

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

1998-08-10

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

OPPOSITION OF SPRINT CORPORATION

Sprint Corporation opposes the petitions for reconsideration, filed by SBC Communications, Inc., et al., and Bell Atlantic, of the August 7, 1998 Memorandum Opinion and Order in the above-captioned proceedings. The petitioners seek reconsideration of two issues: the determination that ILECs have an obligation to make "conditioned" xDSL-capable loops available as unbundled network elements, and the determination that §706 is not a grant of substantive forbearance authority. The latter issue needs no comment. The Commission more than adequately explained the basis for its conclusions, and nothing in either petition demonstrates that the Commission misinterpreted its powers under §706. Thus, the balance of this opposition will address only the ILECs' duty to provide conditioned loops.

SBC and Bell Atlantic argue that a conditioned loop is a superior-quality loop, and that the Eighth Circuit, in Iowa Utilities Bd. v. FCC, 120 F.3rd 753, 813 (8th Cir. 1997), ruled that it was beyond the Commission's authority to require ILECs to provide facilities or services whose quality is superior to the ILECs' own facilities. Thus, they

claim, the Eighth Circuit's ruling precludes the Commission from requiring them to provide conditional loops.

As a threshold matter, both petitions are extremely vague as to the scope of their argument. For example, Bell Atlantic (at 3) merely requests clarification that the order only requires ILECs to make available to others "any conditioning that the local exchange carriers provide to themselves," while SBC (at 5) complains that the "conditioning obligations require incumbents to improve their facilities so that they can be used to provide services that the incumbents do not currently provide over those facilities." There can be no question that if ILECs provide conditioned loops to themselves or an affiliate, they must do so for other carriers as well. However, it is not clear whether these RBOCs are arguing that (1) they have an obligation to provide a conditioned loop as a UNE only if they themselves have conditioned that very same loop to provide their own advanced services to the customer on whose premises the loop terminates, or (2) they have no obligation to condition a particular loop if they do not themselves offer conditioned loops to any other customer they serve. The former view is so narrow as not to be taken seriously, and Sprint assumes that instead they are making the latter argument.

In any event, Sprint disagrees with the RBOCs' contention that loop-conditioning requirements run afoul of the Eighth Circuit's decision. Sprint concedes that the Eighth Circuit did strike down general rules requiring ILECs to offer facilities superior to those of the incumbent LEC, and does acknowledge that in the Local Competition Order, 11 FCC Rcd 15499, 15659 (n.680) (1996), the Commission stated that it was requiring the provision of conditioned loops to permit CLECs to provide digital service even when the

ILEC did not provide such service. However, Sprint believes that this issue was not squarely addressed in Iowa Utilities Board. No party directly challenged the Commission's inclusion of xDSL-capable loops within the definition of the loop element. The RBOCs' brief made only a passing reference to ¶382 of the Local Competition Order (which had defined the loop element to include conditioned loops) in its "superior quality" argument,¹ and there was no discussion in the Court's opinion as to the types of factual circumstances it would regard as involving superior quality interconnection or facilities. Instead, the Court merely found that the Commission can require "unbundled access only to an incumbent LEC's *existing* network – not to a yet unbuilt superior one," 120 F.3rd at 813 (emphasis in original), and acknowledged (*id.*, n.33) that ILECs nonetheless have a duty to make modifications to their facilities to accommodate interconnection or access to network elements. Here, the "conditioning" of a loop in order to make it xDSL-capable does not involve the construction of an "unbuilt superior" network by the ILECs. It merely involves maintenance work (*e.g.*, removing bridged taps or loading coils) on the existing copper network. Thus, conditioning a loop to make it xDSL-capable far more closely resembles a modification of existing facilities, which the Court conceded was necessary, than construction of an "unbuilt superior" network.

Furthermore, n.680 in the Local Competition Order missed the point. After noting in the text (at ¶314) that LECs have a duty to make available unbundled elements of higher quality than the LEC itself employs, the Commission stated in n.680 (emphasis added)

¹ See Brief for Petitioners Regional Bell Companies and GTE, November 18, 1996, at 15.

We require, for example, that incumbent LECs provide local loops conditioned to enable the provision of digital services ... even if the incumbent does not itself provide such digital service.

As can be seen from the above quote, the emphasis in n.680 was on the comparative services offered by the CLEC and the ILEC, not on the comparative quality of the underlying facilities. It does not automatically follow that superior-quality facilities are necessary in order to provide superior-quality services. Sprint does not believe that a conditioned loop is necessarily a superior facility. For example, a loop from which loading coils have been removed is likely to be a lower quality facility for providing conventional voice service than a loop with loading coils. Thus, despite what the Commission said in n.680, Sprint does not believe that by requiring ILECs to provide conditioned loops, the Commission is necessarily forcing them to construct the “unbuilt superior” network that was disallowed in Iowa Utilities Board.

Finally, the RBOC petitions are difficult to reconcile with their representations in their Section 706 forbearance filings. Bell Atlantic, in its May 6, 1998 Reply Comments in CC Docket No. 98-11, stated (at 26):

Bell Atlantic has committed to provide xDSL-conditioned unbundled loops to its competitors in the interconnection agreements and will do so just as it has provided ordinary unbundled loops to competitors.

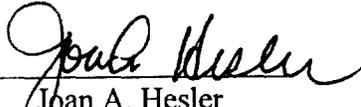
SBC, in its June 9, 1998 petition in CC Docket No. 98-91 stated (at 18-19):

If loop is available but requires conditioning (i.e., removal of load coils, bridge tap, and/or repeater) to support ADSL, conditioning will be available as an option.

And in its July 1, 1998 Reply Comments, in that docket, SBC flatly denied (at 26) that it is seeking “relief from the obligation to provide ADSL-compatible loops... .” In short,

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October, 1998, a copy of the foregoing document were served by U.S. Mail, first class, postage prepaid to the parties on the attached service list:


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both carriers clearly have previously represented that they will, without qualification, provide conditioned loops. The fact that they are challenging their duty to do so at this point can only imply that they intend to renege on their prior commitment to make conditioned loops available.

In any event, as discussed above, Sprint believes that the Commission clearly can require ILECs to make conditioned loops available. Such activity merely constitutes modification of existing plant rather than the construction of a "yet unbuilt superior" network that was proscribed by the Eighth Circuit. Accordingly, Sprint urges the Commission to deny the petitions for reconsideration filed herein by Bell Atlantic and SBC.

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