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February 18, 2000

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VIA COURIER

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

Re: Petition for Reconsideration on behalf of The Competitive Telecommunications Association in CC Docket No. 96-98

Dear Ms. Salas:

On February 17, 2000, The Competitive Telecommunications Association ("CompTel") filed a Petition for Reconsideration in the above referenced proceeding. Attached to this Petition was a copy of the Comments that CompTel filed on May 28, 1999 in the same proceeding. These Comments included six appendices, which were inadvertently omitted in the copy that CompTel attached to its Petition for Reconsideration. Please associate the attached appendices with this filing.

Sincerely,

Todd D. Daubert
Counsel to CompTel

Enclosures

cc: Service list in CC Docket No. 96-98

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A

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CompTel Proposed Rules
CC Docket No. 96-98
5/26/99

The Competitive Telecommunications Association ("CompTel") proposes the following rules for the nondiscriminatory access to unbundled network elements pursuant to Section 251(c)(3) of the Communications Act, as amended. Changes or additions to rules currently listed in 47 C.F.R. Part 51 are underlined.

§ 51.311 Nondiscriminatory access to unbundled network elements.

(a) The quality of an unbundled network element, as well as the quality of the access to the unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be the same for all telecommunications carriers requesting access to that network element.

(b) The quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be at least equal in quality to that which the incumbent LEC provides to itself. If an incumbent LEC fails to meet this requirement, the incumbent LEC must prove to the state commission that it is not technically feasible to provide the requested unbundled network element, or to provide access to the requested unbundled network element, at a level of quality that is equal to that which the incumbent LEC provides to itself.

(c) Previous successful access to an unbundled element at a particular point in a network, using particular facilities, is substantial evidence that access is technically feasible at that point, or at substantially similar points, in networks employing substantially similar facilities. Adherence to the same interface or protocol standards shall constitute evidence of the substantial similarity of network facilities.

(d) Previous successful provision of access to an unbundled element at a particular point in a network at a particular level of quality is substantial evidence that access is technically feasible at that point, or at substantially similar points, at that level of quality.

<u>(e) Incumbent LECs shall provide CLECs access to any and all equipment and facilities used to combine network elements in the same manner that the incumbent LEC uses such equipment and facilities to combine elements in the provision of their own telecommunications services.</u>

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§ 51.3xx Necessary and Impair

(a) A carrier is impaired if a failure to obtain access to a network element would impose a material increase in cost, a material delay, or would materially restrict the number or scope of customers likely to receive the service any requesting carrier seeks to offer. Impairment would arise if, for example, any one of the following applied:

(1) a denial would materially increase the cost to provision, combine, or otherwise utilize a requested network element in connection with other elements of the ILEC's network or the network of an alternative provider,

(2) a denial would cause a requesting carrier to experience a material delay to provision, combine or otherwise utilize a network element in connection with other elements of the ILEC's network or the network of an alternative provider, or

(3) a network element exhibits material economies of scale and scope.

(b) A carrier's ability to provide telecommunications service will be presumptively impaired by denial to a particular network element unless the Commission finds that:

(1) network element provisioning systems are capable of delivering any other network element (or network element combinations) to alternative providers of the particular network element on terms, quantity and quality comparable to the access that the incumbent carrier receives, and

(2) for a geographic area no smaller than an Major Trading Area, there are sufficient alternative providers of the particular network element capable of supplying the network element on terms that are comparable in quality, cost and efficiency to those of the ILEC, and in quantities sufficient to result in a competitive market for such elements and facilities.

(c) Access to a network element that has a proprietary component is necessary if a material loss in the functionality of the network element would result without access to its proprietary characteristic and if the requesting carrier's ability to provide the intended service would otherwise be impaired in accordance with paragraph (a) above.

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§ 51.319 Specific unbundling requirements.

An incumbent LEC shall provide nondiscriminatory access in accordance with § 51.311 of this part and section 251(c)(3) of the Act to the following network elements on an unbundled basis to any requesting telecommunications carrier for the provision of any telecommunications service:

(a) *Local Loop*. The local loop network element is defined as the transmission capability (regardless of the transmission media involved, including unused transmission media such as dark fiber) between a requesting carrier-designated point in an incumbent LEC central office (or an equivalent location designated by the requesting carrier where the loop can be connected to other ILEC network elements or the network facilities of another carrier) and an end user customer premises.

