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**BELLSOUTH**

**Kathleen B. Levitz**
Vice President-Federal Regulatory

August 24, 1999

EX PARTE OR LATE FILED

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WRITTEN EX PARTE

RECEIVED

AUG 2 4 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

Re: CC Docket No. 96-98

Dear Ms. Salas:

This is to give notice that on August 23, 1999 I sent the attached written ex parte to Jake Jennings, a member of the Common Carrier Bureau's Policy and Program Planning Division staff. Today I am sending copies of the ex parte to the following Commission staff members: Lawrence Strickling, Chief of the Common Carrier Burea; Chris Libertelli, a member of that Bureau's Policy and Program Planning Division; 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 Stricking
Jake Jennings
Kyle Dixon

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List ABCDE

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August 23, 1999

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WRITTEN EX PARTE

Mr. Jake Jennings
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
Room 5-C260
445 12th Street, S.W.
Washington, D.C. 20554



Re: CC Docket No. 96-98

Dear Mr. Jennings:

On August 20, 1999, Richard Teel, Jonathan Banks, Robert Blau, and I, representing BellSouth, met with you to discuss issues relating to the Commission's UNE Remand proceeding. During that meeting you suggested that BellSouth might want to file a legal memorandum in support of the standard for unbundling the transport and entrance facility network elements. Responding to your suggestion, we have prepared the attached analysis. If after reviewing it, you have any questions, please call me at 202.463.4113.

In accordance with Section 1.1206(b)(1), I am filing two copies of this written ex parte presentation with the Secretary of the Commission and requesting that it be associated with the record of CC Docket No. 96-98.

Sincerely,

Kathleen B. Levitz

Kathleen B. Levitz

Attachment

cc: Chris Libertelli
Lawrence E. Strickling
Dorothy Atwood
William Bailey
Kyle Dixon
Linda Kinney
Sarah Whitesell

**BELLSOUTH**

August 23, 1999

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WRITTEN EX PARTE

Mr. Jake Jennings
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
Room 5-C260
445 12th St. SW
Washington, D.C. 20554



Re: CC Docket No. 96-98

Dear Mr. Jennings:

Section 251(d)(2) requires that the Commission assess whether competing carriers would be impaired without access to particular elements of an incumbent LEC's network before mandating that an element be unbundled and provided at cost-based prices. The Supreme Court has required the Commission to look to the presence of alternatives to incumbent LEC network elements and to the ability of competing carriers to self-provision those elements before arriving at a conclusion as to whether a carrier may be impaired.

The presence of alternatives to incumbent LEC dedicated transport elements, and the ability of competing carriers to self-provision dedicated transport, varies depending on which of two groups those dedicated transport links fall into. One of the groups provides the transport link between incumbent LEC wire centers and interexchange carrier Points of Presence (POPs). The other provides interoffice links between incumbent LEC wire centers. The market for alternative transport between POPs and incumbent LEC wire centers is more mature than the market for dedicated interoffice transport. The analysis the Commission uses for measuring whether a CLEC would be impaired without access to unbundled incumbent LEC elements at cost-based prices should reflect this difference, as should the results of that analysis.

This letter explains why the market for alternative dedicated transport between incumbent LEC wire centers and POPs is a relatively mature market while the interoffice dedicated transport market has not yet developed to the same extent. The letter suggests that a test for impairment should adopt different triggers to properly reflect this difference between the markets. These different triggers will lead, appropriately, to relatively more unbundling of incumbent LEC dedicated interoffice transport facilities and relatively less unbundling of incumbent LEC dedicated transport to POPs.

Transport Links Between Incumbent LEC Wire Centers and POPs

Dedicated transport links between incumbent LEC wire centers and interexchange carrier POPs constitute a key element of special access and other access services. The Commission has regulated interstate special access service with an eye towards fostering the development of competitive alternatives to incumbent LEC-provided service for some time.[1] The Commission's policies had sufficiently laid the ground work for competition so that well before the Telecommunications Act was passed alternatives to incumbent LEC special access services existed in many areas. These competitive alternatives were sufficiently well-developed to allow the Commission to find that special access service at DS1 and DS3 levels was subject to competition in 1992.[2] Transport links to POPs are rarely, if ever, provided at levels lower than DS1 or DS3.

