

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In the Matter of )  
 )  
Implementation of the Local Competition ) CC Docket No. 96-98  
Provisions in the Telecommunications Act of 1996 )  
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**BELL ATLANTIC PETITION  
FOR  
RECONSIDERATION AND CLARIFICATION**

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February 17, 2000

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I. Introduction and Summary

The Commission should reconsider several provisions of its *UNE Remand* decision and clarify one provision.

First, the Commission should not require incumbent carriers to provide the enhanced extended link (“EEL”) as a condition for obtaining relief from unbundled switching. Competitors have already demonstrated that they are not impaired in using their own switches to provide local services and that is all the Act requires to obtain relief from switch unbundling obligations. Moreover, the Commission does not have authority to require incumbent carriers to combine network elements that aren’t already combined and that effectively is what the Commission’s EEL condition would do.

Second, the Commission should reconsider its decision to limit switch unbundling relief to medium and large business customers in access Zone 1 areas within the top 50

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<sup>1</sup> The Bell Atlantic telephone companies (“Bell Atlantic”) are Bell Atlantic-Delaware, Inc.; Bell Atlantic - Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, DC, Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company and New England Telephone and Telegraph Company.

MSAs. These limitations are inconsistent with its own findings that competitors are not impaired where there are already competitive switching facilities in use. The geographic designations arbitrarily exclude significant areas of the country served by competing carriers using their own switching facilities.

Third, the Commission should reconsider its decision to allow competing carriers to connect their own loop facilities directly to an incumbent carrier's Network Interface Device ("NID"). The Commission had previously determined that such access was not technically feasible unless the competing carrier had deployed its own adjoining NID and there is no basis for the Commission to reverse its prior determination.

Fourth, the Commission should reconsider its decision to require incumbent carriers to construct single points of interconnection for subloop network elements at multi-unit premises. The Act only requires incumbent carriers to unbundle their existing networks and does not require them to build new network elements at the request of competing carriers.

Finally, the Commission should clarify that incumbent carriers can satisfy their obligations by having their back office personnel provide loop information to competing carriers in the same manner as they provide loop information to the incumbent carrier's other personnel. The Act does not require incumbent carriers to give competing carriers better access to loop information than their own personnel.

## II. The Commission Should Not Require Incumbent Carriers To Provide EELs Or To Unbundle Local Switching In Areas Served By Competitors Using Their Own Local Switches.

The Commission should reconsider its decision to require the availability of EELs as a prerequisite to obtaining relief from the obligation to unbundle local switching. The

Act's impairment standard has not been met for switching because competitors have deployed their own switching facilities and have demonstrated that they don't need unbundled switching from incumbent carriers to provide the services they seek to provide. That is all that the Act requires for incumbent carriers to obtain relief from unbundled switching obligations. Moreover, the Act does not give the Commission the authority to require incumbent carriers to combine network elements that aren't already combined in their networks and that effectively is what the Commission has done here.

The Commission should also reconsider its decision to limit switch unbundling relief to medium and large business customers in the access Zone 1 areas that are located in the top 50 MSAs. The geographic limitations arbitrarily exclude significant areas of the country that are served by competing carriers' local switches. Competitors have already deployed their own switches in other areas of the country and have demonstrated their ability to provide services without the incumbent carriers' unbundled switching element. The Commission should therefore not require incumbent carriers to unbundle local switching in any area that is already served by competing carriers' switches.

- A. The Commission should not require EELs as a prerequisite to relief from switch unbundling.

The Commission should reconsider its decision to require the availability of EELs throughout access Zone 1 as a condition of relief from switch unbundling. The Commission's stated rationale for this condition is to reduce the cost of collocation by giving carriers the ability to "collocate in as few as one incumbent LEC central office in an MSA to provide service." Third Report and Order, FCC 99-238, ¶ 288 (rel. Nov. 5, 1999) ("Order"). This rationale is completely irrelevant to the statutory impairment test for unbundled switching.

