EX PARTE OR LATE FILED

AT&T

Frank S. Simone
Government Affairs Director

Suite 1000
1120 20th Street, N.W.
Washington, DC 20036
202 457-2321
FAX 202 457-2165
fsimone@lgamgw.attmail.com

January 19, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S. W. – Room TWB-204
Washington, D. C. 20554

Re: *Ex parte*, CC Docket No. 98-147, Deployment Of Wireline Services Offerings Advanced Telecommunications Capability

Dear Ms. Roman Salas:

On Friday, January 15, 1999, Leonard Cali, James Bolin and the undersigned, of AT&T, met with Linda Kinney, Legal Assistant to Commissioner Susan Ness. The purpose of the meeting was to discuss AT&T's views in the above-referenced proceeding. During the course of the meeting I distributed the attached outline of AT&T's position in this matter. In addition, attached to this Notice are copies of publicly available documents outlining BOC plans to accelerate the deployment of advanced telecommunications capabilities and several previously filed *ex parte* documents regarding AT&T's position on the Commission's separate affiliate proposal and its LATA boundary modification proposal.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206 (b) of the Commission's rules.

Sincerely,

F S Simone

ATTACHMENTS

cc: L. Kinney

No. of Copies rec'd 0+1
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"Data Affiliate" Proposal

The NPRM's "data affiliate" proposal is contrary to the 1996 Act, and would exceed the authority granted the Commission by Congress.

- Congress granted broad forbearance powers to the Commission in § 10, but expressly withheld authority to forbear from § 251(c).

- The NPRM's proposal would short-circuit the regime Congress established by using § 272 as a template for forbearance from § 251(c).

- Congress applied the § 272 separate affiliate safeguards in a clearly defined circumstance: to BOCs that already have proven through the § 271 process that their markets are open to competition.
  - --Section 272 is intended to provide additional safeguards to protect local competition after a BOC fully complies with § 271.
  - --Nothing in § 272 suggests that section suffices to confer non-ILEC status. Instead, Congress provided criteria for determining "ILEC" status in § 251(h).

- The NPRM posits that an affiliate would be "truly separate" from an ILEC. In fact, the affiliate would simply be the ILEC's alter ego.
  - --A wholly-owned affiliate has no legal duty – and no economic incentive -- to act other than in the interest of its ILEC parent.
  - --NPRM would permit ILEC alter ego to operate in ILEC's territory, using ILEC's brand, but without protections Congress enacted in § 251(c).
  - --If ILEC is permitted to transfer facilities to affiliate, then affiliate also would operate using the very network assets that § 251(c) now covers.

- Data affiliates would also be "successors or assigns." Those terms have broad meanings, and should be read to effectuate Congress intent in enacting § 251 – to open local markets by permitting CLECs to share ILEC economies of scale and scope.

- Transaction disclosure requirements do not alter ILECs' ability to control affiliate's operations. Congress could have mandated "transparency" in lieu of § 251(c), but did not do so.

- The record clearly shows ILECs have failed to comply with existing requirements for collocation and other aspects of § 251, as well as § 272. There is no basis to presume ILECs will comply with amended rules.

AT&T

Frank S. Simone
Government Affairs Director

Suite 1000
1120 20th Street, N.W.
Washington, DC 20036
202 457-2321
FAX 202 457-2165
fsimone@lgamgw.attmail.com

December 31, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S. W. – Room TWB-204
Washington, D. C. 20554

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

Dear Ms. Roman Salas:

This letter responds to several issues raised in recent discussions AT&T has had with members of the Commission's staff regarding the Commission's authority under § 3(25)(B) of the Communications Act to grant Bell Operating Companies what has been referred to as "targeted interLATA relief." In particular, some of the RBOCs, such as Ameritech, have proposed in their comments on the pending NPRM in this docket that the Commission should establish new "data LATAs" that would encompass entire states that are today divided into multiple LATAs (or that otherwise would have geographic boundaries larger than current LATAs). According to these proposals, BOCs that have not met the requirements of § 271 would nonetheless be authorized, within these larger areas, to provide what are currently prohibited interLATA data services, provided they met certain minimal conditions, such as utilizing a separate affiliate.

Such relief would exceed the Commission's statutory authority, because it would represent an act of forbearance from the requirements of § 271 -- which § 10(d) of the Act expressly prohibits. These requests are merely an improper attempt to resurrect, through the back door of § 3(25)(B), the § 271 forbearance requests that the Commission correctly held were beyond its authority in its Memorandum Opinion and Order in the instant docket.[1] In that Order, the Commission expressly rejected attempts to recharacterize such relief as "boundary

[1] *See* Memorandum Opinion and Order, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, ¶¶ 69-79 ("*Advanced Telecommunications Services*").

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modifications," holding that requests for "large-scale changes in LATA boundaries" were "functionally no different" from requests for prohibited forbearance from § 271.[2] The present proposals cannot be saved by claims that they are less "large-scale" than the proposals the Commission has already rejected. That is so for at least two independent reasons.

First, any such distinction, even if true, would be irrelevant. All of the present and past BOC proposals for interLATA relief for so-called "data" services share a common and dispositive flaw: they fundamentally misperceive the difference between the authority to establish or modify LATA boundaries under § 3(25)(B), which the Commission has, with the authority to forbear from particular requirements of § 271, which the Commission lacks. Section 3(25)(B) defines -- and gives the Commission some authority to redefine -- the geographical boundaries of LATAs. The regulatory consequences of those geographical boundaries, however, are the sole province of § 271. That section, as is well understood, prohibits the BOCs from providing within their regions landline telecommunications services that cross the boundaries established under § 3(25)(B), unless they first satisfy the competitive checklist and the other statutory prerequisites for interLATA relief. Section 10(d), moreover, expressly and unequivocally prohibits the Commission from forbearing from applying the requirements of § 271 unless (as no one claims has yet occurred) those requirements have been "fully implemented."

