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

In the Matter of )  
 )  
Deployment of Wireline Services Offering ) CC Docket No. 98-147  
Advanced Telecommunications Capability )  
 )

**REPLY COMMENTS OF BELLSOUTH CORPORATION**

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BellSouth Corporation, for itself and its affiliated companies (collectively “BellSouth”), submits the following reply comments in response to the comments filed in the above-captioned proceeding.

**I. INTRODUCTION AND SUMMARY**

The positions of the parties in this proceeding are clearly delineated. On one side, the incumbent local exchange carriers (“ILECs”) have asked the Commission to remove the regulatory constraints that they alone face so that they may be able to provide advanced services on an equal footing with their competitors. On the other side, opponents of the ILECs have urged the Commission to adopt a host of new regulatory constraints on ILEC provision of advanced services. Caught in the middle are consumers, who are anxiously awaiting the deployment of advanced services to fulfill their growing demand for broadband capabilities. In this proceeding, the Commission must decide whether it will rely on competition (as urged by the ILECs) or regulation (as urged by their opponents) to meet this consumer demand.

The comments filed in response to the *Notice of Proposed Rulemaking* (“*Notice*”)<sup>1</sup> and the *Notice of Inquiry* (“*NOI*”)<sup>2</sup> demonstrate that the Commission should rely on competition to ensure the timely deployment of advanced services. Although almost 100 comments have been filed in this proceeding, three fundamental facts remain largely unrefuted:

- ILECs are not dominant providers of advanced access services, which connect the user to broadband networks, or of advanced end-to-end networking, including backbone transport services.
- Competitive local exchange carriers (“CLECs”) have the unfettered ability to obtain equipment used to provide digital subscriber line (“DSL”) services.
- Regulatory relief that is not conditioned on the formation of a separate affiliate will enable ILECs to deploy advanced services more efficiently and to a broader range of consumers.

The record thus provides no rational basis for maintaining current regulations on ILEC provision of advanced services and certainly cannot support the imposition of new restrictions that limit an ILEC’s ability to fully compete in the functioning and competitive advanced services market. The proposals in the *Notice* to increase regulation of ILECs are at best premature<sup>3</sup> and at worst threaten to diminish ILEC incentive to deploy advanced services.

In spite of (or perhaps because of) the lack of necessity for Commission intervention into the advanced services market, ILEC opponents have adopted a “throw-it-

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<sup>1</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability, Memorandum Opinion and Order, and Notice of Proposed Rulemaking*, CC Dkt. No. 98-147, FCC 98-188 (rel. Aug. 7, 1998) (“*Order*” or “*Notice*,” as applicable), *recon. pending*.

<sup>2</sup> *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*, Notice of Inquiry, CC Dkt. 98-146, FCC 98-187 (rel. Aug. 7, 1998) (“*NOI*”).

<sup>3</sup> See Florida PSC Comments at 1-3.

against-the-wall-and-hope-it-sticks” approach in their comments. These commenters apparently believe that they can compensate for their inability to provide a convincing policy rationale for increased regulation of ILECs by submitting thousands of pages of proposals and hoping that the Commission will not realize that their proposals are without foundation. The Commission should not allow itself to be misdirected by ILEC competitors that seek to preserve the competitive advantage that current regulatory distinctions provide them.

For these reasons, BellSouth believes that the debate here must be over how best to *deregulate* ILECs so that they will have the same market incentives as their competitors to deploy advanced services.<sup>4</sup> Unfortunately, the Commission initiated this proceeding on the wrong foot by focusing the debate on the level of *additional* regulations that should be imposed on ILECs, and in particular, on the establishment of a separate affiliate precondition to regulatory relief. It is not too late, however, for the Commission to reassert its commitment to the procompetitive policies of the Telecommunications Act of 1996 (the “1996 Act”), and to Section 706 of the 1996 Act,<sup>5</sup> by using its interpretative authority to adopt a deregulatory framework for ILEC provision of advanced services.

To that end, BellSouth joins other parties in urging the Commission not to condition regulatory relief on the formation of a separate advanced services affiliate.<sup>6</sup> Although the Commission has concluded that Section 251(c) applies to ILEC provision of advanced

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<sup>4</sup> BellSouth Comments at 3; *see also* ADC Comments at 14 (stating that the Commission should “take greater steps to speed the transition to competition by establishing now a deregulated environment for the provision of advanced telecommunications capability”).

<sup>5</sup> Pub. L. No. 104-104, Title VIII, § 706, 110 Stat. 153, 47 U.S.C. § 157 note.

<sup>6</sup> Bell Atlantic Comments at 21; US West Comments at 15.

services, the Commission retains the authority to interpret Section 251(c) and other provisions of the Act in a manner that preserves ILEC incentives to deploy advanced services without forming a separate affiliate.

In particular, the record supports the exercise of Commission discretion to refrain from adopting prescriptive rules requiring the unbundling of non-bottleneck facilities used to provide advanced services.<sup>7</sup> Commission restraint, along with the negotiation and arbitration provisions of the Communications Act of 1934 (the “Act”), will encourage the deployment of competing advanced services facilities while preserving competitors’ access to “bottleneck” facilities. Although ILEC competitors devote much discussion as to *how* the Commission should require unbundling of advanced services, the record is devoid of any persuasive reason that the Commission *should* require such unbundling in the first instance.

The record also supports BellSouth’s position that the Commission cannot and should not apply Section 251(c) resale requirements to ILECs that offer advanced services predominantly on a wholesale basis.<sup>8</sup> Because Section 251(c) resale requirements by their terms apply only to telecommunications services offered at retail, attempting to apply requirements to the wholesale offering of advanced services would exceed the Commission’s jurisdiction under the Act.

BellSouth also joins with the other Bell Operating Companies (“BOCs”) in urging the Commission to grant relief from the interLATA restrictions of Section 271.<sup>9</sup> Although barely

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<sup>7</sup> See Bell Atlantic Comments at 19; US West Comments at 10.

<sup>8</sup> See GTE Comments at 109; Bell Atlantic Comments at 53.

<sup>9</sup> See Ameritech Comments at 62; Bell Atlantic Comments at 3.

mentioned in the *Notice*, the interLATA restriction represents the single largest competitive barrier to full-fledged competition in the advanced services market. BellSouth wholeheartedly agrees that the Commission must act promptly to eliminate this unnecessary regulatory distinction between BOCs and their advanced services competitors.

