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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Deployment of Wireline Services Offering	)	CC Docket Nos. 98-11, 98-26,
Advanced Telecommunications Capability	)	98-32, 98-78, 98-91, 98-147

REPLY COMMENTS OF DSLnet COMMUNICATIONS, LLC

DSLnet Communications, LLC ("DSLnet"), by its undersigned counsel, hereby submits these reply comments in connection with the remand of the Commission's August 1998 *Advanced Services Order*[1] from the United States Court of Appeals for the District of Columbia.

In these brief reply comments, DSLnet will address three issues: 1.) As DSLnet and others demonstrated in the initial round of comments in response to the Commission's public notice, Section 251(c) applies to the facilities and services of incumbent Local Exchange Carriers (ILECs), without regard to the particular services the ILEC may offer. Accordingly, the Commission need not decide whether a particular advanced service falls within either telephone exchange service or exchange access service in order to conclude that the ILEC's facilities and services are subject to Section 251(c). 2.) To the extent the Commission believes it must resolve the issue of whether advanced services utilizing fall within the statutory categories of telephone exchange service or exchange access service, the record amply demonstrates that DSL technology is capable of being deployed, and is deployed, as part of a wide range of telecommunications services, including telephone exchange service and exchange access services. 3.) Even if the Commission were to

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[1] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order, CC Docket No. 98-147, FCC 98-188, released August 7, 1998 ("*Advanced Services Order*").

conclude that Section 251(c) is inapplicable to the services at issue, other provisions of the Act (notably Sections 201,202 and 706) provide ample authority to require ILECs to provide requesting telecommunications carriers with interconnection, collocation, access to unbundled elements and resale for the provision of advanced services.

I. Section 251(c) Applies to Incumbent Local Exchange *Carriers*, and is Not Limited to Telephone Exchange and Exchange Access Services

As DSLnet observed in its initial comments, the plain terms of Section 251(c) indicate that its provisions apply to *carriers*, not to services. DSLnet, at 3-4. See CoreComm, at 5-6: "Congress imposed the obligations outlined in Section 251(c) on ILECs -- and only on ILECs -- because of the distinctive problems posed by their intrenched position, with established customer relationships and control of local telecommunications infrastructure." See also AT&T at 7.

Neither U S WEST nor any of the other ILEC commenters claim that they are not incumbent local exchange carriers as defined in Section 251(h), or that they are not "persons" engaged in the provision of telephone exchange service or exchange access. The obligations of incumbent LECs under 251(c) do not, as DSLnet and other parties have noted, turn on what kind of telecommunications services any particular incumbent LEC provides over its facilities. See, e.g., AT&T at 6, NorthPoint at 5-6.

There is simply no merit to U S WEST's claim that "[a]n entity is not an ILEC when it provides advanced services." U S WEST at 16. An ILEC is an ILEC, for purposes of Section 251(c), without regard to whether it restricts its offerings to plain old telephone service, or also provides telecommunications services the Commission has described as "advanced" in the context of this proceeding. With particular reference to Section 251(c)(3), the Commission has consistently

held that ILECs' local loops are among the bottleneck facilities that meet the "necessary or impair" requirements of Section 251(d)(2), such that an ILEC must make them available "to any requesting telecommunications carrier for the provision of a telecommunications service." Therefore, wholly without regard to whether the Commission determines that the ILECs' own DSL services constitute telephone exchange or exchange access service, ILECs are nonetheless required to fulfill DSL carriers' requests for access to unbundled elements.

II. ILECs Facilities Used for Competitive DSL Service Should be Subject to Section 251's Market-Opening Provisions Because DSL Technology Can Be Used to Provide Telephone Exchange Service and Exchange Access Service