The Commission's analysis of the underlying dynamics of special access competition revealed that traffic density and cost were the key competitive drivers.[3] Both of these factors supported the construction of links between incumbent LEC wire centers and POPs, especially in urban areas. In fact, the Commission emphasized that "traffic density is likely to be greater, and costs lower, on routes that involve greater traffic aggregation, such as routes to IXC POPs."[4] In line with the Commission's observation, MCI WorldCom explains in this proceeding that, "[a]lternative providers have focused their investments on one type of link – the 'entrance facility'[the link between POPs and incumbent LEC wire centers."[5]

Competitive providers of dedicated transport have been building these links between incumbent LEC wire centers and POPs for over a decade now.[6] Today's CLECs, like their CAP precursors, continue to focus on providing links to POPs, regardless of the particular interexchange carrier controlling the POP because POPs are nodes where large amounts of traffic and therefore revenue are concentrated. NextLink "design[s] each network to connect the maximal number of businesses, long distance carriers' points of presence and ILEC principal central offices in the area to be served."[7] GST Telecommunications "designs its networks with a ring architecture with connectivity to the ILEC's central offices, POPs of long distance carriers and large concentrations of telecommunications intensive end-users."[8] Similarly, ICG "designs a

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[1] *In the Matter of Expanded Interconnection with Local Telephone Company Facilities and Amendment of the Part 69 Allocation of General Support Facility Costs*, CC Docket Nos. 91-141 and 92-222, *Report and Order and Notice of Proposed Rulemaking*, 7 FCC Rcd 7369, 7451-55 (1992) (*Expanded Interconnection Order*).

[2] *Expanded Interconnection Order*, 7 FCC Rcd at 7454, ¶ 179 n.412.

[3] *Expanded Interconnection Order*, 7 FCC Rcd at 7452, ¶ 175.

[4] *Expanded Interconnection Order*, 7 FCC Rcd at 7452, ¶ 175 (emphasis added).

[5] MCI WorldCom Comments at 64. In fact, it has long been recognized that the economics favor the provision of competitive transport links on routes between incumbent LEC wire centers and POPs. Thus, MCI argued as far back as 1982 that competition on these routes was feasible. *See* Objections of MCI Communications Corporation to Application for Approval of Exchange Areas, *United States v. Western Elec. Co.*, No. 82-0192 (D.D.C. Nov. 3, 1982).

[6] Sprint Comments at 34.

[7] NextLink Communications, Inc. Form 10-K dated March 29, 1999 at 11.

[8] GST Telecommunications, Inc. Form 10-K dated March 12, 1999, at 2.

ring architecture with a view toward making the network accessible to the largest concentration of telecommunications-intensive businesses in a given market.... The Company's networks are constructed to access long distance carriers."[9] Time Warner Telecom "provides dedicated transport between local exchange carrier central offices and customer designated POPs of an IXC" as well as lines "linking the Points of Presence of one IXC or the POPs of different IXCs in a market, allowing the POPs to exchange transmissions for transport."[10] Similarly, e.spire provides "alternative local access to long distance carrier networks."[11]

The construction efforts of competitive transport providers have created competitive transport alternatives in a broad array of urban markets. Competitive fiber rings providing alternative to incumbent LEC transport currently exist in 149 of the top 150 MSAs. Most larger cities have multiple alternatives to incumbent LEC transport. For example, 47 of the top 50 MSAs have three or more alternative fiber rings to those of incumbent LECs.[12] These networks have been constructed to provide transport alternatives to interexchange carriers seeking to link their POPs to incumbent LEC wire centers.

BellSouth provided data and maps highlighting the depth and breadth of current alternative transport facilities in its region. BellSouth has provided maps depicting representative alternative provider fiber networks in 12 cities.[13] While incomplete, these maps illustrate the breadth of typical alternative fiber ring networks. BellSouth has also submitted data on the presence of alternative transport facilities in BellSouth's wire centers. These data show that alternative transport facilities are present in the great majority of BellSouth's urban wire centers, sometimes in large numbers. [14] Eight BellSouth wire centers in Miami, Florida, have ten or more independent fiber transport facilities. One of these Miami wire centers has eighteen. Four BellSouth wire centers in Charlotte, N.C. have ten or more alternative facilities. Atlanta has sixteen offices with three or more alternatives. Jacksonville, Florida has thirteen wire centers with three or more alternatives.

Customers have been purchasing transport on these alternatives facilities for more than a decade. MCI WorldCom uses alternative facilities to incumbent LEC transport to

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[9] ICG Communications, Inc. Form 10-K dated March 31, 1998, at 10.

[10] Time Warner Telecom LLC Form 10-k dated March 31, 1999 at 6.

[11] E.spire Special Access Service Marketing Information at 1, available at <http://www2.espire.net/products/voice/special_access.cfm>

[12] 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, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, filed May 26, 1999 at Appendix B. No party has taken issue with the accuracy of the *UNE Fact Report*'s city-by-city listing of alternative transport facilities.

