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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, et al.	)	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 AT&T CORP. TO THE PETITIONS OF BELL ATLANTIC CORPORATION AND SBC COMMUNICATIONS, INC. FOR RECONSIDERATION

Pursuant to the Public Notice released on September 18, 1998, AT&T Corp. ("AT&T") respectfully submits its Opposition to the petitions for reconsideration filed by Bell Atlantic Corporation ("Bell Atlantic")[1] and SBC Communications, Inc. ("SBC")[2] of the Commission's Order denying their petition for relief under Section 706 of the Telecommunications Act of 1996.[3] For the reasons set forth below, these petitions should be rejected.

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1 Petition of Bell Atlantic for Partial Reconsideration or, Alternatively, for Clarification, CC Docket No. 98-147, et al. (filed September 8, 1998).

2 Petition for Reconsideration of SBC Communications Inc., Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell, CC Docket No. 98-147, et al. (filed September 8, 1998).

3 Memorandum Opinion and Order, In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, et al., CC Docket No. 98-147, et al. (rel. August 7, 1998) (hereinafter the "Advanced Services Order").

I. REQUIRING INCUMBENT LECS TO CONDITION LOOPS FOR ADVANCED SERVICES DOES NOT REQUIRE THEM TO PROVIDE SUPERIOR ACCESS TO COMPETITORS.

In the Advanced Services Order, the Commission determined that incumbent local exchange carriers must "condition" loops by removing load coils, bridge taps, and other electronic impediments, if technically feasible, to enable competitors to provide advanced services over those loops. Advanced Services Order ¶ 53. Bell Atlantic and SBC argue that the Commission's holding runs afoul of the Eighth Circuit's decision in Iowa Utilities Board v. FCC[4] because it requires incumbent LECs to provide competitors with "superior access" to what they provide themselves. Bell Atlantic Petition at 3; SBC Petition at 2-5. This argument is meritless for several reasons.

First, conditioning a loop to provide advanced services does not provide superior access; rather, it simply facilitates use of features, functions and capabilities of the existing loop. A plain copper loop is capable of supporting narrowband and broadband services, limited only by the loop's resistance and spectrum management concerns. In instances where the incumbent LEC has placed load coils and bridge taps on a copper loop, it has augmented one loop capability (voiceband traffic) but, in doing so, has inhibited the existing capabilities (broadband channels). Requiring the incumbent LEC to remove this equipment, then, does not amount to superior access. Rather, it simply requires the incumbent LEC to make all the features, functions and capability of the loop available to CLECs, rather than restricting the features, functions, and capabilities of the loop to those that the incumbent LEC itself uses.

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[4] 120 F.3d 753 (8th Cir. 1997), cert. granted, 118 S. Ct. 879 (1998).

Second, although the Eighth Circuit invalidated the Commission's superior quality rules, it expressly endorsed the Commission's holding that the obligations imposed "by Sections 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements." Iowa Utilities Bd., 120 F.3d at 813 n. 33, citing First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 ¶ 198 (1996) (the "Local Competition Order"). And the Commission had expressly cited loop conditioning as an example of facilities modification that incumbent LECs would be obligated to undertake. It stated:

> Our definition of loops will in some instances require the incumbent LEC to take affirmative steps to condition existing loop facilities to enable requesting carriers to provide services not currently provided over such facilities. For example, if a competitor seeks to provide a digital loop functionality, such as ADSL, and the loop is not currently conditioned to carry digital signals, but it is technically feasible to condition the facility, the incumbent LEC must condition the loop to permit the transmission of digital signals. Thus, we reject Bell South's position that requesting carriers "take the LEC networks as they find them" with respect to unbundled network elements. As discussed above, some modification of incumbent LEC facilities, such as loop conditioning, is encompassed within the duty imposed by Section 251(c)(3).[5]

Local Competition Order ¶ 382. Thus, as the Commission recognized, far from "cater[ing] to every desire of every requesting carrier," Iowa Utilities Bd., 120 F.3d at 813, conditioning loops simply allows competitors to provide functionalities that the existing loop has the capability of offering.

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[5] This paragraph mistakenly cross-references Section IV.D of the Local Competition Order, but the Commission obviously meant to reference Section IV.E (which includes ¶ 198) because that is the section that discusses the definition of "technically feasible."