First, collocation is not part of the Act's impairment test for unbundling. The statutory test for unbundling a network element, such as local switching, is whether "failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." 47 U.S.C. § 251(d)(2)(B). In its *UNE Remand* decision, the Commission interpreted this statutory requirement to mean that network elements should be unbundled only where a competing carrier's ability to provide service is materially diminished without access to the element: "the failure to provide access to a network element would 'impair' the ability of a requesting carrier to provide the services it seeks to offer if, taking into consideration the availability of alternative elements outside the incumbent's network, including self-provisioning by a requesting carrier, . . . lack of access to that element materially diminishes a requesting carrier's ability to provide the services it seeks to offer." Order ¶ 51.

The statutory test for unbundling is not met with respect to local switching. As the Commission itself recognized, "a significant number of competitive switches have been deployed." Order ¶ 254. And competitors have demonstrated they are able to use their switches to provide the services they seek to provide without using the incumbent carriers' unbundled local switching. This is all that is required to determine that the statutory test is not met and that incumbent carriers cannot be required to unbundle local switching.

Moreover, competing carriers can use their existing investment in switches to reach customers in many locations through the fairly ubiquitous collocation they already have in place. In the top 50 MSAs located in the Bell Atlantic region, there are nearly 3,500

collocation arrangements in approximately 870 wire centers. And across the Bell Atlantic region, competing carriers are adding nearly 500 collocation arrangements each month.

Second, the Commission does not have the authority to require incumbent carriers to combine elements that are not already combined in their networks, but the Commission's EEL prerequisite is effectively a requirement to do so. In its original decision, the Eighth Circuit invalidated the FCC's rule requiring access to elements that "are not ordinarily combined in the incumbent LEC's network" (Rule 315(c)) and the rule requiring incumbent LECs to "perform the functions necessary to combine unbundled network elements with elements possessed by the requesting telecommunications carrier in any technically feasible manner." (Rule 315(d)). See *Iowa Util. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997). Neither the Commission nor AT&T explicitly sought review of the Eighth Circuit's judgment with respect to these rules. And nothing in the Supreme Court's decision to uphold Rule 315(b) calls into question the Eighth Circuit's decision to vacate the other subsections of Rule 315.

The Supreme Court upheld Rule 315(b) on the ground that, in light of Section 251(c)(3)'s non-discrimination requirements, the FCC could rationally prohibit incumbents from "disconnect[ing] previously connected elements, over the objection of the requesting carrier, not for any productive reason, but just to impose wasteful reconnection costs on new entrants." *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721, 737 (1999) (internal quotation marks omitted). The fact that the Commission may rationally prohibit incumbents from disconnecting network elements that are *already combined* in the incumbent's network provides no basis for concluding that the Commission may require

incumbents to combine network elements in new ways or with elements provided by the requesting carriers.

Finally, requiring incumbent carriers to provide EELs as a condition to switch unbundling relief is unsound from a policy perspective because it will undermine the investment competing carriers have already made in their own network facilities. As Dr. Crandall explained:

Competitive carriers have been investing in local transport facilities for nearly two decades. These carriers have billions of dollars irretrievably invested in facilities – fiber optics, electronics, ducts, and poles – to serve the market for dedicated and shared transport in hundreds of MSAs around the country. If new carriers – including those affiliated with long-distance companies – were now permitted to assemble UNEs at wholesale rates based on forward-looking costs . . . , these latter companies would be irreparably harmed.

Declaration of Robert W. Crandall ¶ 23, attached to Bell Atlantic’s Comments on Fourth Further Notice of Proposed Rulemaking (filed Jan. 19, 2000). It will also reduce the incentive for carriers to deploy their own competing facilities to serve customers with their own switches. According to Dr. Crandall, “[i]f a regulator can undercut recent entrants, who have made risky investments, simply to benefit a certain class of carriers . . . future entrants will surely be more cautious about committing capital to sunk facilities.” Crandall ¶ 24. The Commission should therefore eliminate the availability of EELs as a prerequisite for relief from switch unbundling.

- B. The Commission should not require incumbent carriers to unbundle switching where competitors are providing service with their own local switches.

