



October 16, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Washington DC 20554

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FEDERAL COMMUNICATIONS
COMMISSION
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RE: Notice of Proposed Rulemaking Concerning Deployment of Wireline Services
Offering Advanced Telecommunications Capability, CC Docket No. 98-147.

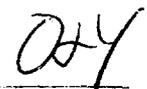
Dear Ms. Salas:

Attached are the original and four copies of the Reply Comments of NorthPoint
Communications regarding the Commission's Notice of Proposed Rulemaking Concerning
Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC
Docket No. 98-147.

Sincerely,


Steven Gorosh
Vice President & General Counsel

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

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OCT 16 1998
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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

REPLY COMMENTS OF NORTHPOINT COMMUNICATIONS, INC.

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October 16, 1998

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EXECUTIVE SUMMARY

The vast majority of comments submitted in response to the Commission's Notice of Proposed Rulemaking tread well-worn paths. For the most part, the incumbent LECs continue their efforts to stymie the local competition mandated by Congress and this Commission. Opposing the Commission's proposed loop and collocation remedies, these ILECs dismiss the relevance of their continuing bottleneck control over copper loops and collocation as well as the compelling record of the disadvantages they have imposed on CLECs seeking equal access to these bottleneck elements. These ILECs also reiterate their unpersuasive case for complete deregulation, and reject the Commission's proposed advanced services affiliate "safe harbor" even though it would provide them with the very relief they seek – lifting the resale and unbundling requirements of section 251(c).

Meanwhile, most CLECs and IXC's argue strenuously against any regulatory relief for incumbent LEC advanced services. These companies call for total divestiture, oppose any incumbent LEC resale relief, and identify a variety of perceived shortcomings in the Commission's separate subsidiary proposal.

NorthPoint and Ameritech have successfully found a middle ground, which accommodates the needs of both ILECs and CLECs. That middle ground, which was laid out in the Joint Statement of Ameritech and NorthPoint attached to both parties' opening comments, provides CLECs with protection from persistent problems in obtaining loop and collocation, while providing the ILECs with relief from their resale and unbundling requirements whenever they provide advanced services through a truly separate subsidiary. Most importantly, the NorthPoint/Ameritech proposal requires that the ILEC treat its advanced services affiliate and CLECs in a nondiscriminatory fashion. By

ensuring that CLECs are able to obtain all the unbundled network elements necessary to provide advanced services on the same rates, terms, and conditions as the ILEC affiliate, the nondiscrimination requirement will promote vigorous facilities-based competition to deploy broadband services.

Ameritech currently provides advanced services in this fashion, belying some ILECs' contentions that a separate subsidiary requirement for advanced services is either unreasonable or unduly onerous. Such a requirement should be made mandatory for all ILECs. Accordingly, NorthPoint urges the Commission to adopt this framework as the basis for its order.

This Commission should not overlook, however, its obligation to promote broadband deployment by eliminating specific ILEC practices that have limited competing providers' ability to deploy broadband services. In particular, the Commission should adopt its proposed loop and collocation remedies, which will allow competing providers to obtain the unbundled network elements they need to provide broadband services to all Americans. The Commission also should require specific sub-loop unbundling measures – most importantly, requiring the ILECs to look for alternate “home-run” copper loops -- in order to allow competitive carriers to provide broadband services to end-users that are served by digital loop carriers.

Finally, the Commission should prohibit the ILECs from unilaterally imposing spectrum management policies. In deploying its services, NorthPoint selected SDSL technology – which uses the same line coding as ISDN and HDSL T1 lines – in order to eliminate spectrum management issues. NorthPoint is concerned that the ILECs are now using spectrum management policies to insidiously limit competitors' ability to provide

advanced services, even when those services pose the same spectrum interference issues as existing ILEC services. Virtually all parties agree that spectrum management issues are properly resolved through national standards bodies. NorthPoint agrees, and urges the Commission to order as much.

I. THE COMMISSION SHOULD REQUIRE THAT INCUMBENT LECs PROVIDE ADVANCED SERVICES THROUGH A SEPARATE AFFILIATE

For the most part, the incumbent LECs have opposed this Commission's proposed loop and collocation remedies as well as the Commission's proposed advanced services affiliate "safe harbor," even though the latter would provide them with the very relief they seek – lifting the resale and unbundling requirements of section 251(c). Meanwhile, most CLECs and IXC's have argued strenuously against any regulatory relief for incumbent LEC advanced services short of total divestiture. Virtually all these parties, however, have failed to consider the question at hand: whether a separate subsidiary requirement appropriately balances the ILECs' requests for relief against the need for safeguards against ILEC discrimination in the provision of the loops and collocation necessary for the development of competition in advanced services. NorthPoint firmly believes that the answer is clear: a separate subsidiary requirement for ILEC advanced services is in the public interest. Such a requirement will benefit both CLECs and incumbent LECs, as well as a public seeking broadband service alternatives. As a result, NorthPoint urges that the Commission adopt the separate subsidiary requirements outlined below and make them mandatory for all ILEC advanced services offerings.

A. A Separate Subsidiary Requirement Will Reduce Anticompetitive Barriers Faced by CLECs

As one of several data CLECs that has struggled for more than a year for access to bottleneck loops and collocation, NorthPoint can attest that the proposed separate subsidiary outlined by the Commission would rectify a wide variety of practices that currently limit DSL deployment. Prior to the Commission's draft Order, NorthPoint drafted a list of "Best Practice Remedies" which were tailored to address existing problems limiting CLEC DSL deployment.

Virtually every concern identified in that list is addressed by the Commission's separate subsidiary model.

- Space Availability for Collocation. CLECs have faced a rash of denials in requests for collocation space that has severely limited DSL deployment and consumer choice, while incumbent LECs have deployed DSL equipment without limitation. As defined by the FCC, an incumbent LEC separate subsidiary would have to stand in line for space like other CLECs and purchase collocation through arm's length transaction. This would establish an unprecedented degree of parity. To the extent that separate subsidiaries are the mandatory means for provision of advanced services by incumbent LECs, the incumbent LECs would, for the first time, have to adhere to the same limitations as the CLECs.

The practical results would be significant. For example, recently, Pacific Bell moved its equipment into 59 offices it argued were closed to CLECs. Under a mandatory separate subsidiary model, Pacific Bell's subsidiary would have had to get in line for collocation, and would have been subject to the same space denials it had imposed on CLECs. Stripped of its existing ability to shut out CLECs while deploying its own equipment, Pacific Bell would have had to either honor all CLEC requests or, at a minimum, deny access to its subsidiary. It would thus have faced a choice between serving the needs of all competitors or limiting its own subsidiary's ability to effectively offer advanced services.

- Collocation intervals. It often takes more than a year for a CLEC to obtain a completed cage, while incumbent LECs have to date moved their own DSL equipment into central Offices without any of the delays they have imposed on CLECs. The mandatory separate subsidiary rules would eliminate virtually all of the current gamesmanship played by incumbent LECs. For the first time, incumbent LECs, through their subsidiaries, would face all of the arbitrary and excessive ordering barriers, quote intervals and cage build-outs currently imposed by incumbent LECs upon CLECs. At worst, the incumbent LEC subsidiaries in this scenario would be equally limited, thus creating a level playing field in which CLECs would at least not face unfair competition. At best, the incumbent LEC, stripped of its ability to favor its integrated build-out, would adopt "best-practices" remedies to help its affiliate that would then have to be equally available to all other CLECs.
- Collocation Charges. NorthPoint faces a national average of more than \$50,000 non-recurring collocation charges for each cage, with some key cages costing several hundred thousand dollars. By contrast, incumbent LEC retail tariffs filed at the FCC and with states establish that incumbent LECs are not charging themselves a single penny for collocation. As NorthPoint has demonstrated, this cost shifting causes a "price squeeze" that threatens to kill competition. Once again, a mandatory separate subsidiary mechanism provides a solution. Under the proposed rules, incumbent LEC subsidiaries will have to purchase collocation at arms' length pursuant to publicly reported transactions. The subsidiary should then have to recover the costs of those

charges in its end user charges, thus creating parity that will for the first time favor the most efficient competitor.

- Alternatives to Physical Collocation. As noted above, under the status quo CLECs consistently face space denials, long delays and excessive charges for collocation that are imposed upon incumbent LECs deploying DSL. As a result, unsurprisingly, incumbent LECs have little interest in responding to CLEC calls to implement alternatives such as common, cageless, adjacent and shared collocation. Under a mandatory separate subsidiary arrangement, incumbent LEC intransigence will equally harm incumbent affiliates, which for the first time will have to be treated like other CLECs. This will likely give the incumbent LEC parent incentive to come up with creative alternatives that will be equally available to all providers.
- Equipment Limitations. To date, incumbent LECs have deployed their own DSL equipment without limitation, while limiting CLECs' equipment deployment. Since an incumbent LEC affiliate, by the proposed rules, cannot receive discriminatory treatment, arbitrary incumbent LEC restrictions on DSLAMs and remote access management equipment will for the first time threaten incumbent LEC provision of services as they will apply to incumbent affiliates. By correcting incentives, a separate subsidiary regime can thus be expected to result in the reduction or elimination of unreasonable incumbent LEC practices, and result in greater freedom for all providers, enabling them to compete to offer customers new and innovative services.
- Copper Loop Availability and Intervals. Under the contemplated rules, separate subsidiaries would have to take the same loops and intervals the incumbent LEC parents make available to competing CLECs. At best, this will reduce provisioning times and increase loop availability, speeding service to customers. At worst, the result would be a significant improvement in competitive parity.
- Loops Provisioned via DLCs. One of the most controversial and significant issues currently before the Commission is the achievement of competitive equality vis-a-vis DSL service provided by incumbent LECs using loops that are provisioned via Digital Loop Carriers ("DLCs"). Incumbent LECs claim that technical limitations prevent CLEC use of loops provisioned via DLCs, effectively foreclosing CLEC ability to compete for the quarter of the nation's end users whose loops are provisioned via DLCs. The incumbent LECs have every incentive to employ gamesmanship; for example, Bell Atlantic deploys DSL service via DLCs at the same time that it claims technical barriers prevent it from permitting CLECs to compete for the customers it is serving.

