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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Implementation of the Local Competition) CC Docket No. 96-98
Provisions in the Telecommunications Act)
of 1996)

To: The Commission, *en banc*

COMMENTS IN RESPONSE TO SECOND
FURTHER NOTICE OF PROPOSED RULEMAKING

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May 26, 1999

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Summary

The objections of the Supreme Court to Rule 319 as previously adopted readily can and should be resolved by clarifying the Commission's rationale in adopting the rule. There simply is no justification for making this a lengthy, complex or time-consuming proceeding, as the ILECs would like to happen. The Commission thus should promptly reinstate Rule 319 with modifications to the definition of the "Local Loop" network element required by experience in the marketplace since adoption of the *First Report and Order* herein, and in light of the uncertain status of Rule 315(c) and 315(d).

aXessa is a facilities-based CLEC in New Orleans which has been attempting (futilely) for at least the past 10 months to obtain transmission capacity from BellSouth between aXessa's central office and its customer premises by combining UNEs pursuant to Section 251(c)(3) of the Act. BellSouth has refused to directly combine the UNEs desired by aXessa, and likewise has refused to allow aXessa to combine the UNEs *unless aXessa collocates in every BellSouth central office where aXessa desires combining to occur*. This would (1) cost aXessa from \$30,000 to \$100,000 *per BellSouth central office* to perform the function of a *\$10.00 jumper cable*; would (2), at best, substantially delay the offering of aXessa's competitive service due solely to the logistics of implementing collocation; and (3) would materially degrade aXessa's service offering due to the substantial additional and grossly discriminatory technical complexity it would require aXessa to accept.

The separate definitions of the "Local Loop" and "Transport" UNEs were not initially an issue because Rules 315(c) and 315(d) required ILECs to combine them upon request. Given the current uncertainty of those rules, as well as this Commission's unassailable authority to define UNEs, the Commission should explicitly establish an "Extended Local Loop" UNE to mean a seamless, integrated transmission facility between a *CLEC* end office and end user customer.

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LA PSC Exhibit 0, Drawing 1: aXessa’s UNE Order

LA PSC Exhibit 0, Drawing 2: BellSouth does not want to combine OC3 (tariffed item)
with UNE, unless aXessa collocates

LA PSC Exhibit 3: Letter to aXessa dated August 28, 1998 from BellSouth

LA PSC Exhibit 4: Letter to aXessa dated September 25, 1998 from BellSouth

LA PSC Exhibit 1: Letter to PSC Commissioners dated November 19, 1998 from BellSouth

LA PSC Exhibit 13: Affidavit of Allynn Madere dated March 4, 1999

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To: The Commission, *en banc*

COMMENTS IN RESPONSE TO SECOND
FURTHER NOTICE OF PROPOSED RULEMAKING

COLUMBIA TELECOMMUNICATIONS, INC. d/b/a aXessa (“aXessa”), by its attorney, respectfully submits its comments to the Federal Communications Commission in response to its Second Further Notice of Proposed Rulemaking (“NPRM”) in the captioned proceeding, FCC 99-70, published at 64 Fed. Reg. 20238 (26 April 1999), and respectfully states:

Summary of Position

The Commission properly is required only to clarify its rationale in originally adopting Rule 319, and thus should promptly reinstate both its definition of particular network elements previously established in the rule and the blanket, unconditional obligation on the part of incumbent LECs to provide all of the identified network elements upon request. In doing so, the Commission should modify its definition of the Local Loop network element to also include a seamless, integrated transmission facility between the end user premise and the central office of the requesting carrier, or, alternatively, should define a new Extended Local Loop element that is subject to the unbundling requirements of the Act, encompassing a seamless, integrated transmission facility between the end user premise and the central office of the requesting carrier.

Introduction and Background

This proceeding has been initiated in response to the decision of the Supreme Court in *AT&T Corp., et al. v. Iowa Utilities Board, et al.*, 119 S. Ct. 721 (1999), which, in relevant part, vacated Section 51.319 of the interconnection rules (“Rule 319”) promulgated in the *First Report and Order* herein.¹ The Supreme Court did so because in promulgating Rule 319 the Commission “did not adequately consider” the “necessary” and “impair” standards of Section 251(d)(2) of the Communications Act, as amended (the “Act”). That is, although the Court explicitly affirmed the Commission’s identification in Rule 319 of the discrete network elements themselves, 119 S. Ct. at 733-734 (Part III.A), it vacated the rule nonetheless because the rule also established a blanket, unconditional requirement on the part of incumbent local exchange carriers (“ILECs”) to make the identified elements available to requesting telecommunications carriers. *See* 119 S. Ct. at 734-736 (Part III.B). It was in establishing this blanket obligation, the Court held, that the Commission did not properly apply the “necessary” and “impair” standards of Section 251(d)(2) of the Act. (*Id.*).

Specifically, the Court held that the “Act requires the FCC to apply *some limiting standard* [in requiring ILECs to provide unbundled network elements], rationally related to the goals of the Act, which it has simply failed to do.” (*Id.* at 734-735). (Emphasis added). The Court did not purport to determine what the appropriate “limiting standard” should be, but it did point out two defects in the Commission’s analysis. First, the Court held that confining the inquiry to the availability of substitutes within an ILEC’s own network, as the Commission did,

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (First Report and Order)*, CC Docket No. 96-98, 11 FCC Rcd 15499 (FCC 1996) (the “*First Report and Order*”).

effectively “allows *entrants*, rather than the Commission, to determine whether” the “necessary” and “impair” standards are satisfied, and hence that the “Commission cannot, consistent with the statute, blind itself to the availability of elements outside the incumbent’s network.” (*Id.* at 735). (Emphasis added).