Accordingly, while the Commission can engage in some degree of "redrawing the map lines" under § 3(25)(B), it cannot revise the statutory requirements that *apply* to those lines under § 271. Thus, for example, because § 271's prohibitions apply equally to "data" and voice services,[3] the Commission cannot say that a LATA boundary that exists for voice services (whether a LATA boundary that was established under the MFJ or one that was subsequently established or modified by the Commission) can be disregarded for data services. Similarly, because the competitive checklist may not be "limit[ed]" by the Commission,[4] and because those requirements and the others imposed by § 271 may not be the subject of forbearance,[5] the Commission may not decide that satisfaction of some lesser portion of those requirements will suffice to enable a BOC to provide service across certain LATA boundaries. Such action would not be a boundary "modification" or "establishment" under § 3(25)(B), but rather a prohibited attempt to rewrite § 271 by substituting a new regulatory scheme governing when BOCs may provide interLATA service. Each of the BOC proposals is unlawful for that reason.

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2 *Id.*, ¶¶ 80-82.

3 *See Advanced Telecommunications Services*, ¶¶ 35-37.

4 *See* 47 U.S.C. § 271(d)(4).

5 *See* 47 U.S.C. § 160(d).

This analysis is confirmed by the very authorities on which the BOCs seek to rely. Bell Atlantic's comments, for example, claim (at p. 5 n.2) that "[m]odifications of LATA boundaries were granted under the MFJ for specified purposes, particularly to make possible the speedier deployment of new telecommunications services or increased competition," and argue that the Commission here would be exercising the same type of authority. But the cases Bell Atlantic cites were not "boundary modification" decisions. To the contrary, they were decisions in which Judge Greene granted partial *waivers* of the MFJ's interexchange restriction -- precisely the authority that the Commission is precluded from exercising under § 10(d). Thus, for example, when the MFJ Court authorized the BOCs to provide cellular services in certain areas across LATA boundaries, it made clear that the granting of such relief required that the BOCs first meet the MFJ's stringent standard for "removal" of the decree's line-of-business restrictions.[6] Moreover, the Court made clear that, when such waivers were granted, the LATA lines remained unchanged -- for the Court's decisions stated that the BOCs would be prohibited from constructing or owning the interLATA links themselves, and instead were required to lease any transport across LATAs from interexchange carriers.[7] Thus, the Court in those decisions was not modifying LATA boundaries (the authority the Commission may exercise under § 3(25)(B)), but rather was waiving the prohibition against providing certain services across certain of those boundaries (the authority the Commission is precluded from exercising by § 10(d)).

Second, even the Commission's authority simply to "establish" or "modify" LATA boundaries -- *i.e.*, to redraw lines *without* purporting to dictate new regulatory requirements for how those lines would affect the rights of the BOCs -- is limited by § 10(d). That section "limits the manner in which the Commission may exercise its sole and exclusive authority to approve the establishment of or modification to LATA boundaries" and does not sanction "the piecemeal dismantling of the LATAs."[8] Thus, for example, the Commission correctly held that establishing a single "global LATA," as Ameritech previously requested, would exceed its authority because such action would "effectively eviscerate" §§ 10(d) and 271.[9] The broad interLATA relief the BOCs have requested would be unlawful under this second ground as well.

In particular, the principal distinction on which the BOCs rely in suggesting that the relief they seek would be "limited" -- a purported distinction between "data" and "voice" services -- is unsustainable. If the BOCs were provided with relief for so-called "data" traffic,

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6 *See United States* v. *Western Elec. Co.*, 578 F. Supp. 643, 649-650 (D.D.C. 1983).

7 *See id.* at 650 n.28, 651-652.

8 Order, *Petition for Declaratory Ruling Regarding U S WEST Petitions to Consolidate LATAs in Minnesota and Arizona*, 12 FCC Rcd. 4738, 4751, 4752 (1997).

9 *Advanced Telecommunications Capability*, ¶¶ 80-82.

then they would have every reason to convert what is today circuit-switched voice traffic into IP telephony so as to magnify the scope of their relief and "effectively eviscerate" §§ 10 and 271. Data traffic already is rapidly outstripping voice as a source of minutes and revenue for carriers, and even the BOCs concede that the two could soon be indistinguishable. As Bell Atlantic Chairman Raymond Smith has stated, "Currently, 55 percent of our traffic is data. In three to four years, 75 percent of our traffic will be data and 25 percent voice; it will be hard to tell one from the other when you consider voice over the Internet."[10]

Sincerely,

cc: L. Strickling
C. Mattey
J. Goldstein
A. Gomez
G. Cooke
T. Power
L. Kinney
J. Casserly
K. Dixon
P. Gallant
K. Martin

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10 *Internet Week* (March 2, 1998). Although Ameritech has suggested in *ex parte* filings in this docket that the Commission somehow could exclude IP telephony from LATA boundary modifications targeting "data" traffic, there appears to be no practical means to accomplish that end (and Ameritech has proposed none).

AT&T

Frank S. Simone
Government Affairs Director

Suite 1000
1120 20th Street, N.W.
Washington, DC 20036
202 457-2321
FAX 202 457-2165
fsimone@lgamgw.attmail.com

December 9, 1998

RECEIVED
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW, Room TWB-204
Washington, D.C. 20554

Re: Ex Parte Meeting, CC Docket No. 98-147, Deployment of Wireline Services Offering Advanced Telecommunications Capability

Dear Ms. Roman Salas:

On Tuesday, December 8, 1998, Leonard Cali, James Bolin, Michael Pfau, and I, of AT&T, met with Larry Strickling, Chief of the Common Carrier Bureau, Carol Mattey, Chief of the Policy Division, and Jordan Goldstein, Attorney for the Policy Division. During this meeting we discussed AT&T's views on the Commission's separate affiliate proposal and AT&T's proposed draft rules on collocation and loop unbundling.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(2) of the Commission's rules.

