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EX PARTE OR LATE FILED

August 20, 1999

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WRITTEN EX PARTE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., Room TWB-204
Washington, D.C. 20554

RECEIVED

AUG 20 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CC Docket No. 96-98

Dear Ms. Salas:

This is to give notice that on August 20, 1999 I sent the attached written ex parte to: Lawrence Strickling, Chief of the Common Carrier Bureau; Jake Jennings, a member of that Bureau's Policy and Program Planning Division staff; Kyle Dixon, Legal Advisor to Commissioner Powell; Sarah Whitesell, Legal Advisor to Commissioner Tristani; William Bailey, Legal Advisor to Commissioner Furchtgott-Roth; Linda Kinney, Legal Advisor to Commissioner Ness; and Dorothy Atwood, Legal Advisor to Chairman Kennard.

In accordance with Section 1.1206(b)(1), I am filing two copies of this notice in the docket identified above. If you have any questions concerning this, please call me.

Sincerely,

Kathleen B. Levitz

Kathleen B. Levitz

Attachment

cc: Lawrence Strickling
Jake Jennings
Kyle Dixon
Sarah Whitesell
William Bailey
Linda Kinney
Dorothy Atwood

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August 20, 1999

WRITTEN EX PARTE

Lawrence E. Strickling, Chief
Common Carrier Bureau
Federal Communications Commission
Room 5-C450
445 12th St. S.W.
Washington, D.C. 20554

Re: CC Docket No. 96-98

Dear Mr. Strickling:

BellSouth files this letter in an effort to respond to several ex partes regarding the unbundling of network elements used for the provision of advanced services.¹ Some entities ask the Commission to conclude that packet switches used to provide a variety of forms of packet-based technology services² should be offered to competitive local exchange carriers ("CLEC") on an unbundled basis. Other entities seek to have the digital subscriber line access multiplexers ("DSLAM") used to provide asymmetrical digital subscriber line ("ADSL") service subject to the unbundling requirements of Section 251(c)(3). These entities seek unbundling of packet switches and DSLAMs for the same reason -- to obtain capabilities offered by these components

¹ See e.g., ex partes filed by e.spire Communications, Inc. on July 21, 1999, and Association of Local Telecommunications Services ("ALTS") on June 23, 1999. e.spire's ex parte actually seeks the unbundling of a complete "platform" of elements over which it can provide complete data services. Indeed, the ex parte asks the Commission to require four separate unbundled network elements ("UNE") related to the provisioning of frame relay services, of which one would be the packet switch, or in the alternative, to combine all four elements into one network element and simply require a single frame relay UNE. In this letter BellSouth discusses packet switching as one of the elements that make up the proposed data platform. For the reasons discussed herein, this element should not be unbundled.

Consequently, the Commission should not mandate provision of the platform that e.spire seeks.

² The packet switch can be a frame relay or asynchronous transfer mode ("ATM") switch. Both provide the same basic functionality. The choice between them is driven by economics and quality of service needs. Both switches are also used for a broad array of other data services.

from the incumbent LECs ("ILEC") at TELRIC prices without assuming the risk of investment³ - not because they cannot reasonably provide these items themselves. CLECs desires to avoid the investment risks otherwise attendant to their business plans is no basis to require the further unbundling of the ILECs' networks.

The Commission has recognized that advanced services, which both packet switches and DSLAMs are used to provide, are in their infancy. ILECs not only do not dominate this market, but in fact, are behind other carriers in deployment and provisioning of the same components these entities seek to have unbundled. Because packet switches and DSLAMs are without question freely and easily available, denial of access to ILEC packet switches and DSLAMs will not impair any competitors' ability to provide such services. Additionally, DSLAMs, such as those used by many ILECs, cannot be unbundled on a line by line basis. Accordingly, as set forth in more detail below, the Commission should refrain from requiring ILECs to unbundle packet switches and DSLAMs that are used to provide advanced services.

I. ILECs Clearly Do Not Possess a Monopoly in the Rapidly Expanding Advanced Services Market

While some of the network elements used to provide voice services, *e.g.*, the local copper loop, may also be used to provide advanced services, other elements, *e.g.*, packet switches and DSLAMs, are used for advanced services.⁴ Clearly, as the Commission has previously noted, ILECs possess no monopoly in advanced services.⁵ This is a nascent market in which no competitor enjoys market control. Thus, it would be illogical to conclude that failure to provide access to the elements of an ILEC network used for the provision of advanced services would somehow impair a competitor's ability to provide advanced services. If no party controls the

³ As discussed below, the cost of a DSLAM is relatively inexpensive depending on its type and size. However, if a carrier can obtain the DSLAM from the ILEC at a total element long run incremental cost ("TELRIC"), which is the price applied to unbundled network elements, that carrier can obtain this easily purchasable item from the ILEC without any capital outlay of its own.