The mandatory separate subsidiary model has the potential to solve this crucial problem. No DLC deployment by the incumbent LECs would be permitted absent a solution for the CLECs. Clearly, this creates a powerful incentive for a solution that maximizes the public interest and represents an agreeable solution to reasonable parties. *See* Joint Statement of Principles Applicable in a Separate Subsidiary

Environment By Ameritech and NorthPoint Communications, Appendix to Comments of NorthPoint Communications, CC Docket No. 98-147 (Sept. 25, 1998) (Ameritech agrees with NorthPoint that under a separate subsidiary approach, no DLC deployment would be allowed for anyone -- including the Ameritech subsidiary -- unless the solution was equally available to all parties).

- Loop Pricing and One-Loop Products. While most incumbent LECs are deploying DSL with the aid of a splitter which allows an end-user to buy one loop to carry both voice and data, the incumbent LECs are at the same time arbitrarily refusing to take simple steps which would allow DSL CLECs to provide service in the same manner without requiring end-users to purchase a second loop. To make matters worse, the incumbent LECs employing a one-loop product are not imputing a penny of loop costs to their DSL charges. This creates an intolerable price squeeze. In Florida, for instance, BellSouth charges CLECs more than \$40 for an unbundled loop, while charging retail end users less than \$40 for retail DSL service. Obviously, there will be no competition if a single element necessary for competition - the loops - costs CLECs more than end users pay for incumbent LEC-provided DSL.

The separate subsidiary rules would remedy this problem by requiring incumbent affiliates to purchase loops through arm's length transactions, which should result in the reflection of the loop costs in their end user charges. A second principle, accepted by Ameritech, in its Joint Statement with NorthPoint, requires that under the separate subsidiary approach, no one-loop arrangement would be allowed for anyone (including the incumbent LEC subsidiary) unless the solution was equally available to all parties. This eminently fair approach furthers competitive parity, and, ultimately, creates a powerful incentive for an incumbent LEC parents to develop a one-loop product for all providers.

- OSS. The status quo includes disparate access to databases with critical loop conditioning information, as well as unequal OSS charges. The separate subsidiary model ensures that where databases exist, CLECs get equal, rather than second-class, access, and ensures that incumbent LEC subsidiaries pay for and collect OSS charges that are imposed on CLECs. A separate subsidiary requirement could also provide the impetus for incumbent LEC satisfaction of the section 251 OSS requirements that go unfulfilled today.

A separate subsidiary requirement like that proposed by the Commission thus will promote full and flourishing competition by eliminating the lack of parity experienced by CLECs like NorthPoint.

B. A Separate Subsidiary Requirement is Appropriate

The criticisms of the Commission's separate subsidiary proposal offered by both of the extreme sides of the debate are overstated. Both miss the point: reasoned decision making does not require perfection, but instead a solution that strikes an appropriate compromise between competing considerations.

1. ILEC claims that a separate subsidiary is inefficient are meritless.

The main incumbent LEC complaint against separate subsidiaries is that they are inefficient and will hinder incumbent LEC abilities to compete against cable modems, and wireless and wireline CLECs. NorthPoint is skeptical of these claims. Although the separate subsidiary proposal purposefully strips incumbent LECs of their existing collocation and loop advantages, the proposal does not impose a single significant disadvantage on incumbent LECs vis-à-vis competing DSL providers. Moreover, under the Commission's proposed subsidiary rules, the incumbent LECs would retain a series of significant advantages not enjoyed by most CLECs. These include access to their parent's substantial capital resources, and joint marketing authority enabling the subsidiaries to leverage the considerable brand name awareness of their parent's monopoly brand.

Without similar advantages, numerous data CLECs have raised hundreds of millions of dollars from risk-averse third-party investors based on the strength of their DSL business plans. Given that incumbent LECs are, as noted above, no worse off than CLECs in any major respect, and clearly better off with regard to capital access and brand recognition, incumbent LEC claims that their business cases for DSL deployment would evaporate if they are required to use separate subsidiaries are entirely unconvincing.

Most importantly, however, the ILECs' claims are entirely belied by the fact that Ameritech currently provides its advanced services through a separate subsidiary. Ameritech also supports the separate subsidiary model laid out in the NorthPoint/Ameritech Joint Statement. That Joint Statement reflects careful and sober compromise on both sides. Under the Joint Statement model, CLECs obtain nondiscriminatory access to bottleneck element access, as well as pricing parity. Incumbent LECs retain useful but limited capital and marketing advantages, and are relieved of resale obligations not faced by their CLEC counterparts. Compared to arguments for total divestiture or total deregulation, this compromise strikes an appropriate give and take between the competing interests in this proceeding.

Nor are some ILECs' claims to the contrary convincing. The ILECs base their case on pre-Telecommunications Act studies about the pros and cons of separate subsidiaries lifted from the *Computer III* cases, which dealt with competition in the markedly different enhanced services market. But the ILECs' reliance on these cases is entirely misplaced. This Commission already has recognized that the unbundling requirements of Section 251 of the Telecommunications Act of 1996 (enabling CLECs to provision competitive services, including advanced services) are fundamentally different from the unbundling requirements of Open Network Architecture (designed to enable ESPs to offer enhanced services in competition with the BOCs). In the recent *Computer III* FNPRM, the Commission stated, "[t]he type and level of unbundling under section 251 is different and more extensive than that required under ONA. This may be because one of Congress's primary goals in enacting section 251 – to bring competition to the largely monopolistic local exchange market – is more far-reaching than the Commission's goal for ONA, which has been to preserve competition and promote network efficiency in the developing, but highly competitive, information services market." Further Notice of Proposed Rulemaking,

Computer III Remand Proceedings: Bell Operating Company Provision of Enhanced Services, 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and, 13 FCC Rcd 1640 (1998) (footnotes omitted).¹

Advanced services are entirely different from enhanced services and present a wholly different model for cost analyses. The studies conducted before the passage of the Telecommunications Act of 1996 focused upon the unbundling of services. The studies cited by the incumbent LECs, which focus upon enhanced services, involve unbundling switch software. Switch software used for basic and enhanced services involves a high proportion of costs common to both types of service. Where there is a high proportion of common costs, there are also opportunities for economies of scope. The 1996 Act fundamentally altered the regulatory framework, however, by requiring unbundling of “things” (unbundled network elements) rather than services. The relevant model for advanced services is the post-Telecommunications Act model; advanced services rely on unbundled facilities, not services. For example, local unbundling involves the dividing of loop and switch, and implicates very few common costs. Under these circumstances, there are not the same opportunities for economies of scope. Moreover, a large portion of the economies of scope cited by the Hausman and Tardiff report and

¹ Moreover, the ILECs’ claims of alleged inefficiencies appear to be greatly inflated. The estimates forwarded in the articles cited by the incumbent LECs are drastically overstated, even with respect to the wholly different enhanced services market. For example, U S WEST attached to its comments a 1995 article by Dr. Jerry Hausman in which he describes consumer loss relative to delay in BOC ability to offer voicemail services at \$5 billion. Dr. Hausman himself, with the benefit of further study and experience, subsequently reduced his estimates radically, publishing an article in 1997 with estimates of \$1 billion in lost consumer value due to the delay in BOC introduction of voicemail. See Jerry A. Hausman, *Valuing the Effect of Regulation on New Services in Telecommunications*, in *Brookings Papers on Economic Activity 1* (Martin Neil Baily et al. Eds., 1997). Moreover, the estimates of out of pocket costs associated with separation cited by the incumbent LECs are also flawed. For example, U S WEST estimates the costs of relocating U S WEST personnel, but does not appear to take into account the ways in which U S WEST could mitigate these costs. See Hausman & Tardiff, *Benefits and Costs of Vertical Integration of Basic and Enhanced Telecommunications Services*, at 23 (April 6, 1995), Appendix to Comments of U S WEST. In this case, the cost to U S WEST should be offset by the value of having other U S WEST people move into the old building or the return received for sub-letting the premises.

the Frye report (which were both attached to the comments of U S WEST) were marketing oriented and those are not diminished by a separate subsidiary. Without economies of scope, there is little benefit to integration, and the costs of separation are considerably lower.

The risk of anti-competitive behavior is greater today with respect to advanced services, which are a nascent market, than with respect to enhanced services, which are – as this Commission already has concluded – “developing, but highly competitive.” When the enhanced services market was just beginning to develop, the Commission used structural separation, under the *Computer II* rules, to guard against anti-competitive behavior. Only after some years of experience did the Commission move to nonstructural safeguards.

A similar path should be followed here. The record in this proceeding is replete with instances of discrimination by the ILECs in their provisioning of the loops and collocation necessary for competitive broadband services. Competitive carriers like NorthPoint are rushing to deploy advanced services to consumers. This competition is fragile, however, and the risk of anti-competitive ILEC behavior is high. Accordingly, this Commission should require that all ILECs offer their advanced services through a separate subsidiary like that outlined in the NorthPoint/Ameritech Joint Statement.

