

Before the
Federal Communications Commission
Washington, D.C. 20024

In the Matter of)	
)	
Implementation of the Local Competition)	
Provisions in the Telecommunications)	
Act of 1996)	CC Docket No. 96-98
)	
Interconnection between Local Exchange)	
Carriers and Commercial Mobile Radio)	
Service Providers)	CC Docket No. 95-185

**COMMENTS OF TELTRUST, INC. ON THE
SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**

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SUMMARY

Teltrust, Inc. provides directory assistance and operator services in competition with the incumbent local exchange carriers ("LECs"). Teltrust supports the Commission's conclusion to maintain a list of minimum unbundled network elements that the incumbent LECs must make available upon request and urges the Commission to include access to the ILECs' operator services and directory assistance databases. Teltrust recommends that the Commission find the "impair" standard to be satisfied where the unavailability of an unbundled network element would "materially" diminish the ability of a competitor to offer a telecommunications service in a competitive manner, or would "materially" increase the cost of providing that element.

Moreover, the Commission should clarify that these unbundled network elements are available to third parties who provide directory assistance and operator services functions on behalf of requesting telecommunications carriers. By ensuring such access to competitive providers of DA and operator services, the Commission will enhance alternative sources for competitive local exchange carriers with respect to these services. Competitive LECs would be able to offer directory assistance and operator services to their customers by providing these services themselves, by purchasing these services through the ILECs, or by employing a competitive provider of these functions.

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Teltrust, Inc. ("Teltrust"), by its attorneys, hereby submits its comments in response to the Federal Communications Commission's ("FCC or Commission") Second Further Notice of Proposed Rulemaking in the above-captioned proceeding.^{1/} In this proceeding, the Commission has the opportunity to review its previous decisions on the unbundling of incumbent local

^{1/} Implementation of the Local Competition Provision in the Telecommunications Act of 1996, *Second Further Notice of Proposed Rulemaking*, FCC 99-70, released Apr. 16, 1999 ("*Second Further Notice*").

exchange carrier ("ILEC") network elements and to make the appropriate adjustments to enhance competition in the local exchange market.^{1/}

^{2/} *AT&T Corp. v. Iowa Utilities Board., et al.*, 119 S.Ct. 721 (1999).

In this *Second Further Notice*, the Commission has proposed to retain a set of minimum network elements that must be unbundled from the incumbent LECs' networks on a uniform nationwide basis.^{3/} Teltrust generally supports the Commission's initial conclusion to maintain a minimum list of unbundled network elements ("UNEs") the ILECs must make available upon request and urges the Commission to keep operator services and directory assistance ("DA") on the list of UNEs. Teltrust also responds to the Commission's request for criteria to illuminate the application of the "necessary" and "impair" standards of Section 251(d)(2) of the Communications Act that govern the ILECs' legal obligation to provide access to their DA and operator service databases.^{4/} Under either standard, the Commission should continue to require unbundled access to these databases.

^{3/} *Second Further Notice* at ¶ 14. The *Second Further Notice* also proposes retaining the option for state commissions to order additional elements to be unbundled.

^{4/} 47 U.S.C. § 251(d)(2).

Further, the Commission should expressly extend the unbundling requirements to require these ILEC network elements to be made available to third parties who provide directory assistance and operator services as outsourced functions for requesting telecommunications carriers.^{5/} This would further advance the competitive aims of the Telecommunications Act of 1996, by reducing unnecessary dependence of competitive local exchange carriers on the ILECs with respect to the provision of operator services and directory assistance. Competing telecommunications carriers offering operator services and DA to their customers would have the option of: (1) providing these particular services themselves; (2) providing these services through the ILEC; or (3) selecting a third party to provide the services. Denying third parties access to network elements that are used to support requesting carriers' provision of telecommunications service would preclude carriers offering competitive services from choosing to provide DA and operator services to their customers by outsourcing certain functions when assessing various strategies for market entry. This, in turn, would have an adverse impact on competition in the local exchange market.