(1) The local loop network element shall encompass all features, functions and capabilities of the underlying transmission facilities used to provision the local loop network element.

(2) The purchaser of the local loop network element shall obtain exclusive use of the transmission capability of this network element.

(3) The local loop network element shall include the network interface device.

(4) Wherever it is technically possible, the incumbent LEC shall provide the local loop network element configured in a manner to support the transmission specifications of the requesting carrier.

(5) At a minimum, ILECs should offer the following types of local loops: 2-wire analog, 4-wire analog, ISDN-PRI, ISDN-BRI, xDSL capable, xDSL equipped, high capacity loops (e.g., DS1, DS3, OC 12 and higher), and dark fiber loops.

(b) *Network Interface Device*.

(1) The network interface device network element is defined as a cross-connect device used to connect loop facilities to inside wiring, along with any facilities (such as riser cable or inside wire) owned by the incumbent LEC.

(2) An incumbent LEC shall permit a requesting telecommunications carrier to

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connect its own local loops to the inside wiring of premises through the incumbent LEC's network interface device. The requesting telecommunications carrier shall establish this connection through an adjoining network interface device deployed by such telecommunications carrier;

(c) *Switching Capability*.

(1) Local Circuit Switching Capability.

(i) The local switching capability network element is defined as:

(A) line-side facilities, which include, but are not limited to, the connection between a loop termination at a main distribution frame and a switch line card;

(B) trunk-side facilities, which include, but are not limited to, the connection between trunk termination at a trunk-side cross-connect panel and a switch trunk card; and

(C) all features, functions, and capabilities of the switch, which include, but are not limited to:

(*1*) the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, as well as the same basic capabilities made available to the incumbent LEC's customers, such as a telephone number, white page listing, and dial tone; and

(*2*) all other features that the switch is capable of providing, including but not limited to custom calling, custom local area signaling service features, and Centrex, as well as any technically feasible customized routing functions provided by the switch.

(ii) An incumbent LEC shall transfer a customer's local service to a competing carrier within a time period no greater than the interval within which the incumbent LEC currently transfers end users between interexchange carriers, if such transfer requires only a change in the incumbent LEC's software;

(2) Tandem Circuit Switching Capability. The tandem circuit switching capability network element is defined as:

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(i) trunk-connect facilities, including but not limited to the connection between trunk termination at a cross-connect panel and a switch trunk card;

(ii) the basic switching function of connecting trunks to trunks; and

(iii) the functions that are centralized in tandem switches (as distinguished from separate end-office switches), including but not limited to call recording, the routing of calls to operator services, and signaling conversion features;

(3) Packet Switching Capability. The packet switching capability network element is defined as the assembling, disassembling, addressing, conversion or routing of digital information in packet form. The packet switching capability network element shall include all features, functions and capabilities of the packet switching and/or routing devices.

(d) *Interoffice Transmission Facilities*.

(1) Interoffice transmission facilities are defined as incumbent LEC transmission facilities dedicated to a particular customer or carrier, or shared by more than one customer or carrier including the ILEC, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.

(2) The incumbent LEC shall:

(i) provide a requesting telecommunications carrier exclusive use of interoffice transmission facilities, including unused transmission media such as dark fiber, dedicated to a particular customer or carrier, or use of the features, functions, and capabilities of interoffice transmission facilities shared by more than one customer or carrier, including the ILEC;

(ii) provide all technically feasible transmission facilities, features, functions, and capabilities that the requesting telecommunications carrier could use to provide telecommunications services;

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(iii) permit, to the extent technically feasible, a requesting telecommunications carrier to connect such interoffice facilities to equipment designated by the requesting telecommunications carrier, including, but not limited to, the requesting telecommunications carrier's collocated facilities; and

(iv) permit, to the extent technically feasible, a requesting telecommunications carrier to obtain the functionality provided by the incumbent LEC's digital cross-connect systems in the same manner that the incumbent LEC provides such functionality to interexchange carriers;

(3) The incumbent LEC shall provide a requesting telecommunications carrier use of packet transport defined as the transport of packetized information between (and including) two or more packet devices, or between interconnected transmission facilities which terminate at a packet device, including any intermediate routing or switching, without regard to the protocol or packet definition scheme involved. The packet transport network element shall include all features, functions and capabilities of the ILEC's packet transport network.