[13] BellSouth Comments filed May 26, 1999, at Appendix B.

[14] As detailed in BellSouth's August 16, 1999 *Ex Parte*, competitive transport facilities in BellSouth's wire centers generally consist of multiple fiber sheaths, each containing 24 strands of fiber. The multiple sheaths indicate that the typical competing provider is using a ring architecture providing at least some route diversity. The number of strands indicates that the fiber facility has the capability to carry large amounts of traffic.

reach 1,600 incumbent LEC end offices. Of these 1,600 end offices, MCI WorldCom reaches 400 through its own facilities and 1,200 through other competitive providers.[15] AT&T uses alternatives to incumbent LEC dedicated transport for approximately 20% of its needs.[16] Sprint has made "significant use" of alternatives to incumbent LEC special access services and has designated alternative providers as Sprint's "preferred providers" of special access service, rather than the incumbent LEC, in five metropolitan areas.[17]

The FCC's 1998 Local Competition Survey bears out that alternative providers have created real alternatives to incumbent LEC access transport services. That survey reports that alternative providers account for about 14% of the private line and special access service supplied to other carriers for their resale. This means that a substantial part of the dedicated transport services sold at wholesale is sold by alternative providers.[18]

The length of time that alternatives to incumbent LEC transport to POPs have been available, as well as the broad range of competitive providers, has created a substantial base of commercial experience regarding these alternative services. Carriers buying and selling these transport services have had over a decade to develop procedures for ordering and delivering these services. Generally acceptable commercial terms for defining the relationship between the carriers have evolved.

This broad commercial experience in utilizing alternatives to incumbent LEC dedicated transport services to interexchange carrier POPs provides market proof showing that where an alternative facility is present, it provides an alternative to reliance on unbundled incumbent LEC transport. In addition, the economics of connecting incumbent LEC wire centers to POPs have been well-established over the past decade. The aggregation of substantial traffic on these routes means that self-provisioning the link between these locations always provides an alternative to incumbent LEC service.[19] At a

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[15] MCI WorldCom Comments at 64.

[16] AT&T Comments at 122.

[17] Sprint Comments at 34. Sprint notes that using competitive alternatives to incumbent LEC facilities on routes other than the one between incumbent LEC wire centers and POPs is relatively more difficult. Sprint Comments at 35.

[18] This percentage certainly understates the extent of CLEC alternatives. First, the Commission does not systematically collect from CLECs information that would provide for more accurate data. 1998 Local Competition Survey at 3 ("the Commission, however, gathers almost no systematic information from new entrants"). Second, the percentage above does not include self-supply of transport. Third, the percentage is a nationwide one, even though CLEC facilities are concentrated in particular local markets. *See, e.g., In re Application of Teleport Communications Group, Inc., Transferor, and AT&T Corp., Transferee, for Consent to Transfer Control of Corporation's Holding Point-to-Point Microwave Licenses and Authorizations to Provide International Facilities-Based and Resold Communications Services*, CC Docket No. 98-24, *Memorandum Opinion and Order*, 13 FCC Rcd 15236, 15257-58 (1998). Thus, far more than 15% of transport sold at wholesale in urban areas is likely to come from alternatives to incumbent LECs.

[19] Self-provisioning through new construction on POP to incumbent wire center routes poses a particularly realistic alternative given the relative ease of construction. Because many of these links are already established, the number of new links necessary is substantially reduced. In many situations, new links can be established simply by building a short spur from an existing alternative fiber ring. IXCs also possess considerable flexibility to choose the location of their POPs and to establish multiple POPs. Thus, IXCs can select POP locations to maximize the availability of competitive alternatives to incumbent LEC

minimum, the threat of new entry on such routes would be sufficient to discipline any potential for impairing the ability of an alternative carrier to provide competing service.

Thus, the Commission could properly find that no carrier's ability to offer service on routes between incumbent LEC wire centers and POPs would be impaired without access to unbundled incumbent LEC dedicated transport at cost-based prices. History would support this approach. Alternative carriers have made transport on this link a competitive commodity by constructing their own facilities rather than relying on unbundled incumbent LEC facilities.

However, in order to remove any argument that a carrier could be impaired without access to unbundled incumbent LEC dedicated transport links to POPs at cost-based prices, the Commission could establish a more stringent test. The Commission could properly go so far as to require the presence of at least one alternative transport facility before concluding that carriers would not be impaired without unbundled incumbent LEC transport between that office and interexchange carrier POPs. Thus, where one alternative dedicated transport facility and collocation exist at an incumbent LEC wire center, incumbent LEC dedicated transport from that office to interexchange carrier POPs would not meet section 251(d)(2)'s impair standard. This requirement would be further supported by the demonstrated ability of carrier to self-provision alternative facilities on these routes.