^{5/} Press accounts indicate that telecommunications companies are increasingly turning to third parties to provide support services and functions. One article, for example, observed that

As the telecommunications service industry booms, peripheral companies are reaping the benefits of overflowing business from local telcos and interexchange carriers. . . . These companies are providing outsourced services ranging from operator assistance to switching and network facilities for voice and data, a business that appears to have tremendous upside as carriers try to meet growing demand without overtaxing their internal resources or being forced to build internal capabilities too quickly.

Wayne Carter, *Distributing the Load: Outsourcing Opportunities Grow with Telecom Offerings*, Telephony, Jan. 26, 1998.

I. AS A COMPETITIVE PROVIDER OF OPERATOR SERVICES AND DIRECTORY ASSISTANCE TO CARRIERS, TELTRUST HAS A STRONG INTEREST IN THIS PROCEEDING

Teltrust is a diversified telecommunications company that has provided customized support services to the telecommunications and other industries since 1986. These services include national directory assistance, operator-assisted services, third party verification, back office support services, customer support services and network transmission services. Teltrust provides, or could provide, these services for a wide variety of customers, including incumbent and competitive local exchange carriers ("LECs"), long distance and cellular carriers, and other users, such as large clearinghouses.

As one of the nation's leading outsource providers of high-quality telecommunications services, Teltrust provides many types of operator services, including busy line verification, real-time rate quotes, general assistance and completion of collect calls and calls billed to credit cards or calling cards.^{6/} Teltrust operates state-of-the-art call centers with specially trained agents, offers numerous network and reporting capabilities, and provides a variety of billing options to its carrier clients. Teltrust's directory assistance program offers carriers and retail suppliers a national directory assistance database, which uses a dynamic system architecture that is designed for high-speed search operations and efficient management of information. Teltrust's directory assistance agents can perform many search types X over a single area code, a multiple area-code

^{6/} Teltrust has the potential to provide DA and operator service on a wholesale basis, but it currently lacks critical access to ILEC DA and operator services databases as a wholesale provider.

region, or even the entire country. Teltrust also has created versatile query methods to improve search accuracy, including neighborhood searching, metropolitan-area searching, searching by first and second letters, and searching by standard industry category. Teltrust also offers a package of enhanced service options, including label branding, multilingual directory assistance, automatic return to directory assistance by pressing the "*" key, and international directory assistance.

To service its customers, Teltrust has attempted to assemble the most comprehensive nationwide directory assistance database possible based on publicly-available source materials from LECs, Regional Bell Operating Companies, independent telephone companies and other telecommunications- related sources. To keep its database up-dated and to obtain information not available from other sources, Teltrust must have access to the electronic directory assistance databases of the incumbent LECs.

II. THE "NECESSARY" AND "IMPAIR" STANDARDS ESTABLISH TWO DISTINCT MECHANISMS TO GAIN UNBUNDLED ACCESS TO THE ILECS= NETWORK ELEMENTS

The Supreme Court has remanded two competitively significant issues from the *Local Competition Order* for reexamination by the FCC. On remand, the FCC was directed to examine: (1) whether an ILEC network element, if it is proprietary, is nevertheless "necessary" for a competing carrier; and (2) whether the unavailability of a network element from the incumbent LEC would "impair" the competitor's ability to provide its telecommunications services.^{1/} The

^{1/} Under Section 251(d)(2)(A), the "necessary" standard applies to "proprietary" network elements whereas the "impair" standard applies to all network elements. In the ordinary

Supreme Court considered it inappropriate for the Commission to apply a single standard test (*i.e.*, whether denial of access would result in an increase in cost or decrease in quality of the service) to all types of network elements for purpose of determining whether to mandate compulsory access to these elements.

usage, "necessary" and "impair" are given different connotations: "necessary" means "essential", "indispensable," "absolutely required" while "impair" is defined as "to damage or make worse by, or as if by, diminishing in some material aspect" or "handicap." *See* Merriam Webster Collegiate Dictionary, Tenth Edition (1993).