Sincerely,

Attachments

cc: Larry Strickling
Carol Mattey
Jordan Goldstein

Recycled Paper

Separate affiliate

- Infirm as a matter of law
- Infirm as a matter of policy

Collocation

- Minimum national guidelines and rules will foster entry
- Expand collocation options
- Require nondiscrimination, monitor performance

Loop unbundling

- Basic loop (voice and analog data services)
- xDSL capable loop
- xDSL equipped loop

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

Separate Affiliate Proposal

The NPRM's "data affiliate" proposal is contrary to the 1996 Act, and would exceed the authority granted the Commission by Congress.

- Congress imposed specific requirements on ILECs in § 251(c), and expressly exempted that section from the Commission's otherwise broad forbearance powers under § 10.

- There is no relevant legal distinction between POTS and advanced services -- both are subject to § 251(c) and to § 10.
  --Advanced services carry voice as well as "data."

- The NPRM's proposal would short-circuit the regime Congress established by effectively using the § 272 requirements as a template for granting forbearance from § 251(c).

- Congress wrote the § 272 separate affiliate safeguards to apply in clearly defined circumstances: to BOCs that have met the § 271 requirements for in-region interLATA relief.
  --Section 272 seeks to limit BOCs' ability to abuse their remaining market power <u>after</u> they have satisfied § 271.
  --Nothing in § 272 suggests that section suffices to confer non-ILEC status on ILEC affiliates.
  --Section 272(a)(1)(A) does not support the NPRM's proposal. If anything, that section makes clear that that an affiliate that complies with § 272 does not thereby escape § 251(c). (See attachment).

- Congress provided criteria for determining "ILEC" status in § 251(h). No reasonable interpretation of that section, or of the Act as a whole, could conclude that the proposed "data affiliates" can escape regulation as incumbent LECs.

Separate Affiliate Proposal

The NPRM's "data affiliate" proposal is contrary to the 1996 Act, and would exceed the authority granted the Commission by Congress.

- The NPRM posits that proposed affiliate would be "truly separate" from the ILEC, and therefore not subject to § 251(c). In fact, affiliate would simply be the ILEC's alter ego.
  - –Affiliate would be wholly-owned by ILEC, and therefore have no legally enforceable duty to act other than in the interest of ILEC.
  - –Proposal would permit ILEC alter ego to operate in ILEC territory, using ILEC brand, but without protections Congress enacted in § 251(c).
  - –If ILEC is permitted to transfer facilities to affiliate, then affiliate also would operate using the very network assets that § 251(c) now covers.

- The proposed requirements for disclosure of dealings between an ILEC and its wholly-owned affiliate do not alter ILEC's ability to control affiliate's operations.
  - –Congress could have mandated "transparency" for ILEC operations in lieu of § 251(c). It did not do so.
  - –In all events, the record before the Commission clearly shows that its § 272 rules have been ineffective. BOCs have openly refused to comply with existing § 272 disclosure requirements, and have engaged in numerous other violations.

Separate Affiliate Proposal

Contrary to the argument that has been offered in this proceeding, § 272(a)(1)(A) does not support the NPRM's proposal. In fact, that section makes clear that an affiliate that complies with § 272 does not thereby escape § 251(c). Section 272(a)(1) provides that:

> (1) In general.--A Bell operating company (including any affiliate) which is a local exchange carrier that is subject to the requirements of section 251(c) may not provide any service described in paragraph (2) unless it provides that service through one or more affiliates that--
>
> > (A) are separate from any operating company entity that is subject to the requirements of section 251(c); and
> >
> > (B) meet the requirements of subsection (b).

If anything, this provision demonstrates that Congress understood that BOCs might try to evade the Act's requirements by creating subsidiaries, and intended that such subsidiaries would be treated as ILECs pursuant to 251(h). Section 272(a)(1) could simply have referred to "any BOC" -- particularly since the statutory definition of "Bell operating company" includes successors or assigns "that provide wireline telephone exchange service."[1] Instead, Congress invoked § 251(c), which applies not only to BOCs, but to <u>all</u> ILECs; and Congress therefore invoked the criteria of 251(h) in addition to § 3(4)'s more limited requirements for a carrier to be deemed a BOC. In § 272(a)(1), as elsewhere in the Act, Congress took pains to prevent ILECs from escaping the specific obligations it imposed on incumbents in § 251(c).

Section 272(a)(1)(A) nowhere states that a BOC affiliate that complies with § 272 is therefore not subject to § 251(c). Instead, that section provides that in order

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1 47 U.S.C. § 153(4)(B).

for a BOC affiliate to offer in-region interLATA services following Commission approval of the BOC's § 271 application for a given state, the affiliate must both (*i*) comply with § 272(b) and (*ii*) be sufficiently separate from the BOC (or from the BOC's ILEC affiliate) so as not to be subject to section 251(c) -- that is, the affiliate must not fall within § 251(h)'s definition of an "incumbent local exchange carrier." By its plain language, § 272(a)(1)(A) is a mandatory phrase, not a declaratory one. That section provides that in order to offer certain services, a § 272 affiliate "must not be an ILEC;" not that it "is not an ILEC" if it satisfies § 272(b).

The Commission therefore may not point to section 272(a)(1)(A) as evidence that an affiliate that complies with § 272 is a non-ILEC. To the contrary, that section charges the Commission with determining whether a BOC affiliate is sufficiently separate to be deemed a non-ILEC pursuant to § 251(h), in addition requiring that such an affiliate satisfy section 272(b).

Collocation

National guidelines and rules applicable to collocation are needed now to achieve the following:

- Expand Collocation Options
- Expand Equipment Types That May Be Collocated and Limit Qualification Constraints
- Assure Nondiscrimination When Space Exhausts
- Provide for Specific Monitoring Collocation Performance

Loop Unbundling

Three separate loop configurations are necessary to support the development of competition.