The presence of a transport alternative can be measured by whether a competitive provider has fiber facilities entering the central office coupled with whether there is collocation at the office. Incumbent LECs can be required to post a list of wire centers meeting these criteria on their websites. The list can be updated when an incumbent LEC receives an order from a competing provider to place fiber in a particular incumbent LEC office and when construction is finished. The list could be updated similarly to reflect collocation.

Interoffice Dedicated Transport

Interoffice dedicated transport provides dedicated transport between incumbent LEC wire centers. As detailed above, competitive providers have been constructing fiber rings providing dedicated transport alternatives to incumbent LEC facilities for over a decade. These fiber rings connect POPs with incumbent LEC wire centers. These alternative facilities can also be used to provide transport between the incumbent LEC wire centers that they serve.

This construction has focused on providing alternatives to incumbent LEC access services. Although alternative fiber exists in substantial numbers of incumbent LEC offices -- for example, each of eight BellSouth wire centers in Miami, Florida, have ten or more alternative transport facilities -- there is not the same degree of market experience with the provision of alternative interoffice or local transport links. To some degree this

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facilities and to ensure that additional alternatives can be easily constructed or extended to the POP location.

may result from the greater availability of alternative facilities on routes to POPs. Sprint notes that while it can obtain links from POPs to wire centers, continuing a circuit deeper into the incumbent LEC network via an alternative carrier is more difficult.[20]

In addition, the current market conditions regarding the provision of alternatives to incumbent LEC transport between incumbent LEC wire centers are still to some degree in flux. The Commission's order expanding collocation opportunities for competitive LECs is too recent to have yet had a substantial affect on the market.[21] By expanding collocation opportunities for the provision of local transport and other services, that order should result in significantly expanded alternatives to incumbent LEC transport between wire centers.

AT&T correctly contrasts the difference between the degree of commercial experience that market participants have in the two markets, and notes that

> the regulatory environment has been marked by great uncertainty regarding the rates, terms, conditions, and processes under which unbundled dedicated interoffice transport would be made available. By contrast, CLECs for many years have had internal processes in place for analyzing and ordering special access.[22]

As all parties to this proceeding appear to agree, interoffice transport is a point-to-point service.[23] The record indicates that, particularly in urban areas, alternatives exist for particular interoffice routes.[24] Where incumbent LEC wire centers are served by an alternative transport facility, and an alternative provider has collocated in each of the offices, a dedicated transport alternative between the two offices is all but certain to exist. Where a transport alternative exists, a finding that carriers would not be impaired without access to unbundled incumbent LEC dedicated transport at cost-based prices would be consistent with section 251(d).

However, the current degree of market experience may not be sufficient to demonstrate beyond question that a single competitive facility coupled with collocation provides an alternative to incumbent LEC local transport service between incumbent LEC wire centers.[25] Until greater market experience has been

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[20] Sprint Comments at 35.

[21] *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 99-48, released March 31, 1999.

[22] AT&T Reply Comments at 125 n. 256.

[23] AT&T Reply Comments at 129-130, Covad Comments at 45.

[24] For example, BellSouth data submitted with its August 16, 1999, *Ex Parte*, describes alternative fiber transport facilities by wire center. Those data demonstrate that neighboring wire centers in urban areas often contain multiple competing transport facilities that provide interoffice transport alternatives.

[25] In addition, as MCI WorldCom observes, local interoffice transport must be provided between already existing incumbent LEC wire centers. WorldCom MCI Comments at 66-67. Self-provisioning on these links may be more difficult than on links between incumbent LEC wire centers and POPs due to the broad

gained regarding the commercial provision of alternative interoffice transport and the regulatory environment is more settled, the Commission could go so far as to require that two alternative transport providers be present in incumbent LEC wire centers, along with two collocators, before concluding that a carrier seeking dedicated transport between those offices would not be impaired without access to cost-based incumbent LEC dedicated transport.

The record in this proceeding fully supports a determination that there exist discrete groups of dedicated transport facilities: (a) between an incumbent LEC wire center and an interexchange carrier POP; and (b) between incumbent LEC central offices. There is also ample basis to distinguish when network elements must be made available in those markets so as not to impair the ability of others to compete.

Sincerely,

Richard J. Teel RBL

Richard J. Teel
Vice-President, Regulatory and External Affairs

flexibility that interexchange carriers have to choose POP locations and to establish multiple POPs, as set out above.