It is generally accepted that, when legislation uses two different terms, these terms are meant to be given two different meanings and the underlying test standards corresponding to these words should be different, especially when they are used in the same section, in relation to two different subjects.^{1/} In the *Local Competition Order*, the Commission defined "necessary" as "a prerequisite for competition."^{2/} In light of the Court's guidance, the Commission will need to consider specific prerequisites to competition, based on consideration of the market conditions before requiring unbundling of a proprietary UNE. Where the barriers to entry to providing a specific UNE are high and competition seems unlikely in the provision of that service, the Commission should find that access to an ILEC proprietary network element is "necessary" under the Section 251 (d)(2).

Under the "impair" standard, the Commission should consider showings of fact that demonstrate diminished quality or increased price as a result of a failure to obtain a UNE. In the Supreme Court's view, not every increase in cost or decrease in quality would qualify as an "impairment." Teltrust urges the Commission to find the "impair" standard to be satisfied where the unavailability of a UNE has "materially" diminished the ability of a competitor to offer a

^{8/} *Wilson v. Turnage*, 750 F.2d 1086, 1091 (D.C. Cir. 1984) ("Where different terms are used in a single piece of legislation, the court must presume that Congress intended the terms to have different meanings"); *National Insulation Transportation Committee v. ICC*, 683 F.2d 533, 537 (D.C. Cir. 1982) ("the use of different terminology within a statute indicates that Congress intended to establish a different meaning"); *National Wildlife Federation v. Gorsuch*, 693 F.2d 156, 172 (D.C. Cir. 1982) ("use of two different terms is presumed to be intentional").

^{2/} Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, *First Report and Order*, 11 FCC Rcd. 15499, 15641-42 (1996) (*Local Competition Order*).

telecommunications service in a competitive manner, or has "materially" increased the cost of providing that element. Thus, the Commission could conclude that having to obtain network elements outside of the ILEC's network, or having to obtain them from the ILEC without unbundled network pricing, would constitute material impairment under Section 251(d)(2)(B).

Key to understanding whether an ILEC facility or function is "necessary" or whether its absence will "impair" a competitor's operations is a real-world analysis of available alternatives and reasonable substitutes. It is possible that the conclusion the Commission will draw for each network element may be different. For each particular network element examined under Section 251(d)(2), the Commission also should seek to implement the Congressional policy preference for a "rapid private sector development of advanced telecommunications and information technologies and services to all Americans," which the Congress intended to achieve "by opening all telecommunications markets to competition."^{10/} Promoting vigorous competition between independent firms can be achieved, with respect to operator services and DA databases, by requiring the unbundling of these network elements for the benefit both of "requesting telecommunications carriers" and other operator services and DA service providers that serve these telecommunications carriers.

III. DENIAL OF ACCESS TO ILEC OPERATOR SERVICE AND DIRECTORY ASSISTANCE DATABASES WOULD MATERIALLY IMPAIR THE ABILITY OF COMPETITORS TO PROVIDE TELECOMMUNICATIONS SERVICES

^{10/} S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

The Commission's task under Section 251(d)(2) is to decide whether ILEC network elements, including operator services and DA, are so significant to ILEC competitors that they should be made available on an unbundled basis. As early as in the *Local Competition Order*, the Commission determined that ILECs must provide unbundled access to their operator services and DA databases.^{11/} Because it viewed facilities and functionalities providing operator services and DA as important to foster competition in the local exchange market, the Commission concluded that the unbundling of these facilities and functionalities was consistent with the intent of the Congress.^{12/} Teltrust believes this conclusion remains valid, as ILECs continue to hold the lion's share of local customers, which gives them a definitive competitive advantage in the market for DA and operator services. In addition, ILECs have significant economies of scale and scope in their provision of DA and operator services, which the *Second Notice* properly recognized may be a factor in determining a competing provider's need for these elements.^{13/}

As the Commission has recognized, there are various methods by which competing carriers can provide operator services and DA to their customers.^{14/} First, the competing carrier can provide operator service and DA to its customers through the use of the ILEC facilities, personnel and databases. In that case, the customer is connected to the ILEC's operator services

^{11/} *Local Competition Order*, 11 FCC Rcd. at 15774.

^{12/} *Id.* at 15772.

^{13/} *Second Further Notice* at & 27.