Because the measures outlined above are warranted without a separate affiliate condition, BellSouth does not support the structural separation approach outlined in the *Notice*. BellSouth believes, however, that if the Commission adopts such an approach, it should be based upon the same deregulatory, procompetitive policy that BellSouth has outlined in its comments. Although ILEC competitors devote much discussion to the myriad of separation requirements that they would like the Commission to impose on ILECs, they fail to explain how their proposals are the minimum necessary to fulfill the objectives of a separate affiliate requirement. In lieu of providing support for their proposals, ILEC competitors fall back on their time-worn and discredited claims that rigid regulatory restrictions are necessary to prevent anticompetitive conduct by ILECs. This question, however, is not new, and when it has previously arisen, the Commission has found that the *Competitive Carrier* separate affiliate model sufficiently addresses concerns about cost misallocation and anticompetitive conduct. In light of this long-standing precedent, the Commission should reject calls for more stringent regulatory restraints.

The record also highlights the importance of preserving the integrity of the local competition framework that Congress adopted in Sections 251 and 252 of the Act. Congress did not intend for local competition to develop through a prescriptive and uncompromising regulatory framework, but specifically created a process whereby negotiation and, if necessary, arbitration by state commissions would lead to competition. The record demonstrates that state

commissions are fulfilling their responsibilities under the Act. The Commission should not now preempt their work in the name of promoting the deployment of advanced services.

Accordingly, the Commission should exercise restraint in the face of proposals to impose onerous new collocation and unbundling requirements on ILECs. Rather than adopt inflexible national rules each time an innovative technology such as DSL technology is developed, the Commission's role should be to step back and allow market participants and state commissions to address the technical issues that may arise from the competitive deployment of advanced services.

## **II. THE COMMENTS SUPPORT BELL SOUTH'S DESCRIPTION OF THE ADVANCED SERVICES MARKET**

In its initial comments here and in its comments to the *NOI*, BellSouth explained that advanced services are being deployed using a variety of competing technologies.<sup>10</sup> Advanced services provided using the local telephone network are by no means the exclusive or even the predominant transmission medium through which consumers can obtain broadband capabilities.<sup>11</sup> Adopting a framework that fails to consider these alternative technologies (*e.g.*, by limiting the definition of advanced services to wireline services)<sup>12</sup> will only further entrench regulatory distinctions and distort the market for advanced services.

The record supports BellSouth's call for a regulatory approach toward advanced services that does not distinguish among technologies or transmission media.<sup>13</sup> ADC states that

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<sup>10</sup> BellSouth Comments at 8-11; BellSouth *NOI* Comments at 3.

<sup>11</sup> ACTA Comments at 5-8.

<sup>12</sup> See *Notice* at ¶ 3.

<sup>13</sup> See, *e.g.*, Intermedia Comments at 3-6.

an unduly narrow view of advanced services could “artificially constrain some technological developments or promote a limited set of technical solutions capable of telecommunications challenges.”<sup>14</sup> GTE observes that “not only do ILECs lack market power in the provision of advanced services, . . . they are the newest among a multitude of rivals in a vigorously competitive market.”<sup>15</sup> And Ameritech correctly counsels the Commission against “‘stacking the deck’ in favor of specific technologies, producing an economically-inefficient form of competition.”<sup>16</sup>

Some anti-ILEC commenters make bald assertions that ILECs possess market power in the advanced services market.<sup>17</sup> Conspicuously absent, however, is any evidence to back up those claims. This is not surprising, as market forecasters uniformly point to cable modems as the leading technology for providing broadband connectivity to the home. Indeed, one research group estimates that by 2002, 80% of homes receiving advanced services will use cable modems, with most of the remaining 20% subscribing to DSL.<sup>18</sup>

The Commission itself has observed that “incumbent wireline carriers . . . are at the early stages of deploying xDSL and other advanced services,” and consequently, they do “not currently enjoy the overwhelming market power that [they] possess[] in the conventional circuit-

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<sup>14</sup> ADC Comments at 6.

<sup>15</sup> GTE Comments at 3.

<sup>16</sup> Ameritech Comments at 8.

<sup>17</sup> See Ad Hoc Committee Comments at 9; AT&T Comments at 25-26.

<sup>18</sup> Kevin Maney, *Net Access: Cable Modems Surge*, USA Today, Oct. 5, 1998, at B1; see also MindSpring *NOI* Reply Comments at 9 (stating that “19 times more customers leaving MindSpring’s service have identified ‘change to cable modem’ as the reason, as opposed to ‘change to xDSL’”).

switched voice telephony market.”<sup>19</sup> In light of this specific Commission finding and the lack of any supportable evidence to the contrary in the record, it is beyond question that ILECs lack market power in the advanced services market. The framework that the Commission adopts in this proceeding must reflect that fundamental fact.

**III. THE RECORD AMPLY DEMONSTRATES THAT A SEPARATE AFFILIATE APPROACH SHOULD NOT BE ADOPTED FOR ILEC PROVISION OF ADVANCED SERVICES**

The inability of ILECs to exercise market power in the advanced services market strongly weighs in favor of removing regulatory restrictions on ILECs that are founded upon their ability to control bottleneck facilities. Unfortunately, rather than grant such relief directly, the *Notice* proposes to condition relief on the formation of an advanced services affiliate. In its initial comments, BellSouth adamantly opposed that proposed approach.<sup>20</sup>

A number of commenters support BellSouth’s position that the Commission should not adopt a separate affiliate framework for ILEC provision of advanced services.<sup>21</sup> As Bell Atlantic states, “imposing a separate affiliate structure as the price to deploy new services free of existing regulatory constraints merely substitutes a whole new set of regulatory barriers that will increase costs and delay deployment to the mass market.”<sup>22</sup> US West accurately describes the Commission’s separate affiliate approach as “a cure that is worse than the disease.”<sup>23</sup> And ADC urges the Commission to use this proceeding to “permit incumbent LECs

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<sup>19</sup> *Notice* at ¶ 7.

<sup>20</sup> BellSouth Comments at 14-21.

<sup>21</sup> *See, e.g.*, Cincinnati Bell Comments at 4; Keep America Connected Comments at 8.

<sup>22</sup> Bell Atlantic Comments at 21.

<sup>23</sup> US West Comments at 15.

to offer deregulated advanced telecommunications services on an integrated basis.”<sup>24</sup> Indeed, even ILEC competitors denounce the adoption of a separate affiliate approach, although admittedly for the purpose of denying ILECs any relief from regulatory restraints.<sup>25</sup>

Several commenters also agree with BellSouth that the Commission’s *Computer II*<sup>26</sup> and *III*<sup>27</sup> proceedings provide a paradigmatic example of the positive effects that removal of structural separation conditions can have on the deployment of innovative new technologies.<sup>28</sup> As US West explains, “the enhanced services market . . . became more robust and competitive following BOC entry.”<sup>29</sup> Similarly, SBC observes that a “structurally integrated approach with

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<sup>24</sup> ADC Comments at 15.