Second, the Court held that the “Commission’s assumption that *any* increase in cost (or decrease in quality) imposed by a denial of a network element renders access to that element ‘necessary,’ and causes the failure to provide that element to ‘impair’ the entrant’s ability to furnish its desired services is simply not in accord with the ordinary and fair meaning of those terms.” (*Id.*). (Emphasis added). The Court buttressed its analysis by citing illustrations where *de minimis* impacts on a competing carrier nonetheless would have satisfied the interpretation of the statutory “necessary” and “impair” standard initially adopted by the Commission.

This proceeding thus endeavors to re-establish ILEC unbundling requirements under Section 251(c)(3) of the Act, and to do so in compliance with the Supreme Court’s decision. The NPRM identifies several issues for comment, including “whether the Commission can require incumbent LECs to combine unbundled network elements that they do not already combine (*e.g.*, an unbundled loop combined with unbundled transport).” (NPRM at ¶33). The NPRM further inquires “whether, in light of . . . experience in the marketplace since adoption of the . . . *First Report and Order*, the Commission should modify the definition of any of its previously identified network elements.” (*Id.* at ¶34).

Interest of aXessa

aXessa is a facilities-based competitive local exchange carrier (“CLEC”) in New Orleans, Louisiana, which has been engaged in “negotiations” with BellSouth since at least mid-July 1998

attempting to obtain transmission capacity between aXessa's central office and its end user customer premises by combining Unbundled Network Elements (UNEs) pursuant to Section 251(c)(3) of the Act. That is, aXessa has been attempting to obtain such transmission capacity by combining what were defined in Rule 319 as a "Local Loop" UNE, running from aXessa's end user premise to BellSouth's main office in New Orleans, with a "Dedicated transport" UNE, running from BellSouth's main office in New Orleans to aXessa's central office. (See 319(a), 319(d)(1)(i)). Heretofore, BellSouth has refused and rebuffed all of aXessa's attempts to do so, insisting that aXessa must instead collocate in each of BellSouth's central offices where aXessa desires to combine UNEs.² Moreover, BellSouth continued to insist upon collocation by aXessa in the face of this Commission's clear and unequivocal ruling that "*BellSouth's offering in Louisiana of collocation as the sole method for combining network elements is inconsistent with section 251(c)(3) of the Act.*"³

More specifically, BellSouth not only has adamantly refused to directly combine the UNEs as desired and requested by aXessa, but BellSouth also has adamantly refused to allow aXessa to combine the UNEs for itself, *except by collocation in each BellSouth office that aXessa seeks such combining*. BellSouth routinely combines these identical facilities in its own network

² Attached hereinafter are exhibits depicting what aXessa has requested (Exhibit 0, Drawing 1) and what BellSouth has insisted upon (*id.*, Drawing 2), as well copies of BellSouth's letters dated August 26, 1998, September 25, 1998 and November 19, 1998 (Exhibits 3, 4 & 1, respectively), memorializing some of the positions BellSouth has taken in its "negotiations" with aXessa. These exhibits are copies of some of the exhibits supporting aXessa's complaint before the Louisiana Public Service Commission in Docket U-23858. (See *infra*).

³ *In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana (Memorandum Opinion and Order)*, CC Docket No. 98-121, 13 FCC Rcd 20599, at ¶168 (FCC 1998) (the "*Second Section 271 Denial*"). (Emphasis added). Even more egregiously, BellSouth falsely claimed error in this ruling in its petition for reconsideration.

using a simple jumper cable that costs less than \$10.00,⁴ but its insistence that aXessa collocate in order to perform the same function imposes an additional cost of \$30,000 to \$100,000 *per office* on aXessa in order to substitute for BellSouth's \$10.00 cable.⁵ BellSouth's conduct on this issue thus has almost totally frustrated aXessa's ability to effectively compete with BellSouth for local telephone service in the New Orleans market, both because of the substantial time delay aXessa has experienced in getting essential facilities due to BellSouth's unjustified delaying and denying tactics, and because the exorbitant additional and wholly unnecessary costs BellSouth seeks to impose on aXessa materially undercuts the economic viability of the competitive service aXessa is offering.⁶

After months of futile "negotiations" with BellSouth on this issue, aXessa filed a formal complaint with the Louisiana Public Service Commission on January 19, 1999, which has been docketed as No. U-23858. By interlocutory ruling entered April 12, 1999, the Administrative Law Judge denied the motions of both aXessa and BellSouth for summary judgment, and held that a hearing would be required on certain specific factual matters related to the dispute.⁷

⁴ In fact, in order to simply get in business in the face of BellSouth's unjustified delaying and denying tactics, aXessa has obtained such transmission facilities for some of its customers via the resale method from BellSouth. BellSouth is thus actually providing to aXessa on an integrated, seamless basis the *identical* facilities sought by aXessa by combining UNEs.

⁵ See Affidavit of Allynn Madere attached hereinafter, which is a copy of Exhibit 13 supporting aXessa's complaint in Docket U-23858 before the Louisiana PSC. (See *infra*).

⁶ aXessa is a start-up company which has not yet achieved profitability. Thus, the substantial increased costs BellSouth seeks to impose by its position quite literally threatens aXessa's economic existence.

⁷ Ruling on Cross Motions for Summary Judgment by Columbia Telecommunications, Inc. d/b/a aXessa, and BellSouth Telecommunications, Inc. and Ruling on Commission Staff's Motion to Dismiss, *Columbia Telecommunications, Inc. d/b/a aXessa Versus BellSouth Telecommunications, Inc.*, Docket No. U-23858 (LA PSC 12 Apr. 1999) (the "Interlocutory

aXessa has appealed the interlocutory ruling to the full Commission, which appeal is pending before the PSC.