^{14/} Application of BellSouth Corp., BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc., for Provision of in-Region, InterLATA Services in Louisiana, *Memorandum Opinion and Order*, 13 FCC Rcd. 20599 (Oct. 13, 1998), at && 242, 248 (*Section 271 Application of BellSouth*).

and DA that provides the service on behalf of the competing carrier that requested that service. Competing carriers choosing that option may ask the ILEC either to identify the service as being provided by the competing carrier (*i.e.*, to "rebrand" the service) or not to identify the provider at all (*i.e.*, "unbrand" the service).

Other competitors may choose to supply their own operator services or DA with their own personnel and facilities. In that case, they must either obtain access to the ILECs' directory databases on a "read-only" or "per dip" basis or must purchase the entire ILEC databases of subscriber listings and incorporate these listings, with the exception of the unlisted numbers, into their own DA databases.^{15/} However, based on Teltrust's experience, buying DA listings as tariffed offerings from the ILECs is prohibitively expensive. Per-query tariffed offerings are priced at levels that will earn market-based retail revenues for the ILECs. For example, tariffed rates for directory listings range from \$0.18 to \$0.21 per customer listing.^{16/} The other type of tariffed offering is purchased by subscription, which requires an initial access fee of approximately

^{15/} *Id.* at && 242, 248.

^{16/} This contrasts sharply with the typical rate available by direct access to an ILEC's database. For example, were Teltrust to obtain direct access to Bell Atlantic-New York's directory assistance database, Teltrust could expect a rate of \$0.0419 per query. Joint Complaint of AT&T Comm. of New York, MCI Telecommunications Corp., et al. against New York Tel. Co. Concerning Wholesal Provisioning of Local Exchange Service by New York Tel. and Sections of New York Tel.'s Tariff No. 900, *Opinion and Order in Phase 2*, Case Nos. 95-C-0657, 94-C-0095, 91-C-1174 and 96-C-0036, Appendix A, Part 1, page 2, effective Dec. 22, 1997. Similarly, Bell Atlantic-New Jersey, through its Statement of Generally Available Terms and Conditions, offered a rate of \$0.0409 per query, with no service establishment fee. *See* Bell Atlantic-New Jersey, Inc., Statement of Generally Available Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services and Resale of Telecommunications Services at 42-43 and Exhibit A at 8, NJ Board of Utilities No. TO-97020075, filed Feb. 4, 1997, *final decision pending*.

\$25,000, plus a query fee each time the database is accessed, plus monthly update fees. An update fee is charged not only when an individual subscriber's information changes but can include a fee to update every telephone number in an area code when that area code changes. In addition, not all ILECs offer subscription database access, which means that even purchasing a subscription will not ensure that the competitive provider will have timely nationwide information.

Alternatively, a telecommunications carrier could choose to build a database entirely independent from the ILECs' databases, or to use the database of an independent directory assistance and operator services provider. Although a provider may compile its own database using publicly available sources, such a database would suffer from information deficiency. In today's highly mobile society, printed directories are out-of-date by the time they are released. Similarly, Internet directories, which often rely on a consumers' voluntary submission of updated information to the provider, are likely to contain old listings and other inaccuracies. In contrast, the ILECs revise their database information continuously, thanks to the unparalleled access they have to the necessary information for the vast majority of all telephone customers.^{17/} Any published sources would not contain these crucial updates, which are made possible only because the ILECs have a unique position in the marketplace.

Customers expect to obtain full and accurate directory assistance without unreasonable delay, and they would perceive DA and operator services information that falls short of their expectations as deficient. Competing carriers that do not have access to ILECs' DA and operator

^{17/} The ILECs typically require interconnecting carriers to provide their subscriber information as a term of any interconnection agreement, thus ensuring that the ILECs have unequalled access to all DA information.

services, or whose operator service and DA service provider does not have access to information contained solely in the ILEC databases, would find themselves at a significant competitive disadvantage. To remedy the impediment to competition that might be experienced by competitive carriers and their outsource providers of operator services and DA services, the Commission should reiterate its determination that ILECs must provide unbundled access to their databases, at cost-based rates, regardless of whether some of the information needed to build up an operator service and DA database is available outside of the incumbent's network. Thus, when a competitor's ability to compete would be materially impaired by its inability to obtain access to the ILECs' databases for this information -- which they generate due to their dominant market position -- the ILECs should be required to make unbundled access to their databases widely available.