2. Elimination of resale obligation for advanced services affiliates will not impair competitors’ access to necessary UNEs

Under the separate affiliate arrangement advanced by the Commission, the ILEC data affiliate would be relieved of the resale and loop unbundling requirements of the Act. As a consequence, CLECs will be unable to obtain access to the ILEC data affiliate’s DSLAMs or packet switches. CLECs would, however, continue to obtain loops, collocation, and OSS access

from the ILEC. And perhaps most important, the ILEC would be required to provide these monopoly elements on the exact terms, rates and conditions that it provides them to its data affiliate.

Some CLECs nonetheless oppose any proposal that exempts a structured separate subsidiary from its resale obligations. NorthPoint believes that so long as only properly structured separate subsidiaries are exempted, these CLEC concerns are outweighed by the benefits of separate affiliates.

Moreover, if this Commission adopts NorthPoint's proposal of mandatory separate subsidiaries for ILEC advanced services, the need for resale rights is greatly limited.² To date, all of the CLECs that have entered the advanced services market by installing their own DSLAMs in central office collocation cages purchased from the ILECs. Where CLECs enjoy truly nondiscriminatory access to loops and collocation, any CLEC can provide the necessary infrastructure (DSLAMs and packet switches) required to provide advanced services. Moreover, the fact that all DSL CLECs have chosen a facilities-based DSL entry strategy suggests that concerns over the loss of a resale option may be misplaced.

Moreover, in the context of separate affiliates, a resale requirement may actually discourage facilities-based DSL entry. For instance, in Florida, NorthPoint and other data

² Of course, absent a properly designed separate subsidiary system, resale obligations are critical and must be maintained. The incumbent LECs' argument that resale cannot apply to DSL runs counter to the Act and the Commission's Section 706 Order. Section 251(c)(4) of the Act imposes on incumbent LECs the "duty . . . to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." 47 U.S.C. Sec. 251(c)(4). In its Section 706 Order, the Commission stated that "incumbent LECs have the obligation to offer for resale, pursuant to section 251(c)(4), all advanced services that they generally provide to subscribers who are not telecommunications carriers." ADSL service is provided to information service providers and end users, which, under the Telecommunications Act of 1934, are not telecommunications carriers. The rule established by the Commission in its Section 706 Order thus applies. The Commission should reconfirm that, absent an operational separate subsidiary, incumbent LECs are required to allow their competitors to resell DSL service at a discount. *See also* below section II.

CLECs face a price squeeze in which the \$40 price of a loop exceeds the total retail DSL charges that BellSouth charges to end users. Thus, a facilities-based entrant in Florida cannot compete with BellSouth even before it recovers the cost of collocation, DSLAMs and other network pieces. If a non-facilities entrant can pay BellSouth \$40 minus some discount (say 20%) for service, then resellers will pay a fraction of the costs that facilities-based service providers pay to enter the market and facilities-based competition will be unsustainable. This would detriment consumers, who benefit more from facilities-based competition.

C. The Commission Has the Authority to Require a Separate Subsidiary

In this proceeding, some ILECs have argued that the Commission lacks the authority to impose any separate subsidiary requirements. These ILECs favor the elimination of the unbundling and resale requirements of section 251(c) for any advanced services subsidiary, regardless of whether or not the subsidiary operates at arm's length from the incumbent LEC. This interpretation, however, completely misreads the plain language of the Act, which mandates that any "successor or assign" of an ILEC remains subject to the resale and unbundling requirement of the Act. 47 U.S.C. § 251(h)(ii).

As the Commission recognized in the NPRM, the legal import of the phrase "successor or assign" varies depending upon the relevant legal context. NPRM, ¶104, n. 202, *citing Howard Johnson Co. v. Detroit Local Joint Executive Board*, 417 U.S. 249, n.9 (1974) (determinations about successorship must be based on "the facts of each case and the particular legal obligation which is at issue" and "there is and can be no single definition of 'successor' which is applicable in every legal context.")). The many and varied attempts of the incumbent LECs to import definitions of "successor or assign" from string cites of inapposite cases that interpret the meaning of the phrase in wholly different legal contexts are plainly irrelevant. *See, e.g.,*

Comments of Bell Atlantic, CC Docket No. 98-147, at 27-28 (Sept. 25, 1998); Comments of Ameritech, CC Docket No. 98-147, at 51-52 (Sept. 25, 1998).

The Commission not only can, but must, define “successor or assign” as used in section 251 of the Act to prevent frustration of the effective operation of the pro-competitive provisions of that section. As AT&T and MCI point out, this requires, at a minimum, those separation requirements set out for section 272 affiliates in the *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 at 312 (1996), *recommending* (subsequent history omitted) (“Non-Accounting Safeguards Order). See Comments of AT&T Corp., CC Docket 98-147, at 7-11 (Sept. 25, 1998) (noting that the Commission has recognized that it may not treat advanced services differently from local exchange services [either legally or technically], but also that section 272, unlike section 251, presumes that the local exchange market has been opened to competition before the services affiliates at issue may be formed); Comments of MCI WorldCom, Inc., CC Docket No. 98-147, at 8 (Sept. 25, 1998) (the term “assign”, which has been interpreted in the context of section 272, should be given the same meaning in section 251 since “identical words used in different parts of the same act are intended to have the same meaning” [citation omitted]). Cf. Comments of U S WEST at 31 (Non-Accounting Safeguards Order separation requirements to avoid “successor or assign” classification are too stringent since, unlike local exchange facilities, advanced data facilities “do not have bottleneck characteristics.”). Accordingly, this Commission should make clear that an ILEC that provides advanced services through an affiliate that does not meet the requirements of the Non-Accounting Safeguards Order remains a “successor or assign” of the ILEC.

In addition, other ILECs argue that non-structural safeguards³ or the limited separation framework set out in the *Competitive Carrier Fifth Report and Order*⁴ are sufficient to spawn true competition between CLECs and advanced services affiliates. These arguments are inconsistent with the framework established by Congress. The Act plainly expresses a preference for separate affiliates as the means for protecting against incumbent LEC anti-competitive behavior. Before enactment of the Telecommunications Act of 1996, the FCC had shown a preference for nonstructural safeguards, and had adopted nonstructural safeguards for customer premises equipment and enhanced services, for example. The FCC had, however, retained separate affiliate requirements for certain services, such as cellular wireless services.

Since the Act, the Commission has generally used structural safeguards, and has chosen between two types of separate affiliates. The advanced services affiliates proposed by the Commission is based on the separate affiliate requirements laid out in section 272 of the Act. Even more than the section 272 affiliate context, however, the advanced services context requires strong, precise separation requirements. Section 272 affiliates will not exist until the market for their services is deemed open to competition. Those companies competing with section 272 affiliates will require proper policing to maintain fair competition. By contrast, CLECs are dependent upon proper separation requirements for advanced services affiliates for meaningful competition to ever begin in the first place. *See* HAI Report at 19 (market is still a monopoly).

At a bare minimum, therefore, the Commission should require ILECs to provide advanced services through a section 272 type separate subsidiary. The Commission must reject ILEC requests that the Commission only require the structural safeguards required in the

³ Comments of Bell Atlantic at 24; Comments of U S WEST at 15-24.

⁴ Comments of BellSouth at 37; Comments of SBC at 11; Comments of GTE at 15; Comments of U S WEST at 25.

Commission's Fifth Report and Order in the Competitive Carrier proceeding. Those safeguards are insufficient for advanced services affiliates. For example, while the Fifth Report and Order requires only arm's length transactions for non-telecommunications services, the Wireline Advanced Services NPRM proposes that these transactions be reduced to writing and posted on the Internet. The NPRM also proposes a stronger non-discrimination requirement, prohibiting discrimination altogether, rather than simply "unreasonable discrimination" as in the 5th Report and Order. In addition, the NPRM proposes separate officers, directors and employees, a requirement not found in the Fifth Report and Order. Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefore, CC Docket No. 79-252, Fifth Report and Order, 98 FCC 2d 1191 (1984).

As HAI points out, a separate affiliate allows for enforcement of non-discrimination requirements. If transactions are transparent, it is much easier to detect and remedy discrimination. HAI at 46. The cost of the regulation necessary to achieve this, such as posting requirements, is minimal, while the benefits are great. Contrary to the contentions of the incumbent LECs that enforcement is easy, costless and rapid now, there are currently numerous costly and time consuming enforcement disputes being waged between CLECs and incumbent LECs. Posting-type requirements will enhance state and federal authorities' ability to detect and remedy anti-competitive behavior. Without the requirement that transactions be posted on the Internet, it will be much more difficult for CLECs to: (1) establish the options that are open to them as well as the affiliate; (2) determine whether they have been discriminated against; and (3) alert enforcement authorities to problems. As the Washington Association of Internet Service Providers comments, "What gets measured, gets done." WAISP Comments at 6.

The Fifth Report and Order safeguards may be sufficient for certain types of incumbent LEC offerings, such as CMRS, where competitors are reasonably well established and separate networks need only be interconnected. By contrast, there is no separate advanced services network; DSL runs on the same copper loops as plain old telephone service, and the provisioning and interconnection arrangements are essential to non-ILEC providers' ability to provide broadband services. Without the physical separation of the networks, or some other comparable safeguard, it becomes much more important to have the type of separation established in the Non-Accounting Safeguards Order. Moreover, when the risk of discrimination lies with issues such as access to copper loops or pricing issues such as imputation, a truly separate affiliate can create the right incentives for incumbent LECs to treat CLECs (as well as incumbent LEC affiliates) in the manner contemplated in the Act. Accordingly, this Commission should adopt the separate subsidiary requirements proposed in its NPRM and supported in the NorthPoint/Ameritech Joint Statement.