The Commission should make two adjustments to its geographic limitations. First, it should eliminate the arbitrary distinction for access Zone 1 and not require switch

unbundling anywhere in the top 50 MSAs. Second, it should eliminate the switch unbundling obligation in other situations where alternative switching facilities are in use.

In applying the Act's impairment test, the Commission "recognize[d] that the existence of some significant level of competitive LEC facilities deployment is probative of whether competitive LECs are impaired from providing service within the meaning of section 251(d)(2) . . . ." Order ¶ 53. It further found "the marketplace to be the most persuasive evidence of the actual availability of alternatives as a practical, economic, and operational matter." Order ¶ 66.

In conducting its impairment analysis for local switching, the Commission found that "a significant number of competitive switches have been deployed." Order ¶ 254. The Commission further observed that "[t]he pattern of switch deployment by competitors suggests that the costs and operational delays of self-provisioning switching do not preclude requesting carriers from serving certain customer classes in certain geographic markets." Order ¶ 255. Based on this evidence, the Commission concluded that "to the extent that the market shows that requesting carriers are generally providing service in particular situations with their own switches, . . . requesting carriers are not impaired without access to unbundled local circuit switching." Order ¶ 276.

The rule adopted by the Commission – which limits switch unbundling relief to access Zone 1 areas in the top 50 MSAs – does not square with the Commission's own conclusions from its impairment analysis. Both the access Zone 1 and the top 50 MSA restrictions arbitrarily exclude significant areas of the country where competitors are providing service using their own local switches.

First, limiting switch unbundling relief to access Zone 1 areas artificially and arbitrarily excludes significant areas that are already served by competitors' own local switches. The access zones were never developed for the purpose of identifying the areas where competing carriers were deploying their own switches for local telephone services. They were instead "designed to reasonably reflect cost-related characteristics, such as the density of total interstate traffic in central offices located in the respective zones," of special access services. 47 C.F.R. § 69.123(a)(2). *See also Expanded Interconnection Order*, 7 FCC Rcd 7369, ¶ 179 (1992) ("we will allow LECs . . . to implement a system of traffic density-related rate zones to bring special access rates more in line with costs"). Accordingly, drawing a line at access Zone 1 arbitrarily excludes many rate centers in the top 50 MSAs that are served by competitors with their own local switches.

For example, in the Boston Massachusetts MSA, there are more than 80 rate centers that are served by at least one competitor's local switch, but only 4 of those rate centers include access Zone 1 areas. *See Exhibit No. 1.* The Waltham rate center in the Boston MSA is served by 19 competitors' local switches, but includes no access Zone 1 areas. *See Exhibit No. 1.* Likewise, the Burlington, Lexington, Woburn and Quincy rate centers in the Boston MSA are all served by at least 14 competitors' local switches, but none of these rate centers include any access Zone 1 areas. *See Exhibit No. 1.*

Overall, in the Bell Atlantic region, there are 570 rate centers in the top 50 MSAs that are served by at least one competitor's local switch, but less than 100 of those rate centers include any access Zone 1 areas. Accordingly, more than 83 percent of Bell Atlantic's rate centers in the top 50 MSAs that are served by at least one competitor's local switch do not qualify for unbundling relief under the Commission's rule.

Second, the Commission's decision to limit switch unbundling relief to only the top 50 MSAs arbitrarily excludes many other MSA areas that are served by CLEC switches. For example, every rate center in the Wilmington-Newark Delaware MSA (which is not in the top 50) is served by at least 4 competitors' local switches and the rate centers of Wilmington and Newark are served by 12 and 11 competitors' local switches, respectively. *See* Exhibit No. 2. In the other Delaware MSA – Dover – every rate center is served by at least 3 competitors' local switches and the Dover rate center is served by 7 competitors' local switches. *See* Exhibit No. 2.

