ORIGINAL

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

In the Matter of	)	
	)	
Petition of Bell Atlantic Telephone	)	
Companies for Forbearance from Regulation	)	
as Dominant Carriers in Delaware;	)	CC Docket No. 99-24
Maryland; Massachusetts; New Hampshire;	)	
New Jersey; New York; Pennsylvania;	)	
Rhode Island; Washington, D.C.; Vermont;	)	
and Virginia.	)	

COMMENTS OF xDSL NETWORKS, INC.

xDSL Networks, Inc. ("xDSLNet") by its undersigned counsel and pursuant to the Commission's Public Notice, DA 99-224, hereby opposes the above-captioned petition filed by the Bell Atlantic Companies ("BA"). BA seeks forbearance from regulation of its companies as dominant carriers in their provision of special access services in 12 jurisdictions comprising virtually their service area.[1]

Discussion

1. The Commission Should Draw A Bright Line Between xDSL Services and Other Special Access Services for Purposes of Considering BA's Petition

BA's request for forbearance from dominant carrier regulation in the provision of special access services is inconsistent with both applicable law and the public interest. There are many flaws in BA's reasoning, and gaps in its presentation that will unquestionably be dissected in detail by other commenters. xDSLNet, however, does not intend to take a such a "broad brush" approach. Instead, xDSLNet will focus these comments on its principal interest: the question of competition and market control in the provision of advanced telecommunications services such

[1] The jurisdictions covered by Bell Atlantic's Petition include: Delaware; Maryland; Massachusetts; New Hampshire; New Jersey; New York (including the Greenwich, Connecticut service area); Pennsylvania; Rhode Island; Washington, D.C.; Vermont; and Virginia. This includes all of Bell Atlantic's in-region states except for West Virginia and Maine.

as Digital Subscriber Line technologies (including, without limitation, ADSL, HDSL, RDSL, etc. -- generically referred to as "xDSL" services).

As a result of recent Commission action, xDSL services are considered to be special access services.[2] Accordingly, BA's petition, which purports to focus on special access arrangements between interexchange carriers ("IXCs") and their large corporate customers, also (coincidentally or not) "snags" xDSL services in its overbroad conceptual net. Although it is difficult to imagine Commission approval of BA's Petition in any case, even if some special access services are deregulated, xDSL services most certainly should not be.

As discussed in greater detail below, xDSL services are a recent technological development with relatively few subscribers, and therefore it is simply too early to know whether there will be a mature, competitive market for these services that can police itself without the Commission's help. In addition, the inherent technical characteristics of these services, which require access to uninterrupted copper loop plant to deliver high-speed data to subscribers, results in significant dependence on the ILEC's loops, and raises complex, unresolved issues (such as subloop unbundling and spectrum sharing), the resolution of which may ultimately determine whether competition can take root. These issues are of unique importance to xDSL services; consequently, xDSL services should not be acritically "lumped together" with other types of special access for purposes of this proceeding. The Commission should instead draw a bright line between xDSL services and the special access services BA discusses in its Petition.

2. The Commission Should Not Deregulate xDSL Services "By Proxy"

BA's Petition asks the Commission to refrain from regulating special access services on the basis that Section 10(a) of the Communications Act of 1934, as amended, is satisfied. Section 10(a) states that the Commission must forbear from enforcing a regulatory requirement if several conditions are met, namely, that (i) enforcement of such regulation is not necessary to

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[2] *See GTE Tel. Operating Cos. GTOC Transmittal No. 1148,* CC Docket No. 98-79, FCC 98-292, Memorandum Opinion and Order (rel. October 30, 1998).

ensure the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable; (ii) enforcement of such regulation is not necessary for the protection of consumers; and (iii) forbearance from applying such regulation is consistent with the public interest. *All* of these conditions must be satisfied before the Commission is compelled to refrain from regulation. But before these conditions are even addressed, the Commission must ask itself a basic question: does it make sense for the Commission to deregulate a service that *the petitioner has not even directly mentioned* in its petition?

xDSLNet submits that it cannot correctly be *assumed* that the pertinent conditions extant with respect to all services branded as "special access" are equivalent. Even if the Commission concludes that BA has gone through all of the wickets with respect to other types of special access services (which xDSLNet does not concede), there is no logical reason to lump xDSL services into that analysis when they are never even mentioned by BA. This "deregulation by proxy" would neglect very fundamental, and critical, differences between the types of special access services BA talks about in its Petition and xDSL services.