In the meantime, BellSouth and aXessa are continuing discussions concerning a possible interim compromise, *inter alia*, pending this Commission's decision in this proceeding. While the discussions remain confidential, there is no possibility whatsoever that they will resolve aXessa's underlying complaint that it lawfully should be able to obtain from BellSouth seamless, integrated DS-1 facilities at UNE rates (*i.e.*, at rates implemented by the PSC pursuant to Section 251(d)(1) of the Act) connecting aXessa's end user premises with aXessa's central office.

Comments on Further Notice

1. The Supreme Court's Decision on Rule 319 is a Narrow One and Requires Only Limited Remedial Action by the Commission.

Despite ILEC rhetoric to the contrary, the fact of the matter is that the Supreme Court's objections to Rule 319 as previously promulgated are narrow and can be resolved relatively simply by clarifying the Commission's rationale in adopting the rule. Nothing in the Supreme Court's decision crippled the Commission's ability to proceed via rulemaking or cast doubt upon the adequacy of the record compiled herein for the purpose of implementing the UNE provisions of the Telecommunications Act of 1996. Accordingly, aXessa strongly urges the Commission to decline the ILECs' predictable invitations to turn this into an elaborate and time-consuming

Ruling"). Among other things, the ALJ construed this Commission's Rule 315(b), which was reinstated by the Supreme Court, to mean that "incumbent LECs are prohibited from separating the elements being requested by a carrier when those elements are, in fact, currently combined." (*Id.*, at p. 10). The ALJ further found that the parties disagreed as to whether the network elements requested by aXessa are, in fact, currently combined by BellSouth -- notwithstanding that BellSouth could not and did not dispute that it was providing the *identical* facilities to aXessa on a seamless, integrated resale basis -- and, hence, that a hearing would be required to resolve the issue. (*Id.* at p. 11).

proceeding. Rather, prompt and decisive reinstatement of Rule 319, with modifications suggested by experience since it was initially adopted, is urgently necessary to prevent the ILECs from further delaying and frustrating the development of local competition, contrary to Congressional intent.

aXessa respectfully submits that the requisite “limiting standard” and “substance” to the “necessary” and “impair” requirements can be fully satisfied by appropriately acknowledging the *time*-limited character of Rule 319. That is, the current reality is that (1) the ILECs remain essentially entrenched local monopolies; that (2) each of the network elements identified in Rule 319 is a fundamental and essential building block for a local telecommunications network; and that (3) substitutes for those building blocks, whether inside or outside the ILECs’ networks, are typically not available. If available at all, they are available only at materially higher cost to CLECs, and with materially longer provisioning intervals, and, in some cases, with materially degraded service. Those essentially incontestable facts alone justify full reinstatement of Rule 319 (with modifications) in today’s marketplace, even under the Supreme Court’s decision.

The necessary “limiting standard” in aXessa’s view is some form of a *time* limit, and would be satisfied by the Commission’s acknowledgment that in the future, when competition to the ILECs has taken root, the ready availability of substitutes may counsel that at least some of the network elements identified in Rule 319 no longer meet the “necessary” and “impair” standard of Section 251(d)(2). At such time, the Commission’s duty under Section 251(d)(2) would be to eliminate from the list in Rule 319 any elements found to be superfluous.

aXessa believes that the appropriateness of such an analysis is underscored by Section 271 of the Act. Section 271 explicitly conditions the ability of BOCs to provide in-region

interLATA services, *inter alia*, on their provision of five of the seven network elements identified by Rule 319. Thus, Congress obviously recognized that *in today's marketplace, which essentially is starting from ground zero*, blanket and unconditional access to at least these five network elements is absolutely required in order to foster the development of competition. This provision of Section 271 thus can be reconciled with the "limiting standard" in Section 251(d)(2) found by the Supreme Court only if Congress meant that the mandatory provision of those elements, while absolutely required initially, would be limited by *time*.

That is, for the immediate future Congress recognized that the realities of today's marketplace dictate blanket and unconditional availability of the five network elements enumerated in Section 271 (as well as such other, similarly situated elements that the Commission identified by rule under Section 251(c)(3)). However, at some point *after* the BOCs have satisfied the Section 271 requirements and local competition has taken firm root, Congress intended that the Commission would recognize the emergence of adequate alternative sources of supply for basic network building blocks on an economically efficient basis. When that eventuality occurs, Congress intended that the Commission would correspondingly reduce the list of network elements the ILECs are required to make available under Section 251(c)(3) of the Act.

Needless to say, that is certainly not the situation now; nor is it on the horizon. Thus, the Commission is fully justified in ordering the ILECs on a nationwide basis to provide blanket and unconditional access to the Rule 319 network elements until such time as the Commission finds that adequate substitutes have developed. The Commission need not speculate at this time when such an eventuality will occur, but may instead periodically review Rule 319 in the future.

Similarly, a Commission finding that the absence of the network elements enumerated in Rule 319 would *materially* increase an entrant's costs, degrade its service offerings or delay its commencement of competing service, would clearly satisfy the Supreme Court's objections to the Commission's initial interpretation of the "necessary" and "impair" standard. Such a finding is amply warranted in fact and on the present record, without conducting any further proceedings. Accordingly, the Commission should clarify its rationale as set forth above and should promptly reinstate Rule 319.