DSL is a technology, and not a service *per se.* A particular form of DSL technology, high-bit-rate DSL, has been deployed aggressively over the past decade by ILECs to provide basic telecommunications services, specifically DS-1 level multichannel voice grade service. See MCI WorldCom at 8. Although the particular "DSL services" that have been the subject of Commission proceedings may be targeted by the ILECs to a particular class of customer (ISPs) and used to carry a particular type of data traffic (high-speed Internet access) in a point-to-point configuration, DSL technology is also widely used in the provision of a wide variety of telecommunications services. Given the rate of advancement in technology and the rapid deployment of DSL, it would be difficult to compile an exhaustive list of the potential applications of DSL, but it is nonetheless clear that DSL technology is inherently capable of supporting many telecommunications services, and that telephone exchange services (e.g., the DS-1 level multichannel voice offerings of the ILECs) are among those applications. [2]

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[2] See, e.g., CoreComm at 12-13: "xDSL obviously is functionally similar to and can substitute for both the voice and data capabilities of POTS"; Rhythms at 11-12. See also AT&T at 15, n. 14, noting U S

It is clear that at least some services provided using DSL technology are telephone exchange services as defined in Section 153(47) of the Act.[3] Other telecommunications carriers may, therefore, request that an ILEC provide access to unbundled network elements under Section 251(c)(3) for the provision of any telecommunications service.

III. To Promote the Advanced Services Deployment to all Americans, the Commission Should Subject ILECs Facilities Used for Competitive DSL Service to Section 251's Market Opening Provisions Pursuant to the Commission's Authority Under Sections 201, 202 and 706

As demonstrated above, characterization of "DSL services" is difficult because DSL is a technology, not a specific kind of service. However, even if the Commission were to accept U S WEST's narrow and tortured interpretation of the scope of any of an ILEC's Section 251 obligations with respect to the provision of advanced services, that is not necessarily the end of the matter.

One of the fundamental purposes of the Telecommunications Act of 1996 ("1996 Act") was the creation of a regulatory framework sufficiently flexible to foster, rather than hinder, the development of new technologies. In particular, the 1996 Act established as a national priority the realization of access for all Americans to advanced services, which it defined, "without any regard to transmission media or technology," as "high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video

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WEST's and PacBell's marketing literature, touting the suitability of DSL service for remote Local Area Network (LAN) access and telecommuting, respectively.

[3] Because Section 153(26) defines a local exchange carrier as a "person engaged in the provision of telephone exchange service *or* exchange access" (emphasis added), it is not necessary for the Commission to determine, for purposes of the remand, whether other services provided via DSL might constitute exchange access.

telecommunications using any technology." Section 706 of the 1996 Act requires the Commission to use its existing regulatory authority encourage the deployment of advanced services by, among other means, implementing measures that promote competition in the local telecommunications market and by removing barriers to infrastructure investment. Therefore, the Commission should subject ILEC facilities that are used for competitive DSL service to Section 251's market-opening provisions pursuant to its authority under other provisions of the Act, including sections 706, 201(a), 201(b), 202(a) and 4(i).[4]

Digital Subscriber Line technology offers the most promising opportunity to promote the 1996 Act's objective of ubiquitous access to high-speed broadband access for all Americans. Broadband alternatives that rely on direct fiber-optic connections to the end-user are prohibitively expensive for most consumers. Although more pervasive, existing coaxial cable connections to consumers are often unable to carry two-way interactive transmissions and have not been subjected to market-opening requirements that would promote competition, innovation and price efficiency. DSL, however, utilizes the copper telephone wires that already connect more than 95% of the American public, including schools, libraries, hospitals and government agencies, to the nation's telecommunications infrastructure.

By guaranteeing competitive access to the "last mile," the Commission will enable telecommunications and technology investors to devote their energies and resources to development of enhanced services for consumers rather than the duplication of the historic infrastructure of the incumbent carriers. Therefore, the Commission should require ILECs to provide interconnection

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[4] See, e.g., CoreComm at 16-17.

to DSL carriers pursuant to its authority under the other provisions identified above, and to establish in the record its reliance upon those section as an alternative basis for the application of Section 251 market opening measures for the provision of DSL services.

Conclusion

For the reasons set forth herein, and in DSLnet's initial comments, the Commission should reaffirm its conclusion that the provisions of Sections 251(b) and (c) are fully applicable to the advanced services provided by ILECs.

Respectfully submitted,

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Dated: October 1, 1999

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was hand delivered this 1st day of October, 1999, to the persons listed below.

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