The Commission should eliminate xDSL services from the discussion at the outset, since BA never even attempted to show why or how its analyses apply to such services, and never alluded to them at all. Any actions taken with respect to xDSL services should be deliberate, and not indirect or "by accident." Since BA did not explicitly raise the issue of xDSL services, the Commission should not even consider the possibility of deregulating them.

3. There are Strong Reasons for Continuing to Regulate xDSL Services

Even if the Commission refuses to reject out of hand the possibility of deregulating xDSL services, it should hold them apart from other services to determine whether the analysis suggested by BA is reasonably applicable to them. xDSLNet emphatically contends that xDSL services are materially different from the types of special access services BA discusses in its Petition. These material differences warrant separate treatment by the Commission.

a. xDSL Services are New Technologies with Relatively Few Subscribers

One striking difference between the special access services BA discusses in its Petition and xDSL service is that xDSL services are a new and revolutionary technology that has relatively few subscribers. Although it is anticipated that xDSL services and other advanced and innovative high-speed data services will ultimate have a very broad subscriber base, including both businesses and ordinary households, this has simply not happened yet. In fact, in the Commission's recent Section 706 proceeding, the Bell Companies argued that they should be released from most regulatory requirements in the offering of xDSL services essentially because they would not be able to deploy the technology otherwise, and the consumer would not be able to enjoy its benefits on an expedited basis. It would be fatuous to contend that there is a mature and stable competitive market for these services, warranting deregulation.

b. ILECs Such as BA Have a Stranglehold on Elements Essential for Viable Competition in xDSL Services

i. ILECs Such as BA Predominantly Control the Necessary Copper Loops

Not only is it impossible to judge how competitive the market for xDSL services is in the absence of widespread deployment of the technology, but it is clear from the outset that there are going to be many roadblocks in the way of achieving viable competition for these services. In fact, the very technical characteristics of the service itself may make it especially vulnerable to a variety of anticompetitive actions by ILECs such as BA. It is essential that xDSL services be regulated closely to ensure that "the charges, practices, classifications, or regulations by, for, or in connection with that . . . telecommunications service are just and reasonable."

The greatest advantage, and perhaps also the greatest disadvantage, of xDSL services is that they are designed to be furnished to users over existing copper loops. Very high-speed data services may be routed along copper twisted pairs simultaneously with POTS service, without

the need for retrofitting of basic infrastructure. This is potentially economical and very appealing, especially to consumers and small businesses that are users of copper loops. However, the copper loop inventory is overwhelmingly owned and controlled by ILECs such as BA, giving them a virtual stranglehold over the elements necessary to provide the service.

ii. Loop Spectrum Sharing Is Not Presently Required

There are also other, more subtle advantages retained by BA as the market for xDSL services develop. For example, BA presently offers most of the POTS services over copper loops in its service areas. If a BA POTS customer purchases xDSL service from BA, there is very little added expense involved: a simple frequency splitter must be installed on the client's premises to separate the high frequency xDSL data carrier from the low frequency voice carrier. No additional loops need be installed. Therefore, BA may add xDSL service provision at a very modest incremental cost, because BA is using the same facilities to provide two separate revenue-generating services. Nearly all of the costs associated with bringing this service to an existing customer are already being recovered by the rates charged to the customer for POTS service.

However, if a CLEC wishes to offer xDSL services to a BA POTS customer, this becomes a difficult and expensive proposition. Since BA is not presently required by law to spectrum share (*i.e.,* to make the fallow high frequency capacity over its existing customers' POTS lines available to CLECs), a CLEC must either make use of an existing "spare pair" already installed to that consumer's premises (and use only half of its capacity), or if a spare pair is not available, the CLEC must pay to install *another* copper loop (and use only a portion of its capacity). Either of these alternatives is prohibitively expensive, and the cost basis for its price to the consumer is far higher than BA's would be. From a public policy point of view, it is also

uneconomic and wasteful, because it compels the CLEC to install capacity that may not be utilized to its full potential, while allowing already available capacity (*i.e.*, BA's fallow high-frequency "channel" on its POTS line) to lie dormant.