<sup>25</sup> See, e.g., MCI Comments at 4-5; Sprint Comments at 3-4; Qwest Comments at 19.

<sup>26</sup> *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II)*, 77 FCC 2d 384 (1980) (“*Computer II Order*”), *recon.*, 84 FCC 2d 50 (1980) (“*Computer II Recon. Order*”), *further recon.*, 88 FCC 2d 512 (1981), *affirmed sub nom. Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

<sup>27</sup> *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III)*, Report and Order, CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (“*Computer III Order*”), *recon.*, 2 FCC Rcd 3035 (1987) (“*Phase I Recon. Order*”), *further recon.*, 3 FCC Rcd 1135 (1988), *second further recon.*, 4 FCC Rcd 5927 (1989), *Computer III Order and Phase I Recon. Order, vacated, California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (“*California I*”); Phase II, 2 FCC Rcd 3072 (1987) (“*Phase II Order*”), *recon.*, 3 FCC Rcd 1150 (1988), *further recon.*, 4 FCC Rcd 5927 (1989), *Phase II Order vacated, California I*, 905 F.2d 1217 (9th Cir. 1990); *Computer III Remand Proceedings*, 5 FCC Rcd 7719 (1990), *recon.*, 7 FCC Rcd 909 (1992), *pets. for review denied, California v. FCC*, 4 F.3d 1505 (9th Cir. 1993); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991) (“*BOC Safeguards Order*”), *recon. dismissed in part*, Order, CC Docket Nos. 90-623 and 92-256, 11 FCC Rcd 12513 (1996); *BOC Safeguards Order vacated in part and remanded, California v. FCC*, 39 F.3d 919 (9th Cir. 1994), *cert. denied*, 115 S. Ct. 1427 (1995) (collectively, “the *Computer III* proceeding”).

<sup>28</sup> See US West Comments at 18-19; Bell Atlantic Comments at 24.

<sup>29</sup> US West Comments at 20.

appropriate regulatory relief would do the most to encourage ILECs to deploy advanced capability.”<sup>30</sup> In addition, the structurally integrated approach protected competition in the enhanced services market, as ADC points out, by successfully establishing “appropriate safeguards for integrated provision of regulated and competitive services.”<sup>31</sup>

Most ILEC opponents do not even attempt to dispute the fundamental fact that ILECs can offer advanced services more efficiently on an integrated basis, and the few that do provide no evidentiary support for their assertions.<sup>32</sup> Indeed, even AT&T agrees that the formation of a separate affiliate would constitute a “burden[]” on ILECs.<sup>33</sup> Nevertheless, ILEC opponents argue in effect that the Commission should overlook these losses in efficiency in order to protect competition in the advanced services market. This argument, however, completely ignores Commission precedent and the record in this proceeding, which demonstrate that non-structural safeguards are effective in addressing concerns about potential anticompetitive conduct.<sup>34</sup> Non-discrimination safeguards and the local competition provisions of Sections 251 and 252 of the Act guarantee that ILEC competitors will have non-discriminatory access to the bottleneck network elements they require to institute their own advanced services offerings. In light of these substantial safeguards, there is simply no justification for adopting a framework that unnecessarily increases the cost of deploying advanced services.

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<sup>30</sup> SBC Comments at 4.

<sup>31</sup> ADC Comments at 15.

<sup>32</sup> See Ad Hoc Committee Comments at 14 (asserting only that efficiencies of integrated operation are “dubious”).

<sup>33</sup> AT&T Comments at 27.

<sup>34</sup> See generally BellSouth Comments at 21; Bell Atlantic Comments at 23.

Moreover, nothing in the record or in the 1996 Act supports a finding that Congress intended for ILECs to provide advanced services through a separate affiliate. In the *OVS Second Report and Order*, for example, the Commission concluded that structural separation was inappropriate for LECs operating Open Video Systems under Section 653.<sup>35</sup> The Commission properly adhered to congressional silence about whether to impose “a separate affiliate requirement on LECs providing open video service” and to Congress’s decision not to include OVS within the scope of Section 272.<sup>36</sup> Rather than impose structural separation, the Commission correctly concluded that its cost allocation rules “will adequately protect regulated telephone ratepayers from a misallocation of costs that could lead to excessive telephone rates.”<sup>37</sup>

The Commission should here again respect Congress’s decision not to apply a separate affiliate framework to ILEC provision of advanced services. Congress carefully drafted Section 272 of the Act to include only those telecommunications services that Congress believed should be subject to structural separation. Congress was well aware of the existence of advanced services, as highlighted by the enactment of Section 706, and deliberately chose not to include advanced services within the ambit of Section 272.<sup>38</sup> To the contrary, when Congress spoke of advanced services, it was to command the Commission to “remov[e] barriers to infrastructure

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<sup>35</sup> *Implementation of Section 302 of the Telecommunications Act of 1996 Open Video Systems*, Second Report and Order, 11 FCC Rcd 18223, 18347, ¶ 249 (1996).

<sup>36</sup> *Id.*

<sup>37</sup> *See id.* at 18347, ¶ 248; *see also Implementation of Section 302 of the Telecommunications Act of 1996 Open Video Systems*, Third Report and Order and Second Order on Reconsideration, 11 FCC Rcd 20227, 20321, ¶ 222 (1996).

<sup>38</sup> *See US West Comments at 24.*

investment,” and not to create new hurdles to regulatory relief.<sup>39</sup> Consistent with that command, the Commission should use its authority to remove, without preconditions, those existing regulatory barriers that diminish ILEC incentive to deploy advanced services.<sup>40</sup>

#### **IV. THE RECORD DOES NOT JUSTIFY A PRESCRIPTIVE APPROACH TOWARD UNBUNDLING OF ADVANCED SERVICES**

One existing barrier to full-fledged ILEC investment in advanced services is the possibility that ILECs may be required to provide competitors with unbundled access to advanced services facilities without receiving compensation that reflects the investment and the risk that ILECs would have undertaken to bring new technologies to market. If the Commission adopts prescriptive unbundling rules for an ILEC’s advanced services network, then an ILEC’s incentive to invest in innovative new technologies -- especially those whose successful deployment would be uncertain -- will be diminished.

The record demonstrates that several ILECs share BellSouth’s concerns about the detrimental effect that prescriptive unbundling rules will have on ILEC incentives to deploy advanced services. As Bell Atlantic explains, unbundling rules force ILECs “to make their investments in advanced service capabilities available to competitors at cost” while permitting competitors to “piggyback[] on the investment made by the incumbent with no risk to

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<sup>39</sup> § 706.