- Basic Loop: to permit competition in the local market for traditional voice only or analog data services
- xDSL Capable Loop: to permit competition for data or voice & data over a loop where conditions are conducive (loop length, intervening electronics & collocation)
- xDSL Equipped Loop: to permit competition for data or voice & data services over a loop where incumbent has offered service and/or condition inhibit delivery of a comparable service

AT&T

Frank S. Simone
Government Affairs Director

Suite 1000
1120 20th Street, N.W.
Washington, DC 20036
202 457-2321
202 457-2165
fsimone@gamgw.attmail.com

December 10, 1998

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DEC 11 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW, Room TWB-204
Washington, D.C. 20554

Re: Ex Parte Meeting, CC Docket No. 98-147, Deployment of Wireline Services Offering Advanced Telecommunications Capability

Dear Ms. Roman Salas:

On Wednesday, December 9, 1998, James Bolin and I, of AT&T, met with Carol Mattey and Jordan Goldstein of the Common Carrier Bureau's Policy and program Planning Division and Gregory Cooke or the Network Service Division. The purpose of this meeting was to discuss AT&T's views of the Commission's authority to modify or change LATA boundaries. AT&T's presentation here is consistent with its written comments in the above-referenced proceeding.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(2) of the Commission's rules.

Sincerely,

Attachments

cc: Carol Mattey
Jordan Goldstein
Gregory Cooke

Recycled Paper

LATA Boundary Modifications

Section 10(d) expressly forecloses piecemeal interLATA relief through LATA boundary modifications or waivers

As the Commission has found, § 706 is not a grant of additional powers, but merely directs the Commission to use "the authority established elsewhere in the Act" in support of advanced services.

Section 10(d) prohibits not only total forbearance from its requirements, but also partial or purportedly minor acts of forbearance.

Section 3(25)(B) provides only authority to make the types of administrative changes to LATAs made by the MFJ court.

- E.g., ELCS plans, ICO territory associations
- Minor modifications with minimal effect on interLATA competition

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

LATA Boundary Modifications

As the Commission has found, significantly altering or eliminating LATA boundaries would stifle RBOCs' incentives to open their local markets

Any attempt to limit LATA boundary modifications to provision of "data" services would be unworkable.

- *"Currently, 55 percent of our traffic is data," said Bell Atlantic Corp. Chairman Ray Smith. "In three to four years, 75 percent of our traffic will be data and 25 percent voice; it will be hard to tell one from the other when you consider voice over the internet."*

  InternetWeek, March 2, 1998

There is no valid basis to permit RBOCs to provide what is currently interLATA transport.

- Interexchange market is highly competitive -- prices are close to cost
- No reason to believe RBOCs would have a cost advantage over IXCs -- unless they improperly subsidize advanced services or engage in discrimination
- Only existing RBOC interLATA links are their official services networks. These were built using local revenues and were not supposed to be used to compete in interexchange market

LATA Boundary Modifications

There is no evidence that LATA modifications are needed -- or that RBOCs are willing to serve purportedly underserved areas

The interexchange market is providing adequate capacity, even in the face of exploding demand -- and no RBOC has provided any reliable evidence to the contrary

Bell Atlantic's West Virginia petition is a warning, not an opportunity

- Unsupported allegations and anecdotes cannot provide a basis for LATA modifications
- Bell Atlantic continues to repeat its West Virginia claims both at the FCC and elsewhere, despite their utter lack of factual basis

US WEST conceded in congressional testimony that even with regulatory relief it would not give a "commitment" to a time frame for deployment.

- There is no reason to believe RBOCs' economics of serving rural areas differ from those of IXCs participating in competitive interLATA market.

January 8, 1999

BY FACSIMILE/BY HAND

The Honorable Bob Rowe
Commissioner, Montana Public Service Commission
First Vice President
Chair, Communications Committee
National Association of Regulatory Utility Commissioners
1100 Pennsylvania Ave., N.W.
Room 603
P.O. Box 684
Washington, D.C. 20044

Re: Implications of FCC Separate Affiliate Proposal for Local Exchange Telephone Service

Dear Mr. Rowe:

We are writing to express our serious concerns regarding the FCC's pending proposal to permit incumbent local exchange carriers to create unregulated separate affiliates. 1/ This proposal, if adopted as written, would allow ILECs to subdivide themselves into "Old LECs" and "New LECs." The New LEC would operate on a substantially unregulated basis, leaving little incentive for the ILEC parent company to upgrade either the Old LEC network used today, or the services offered by that regulated company. It is our understanding that the FCC is currently planning to decide on this proposal at its January 28 agenda meeting.

We do not believe that the FCC fully appreciates the consequences of its proposal on state regulation of local companies. The Old LEC/New LEC structure raises a number of key issues concerning local pricing, the integrity of the local exchange network, and the future of competitive choice. In several areas, the FCC may expect that state certification and quality regulation will address the most serious consequences of its proposal. It is not apparent to us, however, that the states share the FCC's assumptions concerning their jurisdiction, resources and responsibility.

1/ *See* Memorandum Opinion and Order and Notice of Proposed Rulemaking, Deployment of Wireline Services Offering Advanced Telecommunications Capability, FCC 98-188 (released Aug. 7, 1998) ("*ILEC Separate Affiliate NPRM*").

Given the key role of state commissions in all of these matters, it is important that the FCC and the states have an opportunity to fully air the potential impact of the Old LEC/New LEC structure carefully before the FCC acts on its proposal. To this end, we suggest that NARUC convene a forum with interested parties and federal and state regulators to address the respective state and federal implications of this proposal.

We have separately challenged the lawfulness of the FCC plan under the Telecommunications Act of 1996. We do not think the FCC may sidestep the requirements of Sections 251(c) and 271 through inadequate structural separation. However, our purpose here is to focus on whether and how the FCC-designed plan comports with the larger policy goals of the states. The FCC already has recognized that its separate affiliate plan requires coordination with the states to some extent. 2/ We believe that this process should now be accelerated, and be completed before the FCC takes unilateral action on its proposal.