(e) *Signaling Networks and Call-Related Databases*.

(1) Signaling Networks.

(i) Signaling networks include, but are not limited to, signaling links and signaling transfer points.

(ii) When a requesting telecommunications carrier purchases unbundled switching capability from an incumbent LEC, the incumbent LEC shall provide access to its signaling network from that switch in the same manner in which it obtains such access itself.

(iii) An incumbent LEC shall provide a requesting telecommunications carrier with its own switching facilities access to the incumbent LEC's signaling network for each of the requesting telecommunications carrier's switches. This connection shall be made in the same manner as an incumbent LEC connects one of its own switches to a signal transfer point.

(iv) Under this paragraph, an incumbent LEC is not required to unbundle

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those signaling links that connect service control points to switching transfer points or to permit a requesting telecommunications carrier to link its own signal transfer points directly to the incumbent LEC's switch or call-related databases;

(2) Call-Related Databases.

(i) Call-related databases are defined as databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of a telecommunications service.

(ii) For purposes of switch query and database response through a signaling network, an incumbent LEC shall provide access to its call-related databases, including, but not limited to, the Line Information Database, Toll Free Calling database, downstream number portability databases, and Advanced Intelligent Network databases, by means of physical access at the signaling transfer point linked to the unbundled database.

(iii) An incumbent LEC shall allow a requesting telecommunications carrier that has purchased an incumbent LEC's local switching capability to use the incumbent LEC's service control point element in the same manner, and via the same signaling links, as the incumbent LEC itself.

(iv) An incumbent LEC shall allow a requesting telecommunications carrier that has deployed its own switch, and has linked that switch to an incumbent LEC's signaling system, to gain access to the incumbent LEC's service control point in a manner that allows the requesting carrier to provide any call-related, database-supported services to customers served by the requesting telecommunications carrier's switch.

(v) A state commission shall consider whether mechanisms mediating access to an incumbent LEC's Advanced Intelligent Network service control points are necessary, and if so, whether they will adequately safeguard against intentional or unintentional misuse of the incumbent LEC's Advanced Intelligent Network facilities.

(vi) An incumbent LEC shall provide a requesting telecommunications carrier with access to call-related databases in a manner that complies with section 222 of the Act;

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(3) Service Management Systems.

(A) A service management system is defined as a computer database or system not part of the public switched network that, among other things:

(*1*) interconnects to the service control point and sends to that service control point the information and call processing instructions needed for a network switch to process and complete a telephone call; and

(*2*) provides telecommunications carriers with the capability of entering and storing data regarding the processing and completing of a telephone call.

(B) An incumbent LEC shall provide a requesting telecommunications carrier with the information necessary to enter correctly, or format for entry, the information relevant for input into the particular incumbent LEC service management system.

(C) An incumbent LEC shall provide a requesting telecommunications carrier the same access to design, create, test, and deploy Advanced Intelligent Network-based services at the service management system, through a service creation environment, that the incumbent LEC provides to itself.

(D) A state commission shall consider whether mechanisms mediating access to Advanced Intelligent Network service management systems and service creation environments are necessary, and if so, whether they will adequately safeguard against intentional or unintentional misuse of the incumbent LEC's Advanced Intelligent Network facilities.

(E) An incumbent LEC shall provide a requesting telecommunications carrier access to service management systems in a manner that complies with section 222 of the Act;

(f) *Operations Support Systems Functions*.

(1) Operations support systems functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information.

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(2) An incumbent LEC that does not currently comply with this requirement shall do so as expeditiously as possible, but, in any event, no later than January 1, 1997; and

(g) *Operator Services and Directory Assistance*. An incumbent LEC shall provide access to operator service and directory assistance facilities where technically feasible.

B

Appendix B
Estimated Profitability Analysis
Multi-line Business Customer – New York

The following analysis compares the average profitability to serve a typical[1] multi-line business customer using the three basic entry strategies: the unbundled network element platform (UNE-P), service resale, and loop resale (sometimes referred to as facilities-based).[2] The primary focus of the analysis is on estimating the costs that are incurred by the entrant for services/facilities obtained from the ILEC. Because an entrant's internal costs are difficult to quantify (due to variations in business strategies and configurations), the analysis adopts simplifying assumptions that are deliberately conservative (i.e., they are intended to underestimate the entrant's costs). This conservative bias has been adopted to minimize the controversy concerning these assumptions and thus remain focused on the effect of ILEC charges on local competition.