IV. GRANTING ACCESS TO OPERATOR SERVICES AND DA DATABASES TO COMPETITIVE PROVIDERS IS CONSISTENT WITH THE STATUTE AND THE CONGRESSIONAL GOAL TO PROMOTE COMPETITION

In the *Second Local Competition Order*, the Commission determined that operator service and DA were network elements that should be provided by the ILECs on an unbundled basis to "providers of local exchange service or telephone toll service."^{18/} The Commission did not address whether operator services and DA also should be unbundled for the benefit of entities that provide operator services and DA to providers of telephone exchange service or telephone toll services. If that issue had been raised squarely at that time, however, it seems likely that the Commission would have extended the benefit of the unbundling requirement applicable to operator services and DA to the providers of these services that do not qualify as "telecommunications carriers." Several sections of the *Local Competition Orders* and other Commission decisions related to the provision of UNEs support this belief.

^{18/} Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Local Competition Second Report and Order*, 11 FCC Rcd. 19392, 19460 (1996) (*Second Local Competition Order*).

In the *Local Competition Order*, the Commission stated that, by requiring all LECs to exchange their directory listings with their competitors, its intention was to "foster competition in the directory service market and foster new and enhanced services in the voice and electronic directory services market."^{19/} Certainly, if the Commission had any indication at the time that entities that do not themselves qualify as telecommunications entities would seek to fill the void of competitively provided operator services and DA services, it would not have overlooked this important way of ensuring independence of competing carriers from ILEC network features and functionalities is to enhance the opportunities for third-party providers of such network functions and functionalities. For these reasons, it is logical to conclude that the Commission would have extended the unbundling requirement to benefit all competing operator service and DA service providers.

Further, in its *Local Competition Order*, the Commission expressed its opinion that unbundling of both the facilities and functionalities providing operator services and DA would be beneficial to competition and would "aid the ability of competing providers to differentiate their services from the ILECs."^{20/} By expressly extending in this proceeding the ILECs' obligation to provide unbundled operator services and DA to third-party operator service and DA service providers, the Commission would further its goal to encourage competition and would strengthen

^{19/} *Local Competition Order*, 11 FCC Rcd. at 15772.

^{20/} *Id.* at 15773.

the competitive position of carriers competing against ILECs in the market for telephone local exchange services and toll services.

Such an interpretation of these various Commission pronouncements, moreover, is consistent with the Congressional scheme to develop competition between competing LECs and incumbent LECs by avoiding long-term dependence of new entrants on the provision of operator services and DA by the incumbent LECs. All LECs, including incumbent LECs, are subject to the obligation under Section 251(b)(3) of the Act to permit nondiscriminatory access to their operator services and DA databases.^{21/} The *Second Local Competition Order* confirmed that requiring "nondiscriminatory access to directory assistance and directory listings" encompasses the right for all customers of competing providers of telephone exchange service and/or telephone toll services to access each LEC's directory assistance and obtain any listed number on a nondiscriminatory basis.^{22/}

Allowing competitive operator services and DA service providers access to these ILEC functions and features as unbundled network elements also is consistent with the language of Section 251(d)(2) and Section 251(c)(3). These provisions do not preclude the Commission from deciding that, for ILECs to comply with their obligation to provide telecommunications carriers with nondiscriminatory access to UNEs, they must provide access to unbundled operator services and DA to both carriers and their providers of operator services and DA services. Therefore, Teltrust urges the Commission to clarify that third party vendors of operator services and DA may

^{21/} *Id.* at 15771.

^{22/} *Second Local Competition Order*, 11 FCC Rcd. at 19457.

request access to unbundled DA and operator services from ILECs in the support of providing telecommunications services.