<sup>40</sup> The separate affiliate approach also threatens to infringe on the authority of the states. As US West points out, states often will refuse to treat an ILEC’s separate affiliate on par with other CLECs. US West Comments at 34. Consequently, the Commission would necessarily be required to preempt state law to preserve the viability of the separate affiliate approach. *Id.* BellSouth does not support the preemption of state laws and regulations, and would prefer that the Commission abandon its separate affiliate approach and rely on the state commissions to fulfill their market-opening responsibilities under the Act.

themselves.”<sup>41</sup> US West also correctly observes that “a carrier that knows that it alone must bear the costs of any unsuccessful innovations, while being forced to share any resulting benefits, will not risk experimenting with innovations that might prove successful.”<sup>42</sup>

Moreover, the ILECs note that prescriptive unbundling rules diminish the incentive of ILEC competitors to invest in their own advanced services facilities.<sup>43</sup> Under a prescriptive unbundling regime, a CLEC competitor will have an incentive to adopt a wait-and-see approach rather than expend resources and risk loss of capital investing in its own facilities. If an ILEC successfully deploys advanced services, then the CLEC can simply take the unbundled elements of the advanced services network at below-cost prices. Moreover, ILECs, knowing that competitors will have unbundled access, will be hesitant to deploy unless they can be assured that they can achieve an acceptable return even with unbundling obligations. In the end, this means that fewer facilities will be built, and that the build-out of advanced services will be delayed. Thus, by discouraging investment in advanced services by both ILECs and their competitors, prescriptive unbundling rules represent a “lose-lose” situation with regard to the deployment of advanced services.

Although ILEC competitors urge the Commission to impose prescriptive unbundling requirements on ILECs’ advanced services facilities, none adequately explains why the Commission should take such a step.<sup>44</sup> AT&T nakedly asserts that access to ILECs’

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<sup>41</sup> Bell Atlantic Comments at 19.

<sup>42</sup> US West Comments at 10.

<sup>43</sup> *Id.* at 10; GTE Comments at 107.

<sup>44</sup> *See, e.g.*, ALTS Comments at 66 (concluding without discussion that advanced services equipment should be unbundled).

advanced services equipment is “vital” to competition, but fails to explain why competitors cannot obtain their own equipment in the open market on the same terms as ILECs.<sup>45</sup> Similarly, Sprint and MCI provide a “wish” list of elements that they would like to see made available on an unbundled basis, but they also do not suggest that they suffer from any disability in obtaining advanced services equipment from independent vendors.<sup>46</sup>

Moreover, as BellSouth explained, CLECs would still have access to any bottleneck facilities that ILECs own.<sup>47</sup> If a CLEC wants to provide advanced services, it simply has to purchase the hardware from one of many vendors and attach it to the local loop, which would remain subject to the Section 251(c) unbundling requirement. No party can seriously claim that this process -- the very process that ILECs engage in -- unfairly restricts competition in the advanced services market.

The Commission has the authority to refrain from prescribing unbundling requirements for ILECs’ advanced services facilities. Section 251(d) explicitly provides the Commission with the authority to exclude facilities from the unbundling requirement of Section 251(c). The record supports the Commission’s exercise of that discretion.<sup>48</sup> As US West points out, whether a competitor should be granted access to ILEC facilities should depend on “whether the competitor can reasonably obtain a substitute facility elsewhere or build the facility itself.”<sup>49</sup>

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<sup>45</sup> See AT&T Comments at 94.

<sup>46</sup> See Sprint Comments at 35; MCI Comments at 75.

<sup>47</sup> See BellSouth Comments at 25; *see also* ADC Comments at 9 (“CLECs can now pay for access to copper pairs and use them to deliver T1-based services with HDSL technology.”).

<sup>48</sup> See, e.g., Bell Atlantic Comments at 19.

<sup>49</sup> US West Comments at 6.

Only where a facility is essential to competition should the Commission require that it be unbundled.<sup>50</sup>

Moreover, Commission restraints on adopting prescriptive unbundling rules for advanced services is consistent with the congressionally prescribed framework for promoting competition in local markets. Congress intended that negotiation, not prescriptive rulemaking, be the primary mechanism by which ILEC competitors would gain access to network elements.<sup>51</sup> In the event that negotiation is not successful, Congress intended state commissions to arbitrate those disputes based on the particular facts and circumstances of each case.<sup>52</sup>

As a result of the negotiation and arbitration process, BellSouth has made its local loops available to numerous competitors, and the record in this proceeding demonstrates that other ILECs have done the same.<sup>53</sup> The record also indicates that state commissions should be trusted to fulfill their responsibilities under the Act. The New York Department of Public Service filed comments highlighting the actions it has taken to ensure that competitors have access to necessary elements, including sub-loop elements, that they require to provide advanced services.<sup>54</sup> Similarly, the Public Utility Commission of Texas has taken steps to ensure that competition is maintained in the advanced services marketplace.<sup>55</sup> BellSouth urges the

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<sup>50</sup> *Id.*; Bell Atlantic Comments at 19; *see also* Cox NOI Comments at 4 (“there is no evidence that any provider’s high speed access service constitutes an “essential facility”).

<sup>51</sup> 47 U.S.C. § 251(a)(1).

<sup>52</sup> 47 U.S.C. § 251(b).

<sup>53</sup> *See* Ameritech Comments at 11.

<sup>54</sup> *See* New York Department of Public Service Comments at 12-13.

<sup>55</sup> *See* Public Utility Commission of Texas Comments at 14-15.

Commission not to preempt this congressionally sanctioned process by imposing national unbundling rules applicable to the provision of advanced services.

**V. ADVANCED SERVICES OFFERED PREDOMINANTLY AS A WHOLESALE SERVICE ARE NOT SUBJECT TO SECTION 251(C) RESALE REQUIREMENTS**

The record supports BellSouth's position that advanced services provided on a wholesale basis are not within the scope of Section 251(c) resale. Congress expressly provided that Section 251(c) resale applies only to a service that is offered both (1) at retail and (2) to subscribers who are not telecommunications carriers.<sup>56</sup> Because advanced services provided on a wholesale basis do not qualify as services provided at retail, any attempt to impose Section 251(c) resale obligations on such services would exceed the Commission's authority under the Act.