A similar competitive situation exists in Massachusetts. In the Lowell Massachusetts MSA (which is not in the top 50), the Lowell rate center is served by at least 17 competing carriers' local switches and the Billerica rate center is served by at least 10 competing carriers' local switches. *See* Exhibit No. 2. Likewise, in the Lawrence Massachusetts MSA, the Andover rate center is served by 11 competitors' local switches, the Lawrence rate center is served by 9 competitors' local switches, the Haverhill rate center is served by 7 competitors' local switches and the West Newbury rate center is served by 6 competitors' local switches. *See* Exhibit No. 2.

Pennsylvania also has multiple MSAs that are served by many competitors with their own local switches, but are not among the top 50. For example, in the Allentown-Bethlehem-Easton Pennsylvania MSA, 9 of the 13 rate centers are served by at least 6 competitors' local switches. *See* Exhibit No. 2. Both the Allentown and the Bethlehem rate centers are served by 11 competitors' local switches. *See* Exhibit No. 2. In the Reading Pennsylvania MSA, the Reading rate center is served by 12 competitors' local switches, the Kutztown rate center is served by 6 competitors' local switches, the Hamburg

rate center is served by 5 competitors' local switches and the Fleetwood rate center is served by 2 competitors' local switches. *See* Exhibit No. 2.

New York is no exception either. In the Albany-Schenectady-Troy MSA (which is not in the top 50), the Albany rate center is served by 10 competitors' local switches, the Schenectady and Troy rate centers are served by 9 competitors' local switches, and the Colonie and Saratoga Springs rate centers are served by 8 competitors' local switches. *See* Exhibit No. 2. Likewise, in the Syracuse MSA, the Syracuse rate center is served by 10 competitors' local switches, the Auburn rate center is served by 7 competitors' local switches and the Onieda and Oswego rate centers are each served by 5 competitors' local switches. *See* Exhibit No. 2.

Overall, in the Bell Atlantic region, over 350 rate centers in MSAs below the top 50 are served by at least one competitor's local switch. *See* Exhibit No. 2. Nearly 230 Bell Atlantic rate centers in MSAs outside the top 50 are served by at least two competitors' local switches. *See* Exhibit No. 2.

Third, even if the Commission were not to require switch unbundling in any MSA, it would still exclude significant areas that are served by competitors' switches but are not located within any MSA boundaries. For example, in Rhode Island, the Newport rate center is served by 10 competitors' local switches, the Portsmouth rate center is served by 7 competitors' local switches, and the Tiverton rate center is served by 6 competitors' local switches, but none of these rate centers are within an MSA. *See* Exhibit No. 3. Similarly, in New York, the Ithaca rate center is served by 7 competitors' local switches, the Cortland and Watertown rate centers are each served by 6 competitors' local switches, and the

Catskill and Plattsburgh rate centers are served by 5 competitors' local switches and none of them are in an MSA. *See* Exhibit No. 3.

Another good example is the state of Delaware where every rate center that is not located within an MSA is served by at least 3 competitors' local switches. *See* Exhibit No. 3. The only exception is the Milton, Delaware rate center, which is served by 2 competitors' local switches. *See* Exhibit No. 3.

Overall, over 350 rate centers in the Bell Atlantic region are not located within an MSA, but are served by at least one competitors' local switch. *See* Exhibit No. 3. And over 100 of these rate centers are served by at least 2 competitors' local switches. *See* Exhibit No. 3.

Finally, there is no reason for the Commission to limit switch unbundling relief to business customers with four or more lines. Once a carrier has invested in a switch, it can use that switch to serve single line customers just as easily as it can use that switch to serve customers with four or more lines. There is nothing in the record that demonstrates competing carriers are impaired when they attempt to use their own switch to serve a customer with one, two or three lines.

### III. The Commission Should Allow Competitors to Access An Unbundled NID With Their Own Loop Facilities Only Where They Have Deployed Their Own NID

The Commission should continue to require competing carriers to access an incumbent's NID only through an adjoining NID deployed by the competing carrier. The Commission had previously found that such a requirement was necessary unless a state commission had determined that it was technically feasible for a competing carrier to interconnect its own loop facilities without an adjoining NID. The Commission's *UNE*

*Remand* decision is silent on the Commission’s prior finding and provides no basis for departing from that finding.

