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Ameritech.

Lynn Shapiro Starr
Vice President
Regulatory Affairs

January 20, 1999

EX PARTE OR LATE FILED

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals
445 12th Street, SW
TW-A235-Lobby
Washington, DC 20554

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JAN 20 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **Ex Parte Statement**
CC Docket 98-147

Dear Ms. Salas:

On Wednesday, January 20, 1999, Steve Gorosh, Vice President and General Counsel of NorthPoint Communications, Ruth Milkman representing The Lawler Group, John Lenahan, Assistant General Counsel of Ameritech and I met with Commissioner Susan Ness.

The purpose of the meeting was to discuss the "Joint Statement of Principles Applicable in a Separate Subsidiary Environment by Ameritech and NorthPoint", as set forth in the presentation material attached hereto.

Sincerely yours,

Lynn Starr

Attachment
cc: Commissioner Ness

No. of Copies rec'd 0+2
List ABCDE

NorthPoint Communications/Ameritech

Section 706 Advanced Services

Joint Ex Parte

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NorthPoint Communications/Ameritech

Agenda

- **Introduction/update**
- **Collaborative "win-win" approach**
- **Statement of Agreement (attached)**
  - Structural separation
  - Collocation arrangements
  - Unbundled loops
  - LATA boundary changes

NorthPoint — Introduction/Update

- **A National Data CLEC**
  - Currently providing fast, affordable and reliable SDSL service at 160, 416, 784, 1,040 and 1,540 Kbps
- **Service deployed in Boston, Chicago, Los Angeles, New York, San Diego, San Francisco Bay Area, Washington, D.C.**
- **Targeting 28 Cities in 20 states by 1999**

Ameritech — Update

- **Proven loop and collocation track record**
  - 114,648 unbundled loops, 279 physical and 379 virtual collocation arrangements provisioned as of October 1, 1998 (physical space is not available in a few central offices)
- **Experience in offering advanced services in a separate affiliate (AADS)**
- **Too many LATAs for data deployment**
  - Ameritech operates in 41 LATAs, 25 of which are too small to support "stand-alone" deployment
- **Regulatory concerns have put <u>additional</u> xDSL plans "on hold"**

NorthPoint/Ameritech Joint Statement

- **The NorthPoint/Ameritech Joint Statement transcends the adversarial posturing of most participants in this proceeding**
  - Agree on loop and collocation remedies
  - Agree that a separate subsidiary is appropriate and provides safeguards to promote competition
  - Agree that such a separate subsidiary should receive limited LATA boundary changes
- **This results in a "win-win" outcome for all**
  - Facilitates CLEC entry
  - Creates incentives for ILEC investment
  - Provides customers more choice

Structural Separation

- **The Joint Statement provides ILECs with an incentive to adopt "Section 272-like" separate subsidiary**
  - CLECs will receive unbundled network elements (e.g., loops, collocation and OSS) on the same rates, terms and conditions as the advanced service affiliates
  - ILEC advanced services affiliates enjoy benefits such as joint marketing, nondiscriminatory installation and maintenance services on collocated equipment and will not be subject to the Act's resale and unbundling requirements
- **This approach avoids legal uncertainty and delay**

A Key Benefit of a Separate Subsidiary: Parity

- **ILECs must provide unbundled loops and collocation to CLECs on the same rates, terms and conditions as provided to their advanced services affiliates:**
  - parity in providing space for collocation
  - parity in collocation intervals
  - parity in collocation charges
  - parity in alternatives to physical collocation
  - parity in equipment restrictions
  - parity in copper loop availability and intervals
  - parity in loops provisioned via DLCs
  - parity in loop pricing and one-loop products
  - parity in OSS access

Process of Creating the Separate Subsidiary

- **Asset transfers should be limited:**
  - No loops should be transferred to the advanced services affiliate
  - ILECs must adopt nondiscriminatory standards for transferring collocation
  - Any "grandfathered" collocation arrangements must be subject to strict nondiscrimination and parity requirements
- **DSLAMs and packet switches purchased prior to the NPRM could be transferred, subject to Commission oversight**

Appropriate Structure for the Separate Subsidiary

- **Key attributes**
  - Advanced services affiliates should have separate books, records and accounts, as well as separate officers and employees
  - Transactions between ILECs and their advanced services affiliates should be reduced to writing and available for inspection
  - Advanced services affiliates should interconnect with the ILECs pursuant to tariff or interconnection agreement
  - Subsidiary may purchase administrative services pursuant to Non-Accounting Safeguards Order

Collocation — Agreed Upon Principles

- **Collocation space availability**
  - CLEC and advanced services affiliate space requests provided on a first-come, first-served, nondiscriminatory basis
  - Space reservation policy equally applied to CLEC and advanced services affiliate
  - When space is not available, the ILEC should make reasonable accommodations (e.g., removal of obsolete equipment)
  - If physical collocation is denied, CLEC should be permitted, at ILEC's premises, to inspect floor plans
- **Collocation intervals**
  - CLEC should have contract or tariff options
  - Intervals must be at parity, measured by average time to respond, average time to provide and missed due dates

Collocation — Agreed Upon Principles

- **Charges for collocation**
  - Advanced services affiliate purchases collocation on same rates, terms and conditions as charged to CLEC. An imputation requirement should apply to ILEC, if it does not establish separate affiliate
  - Based on forward-looking LRIC
  - No "first-in" penalties
- **Physical collocation alternatives**
  - Cageless physical, less than 100 square feet or other mutually beneficial arrangements
  - "Enhanced" virtual, CLEC owns equipment, subject to ILEC administrative control for placement and access, and CLEC can use its own technicians on an escorted basis