2. The "Local Loop" UNE Should Be Modified to Explicitly Include Transmission from the CLEC's Office to its End User Premises

aXessa's experience with BellSouth amply demonstrates that the definition of a "Local Loop" UNE in Rule 319(a) should be modified to make explicit that an ILEC must provide an integrated, seamless and non-discriminatory transmission facility not only from the end user premises to the ILEC central office, but also from the end user premises to the *CLEC* central office. This change can be effected either by modifying the existing definition of "Local Loop" to refer to the central office of *either* an incumbent or a non-incumbent LEC,⁸ or by adding a new UNE definition for an "Extended Local Loop".⁹

⁸ In such case Rule 319(a) could be amended to read something like the following: "(a) *Local Loop*. The local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in either an incumbent LEC central office, or a competitive (non-incumbent) LEC central office, and an end user customer premise." (Added language is underscored).

⁹ In such case, Rule 319(a) could be redesignated "(a)(1)" and a new subsection could be added reading something like the following: "(a)(2) *Extended Local Loop*. The extended local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in a competitive (non-incumbent) LEC central office and an end user customer premise."

In this regard, aXessa points out that the “necessary” component of the statutory standard is not implicated at all because the facilities in question are not “proprietary” to the ILEC within the meaning of Section 251(d)(2)(A). On the other hand, as aXessa’s experience demonstrates, the “impair” component is amply satisfied under any conceivable analysis.

First, aXessa operates its own switch in New Orleans, which is precisely the type of facilities based competition the Act seeks to foster. By the same token, it is the fact that aXessa is operating its own switch that makes the existing UNE definitions inadequate, because aXessa requires a local loop to *its* central office and not just to the ILEC central office. Additionally, the cost of establishing facility based competition, such as offered by aXessa, substantially increases the economic risks associated with the venture (compared, say, to a resale operation) and, thus, commensurately increases the economic return necessary to attract that level of investment in the competitive venture. Furthermore, aXessa and many similar CLECs are still in the developmental stage and typically have not achieved breakeven cash flow, much less profitability.

Thus, the absence of an extended local loop network element being available to a facilities-based CLEC like aXessa substantially and materially increases their cost of operation, to the point that the economic viability of their competitive venture is threatened. Moreover, even if the viability of the venture itself could be sustained in the face of the enormous increased cost, achieving breakeven cash flow and ultimately profitability would be substantially delayed, thereby materially impairing the CLECs’ economic resources and, hence, their ability to provide effective competition to ILECs.

In addition to satisfying the statutory “impair” standard on the basis of cost considerations alone, an extended local loop must be available to avoid both substantially degrading the CLEC’s

quality of service and substantially delaying the introduction of its competitive offering. For example, having to collocate in a ILEC central office means that *at least* four times as many cross-connect (jumper) cables are required to establish connectivity through a particular ILEC central office, each of which introduces additional technical degradation which must be compensated for, thus increasing the likelihood of the CLEC experiencing service disruptions that do not happen to the ILEC. Similarly, the additional electronic equipment required as a part of collocation which is not used by the ILEC for its own network also introduces additional points of technical degradation and breakdowns that are not present in the ILEC services.¹⁰

Substantial impairment from a timeliness of service standpoint also results from failure of an ILEC to provide an extended local loop. The normal provisioning interval for an integrated transmission facility by an ILEC is a matter of days. By contrast, it takes many months to negotiate and implement collocation arrangements, even assuming adequate space in the ILEC central office is available where needed. Thus, just the mechanics alone of implementing collocation, compared to having available an unbundled extended local loop network element, materially impairs a facility-based CLEC's ability to compete with an ILEC.

The absence of an unbundled extended local loop network element also conflicts with Section 251(c)(3)'s explicit requirement that unbundled network elements be made available on

¹⁰ The Commission may take official notice that after a comprehensive evidentiary hearing, the Public Utility Commission of Oregon concluded that using collocation as the means for combining UNEs "will impede the progress of local exchange competition by subjecting requesting carriers to *unnecessary costs, delays, risks, inefficiencies, and inferior service quality.*" Order No. 98-444, *In the Matter of the Investigation into Compliance Tariffs filed by U S West Communications, Inc., Advice Nos. 1661, 1683, 1685, and 1690*, UT 138, at p. 35 (OR PUC 13 Nov. 1998) (the "*Oregon Proceeding*"). (Emphasis added). As part of its decision the PUC meticulously chronicled, *inter alia*, the substantial technical degradation and discrimination inherent in collocation. (*Id.* at, e.g., pp. 35-40).

“rates, terms, and conditions that are just, reasonable, and *nondiscriminatory*”. There can hardly be a more flagrant example of invidious, anti-competitive discrimination by the ILEC, in patent violation of this provision, than its refusal to provide an unbundled extended local loop to a CLEC while providing the *identical* facility on both a retail and resale basis at substantially higher cost or, alternatively, at UNE rates but on a grossly inferior technical basis (*i.e.*, by collocation).

Finally, in this regard, aXessa points out that the identical result sought by aXessa was originally contemplated by Commission when it adopted Rule 315(c) and (d). The Commission’s intent has been thwarted to date, however, because the Eighth Circuit vacated those portions of the rules and only Rule 315(b) was explicitly reinstated by the Supreme Court. Thus, not only has the originally intended mechanism for obtaining the functionality of an extended local loop thus far not been available to CLECs, there is substantial uncertainty as to whether, if ever, the mechanisms intended under Rule 315(c) and (d) will ever be available. The need for relief is simply far too immediate and urgent to risk the delay inherent in waiting for the resolution of the status of Rules 315(c) and (d).

By contrast, the authority of this Commission to define a new extended local loop UNE, or modify the existing local loop definition to include an extended local loop, is absolutely unassailable. Both the Supreme Court and the Eighth Circuit have unconditionally and categorically rejected the ILECs attacks on the Commission’s authority to define UNEs. Thus, the Commission clearly can -- and should -- redefine the Local Loop or define a new UNE to include an extended local loop, and thereby accomplish the same result as originally intended by Rule 315(c) and (d).