Customers, rather than competing carriers themselves, ultimately are the true beneficiaries of the requirement to unbundle operator services and DA databases. It is unimportant to the customer whether her selected carrier receives operator services and DA information through an arrangement with the incumbent LEC or with a third-party provider of operator services and DA services. What is important is whether customers reap the benefit of increased competition in the market for such services as a result of the unbundling requirement. Thus, it is essential that competing carriers offering DA and operator services to their customers not be restricted as to how they deliver such services due to a narrow interpretation of the statute that would allow ILECs to refuse to provide unbundled operator services and DA to independent service providers.

Finally, the Commission, in the *Second Local Competition Order*, required competitors using the LEC databases to be held to the same standards as the database owners, in terms of the type of information they can legally release to directory assistance callers. There, the Commission even contemplated that databases could be administered by third parties.^{23/} As independent operator services and DA service providers are held to the same privacy standards as any competing telecommunications carriers, security concerns should not preclude the Commission from ensuring that these outsource providers obtain unbundled access to operator services and DA.

^{23/} *Second Local Competition Order*, 11 FCC Rcd. at 19461.

In essence, the competitive provider of DA and operator services is operating the DA and operator service function of a competitive LEC on an outsourced basis. For instance, when Teltrust provides operator service and DA services, it does so pursuant to an outsourcing agreement with a carrier that places Teltrust in the position of requesting any ILEC access to these UNEs on behalf of the carrier. It would truly be an elevation of "form over substance" to conclude that carriers seeking to provide operator services and DA to themselves *do* have a legal right to access ILEC DA and operator service as unbundled network elements, but that carriers seeking to provide DA and operator service on an outsourced basis have no legal right to the same information. Also, a regulatory framework that would prevent third party providers from obtaining these UNEs from ILECs would limit the telecommunications carriers' sources for operator services and directory assistance functions. This undoubtedly would impair and delay the development of full competition in the local services market.

Finally, the *Second Further Notice* requested comments on whether there should be a presumption that the network elements on the Section 271 checklist should be subject to the unbundling obligations of Section 251. Teltrust believes that the Commission's treatment of directory assistance under Section 271 was proper and should be carried into the Section 251 context as well. For instance, the Commission recognized, in its review of BellSouth's request for Section 271 approval in Louisiana, that directory assistance and operator services are provided in a number of ways, including via a third party provider of these services.^{1/} The Commission noted that the Section 271 obligations "require the BOCs to provide nondiscriminatory access to the

^{24/} *Section 271 Application of BellSouth*, 13 FCC Rcd. at 20741.

directory assistance service provider selected by the customer's local service provider, regardless of whether the competitor provides such services itself, selects the BOC to provide such services, or chooses a third party to provide such services."^{25/}

Incumbent LECs should be bound under Section 251(d)(2) by the same obligation to provide unbundled access to operator services and DA to customers of competing carriers regardless of whether the competitor provides operator services and DA itself or through a third party. This not only would make sense, it would be consistent with the Commission's decision in the *Local Competition Order* to unbundle operator services and DA elements by analogy to the Section 271 entry condition.^{26/}

V. CONCLUSION

For the reasons stated herein, the Commission should maintain the ILECs' obligation to provide unbundled access to their operator services and DA databases, features and functions at cost-based rates. ILECs remain one of the best sources of information and an independent database cannot be truly equal in quality to that of the ILECs without access to the information possessed only by the ILECs. Moreover, this superior information possessed by the ILECs is due

^{25/} *Id.* at notes 765 and 767.

^{26/} *Local Competition Order*, 11 FCC Rcd. at 15772.

to their access to all customers of local telephone service, access which their competitors cannot replicate.

The Commission can promote competition by authorizing entities that provide operator services and DA services to access these features on an unbundled basis, even though they may not qualify as telecommunications carriers. Restricting access to the limited class of telecommunications carriers would unnecessarily impede competition in the operator services and DA markets and, consequently, in the local exchange market. Rather than limit the number of competing operator services and DA providers, the Commission should fulfill the 1996 Act's promise of greatly enhanced competition by allowing all competitive providers of operator services and DA services to access the ILECs' databases for these features and functions.

Authorizing open competition among all competitive providers, will promote competition and benefit consumers by increasing the competitive LECs' ability to obtain operator services and DA elements outside the ILEC networks at competitive prices.

Respectfully submitted,

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