⁴ Although voice may traverse packet switch networks, this technology is used principally to provide digital services at speeds that equal the definition of advanced services as defined in the *Advanced Services Report*. See *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Dkt. No. 98-146, *Report*, FCC 99-5, released February 2, 1999, ("*Advanced Services Report*"), ¶ 20. (Defined advanced services as high-speed broadband with the capability to support both downstream and upstream speeds in excess of 200 kilobits per second.)

⁵ *Advanced Services Report* ¶ 48 ("The preconditions for monopoly appear absent. Today no competitor has a large embedded base of paying residential customers. The record does not indicate that the consumer market is inherently a natural monopoly"). Letter from Chairman Kennard to Kenneth S. Fellman, Chairman, Local and State Government Advisory Committee, August 10, 1999 ("There is no monopoly or even duopoly in broadband. In fact, when it comes to this very new market, there is a 'no-opoly.'")

market, the competitors stand on equal footing; any alleged need for these components fails to meet section 251(d)(2)'s limiting standard. Accordingly, the Commission should deny any request to unbundle DSLAMs or packet switches in a rapidly growing market in which competitors are on equal footing.

II. Packet Switches and DSLAMs Do Not Meet Section 251(d)(2)'s Limiting Standard and Should Not Be Unbundled

Consistent with the Supreme Court's decision in *AT&T v. Iowa Utilities Board*,⁶ the question the Commission must answer in determining the limiting standard of section 251(d)(2) is whether an efficient CLEC's meaningful opportunity to compete will be impaired without access to ILEC DSLAMs and packet switches at cost-based prices.⁷ The answer is obviously no. CLECs are competing today. They currently have more packet switches deployed and more central offices equipped for DSL service than the ILECs. Thus, CLECs' time of entry to market is equivalent or faster than the ILECs'. Furthermore, the extent to which the CLECs have deployed packet switches and DSLAMs presents overwhelming evidence that these facilities' costs are no hindrance to the CLECs' network needs.

A. Packet Switches

CLECs are not impaired in their ability to secure packet switches in order to provide advanced services. Indeed, CLECs continue to deploy packet switches at rates that exceed ILECs' rates of deployment.

A report prepared and filed in this proceeding discussed the state of different components of the ILECs' network.⁸ Regarding packet switching, the report states:

Long-distance carriers, ISPs, and CLECs – not ILECs – are the major buyers and operators of packet switches. Precise counts are not available, however. According to New Paradigm Resource Group's 1999 CLEC Report, CLECs had deployed 874 data switches as of December 1998. ... By comparison, the LERG reports that the BOCs and GTE have deployed 663 packet switches.⁹

Of the 874 packet switches deployed by CLECs referenced in the above Report, 445 were added in 1998, a 104 percent increase.¹⁰ Moreover, CLECs have announced plans to add 343

⁶ *AT&T Corporation, et al. v. Iowa Utilities Board, et al.*, 119 S.Ct. 721 (1999).

⁷ See BellSouth Comments at 32 – 47 filed in this proceeding.

⁸ P. Huber and E. Leo, *UNE Fact Report*, Prepared for Ameritech, Bell Atlantic, BellSouth, GTE, SBC, and US West, attached to the comments of the United States Telephone Association, filed in this proceeding (May 26, 1999).

⁹ *Id.* at I – 33.

¹⁰ New Paradigm Resources Group, Inc., *1999 CLEC Report*, 10th Ed., 1999, at Ch. 6 pp.15

packet switches to the 874 already deployed.¹¹ Indeed, the Report states that “overall, packet switches are much more cost-efficient than circuit switches, and therefore even easier for CLECs to deploy.”¹² Clearly, CLECs suffer no impairment if they are denied access to ILECs’ packet switching on an unbundled basis. Such switches are amply available. Recent changes in collocation rules established by the Commission will only make it easier to deploy these switches.¹³ The liberalization of the collocation rules coupled with the affordability of these switches offers compelling evidence that a CLEC’s ability to provide advanced services will not be impaired if that CLEC does not gain access to ILEC packet switches.

B. DSLAMs

Not only are packet switches readily available at affordable prices, but as BellSouth and other parties have explained in both the Advanced Services proceeding and this proceeding, DSLAMs, essential components of DSL services, are equally obtainable by all competitors.¹⁴ To say the DSL market is expanding rapidly would be an extreme understatement. Evidence of this expanding market is present in newspaper advertisements, trade publications, and the Internet. Indeed, in its 1999 CLEC Report, New Paradigm Resources Group, Inc., a strategic research and business consulting entity specializing in competitive telecommunications and energy companies, stated “probably no single technology has affected this year’s CLEC market as much as the rapid deployment of Digital Subscriber Line (DSL) service. The demand for robust broadband data communications by large end-users and to a lesser extent, residential users, has been growing exponentially for years. ... 1999 is going to be the year when DSL comes of age and is readily available to the mass market.”¹⁵

The market statistics bear this out. ILECs have only 1,145 central offices equipped for DSL, which corresponds to a total of 28,625,000 customers passed. CLECs, on the other hand, have 1,550 central offices equipped for DSL with a total of 38,750,000 customers passed, and ISP/CLECs have 1,047 central offices equipped for DSL with 26,175,000 customers passed.¹⁶ The figures are unmistakably clear – CLECs are well positioned with DSLAMs and all other

¹¹ *Id.*

¹² *UNE Fact Report* at I - 34.