Conclusion

For the reasons stated above, the Commission should clarify its rationale in promulgating Rule 319 to harmonize it with the Supreme Court's decision in *AT&T Corp.*, *supra*, and should promptly reinstate Rule 319 with the addition of an extended local loop UNE for facilities-based competitive local exchange carriers such as aXessa.

Respectfully submitted,

COLUMBIA TELECOMMUNICATIONS,
INC. d/b/a aXessa

By: 
Kenneth E. Hardman

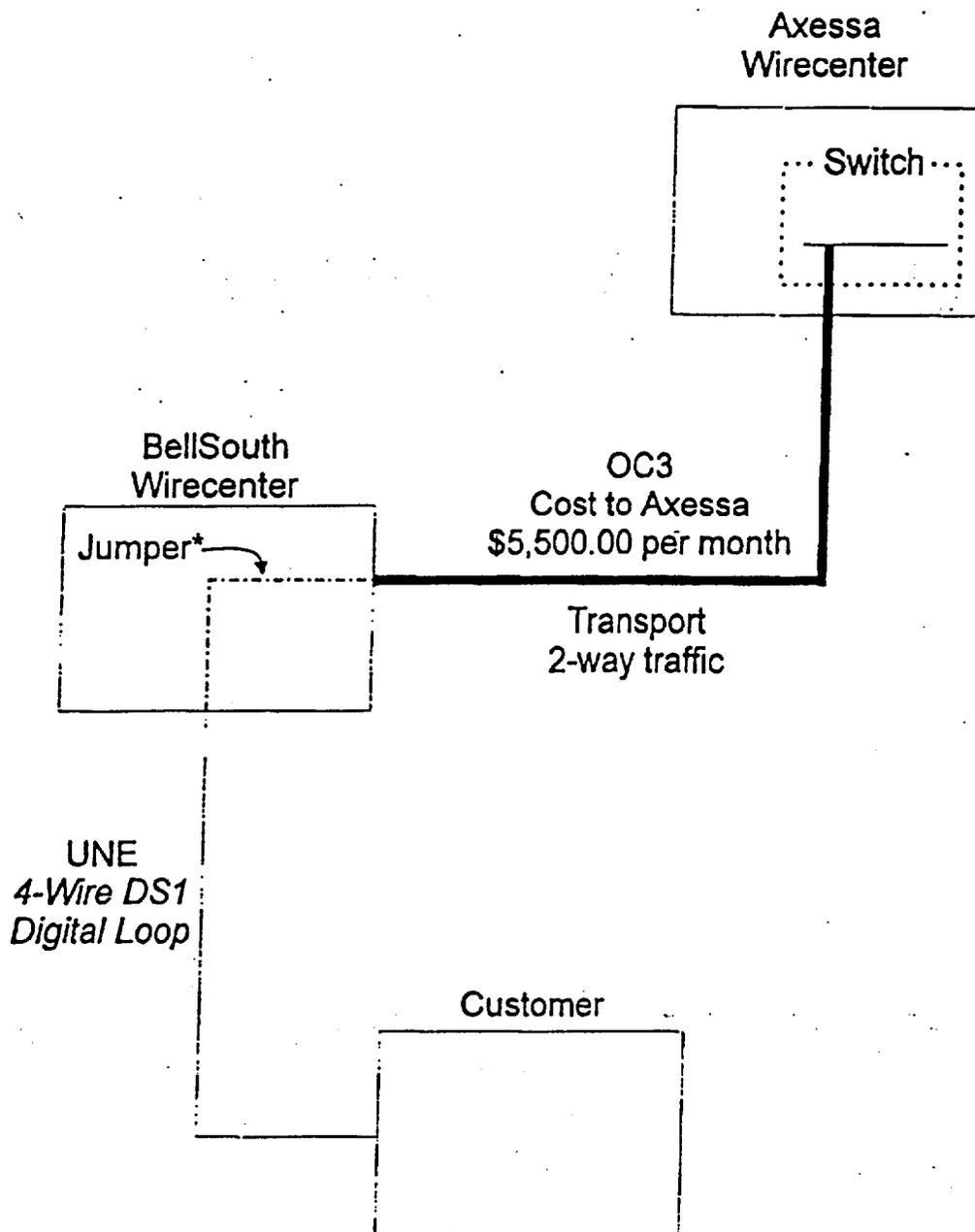
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May 26, 1999

