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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
	)	CC Docket Nos. 98-11, 98-26, 98-32, 98-78, 98-91, 98-147
Remand of August 1998	)	
Advanced Services Order	)	

REPLY COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association ("USTA") hereby files its reply comments. USTA is the principal trade association of the incumbent local exchange carrier industry.

Efforts to expand the scope of ILEC unbundling obligations beyond the requirements of Section 251 of the 1996 Act apparently are infinite. AT&T argues that xDSL services "are *both* telephone exchange service and exchange access."[1] MCIWorldCom "urges the Commission to reject US WEST's untimely and specious attempt to write out of the 1996 an entire category of telecommunications services."[2] Sprint argues that "the Commission's conclusion that xDSL-based services are telephone exchange services and exchange access is entirely correct and

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[1] AT&T Comments at 3.

[2] MCI Comments at 2.

should be reaffirmed."[3] Covad concedes that xDSL service is neither telephone exchange service or exchange access, but that it should be identified as an information service.[4] According to Covad, however, ILECs must unbundle xDSL services to competitors because Section 251 of the Act applies to ILECs regardless of the services they provide, and that the Commission must "make clear that incumbent monopolists that provide advanced telecommunications services must do so subject to the pro-competitive regulatory regime adopted by Congress."[5]

The Commission should reject these arguments that impermissibly would expand ILEC obligations to unbundle xDSL services. USTA supports the arguments raised by US WEST and others [6] that xDSL services provisioned by ILECs are neither telephone exchange service or

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[3] Sprint Comments at 7.

[4] Covad Comments at 7.

[5] *Id.* at 15. Covad apparently is willing to ignore the message the Commission sent to the telecommunications industry on September 15, 1999 that it would not require ILECs to unbundle advanced telecommunications services. According to the September 15 news release, "the Commission declined ... to require incumbent LECs to unbundle the facilities used to provide high-speed Internet access and other data services, specifically, packet switches and ... DSLAMs." *See* www.fcc.gov/Bureaus/Common_Carrier/News_Releases/1999/nrcc9066.html. Clearly, xDSL services provided by ILECs are intended to facilitate "high-speed" access to the Internet and should not be subject to the unbundling requirements of Section 251 of the Act.

[6] US WEST Comments at 2 ("a telephone company is not acting as a local exchange carrier ("LEC") when it provides advanced services, and the obligations of sections 251(b) and (c) - which apply only to local exchange carriers - are inapplicable to the provision of those services").

exchange access.[7] Clearly, xDSL service is not a telephone exchange service because it does not constitute telecommunications service within an exchange. In addition, such services are not by definition exchange access because, as SBC correctly argues, "a carrier providing telephone toll service cannot purchase DSL service in order to gain access to its long distance subscribers via their telephone exchange services."[8]

Contrary to the position taken by Covad, not all ILEC telecommunications services are subject to unbundling pursuant to Section 251(c)(3) of the Act. For example, USTA agrees with SBC's position that Section 251(c)(2) limits interconnection "for the transmission and routing of telephone exchange service and exchange access."[9] When ILECs provide xDSL services, they provide end users with high-speed data transmission capability that is primarily used to access the Internet via ISPs or to reach corporate LANs. The Act defines a local exchange carrier as an entity providing telephone exchange service or exchange access.[10] An ILEC providing xDSL services "is not a local exchange carrier, and not subject to ... ILEC obligations, with respect to that service ...."[11] This prohibition on regulating xDSL services should extend to any requirement that ILECs provide xDSL services at a wholesale discount pursuant to Section

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[7] *See* GTE Comments at 3 ("ADSL and similar advanced services are information access, not exchange access or telephone exchange service").

[8] SBC Comments at 7.

[9] *Id.* at 10.

[10] 47 U.S.C. §153(26).

[11] GTE Comments at 3.

251(c)(4)[12] of the Act.[13]

A careful reading of the Act leads to the conclusion that xDSL services offered by ILECs to provide high-speed connections to the Internet are not telephone exchange services or exchange access. It is important for the growth and development of xDSL services, and new advanced broadband telecommunications services provided by ILECs, that the Commission create incentives for ILECs to deploy these services. Imposition of regulations, such as those proposed by some parties, which would require ILECs to unbundle xDSL services, would create economic disincentives to invest in new advanced broadband telecommunications services. As USTA recently explained in the Commission's *UNE Remand* proceeding:

> Technological progress in telecommunication network services has yielded new techniques, such as ... ADSL, which has enabled ILECs to deliver advanced data services .... to provide customers network access to the Internet and other popular multimedia and data services at speeds 50 times faster than an ordinary phone line.[14]
>
> [T]he Commission's imposition of mandatory unbundling aimed at

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[12] 47 U.S.C. §251(c)(4).

[13] *See* USTA Comments at 8, CC Docket No. 98-147, September 25, 1998 ("USTA opposes applying Section 251(c)(4) resale obligations on ILEC deployed advanced telecommunications networks and services." Even if xDSL service is classified as exchange access, Section 251(c)(4) would not apply because the Commission has previously determined in the *Local Competition Order* that "Exchange access services are not subject to the resale requirements of section 251(c)(4)" *id.* at 8, and in the *Universal Service Report to Congress* that "Internet access providers do not offer "telecommunications service" when they furnish Internet access to their customers" *id.* at 11.

[14] USTA *Affidavit of Jorde, Sidak, and Teece* at 20, CC Docket No. 96-98, May 26, 1999.

> unproven technologies that are necessary to support new services would severely damage the ILEC's incentives to invest.[15]

The Commission can send the right public policy message that market-based competition, not government regulations, should drive investments in and deployment of advanced broadband services and access to the Internet. In a recent speech, Chairman Kennard outlined his position on broadband deployment, including xDSL:

> Fundamentally, we want four things for consumers in the broadband world. We want fast deployment. We want ubiquitous deployment. We want competitive deployment. And we want open deployment....
>
> The most exciting thing that is happening is this competition emerging between the telephone companies rolling out their broadband product, DSL, and the cable companies simultaneously rolling out their broadband product, the cable modem....
>
> And on the telephone side, on the DSL side, we are seeing some real interesting growth in DSL service. The telephone companies are starting to deploy it much more aggressively. Between the end of March and the end of June of this year the number of DSL lines doubled to nearly 200,000 and it is expected to double again by the end of the year. And this pickup in growth is a function of one thing: competition. The regional Bell companies know that for the first time in the history of this country they are facing a serious, facilities-based competitor in their backyard: the residential marketplace. And that is the cable television industry. And it is the prospect of that competition that is going to really jumpstart broadband deployment in this country.[16]

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[15] *Id.* at 24.

[16] Remarks by William E. Kennard, Chairman Federal Communications Commission at the National Association of Telecommunications Officers and Advisors 19th Annual Conference Atlanta, GA, September 17,1999. *See* www. fcc.gov/Speeches/Kennard/spwek931.html.

The Commission should not impose unwarranted regulation on xDSL services provided by ILECs. Such regulatory overkill can only stifle the very competition in advanced broadband technologies Chairman Kennard supports. Fundamentally, USTA wants four things for consumers in the broadband world. USTA wants fast deployment. We also want ubiquitous deployment. USTA wants competitive deployment. And USTA wants xDSL to be deployed without costly and burdensome regulations. ILEC deployment of xDSL services, unfettered by the mandatory requirements of Section 251, is required if consumers are to benefit from unrestricted competition between competitors providing multiple options for access to the Internet and advanced telecommunications services. USTA urges the Commission to find that xDSL services are not subject to the requirements of Section 251 or any other provision that would create economic disincentives to its deployment by ILECs.

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