In its First Report and Order, the Commission found that “the record in this proceeding does not permit a determination on the technical feasibility of the direct connection of a competitor’s loops to the incumbent LEC’s NID.” First Report and Order, 11 FCC Rcd 15499, ¶ 396 (1996). The Commission acknowledged Ameritech’s evidence that a direct connection “would leave Ameritech’s unused loops without overvoltage protection.” First Report and Order ¶ 395. The Commission therefore held that “States should determine whether direct connection to the NID can be achieved in a technically feasible manner in the context of specific requests by competitors for direct access to incumbent LECs’ NIDs.” First Report and Order ¶ 396.

Based on these findings, the Commission “conclude[d] that a requesting carrier is entitled to connect its loops, via its own NID, to the incumbent LEC’s NID.” First Report and Order ¶ 392 (emphasis supplied). The Commission “d[id] not require an incumbent LEC to permit a new entrant to connect its loops directly to the incumbent LEC’s NID.” First Report and Order ¶ 394.

On remand, the Commission reversed its prior findings and conclusions without any explanation or basis in the record. The Commission’s new rule requires that “[a]n incumbent LEC shall permit a requesting telecommunications carrier to connect its own loop facilities to on-premises wiring through the incumbent LEC’s network interface device . . . .” 47 C.F.R. § 51.319(b). It does not require the requesting telecommunications carrier to “establish this connection through an adjoining network

interface device deployed by such telecommunications carrier” as the Commission’s prior NID unbundling rule had required.

While the Commission is not forever bound by its prior decisions, it cannot abruptly change course with no explanation or basis in the record. As the Supreme Court explained, “an agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance.” *Motor Vehicles Mfrs. Ass’n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983). The Commission’s decision does not meet the Supreme Court’s test.

The Commission’s decision is completely silent on the reasons for the change from its prior decision. It identifies no evidence in the record to show that it is now technically feasible for competing carriers to connect their loop facilities directly to incumbent carriers’ NIDs or how the overvoltage concerns have been addressed.<sup>2</sup> Nor is there any evidence in the current record to support such a decision. The Commission should therefore revise its rules to provide that a competing carrier may connect its own loops to the incumbent LEC’s NID only via its own adjacent NID.

#### IV. The Commission Should Not Require Incumbent Carriers To Construct Subloop Interconnection Points at Multi-Unit Premises.

The Commission should reconsider its decision requiring incumbent carriers to construct interconnection points at multi-unit premises. Order ¶ 226; new Rule

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<sup>2</sup> Of course, there is no problem of technical feasibility where the requesting carrier seeks to use the incumbent’s unbundled NID together with the incumbent’s unbundled loop, rather than its own loop facilities. As the commenters correctly pointed out, there is no need for competing carriers to deploy their own adjacent NID in these situations. See MCI WorldCom Comments at 47; MGC Comments at 20.

319(a)(2)(E). This requirement would force incumbent carriers to create subloop elements where they do not exist and the 1996 Act does not require incumbent carriers to do so.

The 1996 Act only requires incumbent carriers to unbundle their existing network. As the Eighth Circuit explained, “subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC’s *existing* network – not to a yet unbuilt superior one.” *Iowa Utils. Bd.* at 813. The Act does not require incumbent carriers to construct network elements simply to make them available on an unbundled basis to competing carriers.

The Commission’s requirement that incumbent carriers “construct a single point of interconnection” is a requirement that incumbent carriers construct subloop network elements. The Commission defines the “subloop network element” as “any portion of the loop that is technically feasible to access at terminals in the incumbent LEC’s outside plant, including inside wire.” New Rule 319(a)(2). The Commission’s definition further states that an “accessible terminal” is “any point on the loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within.” New Rule 319(a)(2). Absent the incumbent’s construction of a single point of interconnection – an “accessible terminal” – no subloop network element would exist.