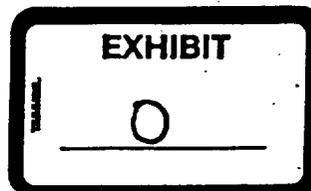
E X H I B I T S

Axessa's UNE Order



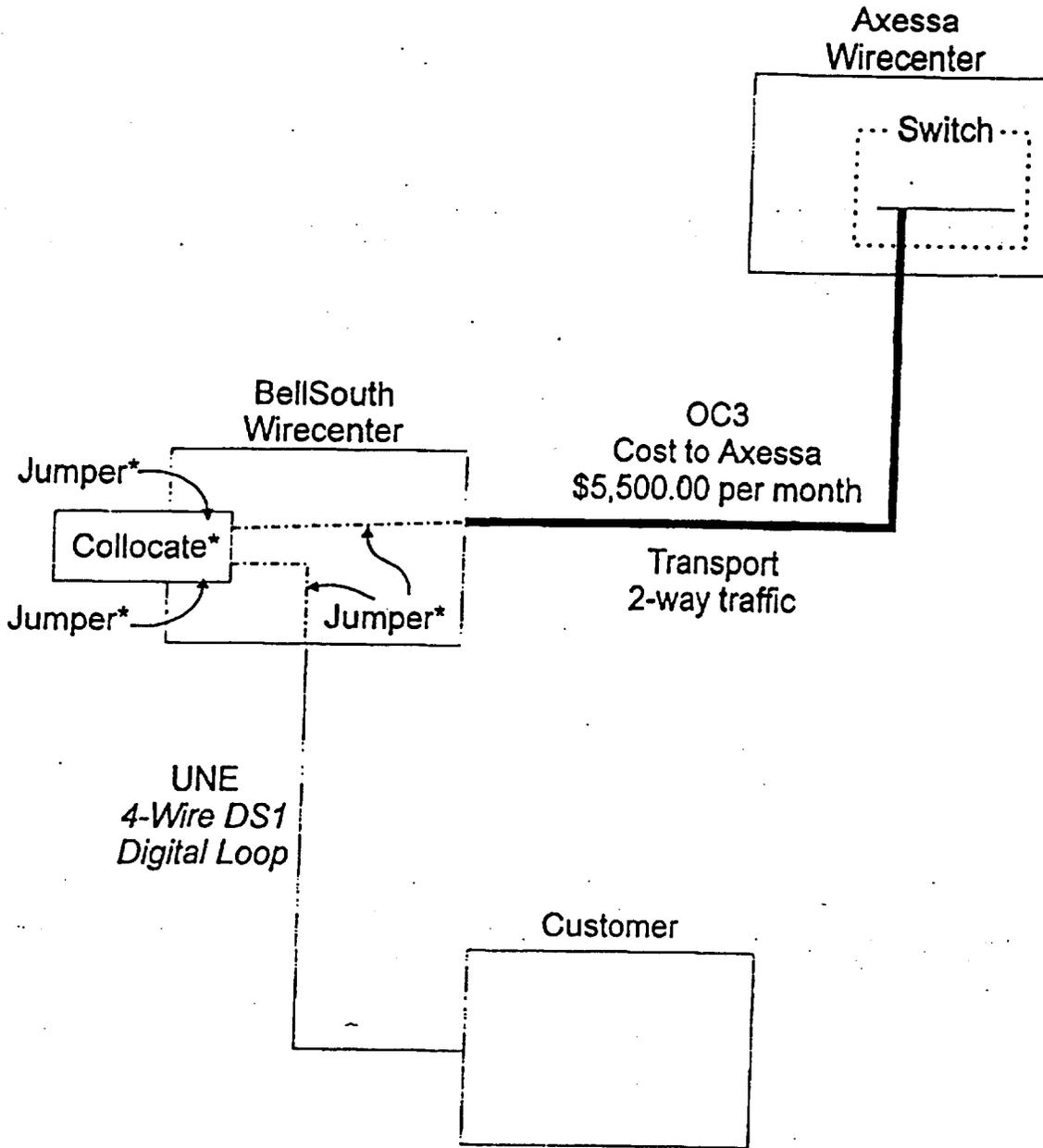
NOTE: Axessa requested service within one mile from BellSouth wirecenter!

* Axessa pays for UNE and Jumper.



Drawing 1

BellSouth does not want to combine OC3 (tariffed item) with UNE, unless Axessa collocates.



NOTE: Axessa requested service within one mile from BellSouth wirecenter!

* Axessa pays for UNE, Collocation and Jumpers. Additional Jumpers may be needed.

BellSouth Telecommunications, Inc.
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375

August 26, 1998

Mr. Tom Nolan
President
Columbia Telecommunications, Inc.
1340 Poydras Street
Suite 350
New Orleans, Louisiana 70112

Re: Your letter dated August 18, 1998

Dear Mr. Nolan:

This is in response to your letter dated August 18, 1998, and the subsequent conversation on August 19, 1998 with BellSouth employees Pat Finlen and David Thierry. It is my understanding that Columbia is proposing that its T-1 UNE loop be connected by BellSouth to the OC-3 facilities Columbia has purchased from BellSouth's tariff.

The interconnection agreement executed between the parties contains the rates, terms and conditions that govern BellSouth's provision of unbundled network elements to Columbia. Section 2.2.2 of Attachment 2 states that: "The provisioning of service to a customer will require cross-office cabling and cross-connections within the central office to connect the loop to a local switch or to other transmission equipment in co-located space." As such, BellSouth will deliver to Columbia the unbundled T-1 loop to Columbia's collocation arrangement. BellSouth will deliver the OC-3 facilities to the Columbia collocation arrangement as well. Columbia may, pursuant to section 1.1.3 of Attachment 2, connect the OC-3 facilities and the T-1 UNE loop to provide the telecommunications service requested by Columbia's end user. The contract language cited is consistent with the current state of the law regarding access to unbundled network elements.

Contrary to the legal opinion provided by Mr. Hardman, an incumbent local exchange company such as BellSouth may rely on collocation arrangements to satisfy its obligation under section 251(c)(3) to provide UNEs. Indeed, the Act itself confirms that collocation is the appropriate method of access under section 251(c)(3). Congress imposed upon incumbent local exchange companies the "duty to provide...for physical collocation of equipment necessary for interconnection or access to unbundled network

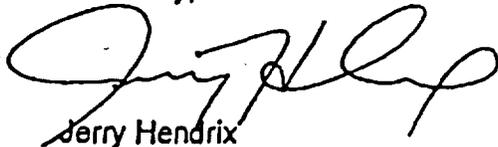
EXHIBIT

3

elements at the premises of the local exchange carrier." 47 U.S.C. § 251(c)(6). Congress thus envisioned that CLECs would obtain access to UNEs under section 251(c)(3) through collocation. Thus, CTI's allegation that BellSouth's collocation requirement is designed to stifle competition and increase competitor's costs is totally baseless and BellSouth adamantly denies this assertion.