Various parties support BellSouth's reading of the Section 251(c) resale requirements. GTE and Bell Atlantic note that because DSL service is typically purchased by Internet service providers ("ISPs") as an input into a much larger Internet service, the DSL service cannot be deemed to be offered at retail.<sup>57</sup> Similarly, US West correctly states that "Congress expressly limited application of Section 251(c)(4) to 'retail' services."<sup>58</sup>

Commenters that seek to apply Section 251(c) resale to wholesale advanced services misread the statute. AT&T asserts that Section 251(c) resale applies because advanced services are telecommunications services that are provided to customers who are not

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<sup>56</sup> 47 U.S.C. § 251(c)(4).

<sup>57</sup> GTE Comments at 109; Bell Atlantic Comments at 53.

<sup>58</sup> US West Comments at 14.

telecommunications carriers.<sup>59</sup> AT&T's construction is flawed because it completely ignores the express language of Section 251(c)(4), which requires that a service subject to wholesale resale be provided at retail.<sup>60</sup> ALTS and MCI make similar errors in their construction of Section 251(c)(4).<sup>61</sup> Thus, even if the Commission has correctly determined that ISPs are not telecommunications carriers, that decision does not alter the fact that ISPs purchase "a 'fundamentally non-retail service' to which Congress never intended Section 251(c)(4) to apply."<sup>62</sup>

## **VI. THE INTERLATA PROHIBITION SEVERELY DISTORTS THE ADVANCED SERVICES MARKET**

The comments are replete with evidence of the distorting effect that the interLATA prohibition is having on the market for advanced services. As Ameritech explains, the interLATA restriction forces "the BOCs to deploy redundant facilities in every LATA in which they seek to provide advanced telecommunications capability services," thus increasing the overall cost of providing services.<sup>63</sup> At the same time, LATA restrictions substantially disadvantage ILECs' ability to compete with other advanced services providers for high volume users that demand networking capabilities across LATA boundaries.<sup>64</sup>

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<sup>59</sup> AT&T Comments at 109.

<sup>60</sup> See 47 U.S.C. § 251(c)(4).

<sup>61</sup> See ALTS Comments at 68; MCI Comments at 77.

<sup>62</sup> US West Comments at 14 (citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 15935, ¶ 874 (1996) ("Local Competition Order")); Bell Atlantic Comments at 53.

<sup>63</sup> Ameritech Comments at 62.

<sup>64</sup> *Id.* at 65; Bell Atlantic Comments at 3.

It is time for the Commission to grant interLATA relief to BOCs so that they may begin providing consumers with end-to-end advanced services.<sup>65</sup> Congress enacted the 1996 Act more than two and a half years ago for the express purpose of “accelerat[ing] rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.”<sup>66</sup> Congress never envisioned that, at the time the Commission was instructed to initiate the *NOI*, the BOCs would *still* be precluded from the interLATA market. The interLATA prohibition constitutes the single largest regulatory impediment to full-fledged competition in the advanced services market. The Commission should not delay in providing interLATA relief any longer than it already has.

**VII. TO THE EXTENT THAT THE COMMISSION ADOPTS A SEPARATE AFFILIATE APPROACH, THE COMMISSION SHOULD FOLLOW THOSE COMMENTS THAT URGE THE ADOPTION OF A COMPETITIVE CARRIER MODEL**

BellSouth repeats its opposition to the creation of a separate affiliate approach for advanced services. If the Commission intends to fulfill Congress’ objective of encouraging the deployment of advanced services on a reasonable and timely basis to all Americans, the focus of this proceeding must remain on reducing the level of regulation that the Commission imposes on ILECs. The Commission’s separate affiliate approach, however, concentrates the debate on the level of increased regulation of ILECs that should be adopted, and as is evident in the comments, has encouraged ILEC competitors to submit a cornucopia of proposed restrictions that have no basis in public policy or Commission precedent. The Commission should maintain its

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<sup>65</sup> See USTA Comments at 12.

<sup>66</sup> Joint Statement of the Managers at 1.

commitment to a deregulatory approach and abandon its attempts to make a separate affiliate a precondition to regulatory relief.

If the Commission proceeds with adopting a separate affiliate approach, however, it should at least adopt a framework that is consistent with its prior precedent. The Commission is not writing on a clean slate in this proceeding. The debate over the level of separation that should exist between ILECs and their competitive affiliates has been ongoing for approximately two decades. The Commission should rely on this prior precedent in formulating a separate affiliate model for advanced services.

Many commenters -- ILEC and non-ILEC alike -- oppose the Commission's reliance on Section 272 of the Act for purposes of determining whether an advanced services affiliate is a successor or assign of an ILEC. As US West observes, "section 272 applies to a type of service the BOCs never before have been allowed to provide, and which is technically separable from local exchange service, while the Commission's separation proposal addresses services incumbent LECs already are providing."<sup>67</sup> Similarly, AT&T notes that "Congress enacted both sections 251(c) and 272 in the 1996 Act, and applied each to different classes of ILECs in order to accomplish different goals."<sup>68</sup> Indeed, Congress specifically provided that only certain services would be subject to separation requirements of Section 272, and Congress deliberately excluded advanced services from that list. Given the deregulatory purposes of the Act, Congress surely did not intend that the Commission should precondition regulatory relief for ILEC provision of advanced services on the separation requirements found in Section 272.

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<sup>67</sup> US West Comments at 28.

<sup>68</sup> AT&T Comments at 10.

If the Commission decides to condition regulatory relief on the formation of an advanced services affiliate, one modeled after the *Competitive Carrier* separate affiliate is sufficient to fulfill the objectives of the separate affiliate requirement.<sup>69</sup> Although BellSouth continues to believe that the *Competitive Carrier* model imposes regulatory constraints on ILECs that far exceed what is necessary or prudent, that model is, at least, vastly superior to the “truly” separate affiliate approach that the Commission outlined in the *Notice*.

**A. A COMPETITIVE CARRIER MODEL PROTECTS AGAINST COST MISALLOCATION AND DISCRIMINATION**

Although the Commission has relied on the *Competitive Carrier* framework in a number of settings, several ILEC opponents argue that the *Competitive Carrier* model is insufficient to address concerns over cost misallocation and discriminatory treatment.<sup>70</sup> Other anti-ILEC commenters claim that all but the most stringent separate affiliate models are inadequate.<sup>71</sup>

These claims simply cannot stand up to Commission precedent. The Commission has repeatedly extolled the ability of the *Competitive Carrier* model to protect against cost misallocation and discriminatory treatment,<sup>72</sup> a fact that is supported by the comments in this

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<sup>69</sup> US West Comments at 25; GTE Comments at 13.

<sup>70</sup> See, e.g., ITAA Comments at 8-9.

<sup>71</sup> See, e.g. MCI Comments at 27-29.

