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January 20, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Via Hand Delivery
Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Written *Ex Parte* Presentation by Intermedia Communications Inc.

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

Dear Ms. Salas:

Pursuant to Section 1.1206(b)(1) of the Commission's Rules, Intermedia Communications Inc. ("Intermedia") submits the attached written *ex parte* presentation in the above-captioned docketed proceeding.

Pursuant to Section 1.1206(b)(1), an original and two copies of this filing are provided for inclusion in the public record of the above-referenced proceeding. Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

Jonathan E. Canis /SH

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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JAN 20 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

To the Commission:

WRITTEN *EX PARTE* COMMENTS OF INTERMEDIA COMMUNICATIONS INC.

INTERMEDIA COMMUNICATIONS INC. ("Intermedia"), by its undersigned counsel, hereby respectfully submits these written *ex parte* comments in the above-captioned proceeding. As more fully discussed below, Intermedia requests that the Commission take the following action in establishing rules to promote the deployment of advanced services:

1. Establish the "Enhanced Extended Link" or "EEL" as a new unbundled network element that provides CLECs with the functionality of loop, central office aggregating and routing equipment, and interoffice transport. Such action will eliminate the need for CLECs to collocate in every ILEC central office, thereby reducing the effective cost of interconnection and conserving central office space.

2. Establish rules that ensure that all advanced services provided by ILECs – and indeed all ILEC end user services -- are made available to CLECs for resale at wholesale rates based on avoided costs. In the case of advanced services filed in ILEC federal access tariffs, the Commission must find unequivocally that such services are subject to resale, and that the wholesale discount prescribed by the States apply to such services.

I. THE COMMISSION SHOULD ADOPT THE ENHANCED EXTENDED LINK ("EEL") AS AN UNBUNDLED NETWORK ELEMENT

As Intermedia discusses below, the record in the instant proceeding provides a compelling showing that an Enhanced Extended Link unbundled network element is critical to the establishment of a competitive environment and the promotion of advanced services.

A. THE RECORD IN THIS PROCEEDING DEMONSTRATES A COMPELLING NEED FOR THE ENHANCED EXTENDED LINK

The record of this proceeding contains considerable support for the establishment of the Enhanced Extended Link as a new UNE.[1] Moreover, the record contains overwhelming support for a regulatory solution that will eliminate the need for competitive carriers to collocate in every end office in order to provide service. Indeed, the majority of competitive carriers that filed comments in this proceeding have requested that the Commission provide such relief.[2] Some parties have proposed other methods, such as the "Bitstream" proposal,[3] or a proposal to redefine the "loop" for data services,[4] as a means of accomplishing the same procompetitive

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1 e.spire comments at 22, 34, 41-42; e.spire reply at 15; ALTS reply at 25; GST reply at 41.

2 ALTS comments at 58, 87; AT&T comments at 69-70; AT&T reply at 21, 78, 85; Covad comments at 53-54; ICG comments at 32-33; Illinois Commerce Commission comments at 16; Intermedia comments at 58; GST reply at 34; MCI WorldCom comments at 63-64; MCI WorldCom reply at 53; NextLink reply at 79; Northpoint comments at 17-20; Paradyne comments at 9; Sprint comments at 33-34; Transwire reply at 19-21; US Exchange at 10.

3 ALTS has put forth a proposal called the "Bitstream" solution, which would provide a transmission path of a pre-defined capacity from the end user to the CLEC's point of presence. (See also supporting comments in e.spire reply at 22-23.) This Bitstream approach is fully consistent with the EEL. Indeed, the EEL – by providing the functionality of loop, central office concertration/routing, and transport as a single UNE – is an efficient means of providing the Bitstream functionality sought by ALTS.

4 ALTS comments at 42; see, e.g., CompTel comments at 45-58; CompTel reply at 3-4; ICG comments at 29-32; MCI reply at 71.

results. All of these proposals attempt to achieve the same goal – providing a direct connection from the end user premises to the CLEC point of presence that obviates the need to collocate in each and every ILEC end office. Essentially, the EEL provides CLECs with the functionality of a loop from their premise to their end-user. The EEL is fully consistent with these approaches, and is in fact a straightforward and easily implementable means of realizing them.

If such relief is not forthcoming in the instant proceeding, CLECs will be forced to collocate in every end office, greatly increasing the cost of interconnection, and creating unwarranted scarcity in ILEC central office space, and erecting an uneconomic barrier to entry. Failure to provide for such a continuous transmission path from end user to CLEC point of presence will also force CLECs – and this Commission – to litigate extensively over the technical means of deriving unbundled local loops in cases where ILECs employ digital subscriber line and other mixed fiber/copper loop technologies. For all these reasons, the record in the instant proceeding provides compelling testimony on the need for an EEL UNE.

B. THE COMMISSION HAS AMPLE AUTHORITY TO ESTABLISH THE EEL AS A NEW UNBUNDLED NETWORK ELEMENT

The Commission is fully empowered to incorporate a series of discrete functions that are themselves defined as UNEs.[5] For example, many state commissions have required ILECs to provide subloop elements – the network interface device, distribution plant, concentrating equipment, and feeder plant – as four discrete UNEs. At the same time, the combination of these four functionalities is also provided as a single unbundled local loop UNE, as defined by the Commission. Using its uncontested authority to define UNEs, the Commission

[5] See, e.g., Intermedia comments at 47-49.

is fully empowered to define as a new UNE a similar combination of loop, central office concentration and routing, and interoffice transport functionalities.