D. Rules Governing the Separate Subsidiary

In order to ensure that the Commission's proposed separate subsidiary arrangement is successful, this Commission must ensure that the ILEC affiliate operates at arm's length with respect to loop, collocation and OSS issues. This requires that the ILEC provide these elements to CLECs on precisely the same rates, terms and conditions as it does to itself. Once this principle of nondiscrimination/parity is firmly in place, some limited flexibility could be accorded the ILEC data services affiliate for joint marketing or limited interLATA relief.⁵ In

⁵ Any such relief, should not, however, exceed that outlined in the NorthPoint/Ameritech Joint Statement, namely, limited interLATA relief that would allow an ILEC data affiliate to provide interLATA data transport within a state (and to the closest Network Access Point). NorthPoint/Ameritech Joint Statement at 5.

order to ensure that this nondiscrimination requirement is properly implemented, the Commission should impose the following specific requirements:

- **Space Availability for Collocation** -- Incumbent LECs must provide CLECs with collocation space on the same rates, terms, and conditions as to their advanced services affiliates.
- **Collocation Intervals** -- Incumbent LECs must provide CLECs with quotes and construction of collocation cages on the same rates, terms, and conditions as to their advanced services affiliates.
- **Collocation Charges** -- Incumbent LECs must charge CLECs no more for collocation than the costs they assign themselves for their own collocation.
- **Alternatives to Physical Collocation** -- Incumbent LECs must provide CLECs with alternative forms of collocation on the same rates, terms and conditions as to their advanced services affiliate.
- **Equipment Limitations** -- Incumbent LECs must be prohibited from discriminating in favor of their own deployment of advanced services equipment.
- **Copper Loop Availability and Intervals** -- Incumbent LECs must provide CLECs with the same loops with the same intervals and on the same rates, terms, and conditions as to their own advanced services affiliate.
- **Loops Provisioned via DLCs** -- Incumbent LECs must be prohibited from deploying DLC-generated advanced services to end-users served by digital loop carriers until they make such loops equally available to CLECs.

- **Loop Pricing and One-Loop Products** -- Incumbent LECs must be required to make one-loop products equally available to CLECs and to charge CLECs no more for loops than the costs they assign themselves.
- **OSS** -- Incumbent LECs must be required to provide CLECs with equal access to information, including OSS, and charge CLECs no more for OSS than the costs they assign themselves.

These specific requirements are the basis of the NorthPoint/Ameritech Joint Statement. They will ensure that CLECs and ILEC data services affiliates are treated in a nondiscriminatory fashion in the areas most crucial to fostering competition.

In addition to these specific guarantees necessary to ensure parity, the Commission must lay out a path for creating an appropriately separate advanced services affiliate. NorthPoint urges the Commission to adopt the following requirements.

1. Asset transfers must be limited so that affiliates do not acquire monopoly elements

The cardinal rule regarding incumbent LEC to affiliate asset transfers must be: no transfer of monopoly elements. To the extent that affiliates are permitted to acquire monopoly elements, the separate affiliate construct will be entirely undercut. Rather than creating comparably positioned competitors, the rules will simply substitute one monopoly for another. A secondary rule should govern to the fullest extent practicable: give the affiliates everything the CLECs have, but nothing more. These rules will ensure that ILEC advanced services affiliates are permitted to acquire DSLAMs and packet switches, but under no circumstances are permitted to acquire loops.

With respect to collocation, rather than simple permission or prohibition, a rule of parity should apply. ILECs should be allowed to: (i) maintain existing virtual collocation arrangements

for its advanced services affiliates, but also must provide CLECs with the right to own, install and maintain equipment on the same rates, terms, and conditions; (ii) limit CLECs' ability to use virtual collocation but also must subject the ILEC data services affiliate to the same restrictions; and (iii) provide its advanced services affiliate with new collocation arrangement, but must simultaneously offer that arrangement to CLECs. In the latter scenario, the ILEC also should be required to publicize the new arrangement in a network disclosure arrangement filing six months before it can use the new arrangement. The network disclosure requirements of section 251(c)(5) also should apply to any subsequent changes that would affect the rates, terms and conditions of virtual collocation.

2. A one-time only transfer of employees is acceptable; thereafter, arm's length dealings should be required

In order to facilitate rapid formation of advanced services affiliates, NorthPoint supports a one-time only transfer of employees from an incumbent LEC to its newly formed subsidiary. Thereafter, transfers of employees should be proscribed. Transfers of employees back and forth will destroy the separate identities of the companies and provides a means of transfer of valuable information that cannot be policed. Consequently, all hiring and firing after the formation of the affiliate must be arm's length and subject to reporting requirements. This will provide ILEC data affiliates with the flexibility to obtain additional qualified personnel from the ILEC while simultaneously minimizing the risks of any improper conduct.

3. Carefully circumscribed sharing of services

Ameritech desires a rule whereby affiliates are permitted to purchase non-operational services from related incumbent LECs. So long as such purchases conform to the clearly delineated standards of the affiliate transaction rules, meaning that they are arm's length

transactions involving full compensation for services rendered, and are reported on the Internet, NorthPoint does not object.

A number of incumbent LECs also want a limited exception permitting affiliates to purchase installation and maintenance services from incumbent LECs. NorthPoint does not object so long as identical prices and terms are provided to CLECs and the charges involve full compensation for services rendered.

4. Transaction reporting is critical

GTE suggests that incumbent LECs and their affiliates should be required to report transactions only upon the request of regulators. Comments of GTE at 19. As explained at length in our comments, we believe that detailed, mandatory reporting of all transactions – promptly and publicly (such as on the ILEC Web site) – is critical to permit the identification and prevention of discrimination. *See* Comments of NorthPoint at 26-28. For this reason, NorthPoint urges the Commission to reject GTE’s proposal.

5. Enforcement

As discussed at length in NorthPoint’s Comments, effective enforcement is necessary to ensure that ILECs do not discriminate between their advanced services affiliates and CLECs. Given incumbent LEC incentives to delay the growth of advanced services, discussed above, without enforcement, even the most carefully designed separate subsidiary model could be abused. In its comments, NorthPoint thus proposed a variety of enforcement practices and procedures that it believes the Commission ought to implement. *See* Comments of NorthPoint at 34-35. In particular, NorthPoint urges the Commission to apply the burden of proof on the ILEC whenever a prima facie violation is shown. NorthPoint Comments at 34. ILECs also should be

required to post affiliate transactions on their web sites and make them available to the Commission and CLECs alike.

6. Transfer of CPNI should not be permitted

Bell Atlantic and GTE propose that the Commission let incumbent LECs transfer CPNI to advanced services affiliates. Comments of Bell Atlantic at 30; Comments of GTE at 46. This, again, would provide a significant and unwarranted competitive advantage to the affiliate, and would undercut the effective operation of the separate affiliate rules. The Commission ought to clarify that advanced services are not “local services” for purposes of CPNI sharing rules, and prevent incumbent LECs from transferring or sharing CPNI unless the customer is taking local service from the incumbent LEC and DSL service from the affiliate. The assumption underlying the separate affiliate proposal is that advanced services are different enough from regular services to warrant special treatment of the Act, i.e., no application of Section 251(c). If this is the case, advanced services should also be considered to be in a separate category from local services for CPNI purposes, and ILECs should not be permitted to share CPNI with their affiliates without prior authorization.

7. Sunset Provisions

Ameritech proposes that the separation requirements adopted for advanced services affiliates sunset once advanced telecommunications capability is available to fifty percent of the local exchange customers served by an incumbent LEC. Comments of Ameritech at 60. The Internet Access Coalition proposes that a sunset be tied to the time at which a substantial percentage of households have the option of securing advanced services from multiple providers. IAC Comments at 24.

NorthPoint suspects that the separate affiliate requirements will be necessary so long as the ILECs retain control over bottleneck network elements such as copper loops. NorthPoint does, however, support the suggestion of the Alliance for Public Technology that the Commission conduct a review after three years in order to determine whether a sunset of the separate affiliate restrictions is appropriate. Similar to the Triennial Review requirement contained in the AT&T Consent Decree, such a review would allow the Commission to determine whether the ILECs' control over monopoly network elements had been sufficiently reduced to make a sunset of the separate subsidiary requirement appropriate.

8. Separate affiliate should be mandatory

In the comments filed in this proceeding, commenters proposed other separation requirements (e.g., outside ownership) and lamented the omission of their preferred safeguards. Without doubt, some of these suggestions and criticisms would yield some incremental benefit. However, NorthPoint believes that the Commission's separate affiliate proposal strikes an appropriate balance between regulatory relief for the ILECs and guarantees for competing providers, which continue to rely on the ILEC for access to the UNEs necessary to provide competing broadband services. Accordingly, the Commission urges the Commission to require ILECs to offer their advanced services through a separate affiliate of the type proposed in the NPRM and supported in the NorthPoint/Ameritech Joint Statement.