<sup>72</sup> See *Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorizations Therefore*, Fifth Report and Order, 98 FCC 2d 1191, 1998, ¶ 9 (1984); *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, 15851, ¶ 165 (1997); *Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Service*, Report and Order, 12 FCC Rcd 15668, 15703, ¶ 58 (1997).

proceeding.<sup>73</sup> Separate books of account and the prohibition on joint ownership of facilities eliminates the ability of ILECs to engage in cost misallocation without detection, just as the price cap regime applicable to the larger ILECs eliminates the incentive of those ILECs to misallocate costs.<sup>74</sup> More stringent requirements are not needed.

**B. THE RECORD DEMONSTRATES THAT A *COMPETITIVE CARRIER* AFFILIATE WOULD NOT BE A SUCCESSOR OR ASSIGN OF AN ILEC.**

In their comments, ILEC opponents attempt to hoist ILEC status onto virtually any entity affiliated with an ILEC by asserting that any such affiliate is a successor or assign of the ILEC.<sup>75</sup> Despite their claims, however, the text and the structure of the Act make clear that Congress intended ILEC obligations to apply only to entities that control “bottleneck” facilities to which competitors would require access in order to provide a competing local service.<sup>76</sup> Congress was concerned that certain portions of the ILECs’ networks (*i.e.*, bottleneck facilities) would be prohibitively costly for a competitor to duplicate, and thus, required in Section 251(c) that ILECs provide competitors access to those portions of the networks. Congress also applied Section 251(c) to “successors or assigns” of ILECs to address those situations where a bottleneck facility came under the ownership of an entity that was not an ILEC “on the date of enactment” of the 1996 Act.<sup>77</sup> Congress was well aware of the difference between an affiliate and a

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<sup>73</sup> See GTE Comments at 13.

<sup>74</sup> US West Comments at 26.

<sup>75</sup> See, *e.g.*, MCI Comments at 7 (any affiliate under common ownership would be a successor or assign of an ILEC); AT&T Comments at 6 (any wholly-owned affiliate providing in-region local services would be a successor or assign of an ILEC).

<sup>76</sup> See Ameritech Comments at 52; GTE Comments at 31.

<sup>77</sup> 47 U.S.C. § 251(h).

successor or assign and used that distinction in several places in the Act.<sup>78</sup> Thus, an advanced services affiliate that complies with the *Competitive Carrier* framework and that does not obtain ownership of bottleneck facilities would not fall within the definition of a successor or assign of an ILEC.

Perhaps realizing the weakness of the successor or assign argument, a number of ILEC competitors make the absurd argument that an advanced services affiliate should be deemed an ILEC under Section 251(h)(2).<sup>79</sup> Under the unambiguous terms of Section 251(h)(2), an entity may be deemed an ILEC only if it occupies a position in the market comparable to that of an ILEC, it has substantially replaced the ILEC, *and* ILEC status is consistent with the public interest.<sup>80</sup> The Commission's decisions implementing this test require that the entity hold a "dominant position in the market."<sup>81</sup> It borders on the frivolous to suggest that advanced services affiliates, which have not even been created yet, would occupy such a position in the market.<sup>82</sup>

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<sup>78</sup> See, e.g., 47 U.S.C. §§ 153(4); 271.

<sup>79</sup> See, e.g., APT Comments at 3-4; MCI Comments at 9-14.

<sup>80</sup> 47 U.S.C. § 251(h)(2); see also Ameritech Comments at 53.

<sup>81</sup> See *Guam Public Utilities Commission Petition for Declaratory Ruling concerning Sections 3(37) and 251(h) of the Communications Act*, Declaratory Ruling and Notice of Proposed Rulemaking, 12 FCC Rcd 6925, ¶ 25 (1997).

<sup>82</sup> Contrary to the position of Qwest, allowing the formation of an unregulated advanced services affiliate does not constitute a loophole by which ILECs can avoid their Section 251(c) obligations. See Qwest Comments at 26-27. Any attempt to place a bottleneck facility in the affiliate could subject the affiliate to ILEC status as successor or assign or as a comparable ILEC under Section 251(h). If the facility transferred to the affiliate is not a bottleneck facility, however, by definition, the transfer would not harm competition in the market.

Transfers of non-bottleneck facilities used to provide advanced services to a *Competitive Carrier* affiliate will not make the affiliate a successor or assign of the ILEC. BellSouth agrees with US West that an ILEC should be permitted to transfer any non-bottleneck facilities to the advanced services affiliate without rendering the affiliate a successor or assign of the ILEC.<sup>83</sup> Although BellSouth opposes any separate affiliate precondition to regulatory relief, if the Commission chooses to adopt such a precondition, it should at least adopt rules that make the separate affiliate option a viable one for ILECs. Unless ILECs are permitted to transfer non-bottleneck facilities and operations to the affiliate without rendering the affiliate an ILEC, the separate affiliate option will be a non-starter from the outset.

**C. THE COMMISSION SHOULD REJECT ATTEMPTS TO COMPETITIVELY HANDICAP THE ADVANCED SERVICES AFFILIATE**

A number of anti-ILEC commenters propose various restrictions on advanced services affiliates that would serve no purpose except to provide a competitive advantage to unaffiliated providers of advanced services. AT&T would prohibit an advanced services affiliate from obtaining ILEC services via resale and would preclude virtual collocation as an option for the affiliate.<sup>84</sup> A number of ILEC opponents would prohibit joint marketing between the affiliate and the ILEC -- a proposal that is not even mentioned in the *Notice*.<sup>85</sup> Several ILEC competitors also seek to bar common employees.<sup>86</sup>

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<sup>83</sup> US West Comments at 31; *see also* Ameritech Comments at 57-58; Bell Atlantic Comments at 27.

<sup>84</sup> AT&T Comments at 28-33; *see also* CompTel Comments at 20.

<sup>85</sup> *See, e.g.*, MindSpring Comments at 27-28; CompTel Comments at 20; Qwest Comments at 40-42.

<sup>86</sup> *See, e.g.*, e.spire Comments at 11-12; Florida Digital Network Comments at 2-3.

These various proposals do not warrant extended discussion. The Commission has repeatedly rejected joint marketing and common employee prohibitions in other contexts, and the record provides no convincing reason to adopt those restrictions here.<sup>87</sup> As to proposals that the Commission effectively require an ILEC to engage in discriminatory treatment against its own affiliate (*e.g.*, by prohibiting resale or virtual collocation), such proposals are based solely on the unsubstantiated concern that an ILEC will favor its separate affiliate in a manner and to such a degree that competition will be harmed. How ILECs would accomplish this and escape detection by the Commission or state commissions is inexplicable. The Commission should not limit the flexibility of an ILEC's advanced services affiliate based on the wild imagination of its competitors.