I. The FCC's Separate Affiliate Proposal Is Not Limited to So-Called "Advanced Services"

In its August 1996 *ILEC Separate Affiliate NPRM*, the FCC has proposed to allow ILECs to use separated subsidiaries to house new network investments and offer services on a substantially deregulated basis. The FCC's plan would essentially allow an ILEC to create a "New LEC" that would operate side-by-side with its present "Old LEC" telephone company. The Old LEC would hold most and perhaps all of the existing local exchange facilities (though the FCC is considering allowing some recent investment to be transferred to the New LEC). Old LEC would continue to offer the services it does today on a regulated basis. In contrast, the FCC envisions New LEC as a largely unregulated company offering "new" services such as those using xDSL technology. 3/

2/ *See*, e.g., id. at ¶ 117 (requesting comment on how to prevent the degradation of the existing ILEC network under the separate affiliate structure).

3/ Specifically, the FCC has proposed not to classify the New LEC as an ILEC "affiliate" under Section 251(h) of the 1996 Act, thereby exempting the New LEC from Section 251(c) and other provisions of the Act applicable to incumbent LECs.

The FCC's announced focus in this docket is on promotion of "advanced" (broadband) services. As a result, relatively little attention has been paid to the unlimited scope of the separate affiliate plan in practice. Yet the FCC plan does not draw lines that would restrict either the kinds of investment New LEC could make, or the kinds of services it could offer.

On the contrary, the FCC proposal creates affirmative incentives to cannibalize the Old LEC by migrating activity into the New LEC. *All* the services of New LEC would be deregulated, so ILECs would have every incentive to freeze (or eliminate) their current Old LEC service offerings, while marketing a full menu of new and existing services through the separated affiliate. 4/ And *all* the exchange plant investment of New LEC would be excused from the interconnection, unbundling and other market-opening requirements of the Telecommunications Act, whether fiber and copper plant or any other exchange facilities. ILECs would have little incentive to make new plant investments through the Old LEC, and every reason to shift investment capital to the New LEC. 5/

The FCC also proposes to classify the New LEC's interstate services as non-dominant. *Id.* at ¶ 86.

4/ We are not necessarily suggesting that Old LEC would withdraw its own services overnight. We would expect ILECs to "manage" the customer base transition to New LEC over time to meet overall corporate objectives. However, the process would be predictable, and inexorable, beginning with the services the ILECs are most anxious to self-deregulate.

5/ Under the FCC's proposal, not only could New LEC deploy network *enhancements* for broadband service, New LEC also could supplant Old LEC as the provider of network *expansion* facilities. Thus, for example, if the FCC's proposal were adopted, when a new subdivision is built, New LEC rather than Old LEC could build the exchange plant to that subdivision and offer service instead of the current certificated LEC. As another example, under the proposal, when a residence or business wants more lines, New LEC could supply that service. When a business wants to expand the capacity of the dedicated special access to its premise, New LEC could do that too.

The FCC proposal appears motivated in part by ILEC arguments that they only will invest in broadband packet technology if they are freed from regulation. It is difficult to see why this is so. Such technology is part of the natural evolution of the local network that has occurred before and will occur again. Broadband packet technology does not require the construction of a new or parallel local network. It only involves, for example, the use of electronics to boost the capacity of existing copper loops, or the addition of electronics and routers to existing interoffice transport facilities. These changes are similar to the evolution of the public switched network from analog to digital switching, from in-band to out-of-band signaling, and from copper to fiber optic transmission media. These evolutionary changes all occurred in a regulated environment, and were funded by monopoly ratepayers. There is no reason to believe that ILECs will not have similar incentives to upgrade their networks in the future.

II. The Implications of the Separate Affiliate Proposal.

A. Implications for Ratepayers.

We believe that the potential consequences of the Old LEC/New LEC structure are complicated and profound, and require more careful review than is possible here. Again, our immediate purpose is to request a discussion of these matters before NARUC and more broadly to open a continuing dialogue.

State commissions traditionally have had the primary responsibility for preserving the integrity and quality of the local network itself. Yet it is not clear, under the FCC's proposal, what the state commissions' role would be in safeguarding the integrity of the network, or what powers would remain with the state commission for this purpose. This key question, which is not squarely addressed in the FCC's *Notice*, must be fully answered.

We fear that the FCC's separate affiliate proposal, while well-intentioned, could condemn the public switched network to technological obsolescence by encouraging ILECs to put all new investment in, and offer all new services through, the unregulated New LEC subsidiary. ILECs would steadily migrate their customer base from the Old LEC to the New, favoring their higher volume customers in this process. States would be left regulating an increasingly irrelevant Old LEC.

B. Implications for Local Exchange Competition.

The FCC's proposal also has serious implications for potential local exchange competition. A key element of the FCC plan is to shelter future ILEC network investment from the interconnection mandates of Section 251(c) of the Telecommunications Act. The practical consequences will be to deny competitors access to network elements they need to offer service on a mass market basis.

This fact is ironic given that one of the FCC's rationales for its separate affiliate plan is to create stronger protections against ILEC discrimination with respect to network element provisioning. The FCC hopes that the New LEC will obtain network elements from the Old LEC on the same terms and conditions, and over the same operations support systems, as other competitors.

Yet this goal is undermined to the extent that key network elements competitors actually need to compete are sheltered in the New LEC rather than provided by the Old. We are concerned about both new ILEC investment to expand the local exchange network's reach, and new investment to enhance its capability, whether for broadband or other services. Both are crucial in order for other carriers to compete with the ILECs in the evolving telecommunications marketplace. Yet the FCC plan would permit and encourage ILECs not to upgrade the Old LEC network, and thereby deny the intent of Section 251(c).

