act of 1996 or in the Commission's implementing orders makes unprofitable deployment that would otherwise be profitable. If the ILECs cut back on their own plans, that would only make it more important to enforce section

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[13] Local Competition Order at ¶ 378.

251(c) so that CLECs can provide services that the ILECs choose for their own reasons not to provide. The resulting competition from CLECs will spur ILEC deployment. Conversely, any retreat from the procompetitive principles embodied in the Commission's order will slow the development of competition in advanced services, particularly for residential and small business customers.

The instant petitions reveal the true anticompetitive motives behind the ILECs' endorsement of facilities-based competition. The danger in permitting the ILECs to avoid their obligation to unbundle the local loop is clear. Failure by the ILECs to provide CLECs with efficient, nondiscriminatory access to xDSL-capable loops at cost-based rates will make it difficult, if not impossible, for CLECs to bring the benefits of broadband competition to residential and small business customers. Accordingly, the Commission must deny the petitions and ensure that the ILECs continue to meet their statutory obligation to provide CLECs with unbundled access to the network elements necessary to provide advanced capabilities especially for residential and small business customers.

III. THE COMMISSION CORRECTLY CONCLUDED THAT SECTION 706 IS NOT AN INDEPENDENT GRANT OF FORBEARANCE AUTHORITY

As the Commission correctly concluded in the Order, section 706 does not constitute an independent grant of forbearance authority, and thus all forbearance requests must be evaluated in accordance with section 10.[14] In their petitions, Bell Atlantic and SBC argue erroneously that the plain language of the Act makes clear that exercising the forbearance standard under section

[14] See Order at ¶ 69.

706 is not dependent on meeting the forbearance provisions of section 10(a).[15] Such a view is misguided and inconsistent with well-established principles of statutory interpretation. Although the congressional objectives of section 706 facilitate the reasonable and timely deployment of advanced capabilities, they do not invalidate the procompetitive requirements of sections 251(c) and 271. Indeed, the Commission is statutorily precluded from granting any forbearance that results in the practical equivalent of forbearance from sections 251(c) and 271 prior to full implementation of those requirements.

Section 706 is not an independent grant of forbearance authority. Rather, section 706 merely refers to the Commission's forbearance authority -- contained in section 10 -- that permits the Commission to exercise "regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods" in order to encourage the deployment of advanced telecommunications capability.[16] In section 10(d), Congress laid out specific limitations on the Commission's forbearance authority. Nothing in section 706 indicates that Congress intended this provision to override those limits contained in section 10(d). Indeed, granting forbearance requests that would permit the ILECs to exercise monopoly control over advanced capabilities would result in the exact opposite of the congressional goals contained in section 706 of the Act: widespread, rapid deployment of advanced capabilities.

Although section 706(a) states that the Commission "shall encourage the deployment" of advanced telecommunications to "all Americans," section 706(a) places specific emphasis on the

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[15] See Bell Atlantic Petition at 6; see also SBC Petition at 5-9.

[16] 47 U.S.C. § 706(a).

timely deployment of such services to "in particular, elementary and secondary schools and classrooms." Given that focus, it is hard to imagine that Congress intended section 706's reference to regulatory forbearance to override the specific limitations on forbearance contained in section 10, and not just for schools and classrooms but for all consumers.

Moreover, the petitioners' interpretation of section 706 as an independent grant of forbearance authority is inconsistent with the overall structure of the Act.[17] The petitioners' reading of the phrase "regulatory forbearance" in section 706 would directly contradict the procompetitive purpose of the Act, including sections 10, 251, 271 and 272.[18] Congress included the strict limitations in section 10(d) to control the types and degrees of forbearance afforded to the BOCs, in order to ensure that the requirements of sections 251(c) and 271 are not subverted or diminished prior to the BOCs meeting those statutory conditions. Accordingly, the Commission should refuse to grant forbearance from the requirements of sections 251(c) and 271 until it determines that such requirements have been fully implemented.

CONCLUSION

For the foregoing reasons, MCI WorldCom urges the Commission to reject the petitioners' requests for reconsideration.

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[17] See generally Tataronowicz v. Sullivan, 959 F.2d 268, 276 (D.C. Cir. 1992) ("[C]ongressional intent can be understood only in light of the context in which Congress enacted a statute and the policies underlying its enactment.")

[18] In fact, if section 706 trumps all other provisions in the Act, including, as Bell Atlantic and SBC argue, the regulatory forbearance limitations set out in section 10, then it should trump the limitations on unbundling and access requirements that the Eighth Circuit inferred, and the Commission should exercise its power to require ILECs to provide CLECs with access to unbundled, xDSL-capable loops.

Respectfully submitted,

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