Third, insofar as Bell Atlantic is suggesting that the only time a competitor could offer a customer advanced services using Bell Atlantic's loops is when that customer has already purchased advanced services from Bell Atlantic and decided to switch to a competitor's offering, Petition at 4, that suggestion is absurd. Far from promoting the deployment of advanced services in accordance with the Act's objective, such a requirement would have the perverse effect of rendering the incumbents the sole arbiters timing and location of such deployment.[6]

Further, Bell Atlantic's purported overriding concern -- that requiring it to condition loops for competitors would turn it into a "construction company" for competitors -- is unconvincing. In advancing this claim, Bell Atlantic first states that requiring it to condition loops would discourage facilities-based competition and therefore be contrary to sound public policy. Bell Atlantic grounds this claim on the Eighth Circuit's decision in Iowa Utilities Board, which it essentially claims viewed the unbundling rules as nothing more than a stop gap measure. Bell Atlantic Petition at 4.

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[6] If Bell Atlantic's argument is given any weight, the only way to avoid the absurd outcome that Bell Atlantic apparently advocates would be to require incumbent LECs to condition upon request any loop within a state in which the incumbent is offering advanced services to its retail customers.

Moreover, petitioners' assertion that the Eighth Circuit's ruling on the superior access rules was not appealed, Bell Atlantic Petition at 4, note 3; SBC Petition at 3, is erroneous. This finding was, in fact, appealed. See Petition for a Writ of Certiorari, AT&T Corp. et al. v. Iowa Utilities Bd., No. 97-826, at pp. 10, 13 (filed November 17, 1997); Brief of Petitioners AT&T, et al., AT&T Corp., et al. v. Iowa Utilities Bd., No. 97-826, at pp. 33-34 (filed April 3, 1998). Thus, in the event that the petitioners' position is deemed to have any merit, any decision on this issue should await the outcome of the Supreme Court appeal.

But Bell Atlantic is simply mistaken that the Eighth Circuit found that the 251 unbundling provisions were merely designed to allow competitors to fill in "piece parts" of their local networks while building their own facilities. In rejecting the incumbent LECs' claim that the Commission's unbundling rules should be vacated, the Eighth Circuit expressly stated that facilities based competition was not the Act's exclusive goal, 120 F.3d at 816, and found that requiring incumbent LECs to allow competing carriers to use their networks would hasten the influence of competitive forces in the marketplace. Id. Indeed, as with the unbundling rule at issue in the Eighth Circuit's decision, the "conditioning" rule, adopted in the Advanced Services Order will hasten, rather than discourage, the introduction of advanced services.[7]

Finally, Bell Atlantic's claim that the Commission failed to address certain technical issues in connection with its ruling is a red herring. Bell Atlantic first suggests that the Commission's holding is problematic because "conditioning a loop for one advanced service does not necessarily mean that the loop will support other advanced services," so that, for example, conditioning a loop to support ISDN could disqualify that loop for ADSL. Bell Atlantic Petition at 5. But it is not rational to expect that a competitor would try to use a particular loop to support multiple advanced services; rather, as one would expect, a competitor will request that a loop be conditioned to

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[7] Bell Atlantic's further claim that it will require additional resources to condition loops for competitors is sheer histrionics. Bell Atlantic well knows that incumbent LECs will be able to recover their costs for performing the conditioning work on the loop from competitors. Local Competition Order ¶ 199 (noting that technical considerations must be separated from economic ones, and stating "[o]f course, a requesting carrier that wishes a "technically feasible" but expensive interconnection would, pursuant to Section 252(d)(1), be required to bear the cost of that interconnection including a reasonable profit").

provide a single particular type of advanced service capability. In any event, the potential inability to support multiple services over one loop exists whether that loop is unbundled and provided to a competitor or is utilized by the incumbent LEC for its own retail customer.[8] Moreover, Bell Atlantic's expressed concern that "introducing a new advanced service into an existing cable sheath could interfere with advanced services already being providing [sic] through other pairs in that sheath," Bell Atlantic Petition at 5, is handled with adequate spectrum management, and newer technologies will, in any event, address this potential problem.[9]

II. NO SOUND BASIS EXISTS FOR RECONSIDERING THE COMMISSION'S DECISION THAT SECTION 706 OF THE ACT DOES NOT PROVIDE INDEPENDENT AUTHORITY TO FORBEAR FROM APPLYING THE ACT'S REQUIREMENTS.