The interconnection agreement executed between the parties authorizes Columbia to request either a virtual collocation arrangement via BellSouth's FCC Tariff No. 1 or a physical collocation arrangement via Attachment 4 of the interconnection agreement. BellSouth employees will be happy to discuss either of these alternatives with Columbia.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jerry Hendrix".

Jerry Hendrix



BellSouth Interconnection Services 205 371-4970/858 478 2783
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Bill French
Sales Director
CLEC Interconnection Sales

September 25, 1998

Mr. Tom Nolan
President
Axessa (d.b.a. Columbia Telecommunications, Inc)
1340 Poydras Street
Suite 350
New Orleans, LA 70112

Dear Tom:

During our meeting on August 31, 1998, we discussed several issues that related to local interconnection, including collocation, unbundled network elements (UNEs) and resale. This letter will serve as a follow up to our discussion regarding BellSouth's position on collocation and combination of UNEs.

BellSouth's proposed delivery method for UNEs complies with Section 251(c)(6) of the Act. In Section 251(c)(6) Congress imposed upon incumbent local exchange companies the "duty to provide...for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier." Congress thus envisioned that new entrants who obtained access to UNEs under Section 251(c)(3) would combine those UNEs through collocation.

While the Eighth Circuit ruling does authorize "telecommunications carriers to achieve the capability to provide telecommunications services completely through access to the unbundled elements of an incumbent LEC's network," the other parts of its opinions demonstrate that it did not intend for the new entrant to make no investment or bear no expense to receive the unbundled network elements. For example, the Eighth Circuit stated that:

A carrier providing service through unbundled access, however, must make an up-front investment that is large enough to pay for the cost of acquiring access to all of the unbundled elements of an incumbent LEC's network that are necessary to provide local telecommunications services without knowing whether consumer demand will be sufficient to cover such expenditures. Moreover, our decision requiring the requesting carriers to combine the elements themselves increases the costs and risks associated with unbundled access as a method of entering the local telecommunications industry and simultaneously makes resale a distinct and attractive option. With resale, a competing carrier can avoid expending valuable time and resources recombining unbundled network elements (120 F.3d at 815)

EXHIBIT

4

Mr. Tom Nolan
September 25, 1998
Page Two

The Eighth Circuit Court further explained that "the degree and ease of access that competing carriers may have to the incumbent LEC's network is... far less than the amount of control that a carrier would have over its own network" (120 F.3d at 816). Thus, the Eighth Circuit ruled out any requirement of direct access to central office equipment for purpose of a new entrant's UNE combination activities.

In summary, BellSouth's proposal to deliver unbundled network elements to a physical or virtual collocation arrangement accomplishes the goals of delivering the individual elements to the new entrant in the most efficient and economical manner and in such a way that the elements can be combined by the new entrant itself.

If you have additional questions regarding this matter, please feel free to call me at (205) 321-4970.

Sincerely,



William D. French

cc: David Barron
Darryl Washington

BellSouth Telecommunications, Inc. 504 828-7900
Suite 3000
305 Canal Street
New Orleans, Louisiana 70130-1102

D. R. Hamby
Regulatory Vice President

FOI: 528-
7554

November 19, 1998

Honorable Jay A. Blossman, Jr.
Commissioner - LPSC
645 Lotus Drive North, Suite A
Mandeville, LA 70471

Honorable James M. Field
Commissioner - LPSC
One American Place, Suite 1510
Baton Rouge, LA 70825

Dear Commissioners:

We have been asked to respond to the November 5, 1998 letter from Connie Willems on behalf of aXessa concerning interconnection facilities between BellSouth and aXessa. Attached are three items which address our response: a schematic which illustrates the major items at question; a copy of Ms. Willem's November 5 letter; and finally, a point-by-point response to aXessa.

First, let me address Ms. Willem's comments in Item #9 of her letter which assert that "BellSouth's conduct has been in bad faith and is anti-competitive" and that "BellSouth's refusal is only based on its wish to prevent facilities-based competition in its area." These words may be commonplace for lawyers, but to me they are disturbing, and (most importantly) untrue. BellSouth has been negotiating with aXessa for over four months. During that time, there have been numerous meetings with aXessa involving both Louisiana and Headquarters representatives. We have assisted and advised aXessa on the most profitable way for them to enter the market in competition against us. We have attempted to answer every question or issue raised by aXessa. While they may not like or agree with some of our answers, to term our position as "anti-competitive" is a gross mis-characterization.

EXHIBIT

1

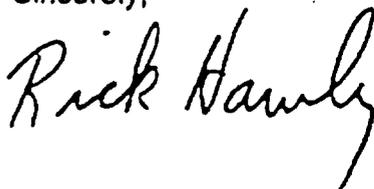
Curiously, Ms. Willem's letter, which consistently misstates the facts, also fails to even mention the real issue between BellSouth and aXessa. Stated simply, aXessa wants BellSouth to recombine UNE's which exactly duplicate BellSouth retail services and thereby provide aXessa with an approximate 60% discount instead of the 20.72% discount ordered by the LPSC. Specifically, they want to purchase DS1 loop and transport UNE's outside of New Orleans and have BellSouth extend them for free to their switch in New Orleans. The retail service which provides this arrangement is MegaLink, which is available for resale and has been offered to aXessa. See attached EXAMPLE.