We strongly believe that this aspect of the FCC plan is unlawful. The ability of competitors to employ ILEC network elements is at the heart of the 1996 Act. Congress understood that broad-based local competition was unlikely to develop if competitors had to duplicate the ubiquitous local exchange network in order to provide service. Congress therefore provided broad access to the capabilities of that network as network elements. 6/ Congress did not attempt to

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6/ The term "network element" is broadly defined under the Act. 47 U.S.C. § 251(c)(3). Network elements can be any equipment, facility, functionality, feature or capability of the incumbent LEC network -- whether it employs packet or circuit-switching technology, offers narrowband or broadband capability, or carries voice or data. 47 U.S.C. § 153(29). The FCC established this principle clearly, both in its rules implementing the 1996 Telecommunications Act, and more recently in its August 1998 *Advanced Services Order*.

predetermine which network elements are more necessary to competition than others -- let alone freeze the definition to include only the pre-Act ILEC network. Instead, Congress wisely recognized that it is impossible to predict which network elements will be needed by which competitors to serve which customers, in which geographic areas, or what technology will look like at any given time.

The Act provided a flexible interconnection rule that permits the economics of local investment to dictate when that investment makes sense. After all, consumers ultimately must pay for network investment, including duplicative investment.

We strongly believe that the component of the FCC's plan that would exempt ILEC facilities from Section 251(c) will seriously retard both the speed with which local exchange competition develops, and in particular the number of consumers that enjoy any material choice at all.

Finally, we would observe that the FCC's proposal also has serious implications for competition in other telecom markets. As market barriers break down, consumers are likely to buy multiple services from the same provider, possibly in bundled service offerings. If competitors cannot duplicate ILEC packaged offerings because they cannot provide the full local component -- including the broadband services the FCC wishes to promote -- then they will have difficulty competing for any of the *other* services in those packages.

Conclusion

The FCC's ILEC separate affiliate plan raises profound issues that will directly affect state commissions, local exchange ratepayers, and competition. We urge NARUC to convene a federal/state forum to discuss the issues raised by the FCC's proposal.

Sincerely yours,

AT&T CORP.

Wayne Fonteix /cwo

Wayne Fonteix
State Public Affairs Director

QWEST COMMUNICATIONS CORPORATION

Drake Tempest /cwo

Drake Tempest
Executive Vice President and General Counsel

THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

Genevieve Morelli /cwo

Genevieve Morelli
Executive Vice President and General Counsel

MCI/WORLDCOM

Jonathan B. Sallet /cwo

Jonathan B. Sallet
Chief Policy Counsel

cc: Jim Sullivan, President
Margaret Welsh, Executive Director
Charles Gray, General Counsel
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Tuesday January 12, 3:14 pm Eastern Time
Note: this article has been superseded by a later article.

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Company Press Release

Got Bandwidth? Pacific Bell Answers California's "Need For Speed" With $39 Adsl Service, Major Availability

Lightning-Fast ADSL Enables Californians to Make the Most of the Internet

SAN FRANCISCO--(BUSINESS WIRE)--Jan. 12, 1999-- SBC Announces Largest Deployment of ADSL in the United States

The wait for affordable super-fast access to the Internet is over for millions of California households and small businesses. Pacific Bell announced today it is reducing prices on its popular high-speed Internet access service and making it available to millions more of its customers throughout the Golden State.

In a related announcement today, Pacific Bell's parent company, SBC Communications, Inc. (SBC), announced plans for the largest rollout of Asymmetrical Digital Subscriber Line (ADSL) service in the country. By the end of 1999, SBC intends to provide ADSL service from 526 central offices to 8.2 million residential and 1.3 million business customers. In California, Pacific Bell will almost triple its current deployment of ADSL, providing service in central offices that serve 70 percent of its customers by the end of the year.

Pacific Bell plans to offer ``always on" ADSL service with guaranteed minimum connection speeds -- which enables users to connect to the Internet at speeds up to 200 times faster than today's conventional 28.8 Kpbs modems -- for as low as $39 a month. In addition, Pacific Bell and Pacific Bell Internet Services will offer ADSL service and Internet access packages for as little as $49 per month. ADSL equipment and installation will be available for as little as $198. These new, attractive price points represent a decrease of 45 percent for ADSL service and Internet access, and 34 percent for ADSL installation and equipment.

See attachment for specific pricing details.

By reducing its cost and boosting deployment, Pacific Bell is making high-speed Internet access a

viable option today for millions of households and small businesses who are looking for greater bandwidth to make the most of the Internet or to connect to the office network from home. Pacific Bell will invest more than $100 million in 1999 to upgrade its ADSL technology and equip 255 central offices with the service. Pacific Bell estimates that as many as 5 million residential and 900,000 business customers will qualify for ADSL service from the 255 central offices.

``Got bandwidth? For the vast majority of Americans, the answer is still no," said Ed Mueller, president and CEO of Pacific Bell. ``Fortunately for Californians, Pacific Bell is answering the Golden State's 'need for speed' by undertaking the country's largest single- state deployment of ADSL service and making it substantially more affordable. Now, Californians can surf the web and connect to the office at quicksilver speeds for less than the cost of taking a family of four to the movies."

``We are confident ADSL service from Pacific Bell will become the high-speed Internet access of choice for California. We're putting ADSL within reach of millions more Californians so that customers will get great value, superior service, all the speed they need and transport provided over the highly-reliable Pacific Bell network," added Mueller.

With the $39 per month ADSL service, Pacific Bell's customers can simultaneously use a phone or fax machine while getting downstream connection speeds up to 1.5 Mbps and an upstream connection speed of 128 Kbps -- 50 times faster than today's most common 28.8 analog modems.

Downstream through-put speeds will vary depending on the customer's distance from the central office and other factors, but the connection speed will be at a guaranteed minimum of 384 Kbps. Pacific Bell estimates 75 percent of its customers qualifying for ADSL will get downstream connection speeds of 1.5 Mbps.

For customers demanding higher speeds, Pacific Bell and Pacific Bell Internet Services will offer a package with downstream connection speeds of up to 6 Mbps, and an upstream connection speed of 384 Kbps. Downstream connection speeds will be guaranteed at a minimum of 1.5 Mbps.