**VIII. THE RECORD PRESENTS NO JUSTIFICATION FOR REWORKING THE LOCAL COMPETITION FRAMEWORK**

**A. THE COMMISSION SHOULD REJECT PROPOSALS TO REVISIT THE LOCAL COMPETITION PROCEEDING**

In its comments, BellSouth warned the Commission not to allow this proceeding to become another local competition proceeding. Unfortunately, the comments make clear that ILEC competitors are attempting to use this proceeding as a vehicle for revisiting the collocation and loop unbundling rules that the Commission recently adopted in the *Local Competition* proceeding. BellSouth joins other ILECs in urging the Commission to reject proposals to fundamentally alter the current local competition framework.<sup>88</sup>

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<sup>87</sup> *Cf.* Ameritech Comments at 54; Bell Atlantic Comments at 29.

<sup>88</sup> *See, e.g.*, Bell Atlantic Comments at 31; SBC Comments at 14-15.

Congress intended negotiation and state arbitration proceedings to be the means by which local competition would develop.<sup>89</sup> Especially for services such as advanced services, which are still evolving, reliance upon case-by-case resolutions of requests for collocation, unbundling, and resale is paramount. As the Public Utility Commission of Texas observed, “states should be allowed to determine additional unbundling requirements based on specific ILEC network architecture.”<sup>90</sup> Similarly, the New York Department of Public Service notes that “it is difficult to predict the impact that various levels of local loop unbundling will have on service quality” and “the states must maintain flexible policies” in this area.<sup>91</sup> And the Florida PSC correctly observed that the assumption that facilities are not available to competitors that seek to provide advanced services is “premature.”<sup>92</sup> These observations are in line with the position of the ILECs that the Commission should not attempt to revisit the local competition framework in this proceeding.

**B. THE COMMISSION SHOULD REJECT THE COLLOCATION AND LOOP UNBUNDLING PROPOSALS THAT HAVE BEEN PUT FORTH IN THIS PROCEEDING**

ILEC competitors have proposed a number of new collocation and unbundling rules that they would like to see the Commission impose on ILECs. The vast majority of these proposals either exceed the Commission’s jurisdiction or are undesirable as a matter of public policy, and they should be rejected. A process of negotiation and arbitration is in place to ensure that competitors have access to bottleneck facilities so that they can deploy their own advanced

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<sup>89</sup> See Ameritech Committee at 33; SBC Comments at 14-15.

<sup>90</sup> Public Utility Commission of Texas Comments at 15.

<sup>91</sup> New York Department of Public Service Comments at 14.

<sup>92</sup> Florida PSC Comments at 1-2.

service capabilities. The Commission should not blindly assume that prescriptive rulemaking on the national level will be superior to that process in encouraging the development of competition in local markets.

**1. Presumptions Regarding Collocation and Loop Unbundling**

Several ILEC competitors urge the Commission to adopt various presumptions regarding collocation and loop unbundling. ACTA advocates a presumption that a collocation arrangement is technically feasible at the premises of one ILEC if it is being implemented at the premises of another.<sup>93</sup> Cable & Wireless wants the Commission to establish a presumptively reasonable deployment interval for collocation arrangements.<sup>94</sup> AT&T seeks a rebuttable presumption for data transmission speed capabilities of DSL-capable and DSL-equipped loops,<sup>95</sup> and Level 3 Communications seeks a rebuttable presumption that prices for square feet of space above a certain level are unreasonable.<sup>96</sup> The Commission should reject these and other presumptions that ILEC competitors propose regarding collocation and loop unbundling.

The presumptions proposed by ILEC competitors make no sense in this setting. A presumption is appropriate where the fact presumed is likely to be true absent unusual circumstances. Here, however, ILEC competitors are asking the Commission to establish presumptions that are no more likely to be true than false. For example, a variety of factors may affect how quickly an ILEC can respond to a request for collocation.<sup>97</sup> Any number that the

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<sup>93</sup> ACTA Comments at 16-17.

<sup>94</sup> Cable & Wireless Comments at 13.

<sup>95</sup> AT&T Comments at 50-53.

<sup>96</sup> Level 3 Communications Comments at 10-13.

<sup>97</sup> Ameritech Comments at 46 (stating that a high volume of orders could delay the implementation of requests).

Commission established as the presumptive interval would necessarily be arbitrary. Similarly, the feasibility of a particular collocation arrangement, the data transmission speed that a particular loop is capable of, and the price for floor space all depend on factors that are extremely location specific and not susceptible to generalization. Accordingly, the Commission should reject proposals to establish presumptions relating to collocation and loop unbundling.<sup>98</sup>

## 2. Provisioning of the Local Loop

Similarly, the fact-specific nature of local network capabilities supports BellSouth's position that the Commission cannot and should not require ILECs to guarantee the successful operation of a competitor's advanced services over a particular local loop.<sup>99</sup> Although BellSouth has and will continue to make its loops available to competitors consistent with its obligations under Section 251(c), it is an unalterable fact that some loops will be unable to successfully transmit DSL transmissions, even with conditioning.<sup>100</sup> Moreover, because of the wide variety of DSL technologies being deployed, simply because one type of DSL service can operate over a particular loop does not signify that another DSL service will achieve similar success. The fact-specific nature of the problem further indicates that any issues involving competitors' access to local loops should be resolved through negotiation and arbitration, not through prescriptive rulemakings.

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<sup>98</sup> In some cases (such as those involving pricing), the Commission does not have the authority to establish presumptions. *See Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *petition for cert. granted*, 118 S. Ct. 879 (1998).

<sup>99</sup> Bell Atlantic Comments at 47.

<sup>100</sup> *See Ameritech Comments* at 12.

### 3. Spectrum Unbundling

Many ILEC competitors have asked the Commission to mandate spectrum unbundling, which would permit competitors to obtain unbundled access to the loop for the provision of data services only.<sup>101</sup> In the *Local Competition Order*, the Commission correctly rejected the concept of spectrum unbundling as “inappropriate.”<sup>102</sup> Spectrum unbundling in the advanced services context is even more inappropriate.

As the ILECs have explained, it is simply “premature” to promulgate a national rule that mandates spectrum unbundling.<sup>103</sup> First, attempting to sort out the technical aspects of mandated spectrum unbundling would be a nightmare.<sup>104</sup> Because there is no guarantee that a competitor will use the exact same advanced services technology as the ILEC uses, detailed spectrum management issues would have to be negotiated with each provider. Experience suggests that these issues are extremely detail oriented, and thus, are best resolved through the negotiation process. If governmental intervention is necessary, state arbitration proceedings provide a far superior forum than the Commission’s rulemaking proceedings in which to address these issues.