If aXessa wants to utilize DS1-type service outside of New Orleans, they have two choices per the LPSC regulations and the Eighth Circuit ruling. First, they can order MegaLink at a 20.72% discount. If they prefer, they can order UNE's and combine the UNE's themselves. Other CLEC's in Louisiana are using both these methods today.

BellSouth is committed to doing everything in its power to implement local competition in our area. We believe that LPSC regulations and the federal law, as interpreted by the Eight Circuit Court, require that we take the stance that we have assumed with aXessa. Frankly, the assertion that we would block facilities-based competition is foolish in light of the requirements for our entry into the long distance market. Nevertheless, we remain open to continuing our meetings with aXessa or any other competitor to pursue legal, fair interconnection.

Thank you for this opportunity to respond to the aXessa letter. We would be happy to meet with you and aXessa to further discuss these matters if necessary.

Sincerely,

A handwritten signature in cursive script that reads "Rick Hawley". The signature is written in dark ink and is positioned below the word "Sincerely,".

Attachments

cc: Ms. Connie Willems

**BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION**

**COLUMBIA TELECOMMUNICATIONS, INC.,
d/b/a AXESSA**

v.

BELLSOUTH TELECOMMUNICATIONS, INC.

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DOCKET NO. U-23858

***In re:* Violations of the Telecommunications Act of 1996 and Local Competition Rules by
BellSouth**

A F F I D A V I T

STATE OF LOUISIANA

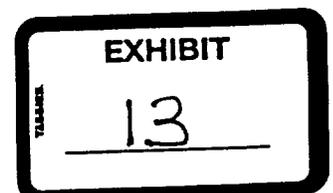
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, duly commissioned and qualified within the State and Parish aforesaid, personally came and appeared:

ALLYNN MADERE

a person of the full age of majority and a resident of the Parish of St. John, State of Louisiana, who, being first duly sworn, deposed and said:

1. That he is the Chief Administrative Officer ("CAO") of Columbia Telecommunications, Inc., d/b/a aXessa ("aXessa"), and that he has been so employed during all times relevant to this proceeding.



2. That in his capacity of CAO he was part of aXessa's team who negotiated with BellSouth Telecommunications, Inc. ("BellSouth") regarding aXessa's request for interconnection and that he has personal knowledge thereof.

3. That the interconnection request reflected on Exhibit 2 is a true and correct copy of the order that was placed with BellSouth and that such was done in the course and scope of the business of aXessa;

4. That BellSouth refused to provide a local channel DS-1, because he was informed by Mr. French that aXessa could not combine a UNE to a tariffed item, *i.e.*, the OC3, unless by collocation;

5. That upon BellSouth's refusal to provide a DS-1 UNE, he personally ordered, as an alternative, on behalf of aXessa, a Local Channel DS-1^{UNE} and a four-wire DS-1 digital interoffice channel,^{UNE}

6. That BellSouth's representative informed him that it would not combine these elements unless by collocation in each BellSouth wire center;

7. That Exhibits 10 and 14-19, were prepared by him, Mr. Nolan, aXessa's President, or aXessa's attorneys, on behalf of aXessa, in the course and scope of aXessa's business and that Exhibits 10 and 14-19, are true and correct copies of the originals.

8. That Exhibits 1, 3, 4 and 6 were received by him from various representatives of BellSouth and that these exhibits are true and correct copies of the originals thereof, which were received by aXessa or its attorneys in the course and scope of the business of aXessa.

9. That he had a telephone conversation with Mr. William French on or about December 3, 1998, after the receipt by Mr. French of aXessa's letter of December 2, 1998 (Exhibit 10) in

which aXessa informed BellSouth that it wished to combine the UNEs itself, wherein Mr. French denied access to BellSouth's network by aXessa's technicians for the purpose of combining the UNE's.

10. That he had numerous telephone conversations and meetings with BellSouth, in which various alternative proposals were made to BellSouth by aXessa and made by BellSouth to aXessa, subject to confidentiality agreements, but that BellSouth and aXessa did not come to an agreement.

11. That aXessa has invested more than \$4 million on a switch, installation thereof, and related matters.

12. That aXessa has paid BellSouth more than \$40,000.00 to connect the switch (OC3) to BellSouth's network, and that it pays over \$3,600.00 per month as recurring charges to BellSouth.

13. That aXessa has not been able to serve third-party endusers from its switch, except through tariffed resale MegaLinks, though it is otherwise operational, due to BellSouth's refusal to provide aXessa with connections to aXessa's endusers, except by collocation in each wire center of BellSouth.

14. That the costs of collocation at a wire center, including the preparation of engineering plans and drawings and the purchase of equipment, are estimated by him to be as high as \$30,000.00 to \$100,000.00 per location, depending on the equipment and site preparation needed.

15. That he has thirty-seven (37) years of experience in the telecommunications industry. That from 1972 through 1998 he was the Executive Vice-President and General Manager of an independent telephone company, Reserve Telephone Company, and that his responsibilities included administration and planning.

16. That as a matter of personal knowledge, he knows that BellSouth has been interconnecting customers of an ILEC such as Reserve Telephone Company, to BellSouth's network for years, without requiring collocation, on a combined basis, by the simple installation of cross connects or jumpers.

17. That he has personal knowledge that BellSouth offers a connection from its switch to the endusers as one link, on a combined basis.

18. That this affidavit is based on his personal knowledge and experience.

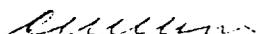
Further, Affiant sayeth not.

New Orleans, Louisiana this 4th day of March 1999.



ALLYNN MADERE

SWORN TO AND SUBSCRIBED
BEFORE ME, NOTARY, THIS
4th DAY OF MARCH, 1999.



NOTARY PUBLIC
110609.1