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OCT 16 1998

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

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

REPLY COMMENTS OF THE UNITED STATES TELEPHONE ASSOCIATION

INTRODUCTION

The United States Telephone Association ("USTA") hereby files its reply comments in response to the Commission's *Memorandum Opinion and Order and Notice of Proposed Rulemaking* ("MOO" & "NPRM"), released August 7, 1998, and comments filed regarding deployment of advanced telecommunications networks and services by incumbent local exchange carriers. USTA is the principal trade association of the incumbent local exchange carrier industry ("ILECS").

Competitors of ILECs have taken upon themselves to create a business plan for ILECs that no rational business entity would propose, or take before Wall Street and other investment capitals for funding. These alleged competitors ("CLECs") would mandate that the Commission order ILECs to fund the design and deployment of advanced telecommunications networks for

the unfettered access by others who bear no financial, business, or competitive risks, but reap all of the rewards of government mandated welfare for the corporate rich. Meanwhile, ILECs would be forbidden from pursuing all the advantages of assuming the business risks of deploying high-speed data and Internet services over advanced telecommunications networks. The customers and owners of these publically and privately owned ILECs would then subsidize the use of these networks and services by AT&T, MCI WorldCom and others. Benefits to the public will include fewer choices, artificially higher prices for high-speed data and Internet services, with many areas of the country having little or no access to advanced telecommunications services. These consequences of the Commission adopting many of the CLECs' anti-competitive suggestions is misguided public policy that creates disincentives for ILEC deployment of advanced telecommunications networks and services - - consequences never intended by the Act or Section 706.

It is time for the Commission to pursue a market-driven, pro-competitive, policy of regulatory forbearance. Unlike non-ILEC competitors such as AT&T, MCI WorldCom, QWEST, and others, ILECs are not the dominate providers of high-speed data and Internet services. In fact, ILECs are the new entrants in these markets. Thus, it is ironic that the Commission would impose regulatory barriers to entry by ILECs into the high-speed data and Internet markets. The Commission's current proposals, however, create disincentives to ILECs deploying advanced telecommunications networks and services and the public's access to the benefits of competition. In the absence of regulatory forbearance, the Commission has signaled its intent to choose government regulations over market forces, competitors over competition,

corporate welfare over the public's interest, politics over progress, and preconceived ideas over visionary leadership in implementing the requirements of Section 706. The public demands access to high-speed data and Internet services over advanced telecommunications networks now. Current technological and competitive advantages enjoyed by businesses and consumers today are at risk under the Commission's heavy-handed regulations. This Commission can avoid the consequences of regulatory delay, such as billions in lost revenue and consumer welfare created by prior Commission's faced with implementing technologically advanced services like cellular communications and voice-messaging, by simply permitting ILECs to compete on a competitive and regulatory neutral basis to deploy advanced telecommunications networks and services. The Commission need only remember that competition, not government regulations, has created the unprecedented growth and demand for high-speed data and Internet services.

Market-driven competition should be just that simple.

I. SECTION 251(h) SUCCESSOR AND ASSIGNS REQUIREMENTS SHOULD NOT APPLY TO ILECS DEPLOYING ADVANCED TELECOMMUNICATIONS NETWORKS AND SERVICES

USTA opposes the Commission's imposition of the *Hobson's Choice* of deploying high-speed, advanced data and Internet services through administratively burdensome and costly separate affiliates, or be bound by the equally burdensome and costly Section 251(c) obligations should ILECs choose to provide such services in an integrated manner through their existing companies. Competitive markets, like the data and Internet markets, don't need protection from

further competition.

AT&T, Sprint, QWEST and others however, propose that in the Commission's separate affiliate model, Section 251(h) should apply.[1] Section 251(h) requires that the Commission apply Section 251(c) unbundling, resale, and interconnection requirements to successor and assigns of ILECs, and ILEC comparable carriers. USTA opposes these unnecessary, burdensome and costly requirements.

The Commission proposed the separate affiliate model as a purportedly less regulatory means for ILECs to gain forbearance from the requirements of Section 251(c)[2] when deploying high-speed data and Internet services over advanced telecommunications networks. AT&T and other CLECs proposed changes to the Commission's separate affiliate model are inconsistent with the Commission's rationale for providing an alternative for ILECs to deploy advanced telecommunications networks and services absent Section 251(c) obligations. What the CLECs' comments establish is their intent to seek government protection from competition to the detriment of the public's interest in the availability of advanced telecommunications services at the lowest, market-driven, prices. The Commission should reject these attempts to further burden ILECs with regulatory compliance obligations that CLECs are not otherwise required to meet.

Most importantly, the Commission has pending a proceeding reviewing a petition filed

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[1] *AT&T Comments* at 5-17; *Sprint Comments* at 4-7; *QWEST Comments* at 22-28.

[2] *Memorandum Opinion and Order and Notice of Proposed Rulemaking* ("NPRM") at 40-53, ¶¶85-117, CC Docket No. 98-147, released August 7, 1998.

by CompTel on March 23, 1998, regarding the application of Section 251(h) to ILEC in-region affiliates. CompTel's petition sought a declaratory ruling or, in the alternative, a petition for rulemaking ***regarding the regulatory status of affiliates of incumbent local exchange carriers ... that provide wireline local exchange or exchange access service within the ILEC's service territory using the same or similar brand name and common financial resources, personnel, and/or other resources of the ILEC or another corporate affiliate.***[3] In opposing the application of Section 251(h) to ILEC in-region affiliates, USTA stated:

> ***The petition requests the Commission to adopt a rebuttable presumption that an affiliate is a 'successor or assign' of an incumbent LEC - - and thus is subject to regulation as an incumbent LEC under Section 251(h) - - if the affiliate uses corporate or brand names that are the 'same or similar' to those of the incumbent LEC when the affiliate provides wireline service in the incumbent LEC's local service territory.***
>
> ***By seeking presumptively to restrict such an affiliate's use of the 'same or similar' corporate brand names, the petition's intent is apparent: to limit the competition that CLECs could face from such affiliates.***[4]

USTA also explained that the requested relief sought by CompTel was inconsistent with prior Commission rulings on BOC separate subsidiaries:

> ***A BOC affiliate should not be deemed an incumbent LEC subject to the requirements of section 251(c) solely because it offers local exchange service; rather, section 251(c) applies to entities that***

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[3] *Public Notice* DA 98-627, CC Docket No. 98-39, *Commission Seeks Comment on Petition Regarding Regulatory Treatment of Affiliated ILECs*, released April 1, 1998.

[4] *USTA Comments* at 3, CC Docket No. 98-39, May 8, 1998.

meet the definition of an incumbent LEC under Section 251(h).[5]

The Commission's regulations confirm USTA's position. Section 53.207 of the Commission's regulations states, in part, that ***A BOC affiliate shall not be deemed a 'successor or assign' of a BOC solely because it obtains network elements from the BOC pursuant to section 251(c)(3) of the Act.***[6] As USTA clearly established, affiliates of ILECs are not "successors or assigns" by definition and operation of law, and ILEC in-region affiliates are not "comparable carriers."[7] AT&T's intent in this proceeding, as was CompTel's intent in its petition, is to ***hamstring incumbent LECs and their affiliates competitively by proposing broad rules that would limit these carriers from arranging their business operations effectively for competition in the telecommunications marketplace.***[8]

II. PROPOSED REGULATION OF ILECS DEPLOYING DATA AND INTERNET SERVICES WILL STIFLE COMPETITION

AT&T and others offer a number of other anti-competitive proposals. According to these CLECs, the Commission should: (1) require ILECs to obtain prior Commission review and approval before providing advanced telecommunications services through a separate subsidiary; (2) require significant outside ownership of the ILECs separate subsidiary; (3) apply the

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[5] *Id.*

[6] 47 C.F.R. §53.207.

[7] *USTA Comments* at 2-8; *USTA Reply Comments* at 6-10, CC Docket No. 98-39.

[8] *USTA Comments* at 2-3, CC Docket No. 98-39.

Commission's separate subsidiary requirements and AT&T's proposed modifications upon all ILECs regardless of their size: (4) prohibit resale by ILEC separate subsidiaries; (5) forbid virtual collocation agreements between a separate subsidiary and affiliated ILEC; (6) find it technically feasible for ILECs to unbundle basic loops, xDSL capable loops, and xDSL equipped loops; and (7) prohibit RBOCs from creating in-region affiliates unless Section 251(c) obligations are met in accordance with the standards established by competitors.[9]

What AT&T, GST, MCI WorldCom and others are attempting to do in the Commission's Section 706 proceedings is again litigating the Commission's implementation of the local competition provisions of the Telecommunications Act of 1996 ("Act"). On October 13, 1998, the United States Supreme Court heard oral arguments on many of these issues. Yet, CLECs like AT&T clearly seek to impose a checklist requirement on all ILECs as a means to prohibit ILECs from deploying advanced telecommunications networks and services on a competitive and regulatory neutral basis. This effort by AT&T and other CLECs is typical of CLECs who wish to do nothing more than entangle ILECs in administratively burdensome and costly regulations to ensure that they maintain their competitive advantage in the deployment of high-speed data and Internet services. These proposals are anti-competitive, protectionist, and inconsistent with the pro-competitive, deregulatory intent of the Act and Section 706. Under proposals recommended by the CLECs, the public will have fewer options, pay more for access to high-speed data and Internet services, with advanced telecommunications networks selectively

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[9] *AT&T Comments* at 10-50; *GST Comments* at 10-37; *MCI WorldCom* at 17-73.

deployed in high income and densely populated residential and business districts to the exclusion of less populated, lower income areas. This country will then become a nation of technology accessible haves and have nots. The current activity of CLECs, including AT&T, in targeting business districts at the exclusion of residential customers, is clear evidence of their "cherry picking" strategy.

Critically important to nationwide deployment of advanced telecommunications networks is participation by ILECs - - including small, rural and mid-size ILECs - - on a competitive and regulatory neutral basis, to provide high-speed data and Internet services. By imposing separate affiliate requirements on small, rural and mid-size companies as recommended by AT&T, the Commission will add costly and administratively burdensome regulations on ILECs which can least afford to meet such requirements. USTA urges the Commission to reject such proposals as disincentives to the deployment of advanced telecommunications networks and services throughout the country.

CONCLUSION

USTA supports market driven competition. A thriving market in high-speed data and Internet services has developed in the absence of government regulation, and notwithstanding the unsubstantiated assertions that ILECs or impeding its further growth. Current Commission proposals, and those of ILEC competitors, can only stifle the growth of further competition intended by the Act. The Commission has within its power, independent authority under Section 706, to remove barriers to infrastructure investment in advanced telecommunications

networks by ILECs. USTA urges the Commission to eliminate those regulatory barriers to competition set forth in the NPRM to ensure that ILECs can deploy the high-speed data and Internet services over advanced telecommunications networks the public demands. The business and financial risks which ILECs must consider should be driven by market demand, not curtailed by government regulations which promotes advantages for ILEC competitors not won through competition. The public's interest in increased choices, lower prices, and ubiquitous deployment of advanced telecommunications networks is best served through free market competition.

Competition should be just that simple.

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