II. THE COMMISSION'S PROPOSED COLLOCATION REMEDIES WOULD PROMOTE BROADBAND DEPLOYMENT

This Commission already has recognized that "incumbent LECs have the incentive and the capability to impede competitive entry by minimizing the amount of space that is available for collocation by competitors." Local Interconnection Order ¶ 585. As NorthPoint stated in its

opening comments, the Commission's proposed collocation measures will mitigate this danger by ensuring more efficient use of collocation space, which is an essential part of xDSL service. NorthPoint Comments at 3. The vast majority of parties agree that minimum national collocation standards would be pro-competitive. See, e.g., ICG at 8. Moreover, such standards would not infringe on state jurisdiction, and state commissions such as the Illinois Commerce Commission ("ICC") support the Commission's proposed standards. ICC Comments at 8.

Those few commenters who oppose such standards offer no principled reason for their position. U S WEST, for instance, suggests that the existing system is not broken and thus should not be fixed. U S WEST at 36. This blanket assertion ignores a wide variety of frustrating ILEC practices. For instance, as NorthPoint explained in its opening comment, NorthPoint Comments at 12-13, U S WEST has successfully prevented NorthPoint from ordering collocation space by imposing arbitrary collocation ordering policies. See also Sprint Comments at 17; KMC Comments at 16. Accordingly, this Commission should dismiss the self-interested comments of parties opposing minimum national collocation standards and, as discussed in greater detail below, adopt the specific standards proposed in the NPRM. See also NorthPoint Opening Comments at 2-19. The Commission should, however, make clear that such standards are the floor and state commissions may adopt more rigorous requirements. Illinois Commerce Commission at 8.

A. Space Exhaustion Must be Remedied

Floor Plans. As many commenters recognize, floor plans are simply inadequate to verify whether space exists in a central office. Space marked as administrative, for instance, may in fact no longer be in use. Without a walk-through, however, the CLEC will be unable to verify whether labels on the plan are correct such that ILEC claims of "no space" are justified. ILECs

such as Sprint (at 18) and State Commissions (at 12) both support walk-throughs and this Commission should reaffirm its tentative conclusion to adopt such a requirement. ILECs also should be required to post a list of closed offices, like Bell Atlantic has already done in New York. Level 3 Comments at 11. This would avoid needless effort by both the ILEC and the CLEC, since to date, ILECs generally require that a carrier requesting space submit extensive documentation and a several thousand dollar fee. If the ILEC already knows such space is unavailable, the application (and the ILEC's analysis thereof) is needless. FirstWorld Comments at 29-30. To avoid such needless consumption of CLEC and ILEC resources, ILECs should be required to furnish reports detailing which offices are closed and which are open.

Moreover, NorthPoint suggests that the Commission should adopt a policy of promoting increased visibility in the collocation-ordering process. This Commission has required that ILECs provide collocation on a first-come, first-served, nondiscriminatory basis. Local Interconnection Order at ¶ 565 (re-adopting the first-come, first-served policy of the Expanded Interconnection Docket). To date, CLECs have been forced to blindly rely on ILEC assurances that collocation is provided on a first-come, first-served basis. However, there is simply no way of auditing this process, and thus there is a risk that the ILEC may favor affiliates (or even specific CLECs). Accordingly, when an office is closed, the ILEC should maintain a list of CLECs that have requested space in those offices in order to ensure the first-come, first-served requirements of the Act are met. Such lists have proved essential in California, for instance, when Pacific recently "found" space in several offices. See Covad Comments at 6. Based on informal comments from some ILECs, notably BellSouth, NorthPoint also is concerned that some ILECs have not yet established a system for tracking CLEC collocation applications. Accordingly, this Commission should require that the ILECs keep records of all requesting

CLECs in order to satisfy the Act's requirement that collocation be provided on a first-come, first-served basis.⁶

Obsolete Equipment. In central offices where collocation space is scarce, this Commission also should require ILECs to remove equipment that is no longer in use and convert administrative space. ILECs such as Sprint and Ameritech support such an approach. Sprint at 16; NorthPoint/Ameritech Joint Statement at 2. Nor should the Commission give any credence to U S WEST's claims that ILECs have ample incentive to remove obsolete equipment. U S WEST at 41. As NEXTLINK explains, U S WEST in fact maintains equipment it no longer uses – and that is not even on its books – in central offices where CLECs had been denied collocation space. NEXTLINK Comments at 15. This is plainly an inefficient use of scarce collocation space and should be prohibited by the Commission.

Warehousing. NorthPoint and Ameritech have already urged this Commission to mandate that requests to reserve space for future use be subject to reasonable and non-discriminatory warehousing policies. NorthPoint/Ameritech Joint Statement at 2. Currently, warehousing is a serious anticompetitive threat, since some ILECs reserve space in their wire centers sufficient to meet their needs for the next five years. MGC Scott A. Sarem Aff. ¶ 15 (PacBell reserves for three years; GTE for five). Such liberal reservation policies are unreasonable, since ILECs could reserve ample space for their own advanced services while denying CLECs any space at all. KMC at 17. MGC, for instance, notes that Pacific Bell recently denied it space in an office where Pacific had reserved 1900 square feet for its cellular affiliate.

⁶ In Florida, the state Commission has apparently approved one CLEC's attempt to jump the "collocation line" by filing a complaint against BellSouth. Revising a CLEC's place in line based solely on a filed complaint plainly violates the first-come first-served provisions of the Act.

MGC at 35. Accordingly, ILEC warehousing should be prohibited, except to the extent ILECs offer themselves reasonable warehousing rights that they also offer CLECs.

Cage intervals and construction. The vast majority of commenters also support the minimal national time frames for collocation cage construction proposed by the Commission. ILECs such as Ameritech, for instance, provide quotes within 10 days. Sprint, which is itself an ILEC, agrees that this is an appropriate interval. Sprint Comments at 17. Sprint also supports a requirement that a standard cage be completed within 90 days. *Id.* NorthPoint notes that this is far less demanding than the 35 business day interval that was apparently established in Texas during collaborative proceedings on SWBT's section 271 application. Intermedia at 42.

Similarly, cages in unconditioned space should be provided in less than 120 days. NEXTLINK at 12-15. Failure to meet these intervals should be cause for liquidated damages. In NorthPoint's experience, non-monetary incentives will not motivate the ILECs. For instance, NorthPoint has received far better cages in Texas, where NorthPoint's interconnection agreement with Southwestern Bell specifically calls for monetary damages for late or flawed collocation cages, than it has in California, where its interconnection agreement with Pacific Bell lacks comparable provisions.

Equitable Allocation of up-front construction costs. NorthPoint and Ameritech have both suggested that ILEC should recover up-front construction costs by allocating the costs among the expected number of collocation customers. Ameritech at 45 ("rates are averaged and recover the central office build-out space conditioning cost over time from multiple customers."). This procedure, which has also been adopted by the New York PSC, is supported by many other commenters. *See, e.g.,* E.spire Comments at 31-32. *See also* Sprint Comments at 16; Transwire Comments at 30. By contrast, schemes in which the first entrant pays all the costs of

conditioning an office, subject to refund in as short a period as one year, impose a huge financial penalty on the “first-mover” and thus act as a barrier to deployment of advanced services. Nor are such schemes necessary: Ameritech, for instance, has already stated to this Commission that there should be no “first-in” penalties. NorthPoint/Ameritech Joint Statement at 3. Accordingly, the Commission should require ILECs to follow an egalitarian cost recovery scheme like that adopted by the New York PSC.

B. Alternative Collocation Arrangements Should Be Encouraged

Ameritech has already stated its support for alternate collocation arrangements, including but not limited to arrangements such as cageless physical collocation, collocation in areas of less than 100 square feet and virtual collocation. NorthPoint/Ameritech Joint Statement at 3. NorthPoint and many other commenters also support the NTIA’s proposal that if one ILEC provides a specific type of collocation arrangement, there should be a rebuttable presumption that all other ILECs can do likewise. ALTS at 42; Transwire at 42. This presumption will ensure that the greatest possible variety of collocation arrangements is made available. Contrary to some ILECs’ intimations, moreover, a rebuttable presumption does not require each ILEC to furnish each of these services under all circumstances. U S WEST, for instance, will always have the right to demonstrate that it is technically incapable of providing a specific types of collocation. U S WEST at 36. Accordingly, the Commission should adopt its tentative conclusion that where one ILEC provides a specific type of collocation, there should be a rebuttable presumption that other carriers can do likewise.

Virtual Collocation. As several commenters explain, virtual collocation is extremely unattractive to CLECs since they are unable to own, install and maintain their own equipment. NEXTLINK at 16-19; KMC at 18. According to MGC, Sprint already allows CLECs to

maintain equipment that is intermixed with the ILECs. MGC at 21. Ameritech also supports allowing CLECs' ability to use their own technicians to service virtually collocated equipment. NorthPoint/Ameritech Joint Statement at 3. Other ILECs should be required to do likewise. NorthPoint suggests, for instance, that collocators be allowed to deploy virtual collocation arrangements in which the CLLC owns, installs and maintains the CLECs' equipment. Installation and repair could be conducted by the CLEC, its equipment vendor, or a third party approved by the ILEC.⁷

Adjacent Collocation. Many commenters also support "adjacent collocation, or nearby collocation." NEXTLINK at 16-18; FirstWorld at 31-32. By using collocation space in a parking lot or other adjacent space, such arrangements would be a useful solution for central offices in which space is limited. (MGC, for instance, states that it has been denied both physical and virtual collocation space in certain central offices. MGC Comments at 17). NorthPoint notes, however, that the Commission should allow the CLECs to select the type of copper cable used to connect the MDF in the central office to the adjacent collocation site. Since xDSL is a distance sensitive-technology, both the length and the type of copper cable linking the central office to the adjacent collocation cite can have a discernable effect on a CLEC's ability to serve its customers.