In addition to downloading data, graphics, audio and video, ADSL's speed transforms e-commerce transactions by creating faster responses for on-line traders and buyers, faster information exchanges between business partners and faster on-line sales. And the e-commerce explosion is just beginning. In fact, Deloitte & Touche predicts a four-fold increase in e-commerce during the next two years.

ADSL: A Better Broadband Solution

With today's announcement, more than half of Pacific Bell's customers will be able to subscribe to lightning-fast ADSL service by the end of the year. This is crucial because industry insiders estimate 35 percent of the nation's Internet traffic begins and ends in California. Add that to the fact more than 3.7 million Pacific Bell households are anticipated to be online by the year 2000, and you have the start of a ``big" bandwidth revolution, explained Mueller.

When compared to cable modems, ADSL ensures greater reliability, better security and more consistent speeds, experts say, because the service is delivered via a dedicated line from a central office to the individual user's home or office. In addition, Pacific Bell's ADSL runs on the Pacific Bell network, one of the most reliable in the world. And customers choosing Pacific Bell Internet Services, surf on one of the country's most sophisticated Internet backbones and benefit from award-winning service and support.

Because cable modems depend on shared bandwidth among a group of users, accessing the Internet via cable modem is a ``floating crap game," said Amy Wohl, Wohl Associates, a market research company. ``If you're using it for telecommuting, there would be some places where not too many people are home during the day and you'd be fine. And there would be other places where you're sharing it with three elementary schools and 42 other telecommuters, and it will be terrible."

For example, Andrew Abbate, a computer consultant with a Bay Area start-up company, has his home hooked to Pacific Bell's ADSL. When telecommuting, Abbate values the service's security so he can conduct on-line banking and download massive audio and video files. In recent months, Abbate also used ADSL to design an interactive Web site and build a virtual private network.

``ADSL has changed the way I work and communicate via the Internet," said Abbate. ``Thanks to Pacific Bell's ADSL, the World Wide Web is no longer the World Wide Wait."

Pacific Bell believes the demand for ADSL will soar now that the service is widely available and affordable. In fact, DataQuest, a market research company, predicts the number of ADSL subscribers could zoom from 50,000 now to 5 million worldwide by 2002.

ADSL Update

SBC also announced plans today to offer ADSL service to millions of its customers in Texas, Missouri, Oklahoma, Kansas and Arkansas by the end of 1999, and will begin ADSL trials in Connecticut later this month.

The company has also completed joint initiatives with Dell Computer Corp. [Nasdaq:DELL - news] and Compaq Computer to promote more convenient access to ADSL.

``We are moving aggressively to provide the advanced high-speed data services customers throughout our territory are demanding," said Edward E. Whitacre Jr., SBC chairman and CEO. ``We are committed to ADSL technology and to building the multi-media corridor to homes and businesses that will enable people to change the way that they work, learn, shop and play."

Whitacre said that SBC is filing tariffs today with the Federal Communications Commission for regulatory clearance to offer ADSL to customers in all five Southwestern states.

Pacific Bell launched ADSL service in May 1998. By Sept. 1998, the company had completed ADSL deployment in about 90 California central offices, making the service available to more than 1.6 million residential customers and 400,000 business customers throughout the Golden State.

``One reason Pacific Bell is deploying this technology so rapidly in California is the favorable regulatory environment established by the California Public Utilities Commission (CPUC)," said Jim Callaway, President, External Affairs Pacific Telesis. ``The CPUC has instituted fair guidelines which make it attractive for us to make the major capital investments necessary to bring this important technology to millions of the residents of this state."

Committed to making bandwidth widely available, Pacific Bell is making it easy for Californians to get ADSL service. For example, the company has signed agreements with more than 22 ISPs -- which act as authorized sales representatives for Pacific Bell's ADSL service and offer the service to their

business and residential customers. In addition, Pacific Bell will continue making ADSL service available to competitors and Internet service providers for resale at the new prices.

For more information on Pacific Bell ADSL and to order the service, California residents can call 1-888-884-2DSL or visit the Pacific Bell Web site at www.pacbell.com/products/business/fastrak/adsl/.

Pacific Bell is a company of SBC Communications Inc. (NYSE:SBC - news; www.sbc.com), a global leader in the telecommunications industry, with more than 36.9 million access lines and 6.5 million wireless customers across the United States, as well as investments in telecommunications businesses in 11 countries. Under the Southwestern Bell, Pacific Bell, SNET, Nevada Bell and Cellular One brands, SBC, through its subsidiaries, offers a wide range of innovative services. SBC offers local and long-distance telephone service, wireless communications, data communications, paging, Internet access, and messaging, as well as telecommunications equipment, and directory advertising and publishing. SBC has approximately 129,000 employees and its annual revenues rank it in the top 50 among Fortune 500 companies.

Pacific Bell Adsl Pricing Sheet

Downstream connection rates of up to 1.5 Mbps,

guaranteed at 384 Kbps, 128 Kbps upstream

Monthly Month-

Service Customer ADSL to-

(1- Year or Premise Equipment Service Month Longer Term) Equipment Installation Installation Service

Pacific Bell ADSL(2) Transport $39 $198 Waived(1) Waived(1) $59

Internet Access(3) $10 $21.95

Downstream connection rates of up to 6 Mbps,

guaranteed at 1.5 Mbps, 384 Kbps upstream

Monthly Month-

Service Customer ADSL to-

(1- Year or Premise Equipment Service Month Longer Term) Equipment Installation Installation Service

Pacific Bell ADSL(2) Transport $129 $198 Waived(1) Waived(1) $149

Multi User (up to 256 accounts) Internet Access(3) $199 $299

-- Equipment and service installation charge waived for customers who

sign up for one-year term or longer
-- Month-to-Month, 1-Year and 3-Year terms are available for ADSL

service
-- Discounts are available for retail customers who purchase more

than 50 ADSL lines
-- A basic telephone line, either business or residential, is

required for ADSL service

1. With term commitment. One-time charges of $497 apply for Customer

Premise Equipment and installation for those customers who choose

month-to-month service. 2. All components of the product are available separately. 3. Internet Access provided by Pacific Bell Internet Services

includes a Global Service Provider charge.