¹³ *See In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Dkt. No. 98-147, *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 99-48 (rel. Mar. 31, 1999) (examples of changes include CLECs’ ability now to obtain cageless collocation in areas as small as a rack and also to collocate in attached structures if space is exhausted within the central office.)

¹⁴ Many CLECs concede that generally DSLAMs do not need to be unbundled. *See* Comments filed by Covad at section III; NorthPoint at 18; and Rhythms at 12 in this proceeding.

¹⁵ *1999 CLEC Report* at Ch. 9 p 2.

¹⁶ *Telechoice, Deployment – UPDATED*, (visited on August 19, 1999)

<http://www.xdsl.com/content/resources/deployment_info.asp>

components¹⁷ they need to provide advanced services and absolutely do not need access to such unbundled elements from the ILECs.

The reason that CLECs are already poised not only to match but to exceed the ILECs' deployment of advanced services is that ILECs possess no advantage in speed of entry or cost of deployment over the CLECs. DSLAMs ranging in size from a three card DSL chassis to a 144 DSL card chassis can be purchased from a multitude of vendors.¹⁸ The numerous vendors and multiple sizes make cost of the DSLAM a nonissue. Moreover, as discussed previously, recently expanded collocation opportunities will allow CLECs greater access to central offices. Considering the relatively small size of DSLAMs, access space should not hinder any CLEC choosing to collocate within a central office. Indeed, the statistic provided by Telechoice indicates that CLECs have already equipped 35% more central offices (405) than have ILECs.

In addition to ease of deploying DSLAMs, CLECs also enjoy the ability to obtain unbundled local loops to the extent required by section 251(d)(2). Access to these loops, along with the CLEC's DSLAM collocated in the ILECs' central office, puts any CLEC on equal footing with an ILEC to provide DSL service to customers.

III. Unbundling of DSLAMs Will Not Produce the Desired Result

CLECs are provisioning ADSL at a rapid pace, thereby demonstrating no impairment in such deployment. Moreover, most ILECs' DSLAMs cannot be unbundled sufficiently to satisfy a CLEC's desire to point specific ADSL lines to the CLEC's own, or leased, packet switch. A DSLAM is a multiplexer that connects to individual lines and aggregates the data traffic from those lines to a single transport link, which is connected to a packet switch. Pursuant to the earlier discussion, DSLAMs come in various sizes. All of BellSouth's current DSLAMs are 144 DSL line cards resulting in 576 potential DSL lines. Under the current configuration, all of BellSouth's DSLAM DSL line cards are connected to one transport link "pointed" to BellSouth's ATM packet switch. Because of this configuration, all of the DSL lines must traverse this transport link to BellSouth's ATM switch. Consequently, even if a DSLAM were unbundled for single lines, the line could not be pointed to another packet switch. Accordingly, DSLAMs, like those used by BellSouth and many other ILECs, cannot be unbundled to enable a CLEC to link a single customer's line directly to its own packet switch network. The single line customer's traffic must be routed through the ILEC's packet switch first.

¹⁷ Most of the data CLECs have deployed their own data switches. See e.g., UNE Fact Report at I – 33. (CLECs have deployed 874 switches as compared to ILECs who have deployed 663 such switches).

¹⁸ A DSL card will accommodate up to four DSL lines. Thus, a three DSL card chassis will allow a carrier to have 12 DSL customers, while a 144 DSL card chassis will allow a carrier to have 576 DSL customers. Additionally, a carrier that purchases a three DSL card chassis can buy additional chassis to stack on the original chassis. Thus, it is very easy to start out small and increase in size as customers are added. Moreover, a DSLAM is itself very compact and can be mounted and stacked easily within a standard 19 to 23 inch single rack within a central office.

BellSouth's DSLAMs could be reconfigured, at substantial cost, to allow as few as 48 lines, 12 DSL line cards, to be multiplexed to a separate transport link. Thus, under this configuration, a DSLAM could be carved into multiples of 48 lines and each set of 48 lines could then pointed to a separate packet switch.¹⁹ Given CLECs' ability to acquire their own DSLAMs, however, incurring the substantial cost to reconfigure the DSLAMs to allow transport links to multiple packet switches can hardly be justified.

For the reasons stated herein, the Commission should find that denial of access to packet switches and DSLAMs would not impair a carrier's ability to provide data services, and therefore should not be unbundled.

Sincerely,



Kathleen B. Levitz

cc: Jake Jennings
Dorothy Atwood
William Bailey
Kyle Dixon
Linda Kinney
Sarah Whitesell

¹⁹ BellSouth's, and many other ILECs', DSLAMs cannot be configured to unbundle lines for multiple packet switches on less than a 48-line basis.