In the Advanced Services Order, the Commission correctly concluded that Section 706 does not provide independent authority to forbear from applying the Act's Section 251 and 271 requirements. Advanced Services Order ¶¶ 72-73. In requesting reconsideration, Bell Atlantic and SBC do no more than recycle arguments that the Commission has already rejected; for that reason, their petitions present no valid ground for reconsideration. See 47 C.F.R. §1.106(b).

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8 To the extent that the loop owner -- that is, the incumbent LEC itself, or the entity that has purchased the loop as a UNE from the incumbent LEC -- intends to utilize the loop for multiple services (e.g., voice and data), it is up to the loop owner to determine whether conditioning the loop will meet its technical specifications.

9 See Comments of AT&T Corp., In re Deployment of Wireline Service Offering Advanced Telecommunications Capability, CC Docket 98-147, at 57-64 (filed September 25, 1998).

Specifically, Bell Atlantic and SBC argue that Section 10(d), which makes clear that the Commission's forbearance authority may not be invoked to forbear from applying Sections 251(c) and 271 of the Act, is only applicable to the Commission's forbearance authority under Section 10(a), and not other grants of forbearance authority. But Bell Atlantic and SBC have already advanced this argument, see Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services at 10 (filed January 26, 1998); Petition of Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell for Relief from Regulation at 23 (filed June 9, 1998) (incorporating by reference, other petitioners' arguments on this point), and the Commission has already rejected it. See Advanced Services Order ¶¶ 72-76 (Section 706 is not an independent grant of forbearance authority; "there is no language in section 10 that carves out an exclusion from [the section 10(d) prohibition] for actions taken pursuant to section 706").

SBC also argues that Congress must have intended Section 706 to include an independent grant of authority because, without it, the section would merely serve to encourage the deployment of advanced services, which would render it redundant of one of the stated purposes of the Act, which is to encourage development of new technologies. SBC Petition for Reconsideration at 7. Bell Atlantic, however, already raised this same argument, Bell Atlantic Reply Comments at 5, and the Commission squarely rejected it:

> "We are not persuaded by Bell Atlantic's argument that a conclusion that section 706(a) confers no independent authority would make that section redundant. On the contrary, we conclude that section 706(a) gives this Commission an affirmative obligation to encourage the deployment of advanced services, relying on our authority established elsewhere in the Act . . .Our actions . . . make clear that this obligation has substance."

Advanced Services Order ¶ 74.[10]

Finally, SBC claims that the Commission's interpretation of Section 706 fails to further Congress' pro-competitive policy objectives because Congress designed "sections 251(c) and 271 specifically to open to competition the markets for conventional local exchange service." SBC Petition at 8. But SBC's argument ignores the Commission's express finding that advanced services are telecommunications services within the meaning of the Act, Advanced Services Order ¶¶ 34-35, and the conclusion that the Act does not distinguish between voice and data services, id. ¶ 11 (stating that the provisions of the 1996 Act apply equally to advanced services and circuit-switched voice services and that "Congress made clear that the 1996 Act is technologically neutral. . ."). The Commission's findings were grounded in sound public policy. Advanced services offerings utilize the same bottleneck facilities controlled by the incumbent LECs that traditional voice services are dependant upon. In addition, the facilities that support the advanced service offerings are capable of carrying all of a customer's traffic, including voice; thus, there is no technological basis on which to distinguish the two types of traffic. See generally, Comments of AT&T Corp., In the Matter of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket 98-11 (filed April 6, 1998).

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[10] Citations omitted.

CONCLUSION

Bell Atlantic and SBC have offered no new facts or information that warrant reconsideration, and reversal of the Commission's ruling would thwart the development of competition that the Act was designed to foster. For all of the foregoing reasons, the petitions of Bell Atlantic Corporation and SBC Corporation should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Rena Martens, do hereby certify that on this 5th day of October, 1998, a copy of the foregoing "Opposition of AT&T Corp. to the Petitions of Bell Atlantic Corporation and SBC Communications, Inc. for Reconsideration" was served by U.S. first class mail, postage prepaid, to the parties listed below.

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