Pacific Bell

ADSL Central Offices

1999 Deployment

The following central offices will be deployed

throughout 1999 in California.

Agoura El Dorado Monterey San Gabriel Alameda El Monte Moraga San Jose(8) Albany El Toro Msvl Franklin San Juan Alhambra Encinitas Mountain View San Luis Obispo Anaheim (2) Escondido Napa San Marcos Antioch Eureka Main National City San Mateo Aptos Fair Oaks Nevada City San Pedro Arcadia Fairfield Newhall San Rafael Arlington Fallbrook Nimbus San Ramon Arroyo Grande Fremont(2) Hollywood(2) Santa Ana(3) Auburn Mn. Fresno(3) Sacramento Santa Clara(2) Bakersfield (3) Fullerton Northridge Santa Cruz(2) Balboa Garden Grove Oakland(4) Santa Marguerita Benicia Gardena Oceanside Santa Rosa(3) Berkeley Glendale Orange(3) Sausalito Beverly Hills Grass Valley Orinda Scotts Valley Bishop Ranch Half Moon Bay Oroville Sebastopol Blue Revine Hawthorne Pacific Beach Sherman Oaks Boulder Creek Hayward(2) Pacifica Shingle Springs Brea Hercules Palmdale Simi Brentwood Hesperian Palo Alto(2) So. Tahoe Sussex Buena Park Hollywood Paramount Solamint Burbank Ignacio Park Sorrento Sonoma Burlingame Irvine(2) Pasadena(2) Stockton(2) Canoga Park La Brea Petaluma Sunnyvale(2) Carlsbad (2) La Crescenta Pittsburg Tiburon Carmel La Jolla Placentia Torrance Chico La Mesa Placerville Tracy Chula Vista (2) Lafayette Pleasanton(2) Truckee Clayton Laguna Nigel Poway Midland Turlock Clovis Larkspur Rancho(3) Tustin Colma Livermore Redding Ukiah Compton Lodi Redwood City Union City Concord Lomita Reseda Vacaville Corona Los Altos Richmond Vallejo Corona Del Mar Los Angeles (16) Riverside Van Nuys Costa Mesa Martinez Rosemead Ventura(2) Cotati Menlo Park S. Placer

Rocklin Visalia Culver City Merced Sacramento(5) Vista Danville (2) Mill Valley San Bruno Walnut Creek Davis Millbrae San Carlos Watsonville Del Mar Milpitas Abel San Clemente West Los Angeles Douglas Mission San Diego(10) Woodland Edgewood Mission Viejo San Francisco(9) Yorba Linda El Cajon Modesto

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Contact:

Paul Cohen, Pacific Bell, 415-356-1025

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BEL and AOL Form Partnership To Provide High-Speed Access For AOL Service

09:44am EST 13-Jan-99 Corporate Release (John Killian 212-395-1152) BEL BEL.SG

Bell Atlantic and America Online, Inc. today announced a strategic alliance to provide high-speed Digital Subscriber Line (DSL) access to the AOL service.

In a significant step for the development of broadband availability, America Online this summer will start to offer Bell Atlantic's Infospeed DSL access as a premium upgrade for AOL members in Bell Atlantic's service area, as the technology becomes available in major markets.

To support this multi-year agreement, Bell Atlantic plans to make its DSL technology available in areas covering 7.5 million homes by the end of 1999, a number that Bell Atlantic expects to nearly double to more than 14 million by the end of 2000.

Infospeed DSL service will provide AOL members with high-speed bandwidth to their personal computers over existing telephone wires. At a typical speed of up to 640 kilobits per second, DSL access will be more than 20 times faster than standard 28.8 kbps modems.

In addition to high-speed access, AOL members who take advantage of the DSL option will:

. Gain "always on" access to AOL, as no dial-up is required for DSL users because they are always connected;

. Be assured of consistently high-speed access because DSL dedicates a broadband connection to each individual user;

. Benefit from "AOL Anywhere," the features of which include enabling broadband users to also connect to AOL when they are not at home;

. Experience broadband-enhanced multimedia and other services, and

. Be able to use their computer and telephone or fax simultaneously on a single phone line.

American Online will be announcing DSL pricing when the rollout begins this summer, but the DSL upgrade is epedted to cost AOL members less than $20 extra per month.

AOL also intends to offer a special version of AOL software that will provide

DSL users with links to a customized Bell Atlantic Web site with information on the company's products and services. The companies are planning other co-marketing directed to AOL members with DSL access. In addition, Bell Atlantic will have opportunities to offer AOL members certain optional telecommunications products and services.

James G. Cullen, president and chief operating officer of Bell Atlantic, said, "This first of its kind alliance with America Online demonstrates Bell Atlantic's commitment to becoming consumers' first choice for high-quality, high-speed data services. We're creating a mass-market model for the millennium that adds value for our customers and our company. Combining AOL's marketing clout, convenience and ease-of-use with Bell Atlantic's technological leadership will provide even more momentum to the interactive medium."

Bob Pittman, President and Chief Operating Officer of America Online, said: "This strategic partnership with Bell Atlantic, one of the world's great telecommunications companies and an industry leader in this groundbreaking DSL technology, ensures that our members will be among the first to have the opportunity to benefit from high-speed connections. This announcement marks an important advance in our commitment to offer affordable and convenient broadband access to those AOL members seeking faster connection speeds."

Mr. Pittman added: "America Online has always been committed to embracing all new technologies and features that offer our members a full range of options to enhance their online experiences. With our industry-leading membership base, we're excited about the prospect of helping to build economically viable markets for broadband technologies. With our Bell Atlantic partnership and other alliances in the future, we together can begin to make the promise of broadband a reality for mass market consumers."

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