Collocation — Agreed Upon Principles

- **Collocated equipment**
  - Type of equipment that is collocated, and standards that apply, must be implemented by ILEC on a nondiscriminatory basis
  - Non-interconnected equipment only needs to comply with applicable industry-approved safety and electrical interference standards
  - To the extent collocated equipment interconnects with other networks, interoperability and reliability standards are also appropriate

Unbundled Loops — Agreed Upon Principles

- **Types of loops and reasonable intervals**
  - ILECs should make available ADSL, HDSL or ISDN-compatible loops. Parties should agree on reasonable intervals based on type, quantity and availability of facilities
  - A standard interval of five days is reasonable where no dispatch is required for orders of 1-10 non-DS1 loops
- **Remote terminals**
  - ILECs should be required to look for alternate or re-arranged copper where CLECs seek to serve customers served by DLCs
  - ILEC should provide access at remote terminals where technically feasible and space permits on a nondiscriminatory basis
- **OSS**
  - Nondiscriminatory access to interfaces for all of the OSS functions (including, where available, loop qualification systems)

Limited LATA Boundary Changes are Appropriate

- **The Commission should establish new state-wide data LATAs for the advanced services affiliate after a BOC demonstrates that it:**
  - provides advanced data services through a separate affiliate that satisfies the separation framework adopted by the Commission
  - complies with all state and federal rules, as well as the terms of applicable tariffs and interconnection agreements regarding i) collocation, and ii) the availability of ADSL, HDSL and ISDN compatible loops, as provided in the Joint Statement
- **New state-wide data LATAs should be established to permit:**
  - 1) interLATA data transport for customers with multiple intrastate locations; 2) intrastate access to packet switches; and 3) transport from such packet switch to nearest NAP (even if outside the state)
- **The Commission should establish a streamlined (e.g., 60 days) process to review such requests**

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.

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[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.

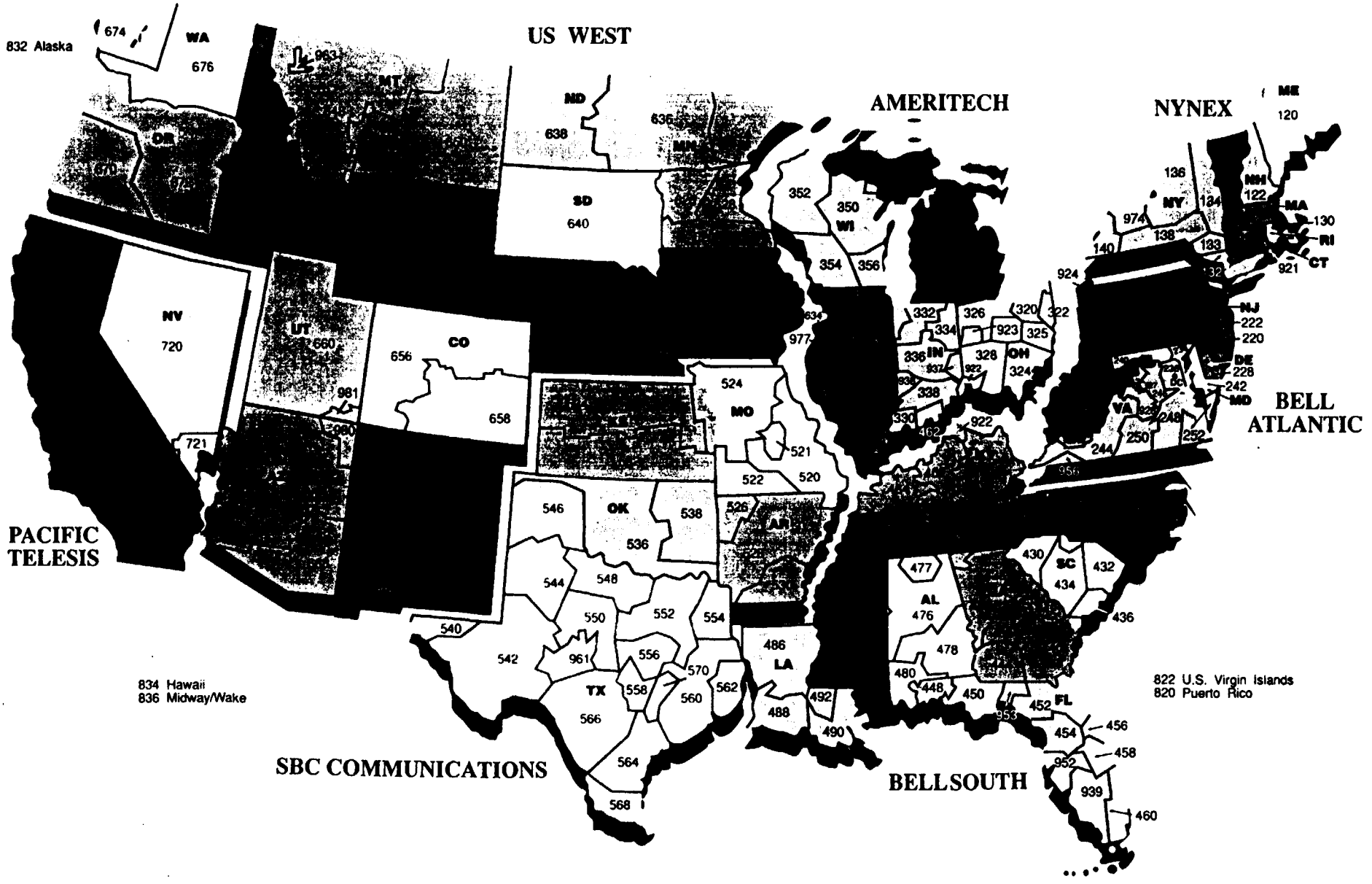
Limited InterLATA Relief

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.

NATIONAL LATA MAP™



LATA - Local Access Transport Area