Moreover, the Commission’s requirement to build a single point of interconnection is inconsistent with the Commission’s own determination that incumbent carriers are not required to build additional space at “accessible terminals.” As the Commission explained,

Although we intend to make collocation available at all *accessible terminals* on the loop, we acknowledge that the incumbent’s network was not designed to house additional equipment of competitors. *Our rules do not require incumbents to build additional space.*

Order ¶ 221 (emphasis supplied). A requirement to build a single point of interconnection is unquestionably a requirement to build additional space and more. It is flatly inconsistent

with the Commission's determination that incumbent carriers should not be required to construct space in accessible terminals for access to subloop network elements.

The Commission should therefore reconsider its decision to require incumbent carriers to construct a single point of interconnection at multi-unit premises.

V. The Commission Should Clarify That Competing Carriers Can Obtain Loop Information From The Incumbent Carriers' Back Office Personnel On A Non-Discriminatory Basis.

The Commission should clarify that incumbent carriers can satisfy their obligation to provide access to loop information to competing carriers by allowing them to obtain loop information from the incumbent carrier's back office personnel in the same manner as other incumbent carrier personnel can obtain the information from the incumbent's back office personnel. There is no justification to impose a higher obligation on providing information to third parties than incumbent carriers provide to themselves.

In its decision, the Commission concluded that "access to loop qualification information must be provided to competitors within the same time intervals it is provided to the incumbent LEC's retail operations." Order ¶ 431. The Commission further concluded that "[t]o the extent such information is not normally provided to the incumbent LEC's retail personnel, but can be obtained by contacting incumbent back office personnel, it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information." Order ¶ 431.

Some competing carriers are misinterpreting the Commission's order. They claim that they cannot be required to obtain loop information from incumbent carriers' back office personnel, but rather are entitled to direct access to the same paper records and systems containing loop information that are used by the incumbent carriers' back office

personnel. The Act requires incumbent carriers to provide competitors with “non-discriminatory access to unbundled network elements.” 47 U.S.C. § 251(c)(3). The Commission has interpreted this non-discrimination requirement to mean that the access provided to competitors must be “equal-in-quality to that which the incumbent LEC provides to itself.” First Report and Order ¶ 312. Bell Atlantic satisfies this obligation by providing loop information to competitors in the same manner as it provides such information to other Bell Atlantic personnel.

The Act does not require incumbent carriers to give competitors better access to unbundled elements than they give themselves. As the Eighth Circuit explained, “subsection 251(c)(3) does not mandate that requesting carriers receive superior quality access to network elements on demand.” *Iowa Utils. Bd.* at 812.

Moreover, what competing carriers are really asking for is a desk in the incumbent carriers’ offices that store loop plant records and the ability to access directly the systems that store that information. The Commission has already found that the Act imposes no such requirement. In its second long distance application for Louisiana, BellSouth indicated that it provided access to its poles, ducts, conduit and right of way information through its back office personnel. Upon receiving a request for such information, BellSouth personnel would locate the pertinent records, redact the propriety information contained in those records and provide the redacted information to the competing carrier within five business days. AT&T argued that the five-business day waiting period for competitors is discriminatory because BellSouth back office personnel have instant access to engineering information. AT&T Comments on BellSouth’s Section 271 Application for Louisiana, CC Dkt. No. 98-121, at 69-70 (filed Aug. 4, 1998). The Commission properly

rejected AT&T's argument, finding that "this disparity in time is reasonable . . . given that BellSouth needs to redact its records to protect proprietary information." *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, 13 FCC Rcd 20599, ¶ 180 (1998).

The situation is no different with respect to loop information. Bell Atlantic's loop information is contained in the same types of facility records as its pole, duct, conduit and right of way information. All of these records contain proprietary information that must be redacted by back office personnel before the information can be provided to the competing carrier. The Commission should therefore clarify that incumbent carriers can satisfy their obligations by having their back office personnel provide loop information to competing carriers in the same manner as they provide the information to the incumbent carrier's other personnel.

**Conclusion**

The Commission should modify and clarify its order consistent with this petition.

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February 17, 2000