⁷ Such a requirement also would eliminate the need to train ILEC technicians to repair CLECs' virtually collocated equipment. (Historically, CLECs have been required to provide such training since the ILECs performed all installation and repair of the CLEC's virtually collocated equipment.) The exorbitant rates charged for such training sessions alone can make virtual collocation uneconomic. Accordingly, the Commission should both allow CLECs to provide installation and maintenance of virtual equipment, and also should specify – as Ameritech suggests – that ILECs may not charge for training of their technicians. NorthPoint/Ameritech Joint Statement at 3.

Shared collocation and subleasing. NorthPoint also supports a general requirement that the ILECs' permit subleasing, a solution that is already permitted by ILECs like SBC. SBC Comments at 21 n. 13.

Common Collocation. There are two types of common collocation: cageless collocation in which the CLECs share a common room that is separated from the ILECs, and common collocation in which the CLECs equipment is interspersed with that of the ILEC. To date, CLEC requests for such arrangements have been based on the presumption that such space will be cheaper than physical collocation space.

As Level 3 points out, however, some ILECs charge more for virtual collocation than for physical. Level 3 Aff. At ¶ 5. NorthPoint agrees. In California, for instance, Pacific recently informed CLECs that 100 square feet of common collocation space would cost more than 100 square foot physical collocation cage. It is simply preposterous for SBC to claim that this demonstrates that CLECs are averse to common collocation when in fact the CLECs were simply voting with their pocketbooks. This Commission should require that CLECs price common and cageless collocation at an appropriate discount to physical collocation. Otherwise, CLECs will have little incentive to pursue innovative collocation arrangements, with negative consequences for broadband deployment

Moreover, as many parties – including both ILECs and CLECs – point out, both common and cageless collocation require proper security measures must be established in order to ensure that no collocator accesses another's equipment. While the ILECs exaggerate the dangers in common collocation, certain basic security measurements – such as those advanced by ALTS (at 50-53) and Intermedia (at 42) – would ensure that common collocation may be used efficiently and without harm to the network. For instance, if the CLEC's equipment is placed in a well-

labeled rack, an ILEC security escort should be able to watch to ensure the CLEC employee does not open other boxes. (Of course, as the ICC points out (at 11), if security escorts are required, they must be available.)

The Commission thus should require ILECs to provide both cageless and common collocation arrangements. And as KMC suggests, since the preparation requirements for either are minimal, each should be made available within 15 days from ordering. KMC at 16.

C. CLECs Should Be Permitted To Collocate Equipment Used For Interconnection Or Access To UNEs

Historically, obtaining the ILECs' authorization to place specific types of equipment in the cage is the most frustrating aspect of collocation. NorthPoint and Ameritech agree that all central office equipment should be required to meet appropriate safety and electrical interference standards. NorthPoint/Ameritech Joint Statement at 4. NorthPoint sees no legitimate reason, however, for requiring CLECs to meet reliability standards such as those contained in NEBS Levels 2 and 3. NorthPoint Comments at 6-7. Both Ameritech and Sprint agree. Sprint at 13; Ameritech at 41. Accordingly, this Commission should mandate that where the CLEC is placing its equipment in its collocation cage and is not interconnecting that equipment with the ILECs' equipment, an ILEC may not require the CLEC to meet any standards other than NEBS Level 1. In addition, to the extent an ILEC or its affiliate collocates equipment that does not meet these standards, CLECs must be allowed to do likewise. KMC Comments at 15 (noting that ILECs should be prohibited from imposing different standards on CLECs than they impose on themselves). As NorthPoint and Ameritech made clear in their Joint Statement, "[a]n ILEC may not discriminate between its affiliate and non-affiliates in the enforcement of such standards, it

must apply those standards equally to its affiliate and non-affiliate.” NorthPoint/Ameritech Joint Statement at 4.

In order to ensure that the ILEC is not in fact imposing more onerous obligations on CLECs, the Commission should require that the ILECs furnish a list of the non-NEBS compliant currently located in its central offices. Any other standard would simply allow the ILEC to make a blanket statement that it adheres to NEBS. Indeed, U S WEST has indicated in this proceeding that it generally adheres to NEBS. U S WEST at 40. “Generally,” of course, does not mean always. To avoid gamesmanship and dissimulation, the Commission thus should require the ILECs to furnish a list of all equipment in their central offices. NorthPoint notes that the list Bell Atlantic states that it provides to collocators lists only a limited number of pieces of equipment. See Bell Atlantic Comments at 41. Such a limited list is manifestly insufficient to allow CLECs to verify what safety standards the ILEC adheres to. The ILECs may contend that generating such a list would be both “unreasonable and impractical,” SBC Comments at 19, but it is far more unreasonable for the ILEC to impose obligations on CLECs that it does not impose on itself.⁸

Finally, NorthPoint notes the comments reflect some confusion over the Commission’s request for comment on possible national standards for central office equipment. Numerous parties, have suggested that national standards applicable to all central office equipment would stifle the deployment of innovative equipment. ALTS at 62. Other parties have addressed a somewhat different issue – whether national standards are appropriate for equipment that

⁸ In the same vein, ILECs should not be permitted to impose unreasonable restrictions on cross-connections between collocation cages. It is plainly unreasonable for an ILEC to refuse to allow a CLEC to cross-connect cages ordered out of different tariffs or any other form of restriction on cross-connects between collocation arrangements. NorthPoint thus supports Intermedia’s proposal that the Commission mandate that CLECs may do cross-connects between any collocation arrangement, including those on separate floors. Intermedia Comments at 28.

connects directly to the ILEC network. KMC at 21-22. While standards may be more palatable in this situation, there is a definite risk that the ILECs will use this process to limit competition. BellSouth, for instance, has already argued that ILECs should be allowed to reject the use of equipment on the grounds of technical incompatibility if such equipment “is not exactly the same as equipment that the ILEC uses.” BellSouth at 54. Any such policy would eliminate CLECs’ ability to deploy innovative equipment, and this Commission should dismiss BellSouth’s proposal.

III. THE COMMISSION SHOULD ADOPT ITS PROPOSED LOOP REMEDIES

The Commission’s proposed loop remedies also will promote broadband deployment, and NorthPoint urges the Commission to adopt them in its order in this proceeding.

A. The Commission Should Require the ILECs to Look for Alternate Copper

NorthPoint’s opening comments indicated that one of the most crucial problems facing CLECs is the need to obtain “home-run copper” between NorthPoint’s DSLAM (usually located in the ILEC central office) and the end-user. Ameritech agrees that “the most economically-efficient and customer-focused means of providing xDSL-compatible loops is to use or find copper loops to support a request.” Ameritech Comments at 21. Accordingly, as discussed in greater detail below, the ILECs should be required to provide such “home run” loops to the CLECs whenever technically feasible. The ILECs should be required to meet their existing obligation to provide unbundled digital loops by removing impediments such as bridge taps and loading coils in order to create digital loops. NorthPoint Comments at 17; see also KMC Comments at 19. As NorthPoint has explained, the Commission should give short shrift to ILEC arguments that this would require the improvement of existing networks, since the ILECs already

regularly engage in these very types of loop conditioning when they prepare loops for ISDN and HDSL T-1 services. NorthPoint Comments at 17.

B. ILECs Should Be Required to Provide Access To Loop Qualification Databases

In addition, this Commission should affirm its tentative conclusion that the ILECs should have access to loop qualification databases. NPRM at para. 157. While such a database should not be used as an excuse for failing to make xDSL-compatible loops available, it will allow CLECs to verify whether they can serve specific customers before actually ordering a loop. Other commenters including both Sprint and U S WEST – agree. In particular, Sprint supports requiring the ILEC to provide same type of information about loops as its own personnel have access to and within same time frames. Sprint at 20. U S WEST suggests that ILECs should provide “information regarding loop length, loop coils, bridged taps, decibel loss, line carriers and the line.” U S WEST Comments at 45.

Similarly, the Illinois Commerce Commission agrees that a loop database is necessary and proposes that the ILECs provide data on whether loops will support advanced services, including but not limited to the loop wire gauge and size. Additional information that should be included in the database includes loop length, number of bridge taps and aggregate bridge tap distance, and whether or not any loading coils or digital loop carriers. Network Access Solutions at 26.⁹

Several CLECs have suggested that the ILECs may already have electronic databases on the availability of xDSL-compatible loops and are not sharing it with CLECs. Transwire at 34. Similarly, Network Access Solutions suggests that the ILECs already maintain this information

⁹ In addition, Network Access Solutions properly suggests the database be configured so as to provide information for all loops serving a specific address if the ILEC claims no copper loop is available to that premises. As Qwest points out, the database should also include access to any ILEC network test capability. Qwest at 60.

for existing T-1 and ISDN service. Network Access Solutions Comments at 27. Nor do the ILECs disagree. SBC, for instance, concedes that it has electronic access to loop information for more than 80% of all loops. SBC Comments at 31. Indeed, in its original Section 706 Petition to this Commission, SBC specifically stated that “the SBC LECs are using a software system called ‘WebQual’” to verify whether there exists “the requisite copper loop to the requested physical location” and “if a copper loop is available its length will be checked using WebQual to determine whether it can support ADSL technology.” Petition of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell for Relief from Regulation at 18. To date, NorthPoint has not been offered access to this database in SWBY territory. Pacific recently offered access to the loop database but does not provide CLECs with the actual length of the loop. Instead, the database simply indicates whether the loop is greater than 12,000 feet or 18,000 feet. To the extent Pacific’s employees are able to verify the exact length of the loop, this is obviously discriminatory against the CLEC.¹⁰

The Commission should not give any credit to ILEC claims that their databases are incomplete. Ameritech at 16. If that is the case, the ILEC should simply specify as much and the CLEC will know to request manual verification. In no event, however, should the ILECs be permitted to cite alleged incomplete databases as grounds for hiding information from CLECs, for discriminatory access clearly raises a risk of anticompetitive conduct. As the Coalition of Independent Utah Internet Service Providers explains, U S WEST already uses its knowledge of which loops will support xDSL to target specific customers, to the detriment of competitors who lack access to the loop database. Utah Coalition at 9.