This inherent disparity between BA's marginal incremental cost of adding xDSL service (to its existing copper POTS loops) and the xDSL CLECs' cost of obtaining a UNE loop (and using only part of its capacity) is a serious threat to competitive xDSL service provision. In fact, it is fair to say that deregulation of BA-provided xDSL services would constitute a veritable bonanza, because BA could easily use its cost leverage to clear the field of its competitors, essentially reserving this very valuable service to itself.

The present costing scheme practically invites a classic price squeeze, since BA could profitably offer xDSL services for a fraction of the CLECs' cost of obtaining a UNE loop (not to mention the added costs of DSLAMs, collocation, etc.) Leveling the playing field in such a situation will not be a simple matter: it may require both a complex reallocation of the costs of copper loops between POTS service and xDSL service, *and* spectrum sharing, *and* subloop unbundling (see below). And even then, it is not certain that BA will not dominate.[3]

Of course, the argument could be made that BA will have the same problem when it seeks to offer xDSL services to POTS customers of CLECs. But this is only *trivially* true, since

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[3] BA's recent initiative to offer xDSL service to customers of America Online ("AOL") may be a harbinger of BA's future strategies to eliminate viable competition in xDSL service provision. According to the firms' January 13, 1999 press release, it is anticipated that AOL customers will be able to receive access at xDSL speeds for less than $20 more than they are currently paying. *See* AOL Press Release, January 13, 1999 (attached as Exhibit 1 hereto). It is inconceivable, in light of the aggregate cost of the elements required to furnish service and other unavoidable expenses, that any CLEC could duplicate this low price. But even at this low price, in light of the inherent economies BA may take advantage of in offering xDSL services to its POTS customers, it is likely that most of the $20 is profit.

the copper loop infrastructure owned and controlled by CLECs is far less pervasive than that in BA's possession. If BA could have dominance of its own POTS customers for xDSL purposes by means of the absence of required spectrum sharing and other strategic advantages, this would be enough to constitute a significant and virtually impenetrable competitive edge. Accordingly, the present regulatory and practical setting for xDSL services does not constitute a sensible opportunity for withdrawal of regulation – indeed, to prevent anticompetitive actions by BA, and to ensure growth of competition, the Commission may wish to regulate this field more closely.

iii. IDLCs Serve as Effective Barriers to Competition by CLECs

In addition to BA's dominance of copper infrastructure in its territories, remote loop concentration devices such as Integrated Digital Loop Carriers ("IDLCs") serve as bulwarks against the possible competitive incursion by xDSL-minded CLECs. BA customers that are served by such devices are difficult and costly for CLECs to serve. The reason for this is that xDSL services require a "clean" run of copper from the central office (where, presumably, the CLEC has collocated its Digital Subscriber Line Access Multiplexers or "DSLAMs"). If a customer's copper line is aggregated at a concentrator which multiplexes the signals and transmits them back to the central office over fiber optic cable, it is not reasonably possible for a CLEC to access that customer's premises with an uninterrupted copper line – unless it is possible to disaggregate that particular loop at the IDLC or other similar device, or otherwise to bypass the IDLC. Since, however, the IDLC is considered part of the customer's loop, this requires "subloop unbundling," something that has been staunchly resisted by ILECs such as BA.[4] So

[4] In its Local Competition Order, the Commission recognized the "technical feasibility" of subloop unbundling (in particular, unbundling of IDLC-delivered loops) using any of a variety of different methods. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket Nos. 96-98, 95-185, 11

IDLCs and similar devices continue for the present to be little "moats" around a portion of BA's customer base that cannot be economically traversed by CLEC xDSL providers.

iv. CLEC xDSL Providers Are Subject to BA's Continuing Anticompetitive Practices

Due to the inherent nature of their technology, most CLEC xDSL providers must generally physically collocate in an ILEC central office, and must purchase copper loops as UNEs. (Facilities-based CLECs can, of course, run their own copper loops, but it will take a great deal of time and money before their networks can equal BA's.) As such, CLEC xDSL providers are to a great degree dependent on ILECs such as BA, and are subject to the same restrictive collocation polices, untoward construction delays and expenses, and ordering and provisioning problems that plague CLECs that provide POTS services. At any link in this complicated chain, BA can insert a slight "tweak," and CLEC xDSL competition will slow to a standstill. Essentially, the present level of interdependence between CLEC xDSL providers and BA dictates that BA's xDSL service provision remain closely regulated. Otherwise, the possibilities of anticompetitive action are manifold.

