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October 21, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ex Parte

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

**Re: Deployment of Wireline Services Offering Advanced Services Capability –
CC Docket No. 98-147**

Dear Ms. Salas:

The attached letter is being delivered today to Lawrence Strickling, Chief – Common Carrier Bureau, regarding the above captioned proceeding. Specifically, the letter addresses provisioning and pricing issues associated with line sharing.

Please enter this letter and the attached letter into the record as appropriate. Should you have any questions please do not hesitate to contact me.

Sincerely,



Attachment

Cc: L. Strickling
J. Jackson
C. Matthey
M. Egler
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Donna M. Epps
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October 21, 1999

Lawrence E. Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
5th Floor
Washington, DC 20554

Re: Implementation of Line sharing, CC Docket 98-147

Dear Mr. Strickling:

In its September 30, 1999 letter, Covad asked the Commission to require incumbent local exchange carriers to submit interim rates, terms and conditions for the provision of line sharing within 30 days of any Commission order mandating line sharing and, further, to provision line sharing within 10 days of a competing carrier's agreement to such interim conditions. According to Covad, such "interim" conditions are necessary to avoid delays as incumbent and competing carriers resolve outstanding operational and pricing issues while renegotiating existing interconnection agreements. Additionally, without any supporting cost data, Covad argues the Commission should impose an interim line sharing rate of 10 percent of the unbundled network element ("UNE") loop rate in each state.

Covad's proposal is flawed in two respects. First, it fails to recognize the complex operational realities of implementing a nationwide "ILEC-CLEC" line sharing arrangement. Second, its proposed interim line sharing rate is arbitrary and fails to enable incumbent carriers to recover those costs associated with line sharing.

First, Covad's proposal would force incumbent carriers to prematurely enter into an ILEC-CLEC line sharing arrangement by allowing incumbent carriers virtually no time to upgrade their systems to accommodate line sharing. Incumbent systems also need to be modified to inventory and assign splitters and main distribution frame cross connections. Moreover, Bell Atlantic's existing operations support systems ("OSSs") are currently unable to accept orders for line sharing, process those orders through the systems and establish an integrated record which includes both retail and wholesale information or at least cross references those items. The development of these required functions necessitate new and/or modified software to be implemented in the OSS systems. This software would essentially equip the OSS systems to maintain the customer service record for the provision of POTs

service on the retail side of the business while simultaneously creating a service record for the competing carrier's use of the unbundled spectrum on the wholesale side.

Despite Covad and other competing carriers' attempts to over-simplify the operational work associated with line sharing, implementing the operational adjustments to enable two carriers to put voice and data signals on a loop will take at least nine months to a year.

Covad claims a Commission order to line share will be "meaningless . . . absent concrete and definitive implementing rules." However, a line sharing order will be just as meaningless if incumbent carriers are not given enough time to develop line sharing offerings that are not wrought with performance deficiencies, operational glitches and negative impacts for both incumbents' and competing carriers' end user customers. The only way line sharing will benefit the public and competing carriers is if the industry has adequate time to fully understand and implement the right system changes to provide a reliable line sharing arrangement capable of handling competing carrier orders in commercial volumes.

Secondly, like its unrealistic implementation time frame, Covad's proposal for an interim line sharing rate of 10 percent of the state rate for UNE loops is equally irrational and beyond the scope of the Commission's legal authority. Despite Covad's characterization of its 10 percent proposal as a "pricing guideline," the proposal calls for the setting, on an interim basis, of specific UNE rates. Setting specific rates, on an interim basis or otherwise, is beyond the scope of the Commission's legal authority under the 1996 Act.

Section 252(c)(2) of the Act entrusts State commissions with the authority to determine the rates for interconnection and network elements. While the Supreme Court in *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999), recognized the Commission had authority to develop a pricing methodology, the Court also made clear that under Sections 252(c)(2) and 252(d)(1) only the State commissions can establish specific rates. In oral argument before the Supreme Court in the *AT&T Corp. v. Iowa Utils. Bd.* case, Solicitor General Seth Waxman, in representing the Commission, acknowledged that the setting of specific UNE rates was within the jurisdiction of State commissions.¹

But even if the Commission did have authority to establish interim rates, Covad's arbitrary proposal of 10 percent of the UNE loop rate is unreasonable. Without providing any cost support or factual analysis, Covad claims its 10 percent figure is appropriate because incumbent carriers' ADSL retail tariffs do not impute loop costs. But Covad misses the point by focusing on the imputation of loop costs. Bell Atlantic's retail ADSL rate fully reflects all of the incremental costs associated with the development and provisioning of that service. Similarly, where incumbent carriers expend resources to introduce a new product like line sharing, they are entitled to charge rates designed to recoup their reasonable expenses.

¹ See *AT&T Corp. v. Iowa Utils. Bd., Nos. 97-826 et al.*, Trans. Oral Argument, 1998 WL 729541 (U.S. Oct. 13, 1998) ("[S]ection 252 . . . directs State commissions in arbitration proceedings to set the specific rates charged by a particular carrier in a particular market.") (Statement of the United States).

Consequently, any line sharing rate must at a minimum accurately reflect incremental costs of line sharing.²

In recognition of the fact that it is difficult at this early stage to set an accurate line sharing rate until the full extent of the associated costs are clear, if the Commission decides to set an interim rate (which it should not), that rate must at least *attempt* to reflect the incremental costs associated with incumbents' efforts to provision line sharing. But since the record in this proceeding is utterly devoid of any evidence on which to base an interim rate, any such rate would be inherently arbitrary.

Nonetheless, the Commission has previously arrived at a compromise on this issue in the context of its SBC/Ameritech Merger Order. There, the Commission found that until SBC/Ameritech was able to provision line sharing, competing carriers were entitled to a UNE loop for use to provide solely data services at 50 percent of the monthly recurring rate and the non-recurring or service connection rate.³ The Commission held that the 50 percent rate strikes the right balance because it "puts unaffiliated advanced services providers on comparable economic footing with the merged firm's separate advanced services affiliate" and "allows these carriers to obtain reduced loop costs that otherwise would not be available to them."⁴ Consequently, should the Commission decide to impose an interim line sharing rate, that interim rate for line sharing also should be 50 percent of the relevant UNE loop rate.

If the Commission determines that line sharing is appropriate, Bell Atlantic will proceed to implement it as swiftly as possible. Such implementation however will entail far more than a few tweaks to existing systems or manual work-arounds. In short, competing carriers will not experience any meaningful benefits from line sharing unless the Commission recognizes the operational hurdles it creates and establishes an implementation timeline and pricing scheme commensurate with this challenging task.

Sincerely,

D. Eppes (j.m)

² The Commission has also recognized that, in addition to recovering the incremental costs of a new service, incumbent carriers may also add an appropriate level of overhead costs to determine the overall price of a new service. See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996); *Amendments of Parts 32, 36, 61, 64, and 69 of the Commission's Rules to Establish and Implement Regulatory Procedures for Video Dialtone Service*, 10 FCC Rcd 244 (1994).

³ See *Applications of Ameritech Corp. and SBC Communications, Inc. for Consent to Transfer Control of Corporations Holding Commission Licenses*, Memorandum Opinion and Order, CC Dkt. 98-141 (rel. October 8, 1999) at ¶ 370.

⁴ *Id.*