The Commission has clear legal authority to define UNEs by function, including an EEL UNE, and this authority has recently been confirmed by the Eighth Circuit Court of Appeals' recent *Shared Transport Decision*.[6] In the *Shared Transport Decision*, the court noted that the statutory definition of network element[7] expressly "includes both individual network facilities and the functions which those facilities provide, either *individually or in consort*,"[8] and that, as presented, the shared transport UNE did not eliminate the distinction between unbundled access and resale.[9] In so stating, the Eighth Circuit expressly upheld the Commission's establishment of shared transport as a UNE, even though shared transport is composed of two functions that are themselves stand-alone UNEs – interoffice transport and local switching. This legal analysis is directly applicable to the UNE, and confirms the Commission's authority to provide the requested relief.

An extended link UNE would maintain a clear distinction between unbundled access under § 251(c)(3) and resale under § 251(c)(4), as purchasers of extended links would

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6 *Southwestern Bell Telephone v. FCC*, 1998 US App. LEXIS 18352 (8th Cir. 1998) ("*Shared Transport Decision*"). In the *Shared Transport Decision*, several ILECs challenged the FCC's shared transport UNE on grounds that: (1) the FCC has "no power to aggregate" ILEC transmission facilities into "a single network element"; and (2) the FCC's shared transport UNE was so broadly defined that it obliterated any meaningful distinction between unbundled access to UNEs (section 251(c)(3)) and total service resale (section 251(c)(4)). The Eighth Circuit rejected both of these arguments.

7 47 U.S.C. § 153(29).

8 *Shared Transport Decision* at 18352.

9 *Id.* Note, however, that the court left open the question of whether the pricing of shared transport could effect its status as a viable network element. The LECs argued that minute-of-use pricing for shared transport would unlawfully "obliterate" the distinction between UNEs and resale. Noting that state commissions have UNE pricing responsibility, the court declined to address this issue, stating that it "could do no more than conjecture as to whether the unbundled sale of transport will erode the careful distinctions between resale and unbundled access." *Id.*

provide their own switching, and the EEL would not resemble any end-to-end services tariffed by ILECs. An EEL UNE would therefore meet the requirements of the plain language of the Act and recent federal appellate court case law. Compelling precedent therefore determines that the Commission has ample authority to define an EEL UNE for all telecommunications services, including advanced services.

II. THE COMMISSION MUST ENSURE THAT THE RESALE REQUIREMENTS OF SECTIONS 251(C)(4) AND 252(D)(3) OF THE ACT IS FULLY IMPLEMENTED

The Commission has already found that the resale provisions of § 251(c)(4) of the Act apply fully to advanced services provided by ILECs.[10] The Commission must take further action, however, and clarify beyond a reasonable doubt a CLEC's ability to resell all ILEC end user services pursuant to § 251(c)(4) of the Act, at wholesale rates that exclude avoided costs, as required by § 252(d)(3). To accomplish this result, the Commission must adopt as a final rule its tentative conclusion that ILEC access services sold to end user customers must be resold at wholesale rates.[11] Moreover, the Commission must clarify that by removing the access service exemption, all ILEC end user services are now subject to the resale requirements of the Act, specifically including Special Access, Switched Access, and other services currently tariffed in interstate and intrastate access tariffs, ADSL-based services (whether tariffed on the Federal or State level), currently available non-ADSL advanced services (such as DS1 special access

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10 *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147, FCC 98-188, ¶ 32 (rel. Aug. 7, 1998) ("*Advanced Services NPRM*").

11 *Advanced Services NPRM*, at ¶¶ 188-89.

services provisioned over HDSL technology), and other advanced and non-advanced end user services that may be introduced in the future.

Recent developments have demonstrated the compelling need for such a finding. Since the issuance of the *Advanced Services NPRM*, a number of ILECs have introduced ADSL-based services in their federal access tariffs. To date, the Commission has approved five of these services, finding that they were properly included in these tariffs.[12] These advanced services are directly targeted to end user residential and business customers, including internet service providers, however, and as such fall directly within the resale obligation of § 251(c)(4) of the Act. As the Commission acknowledged in the *Advanced Services NPRM*, it previously exempted ILEC access services from the resale requirement based on its conclusion that the vast majority of access services were provided to carriers, and that Congress intended the resale provisions to apply to services targeted to end users.[13] The ILEC ADSL tariffs clearly demonstrate that this rationale is no longer applicable, and compel the imposition of the Act's 251(c)(4) resale obligations.

Moreover, when advanced services are tariffed at the federal level, it is incumbent upon the Commission to make clear that such services are available for resale at rates that reflect the avoided cost standard of § 252(d)(3). Specifically, in order to prevent any further delay in CLECs' ability to exercise their resale rights under the Act, the Commission should find that all ILEC end user services – whether tariffed at the Federal or State level – are to be provided to CLECs at the wholesale percentage discounts that have been established by State regulators. Intermedia urges the Commission to include this express prescription in its final order.

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12 *GTE Telephone Operating Cos.*, CC Docket No. 98-79, FCC 98-292 (rel. Oct. 30, 1998); *Bell Atlantic Telephone Cos.*, CC Docket No. 98-168, FCC 98-317 (rel. Nov. 30, 1998).

13 *Advanced Services NPRM* at ¶ 186.

III. CONCLUSION

For the reasons discussed above, Intermedia urges the Commission to act expeditiously to prescribe the Enhanced Extended Loop as an unbundled network element, and to require that ILECs provide *all* of their end user services – including advanced services and interstate and intrastate access services – to CLECs for resale at the wholesale discounts prescribed by State regulatory commissions.

Respectfully submitted,

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