¹⁰ NorthPoint also supports Transwire’s suggestion that the ILEC provide the CLEC with a design layout record (DLR) that allows the CLEC to verify whether the loop will support xDSL prior to ordering and implementation. Transwire at 35.

IV. SPECTRUM INTERFERENCE ISSUES SHOULD BE RESOLVED THROUGH INDUSTRY STANDARDS GROUPS AND NOT THROUGH ILEC FIAT

For the most part, all the commenters agree with this Commission's tentative conclusion that spectrum management issues should be resolved through collaborative process. All agree, moreover, that an effective mechanism for resolving spectrum management issues will be necessary as broadband services become more ubiquitously deployed in the network.

As Sprint explains, spectrum management issues divide into two distinct issues: (i) the spectral density mask associated with a particular service; and (ii) the placement of specific services in binder groups. Sprint Comments at 22. As Sprint makes clear, the ILECs should be prohibited from using either of these spectrum management issues to favor the ILECs choice of technology or service. Sprint at 23. Indeed, the vast majority of parties, including most ILECs, agree that national standards bodies such as the T1E1 group should determine such standards. U S WEST Comments at 44. Such standards should apply to ILECs and CLECs alike. E.spire Comments at 36.

SBC's request that the Commission adopt a conservative -- read "anticompetitive" approach -- should be dismissed. SBC Comments at 33. As NorthPoint explained in its opening comments, SBC is requiring that CLECs providing xDSL service in Texas meet specific standards unilaterally imposed by SBC. NorthPoint Comments at 19-20. For instance, SBC has informed NorthPoint that NorthPoint may not provide service over 784 Kbps in Texas. NorthPoint cannot think how this could be construed as administering spectrum management issues in a "nondiscriminatory fashion." SBC Comments at 34. In fact, SBC is using this issue to stifle its competitors attempts to deploy broadband services.

NorthPoint thus respectfully suggests that the Commission prohibit ILECs from unilaterally imposing spectrum management policies. NorthPoint Comments at 19-20. In deploying its services, NorthPoint selected SDSL technology – which uses the same line coding as ISDN and HDSL T1 lines – in order to eliminate spectrum management issues. NorthPoint thus is especially concerned that the ILECs are using spectrum management policies to insidiously limit competitors’ ability to provide advanced services, even when those services pose the same spectrum interference issues as existing ILEC services – such as HDSL T1 and ISDN -- that are ubiquitously deployed in the ILECs’ networks. In fact, NorthPoint’s own studies verify that 2B1Q SDSL services pose the same spectrum management issues as the ILECs’ services. The ILECs by contrast, have relied on proprietary studies they refuse to share with competitors. NorthPoint Comments at 19-20. The Commission thus should specify that until national standards bodies adopt final standards, the ILECs may not limit competing providers’ ability to deploy technologies such as SDSL that use the same 2B1Q line coding ubiquitously deployed in the ILECs’ networks.¹¹

V. THIS COMMISSION SHOULD TAKE MEASURES TO PROMOTE BROADBAND DEPLOYMENT TO END-USERS SERVED BY DIGITAL LOOP CARRIERS

As NorthPoint explained in its opening comments, the simplest solution to providing service to customers served by digital loop carriers (“DLCs”) or remote switching modules (“RSMs”) is to require the ILECs to verify whether alternate “home-run” copper exists. NorthPoint Comments at 19-20. Pacific Bell, for instance, routinely cuts existing copper-served customers onto DLCs in order to free up copper for xDSL service. As a consequence, in California, NorthPoint has never had to turn down an end-user served by a DLC or RSM.

¹¹ In the alternative, the Commission could adopt Transwire’s proposal that the burden should be on the ILECs to demonstrate interference. Transwire at 36.

Similarly, NEXTLINK states (at 20) that many ILECs currently move IDSL-served customers back onto pre-existing copper when a CLEC-requests a voice grade loop. This provides further proof that other ILECs can emulate Pacific and find alternate “home-run” copper loops or free up a copper loop by moving copper-served customers onto fiber. The Commission should endorse this practice and require it of all ILECs.

In some situations, however, alternate copper may simply not exist. In that situation, where a DLC is served by copper feeder, the Commission should adopt BellSouth’s proposal of “cross-box to cross-box interconnection.” BellSouth Comments at 50. This may require the ILEC to add additional feeder between the DLC and the central office. The Commission should mandate that if fiber is used for this supplement, xDSL services should be given priority access to the existing copper. Moreover, if the DLC is integrated into the switch, the Commission should require that the ILEC demultiplex the xDSL traffic before the switch or require that the ILEC provide the CLEC with the necessary unbundled switching to separate the data traffic at no extra cost.

Third, the Commission should require that where available, the ILEC should be required to provide collocation space to CLECs at the remote switching unit, digital loop carrier or optical network interface FirstWorld at 8; Transwire at 38. NorthPoint notes that the Illinois Commerce Commission has successfully required this of ILECs in Illinois. This Commission should extend remote collocation rights to the entire nation. As part of this obligation, the ILEC affiliate should be prohibited from monopolizing space in the remote terminal.¹² In addition, since collocation

¹² The ILEC should also be required to consider anticipated demand from CLECs when deploying new remotes. See Sprint Comments at 32.

space in the remote will likely be very limited, the ILEC should be prohibited from warehousing space in the remote and should be required to permit rack sharing.

Fourth, the Commission should allow line card collocation. Based on comments made at the FCC's Open Forums on Bandwidth Issues, NorthPoint is concerned that the manufacturer of the DLC – who may be the sole party capable of making such a card – may be unwilling to sell such line cards to CLECs. Accordingly, the Commission should require that the ILEC provide such cards, whether the ADSL service is offered through a separate affiliate or on an integrated basis. (The CLEC should be allowed to use its own line card, of course, if it is compatible with the DLC). In addition, the ILEC should be required to provide transport of that traffic through its ATM switch, where it should be handed-off to the CLEC.¹³

Finally, as the Illinois Commerce Commission suggests, the burden should be on the ILEC to demonstrate a particular method of sub-loop unbundling is not possible. ICC at 15.

VI. THIS COMMISSION MUST ADDRESS THE “PRICE SQUEEZE” ISSUES FOR THOSE ILECS OFFERING ADSL ON AN INTEGRATED BASIS

In its Local Interconnection Order, this Commission recognized that ILECs would have an incentive to subsidize competitive services with regulated ones. That fear has been realized. As explained above, ILECs are currently exerting a price squeeze on competitive xDSL providers. See supra 2-3. See also NorthPoint Comments at 35, Network Access Solutions Comments at 4-5; Sprint Comments at 25-26. This can be achieved either by requiring ILECs to offer advanced services through a truly separate subsidiary or by imposing an imputation rule on

¹³ NorthPoint notes that ILECs that provide xDSL on an integrated basis should be required to unbundle each element of that service. Fifth, the ILEC should be required to unbundle all xDSL equipment. See ALTS at 64-66; Nextlink at 21.

those ILECs who continue to offer services on an integrated basis. NorthPoint Comments at 36-37.

The Commission also should act to allow CLECs to offer a single loop product. The ILECs are currently denying NorthPoint and other data CLECs the ability to take advantage of the loop economies achieved by providing voice and DSL over the same loop. While the ILECs use a single copper pair for both voice and ADSL, data CLECs are required to use a dedicated copper pair for their xDSL services, since the ILECs have indicated they will not accept split-off voice traffic from the CLECs. Nor will the ILECs allow the CLECs to provide xDSL service over an existing copper loop over which the ILEC provides voice service. (By contrast, ILECs like Pacific will only provide ADSL service to end-users who subscribe to Pacific's voice service.) This impairs CLECs' ability to serve residential customers. Accordingly, the Commission should make clear that where CLECs use a single loop to provide both data and voice service, ILECs should be required to accept the split-off traffic from the CLEC at the same price ILECs charge themselves, as well as providing data CLECs with the opportunity to hand off the voice traffic to another CLEC. Accordingly, this Commission should require CLECs to allow the CLEC to tap into loops at the MDF, where the ILEC would filter the voice traffic from the data traffic. The CLEC would then be able to use the loop both for its broadband service and for reselling the ILEC's voice service. At the Commission's October 6, 1998 Technical Roundtable on Loop Issues, all participants who spoke to this issue agreed that it was technically feasible.

Similarly, ILEC tariffs require that the end-user take the ILEC's ADSL service if they want the ILEC's exchange service. Network Access Solutions Comments at 30. NorthPoint agrees that the ILEC should be required to define the high frequencies as a separate UNE.

Network Access Solutions at 31; xDSL Networks at 9. Accordingly, NorthPoint supports e.spire's proposal that ILECs be required to unbundle voice and data channels and allow CLECs to sell loop channels back to the ILEC or another competitors. E.spire at 37.