Second, even where an ILEC and a competitor agree that the competitor can use a particular technology, spectrum unbundling should not be imposed. Mandated spectrum unbundling completely destroys accountability for technical quality over the local loop. If, for

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<sup>101</sup> See, e.g., Ad Hoc Committee Comments at 27-28.

<sup>102</sup> *Local Competition Order*, 11 FCC Rcd at 15693, ¶ 385.

<sup>103</sup> See Ameritech Comments at 21-22; see also GTE Comments at 37-42; Bell Atlantic at 49.

<sup>104</sup> GTE Comments at 38-41; Kiesling Consulting Comments at 21.

example, a particular piece of advanced services equipment is flawed and causes interference to the voice signals, the ILEC (or CLEC that has obtained unbundled access to the voice channel) will undoubtedly seek to rectify the problem. If a competitor, however, believes it has a right of access to the data portion of the loop, it may refuse to cooperate with the voice carrier to correct the problem (especially if correcting the problem would require temporary shut-down of the competitor's service).<sup>105</sup> While the two providers are in dispute, the end user is either experiencing poor service or no service at all. Under a voluntary, negotiated spectrum unbundling arrangement, the voice carrier can negotiate a maintenance process. Where mandatory spectrum unbundling is imposed, any interference issues could result in a costly and lengthy dispute between the voice and data carrier.

Finally, mandated spectrum unbundling is not in the public interest because it would unnecessarily restrict the advancement of technology. DSL technology is still evolving, and the standard-setting process has only begun. If the Commission attempted to mandate spectrum unbundling, the process would have to be artificially hurried in order to establish standards that would make such unbundling technically and administratively feasible. It is uncertain whether expediting the standard-setting process in this manner would be successful, but it could easily take precedence over, and thereby forestall, the development of new advanced services technology. In short, mandating spectrum unbundling will cause considerable difficulties without improving the level of competition, and should be rejected.

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<sup>105</sup> For example, it is currently infeasible to test the performance of either the data or voice channel without affecting the operation of the other channel.

#### 4. Collection of Information

Many ILECs agree that they should not be required to compile information regarding loop conditions or collocation space absent a request by a carrier seeking to purchase the loop on an unbundled basis.<sup>106</sup> Creating a database of such information would constitute an enormous burden on ILECs, and given the dynamic nature of the information, any such database would be out-of-date as soon as it was completed.<sup>107</sup> For example, a loop is composed of several segments that are connected to each other between the central office and the end user's premises. On any given day, a segment can be replaced to fix a problem on a customer's line, which is a more common occurrence as a result of unbundling. With this constant churn on a daily basis, any compilation or database of loop information would be useless.

#### 5. Sub-loop Unbundling

BellSouth agrees with those commenters that urge the Commission to permit (but not require) sub-loop unbundling on a case-by-case basis.<sup>108</sup> By sub-loop unbundling, BellSouth is referring only to the unbundling of the loop distribution element that runs between the subscriber's home and a remote terminal. As BellSouth explained in its initial comments, this portion of the sub-loop generally can be accessed through a cross-box to cross-box interconnection arrangement.<sup>109</sup>

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<sup>106</sup> Ameritech Comments at 16; SBC Comments at 31.

<sup>107</sup> Ameritech Comments at 47.

<sup>108</sup> *Id.* at 18; US West Comments at 49.

<sup>109</sup> BellSouth Comments at 50.

BellSouth opposes those commenters that seek to have the Commission require sub-loop unbundling through collocation at the remote terminal.<sup>110</sup> There is simply no basis for the Commission to conclude that space will be available at a particular remote terminal or that it will be technically feasible to collocate at a particular remote terminal.<sup>111</sup> To date, requests for sub-loop unbundling have been rare, and in many cases, alternatives to sub-loop unbundling may exist.<sup>112</sup> The Commission should not require ILECs to expend unnecessary costs in developing sub-loop unbundling arrangements that CLECs may never even demand. State commissions are well equipped to require sub-loop unbundling in appropriate cases.<sup>113</sup>

#### 6. Exhaustion and Allocation of Space

The Commission should not try to micromanage the allocation and exhaustion of space, and should not require ILECs to provide a particular form of collocation at its central offices. In particular, BellSouth agrees with commenters that urge the Commission not to require the removal of “obsolete” equipment from central offices,<sup>114</sup> and opposes commenters that would restrict the ILEC’s ability to reserve space for future use. The only time an ILEC would ever need to consider removing equipment or relinquishing reserved space is if space in central offices were exhausted. In such cases, a requesting carrier can negotiate with the ILEC for additional space to be made available or state commissions can require ILECs to take

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<sup>110</sup> See, e.g., Allegiance Comments at 9-10; Cable & Wireless Comments at 15.

<sup>111</sup> See BellSouth Comments at 50.

<sup>112</sup> Ameritech Comments at 18.

<sup>113</sup> *Id.* at 19; New York Department of Public Service at 12-14.

<sup>114</sup> Bell Atlantic Comments at 43; Ameritech Comments at 44.

appropriate actions to make space available. It would not serve any purpose to allow ILEC competitors to have oversight authority over the allocation of space in central offices.

Finally, BellSouth opposes proposals to require ILECs to allow sub-leasing of collocation space.<sup>115</sup> ILECs already are required to allow access to collocation space at a substantial discount. Allowing sub-leasing of collocation space would constitute a windfall for CLECs if they are permitted to charge market prices for their space. Sharing of collocation space may be possible, but only if the parties are permitted to negotiate the conditions of such sharing. The Commission should not attempt to establish a generic national rule to govern all situations.

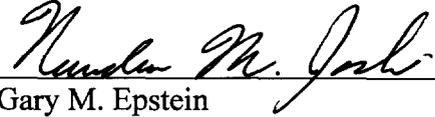
## **IX. CONCLUSION**

While advanced services technology is a relatively new development, the question of how to most effectively promote its deployment has been answered many times before. The Commission has repeatedly found that competition results in greater innovation, lower prices, and a wider variety of services for consumers. The Commission has also recognized that the best way to generate competition is to remove unnecessary regulatory constraints and allow the market to determine the winners and losers. In this proceeding, the Commission should apply that time-tested approach once again.

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<sup>115</sup> See, e.g., Intermedia Comments at 25.

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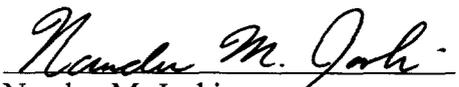
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