Conclusion

xDSL services are fundamentally different from the types of special access services BA seeks to analyze in its Petition. From the outset, since they were not mentioned in BA's Petition, except perhaps by implication, they should be excepted from the Commission's consideration. If BA wants the Commission to deregulate these services, it should ask this directly, and provide

FCC Rcd 15499 at ¶ 384 (1996). However, the Commission declined at the time of the issuance of the Local Competition Order to require subloop unbundling, leaving it for the states to decide on a case-by-case basis. *Id.* at ¶ 391.

the necessary showings to support its proposal. BA has not done so. Absent such a strong showing, there should be no question of deregulation of xDSL services.

Moreover, as demonstrated above, there are many reasons why xDSL services must continue to be regulated for the indefinite future. To ensure viable competition for BA's provision of xDSL services, the Commission will have to monitor the situation closely, and most likely engage in additional regulatory intervention, *e.g.*, to require spectrum sharing and subloop unbundling. If the Commission takes its eye off the ball even for a moment, BA will be off and running, and the xDSL playing field will be swept clear of any real competition.

For these reasons, xDSLNet urges the Commission to deny Bell Atlantic's request for forbearance from dominant carrier regulation for provision of high capacity special access services.

Respectfully submitted,

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Dated: March 18, 1999

Exhibit 1

January 13, 1999 Press Release Concerning Bell Atlantic/ AOL Initiative to Offer xDSL Services to AOL Customers

NEWS RELEASE

America Online and Bell Atlantic Form Strategic Partnership to Provide High-Speed Access for the AOL Service

DSL Upgrade Begins Rolling Out this Summer to AOL Members

Bell Atlantic High-Speed Technology Available in Areas Covering 14 Million Homes by End of Year 2000

January 13, 1999

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DULLES, VA and NEW YORK, NY -- America Online, Inc. (NYSE: AOL), the world's leading interactive services company, and Bell Atlantic (NYSE: BEL) 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 the year 2000.

This DSL feature 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 the 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.

America Online will be announcing DSL pricing when the roll out begins this summer, but the DSL upgrade is expected to cost AOL members less than $20 extra per month.

AOL also intends to offer a special version of the 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."

About Bell Atlantic

Bell Atlantic is at the forefront of the new communications and information industry. With more than 42 million telephone access lines in New England, New York and the Middle Atlantic states and more than eight million wireless customers worldwide, Bell Atlantic companies are premier providers of advanced wireline voice and data services, market leaders in wireless services and the world's largest publishers of directory information. Bell Atlantic companies are also among the world's largest investors in high-growth global communications markets, with operations and investments in 23 countries.

About America Online

America Online, Inc., based in Dulles, Virginia, is the world's leader in branded interactive services and content. America Online, Inc. operates two worldwide Internet services: America Online, with more than 15 million members; and CompuServe, with approximately 2 million members. America Online, Inc. also operates AOL Studios, a leading builder of Internet brands for new market segments. Other branded Internet services operated by America Online, Inc. include AOL.COM, the world's most accessed Web site from home; Digital City, Inc., the No. 1 branded local content network and community guide on AOL and the Internet; AOL NetFind, AOL's comprehensive guide to the Internet; AOL Instant Messenger, an instant messaging tool available on both AOL and the Internet; and ICQ, an instant communication and chat technology on the Internet.

This press release contains forward-looking statements within the meaning of the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995. These statements address the timing of deployment, availability, new technology and pricing and benefits of DSL service. The forward-looking statements are based on management's current expectations or beliefs and are subject to a number of uncertainties and other factors (and uncertainties) that could cause actual results to differ materially from those described in the forward-looking statements. See AOL's Annual Report on Form 10-K, 10-Q's and other public filings for additional information.

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of March, 1999, copies of the foregoing COMMENTS OF XDSL NETWORKS, INC.; CC Docket No. 99-24, were served via Messenger* or First Class mail, U.S. postage prepaid, on the following parties:

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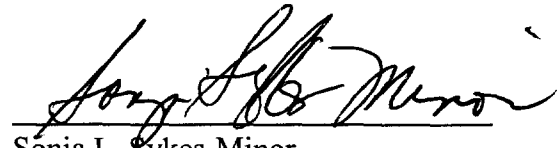

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