Finally, the Commission should require the ILECs to tariff a wholesale xDSL offering at an appropriate discount. NorthPoint Comments at 36-37. As the Commission suggests, this service -- whether considered exchange access or local exchange service -- is not offered primarily to IXCs and thus should be tariffed at a wholesale discount. Sprint at 36; Transwire at 41.

CONCLUSION

NorthPoint urges this Commission to require ILECs' to conduct their advanced services through a separate subsidiary. This will provide ILECs with the relief they seek, while ensuring that CLECs can obtain nondiscriminatory access to the loops and collocation necessary to offer competing broadband services. Consumers as a whole will benefit, and Congress's mandate of widespread deployment of broadband services will be fulfilled.

**JOINT STATEMENT OF PRINCIPLES APPLICABLE
IN A SEPARATE SUBSIDIARY ENVIRONMENT
BY AMERITECH AND NORTHPOINT**

In anticipation of the Commission's Section 706 NPRM, Ameritech and NorthPoint Communications initiated discussions regarding the principles that should drive Commission decisions in this proceeding. Both parties entered into these discussions with a desire to conduct an open and honest dialogue that transcends adversarial posturing with the sense that such a dialogue could add significantly to the record. We began with NorthPoint's July 29, 1998, *ex parte* filing at the FCC but expanded discussions to other issues as well.

As a result of this dialogue, Ameritech and NorthPoint found common ground with respect to most of the major issues in this proceeding. Set forth below is a statement of the principles on which the two companies agree. Both companies urge the Commission to adopt policies that reflect and implement these principles in its Section 706 order, to the extent it has authority to do so.

Most importantly, both companies agree that a separate subsidiary for the provision of advanced data services ameliorates many of the concerns that might otherwise exist with respect to the possibility of discrimination and cross-subsidization by an ILEC. Ameritech and NorthPoint accordingly urge the Commission to adopt policies that incent ILECs to provide data services through a separate subsidiary.¹

Both companies also agree as to the level of separation that is appropriate. Specifically, both companies agree that the separate subsidiary framework proposed in the Notice should generally be adopted, subject to one clarification and one modification described in Ameritech's comments.

Assuming that an ILEC adopts the Commission's separate subsidiary framework, the following principles should also apply. Additional requirements beyond those discussed below may be appropriate for ILECs that provide data services on an integrated basis.

¹ Although Ameritech questions whether, as a matter of law, an ILEC affiliate could be deemed a "successor or assign" of the ILEC or a "comparable carrier" under section 251(h) simply because it does not meet all of these separation requirements, Ameritech and NorthPoint agree that the Commission should incent ILECs to adopt a separate subsidiary framework.

Collocation Space Availability

All requests for collocation, including requests to reserve space for future use, should be handled on a first-come, first-served, nondiscriminatory basis.

Requests to reserve space for future use should be subject to appropriate, reasonable, and non-discriminatory anti-warehousing policies. Specifically, ILECs should accommodate such requests when space is available. However, if another entity seeks the reserved space for its immediate use, and alternative collocation space is not available, the party that had reserved such space for future use should be required to either take the space at that time or give it up to the new requestor. These principles should govern requests by ILEC affiliates and non-affiliates.

Among the options that should be explored when collocation space is not available are the removal of inactive equipment and conversion of administrative space. Both parties recognize that these options may or may not be appropriate, depending upon the circumstances, but agree they should be considered.

In the event a request for physical collocation is denied, the ILEC should permit CLEC personnel, subject to appropriate supervision and protection of confidential information, to inspect, at the ILEC's premises, copies of office floor plans with respect to the relevant space.

ILECs and CLECs should negotiate in good faith when space constraints prevent the ILEC from meeting a collocation request. Parties should attempt to negotiate a mutually acceptable solution before seeking regulatory intervention. The negotiation process, however, should never be used as an instrument of delay.

Collocation Intervals

CLECs should have the option of ordering collocation under tariff and, to this end, ILECs should file a tariff in each state in which they operate as an ILEC. CLECs that wish to negotiate collocation terms in an interconnection agreement should be able to do so.

ILECs may not discriminate between data affiliates and unaffiliated providers of data services with respect to intervals within which they provide collocation. ILEC compliance with this requirement should be gauged through performance measurements that show: average time to respond to a collocation request, average time to provide a collocation arrangement, and percent of due dates missed.

Charges for Collocation

Collocation charges should be based on forward looking long run incremental cost.

Charges for collocation should be assessed on a nondiscriminatory basis. ILEC subsidiaries should receive collocation at the same rates, terms, and conditions as an unaffiliated company. If an ILEC employs a separate subsidiary to provide advanced data systems, it is not necessary to employ an imputation test to address cross-subsidy concerns. An imputation requirement should, however, apply to ILECs that do not establish separate data affiliates.

Collocation providers should estimate the demand for collocation space and the average initial first-in cost should be recovered over time from multiple customers based on those demand estimates. There should not be "first in" penalties.

ILEC should permit CLECs to purchase their own equipment for virtual collocation, subject to an appropriate arrangement that provides the ILEC with the necessary administrative control over placement and access. Such arrangements should not prevent CLECs from giving equipment vendors a security interest in virtually collocated equipment, as necessary to obtain vendor financing.

Ameritech and NorthPoint agree that Ameritech's current practice of allowing the requesting carrier to negotiate directly with Ameritech approved installation contractors to determine both price and timing of installation of collocated equipment is an effective and efficient means of controlling costs.

Physical Collocation Alternatives

Parties should negotiate alternatives to traditional physical collocation arrangements where they are mutually beneficial. These alternatives include, without limitation, cageless physical collocation; collocation areas of less than 100 square feet; and virtual collocation.

Except for providing reimbursement for expenses, CLECs should not be charged for training ILEC service technicians.

To the extent, CLECs seek to use their own technicians to service virtually collocated equipment, ILECs should negotiate arrangements that permit CLECs to do so on an escorted basis.

Collocated Equipment

Carriers shall have the right to collocate equipment that complies with applicable industry approved safety and electrical interference standards. To the extent such equipment interconnects with other networks, it must also comply with applicable industry approved interoperability standards. ILECs should not refuse to collocate non-interconnected equipment for failure to comply with reliability standards.

An ILEC may not discriminate between its affiliate and non-affiliates in the enforcement of such standards; it must apply those standards equally to its affiliate and non-affiliates.

Access to Unbundled Loops

ILECs may not discriminate in favor of their affiliate in the rates, terms, or conditions on which they provide access to unbundled loops (including ADSL, HDSL, or ISDN loops).

ILECs should provide access to unbundled loops at remote terminals where technically feasible and space limitations permit. ILECs may not discriminate in the provision of such access in favor of their affiliate.

To the extent that appropriate unbundled loop facilities are not available and where the ILEC voluntarily undertakes to expand or modify its loop plant to make such loops available, it is appropriate that the requesting carrier, whether affiliated or not, bear the reasonable cost of such expansion or modification.

Interconnection agreements should prescribe reasonable intervals for provisioning of loops. The parties agree that for minimum volume orders of existing non-DS-1 loops, a standard interval of five days is reasonable where dispatch is not required. Reasonable intervals should be established based upon the type, quantity, and availability of facilities that have been requested.

An ILEC's affiliate and non-affiliated telecommunications carriers should have the same access, under the same terms, to the operations support systems (OSS), including pre-ordering (including, where available, loop qualification systems), ordering, provisioning, repair, and billing interfaces consistent with industry standards.

Spectrum Sharing

Spectrum management issues are highly complex and are thus best addressed through industry standards developed in industry fora. Industry standards should address, not only the ability of two or more carriers to share the same loop, but also the potential of one loop user to interfere with other users.

The Commission should not adopt specific rules regarding spectrum sharing until the standards bodies have completed their deliberations. This, of course, would not preclude a regulatory body from addressing specific activities that an individual carrier may undertake to impose a proprietary standard on other interconnected carriers, should that occur.

Limited InterLATA Relief

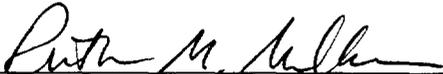
Ameritech and NorthPoint agree that a BOC should be given limited interLATA relief for advanced data services, as described below, if that BOC demonstrates that it: (1) provides advanced data services through a separate affiliate that satisfies the separation framework adopted by the Commission; (2) complies with all state and federal rules, as well as the terms of applicable tariffs and interconnection agreements, regarding collocation; and (3) complies with all state and federal rules, as well as the terms of applicable tariffs and interconnection agreements, relating to the availability of ADSL, HDSL, and ISDN compatible loops.

Upon a showing that these conditions have been met, the Commission should provide limited interLATA relief to permit the BOC: (1) to provide interLATA transport within a state for data services provided to customers with multiple locations in that state; (2) to access an ATM switch within the state; and (3) to provide transport from the ATM switch to the closest Network Access Point (NAP) outside the LATA in which the switch is located, regardless of whether that NAP is located within the state.

The Commission should establish a streamlined process (*e.g.* 60 days) to review BOC requests for limited LATA relief.

CERTIFICATE OF SERVICE

I, Ruth M. Milkman, hereby certify that on this 16th day of October, 1998, a copy of the Comments of NorthPoint Communications, Inc. filed in CC Docket No. 98-147 was hand delivered to the parties listed below.


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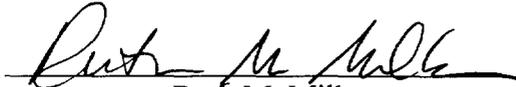
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