Estimated Profitability

	UNE-P	Service Resale	Loop Resale
Revenues	$54.06	$42.30[3]	$54.06
UNE Costs			
Switch-Related	$8.10		
Network Usage	$3.12		
Loop	$16.42		$16.42
Platform NRC[4]	$0.63		
Resale Cost[5]		$34.22	
Other Entrant Costs			
SCOPE[6]			$4.15
LOOP NRC[7]			$3.58
Local Termination[8]			$5.40
Network Cost[9]			$7.29
Total Cost	$28.27	$34.22	$36.84
Gross Margin	47.7%	19.1%	31.9%
SG&A[10]	30.0%	20.0%[11]	30.0%
Profit Margin	17.7%	-0.9%	1.9%

Critical Assumptions

1 Revenues and usage information is based on the actual revenue profile of a CompTel member company that had competed in New York, offering local service to its base of multi-line business customers. Like most carriers that attempted a resale-based entry strategy, the member company has since ceased accepting new customers. Revenues are adjusted to include estimated access revenues that the entrant would receive under the UNE-P and Loop Resale scenarios.

2 Loop resale configuration assumes that the entrant has installed its own local switch, collocates in the central office to connect to Bell Atlantic loops, and interconnects at the tandem for local call termination.

3 Average revenue per line is lower under the service resale scenario since access charges collected by the reseller.

4 Customer/line-related nonrecurring charges are amortized over 12 months.

5 Assumes that Bell Atlantic's operator services are being resold.

6 Analysis assumes that Bell Atlantic's shared collocation service (SCOPE) is used, with a SLC-2000 Digital Loop Bay used to cross-connect to the entrant's network. To convert SCOPE costs to a monthly charge per line, the analysis assumes a 70% fill rate, line-related nonrecurring charges are amortized over 12 months, while nonrecurring charges for the collocation bay itself are amortized over 36 months. Consistent with the conservative nature of the analysis, the analysis does not include the cost of the SLC-2000 system, test equipment, the entrant's cost to install and maintain the equipment, or any other associated transmission equipment.

7 Customer/line-related nonrecurring charges are amortized over 12 months.

8 Local call termination assumes Meet Point B interconnection (i.e., at the tandem).

9 To minimize controversy concerning the entrant's network cost, the analysis assumes that the entrant's entire network cost – transmission, switching and collocated equipment – is collectively 10% more efficient than the cost of local switching from the ILEC alone. Of course, such a cost relationship is improbable, particularly since the ILEC's switching costs represents the scale economies of a monopoly network and the entrant would incur substantial transmission costs to collect and its distribute traffic. However, to avoid debate concerning these difficult-to-quantify costs, the analysis applies this exceedingly conservative assumption. In reality, the entrant's actual costs are likely to be higher, particularly when all cost categories are considered (and profitability, correspondingly lower).

10 Determining the SG&A cost of competitive local providers is not easily documented. This analysis is based information provided by Merrill-Lynch on a number of publicly traded

CLECs [Telecom Services – Local, Merrill-Lynch, February 11, 1999, company-specific attachments dated February 8, 1999]. The Merrill-Lynch analysis reports actual SG&A levels, as well as provides its projections of future SG&A levels when CLEC operations should have stabilized. The average SG&A for the reported group (Electric Lightwave, e*spire, Intermedia, ICG, Nextlink, and Teligent) in 2002 is estimated by Merrill-Lynch to be 42.4%, with a range of 30% to 61%. (Actual SG&A levels today are significantly higher than these Merril-Lynch projections). The above analysis uses the lowest estimated SG&A consistent with its conservative bias.

[11] The assumed SG&A cost for the resale scenario has been reduce by 1/3 to reflect the (presumably) lower costs associated with this simpler entry strategy.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-98
Local Competition Provisions of the	)	
Telecommunications Act of 1996	)	
	)	

AFFIDAVIT OF DAVID MALFARA

1. My name is David Malfara. I am President of Z-Tel Network Services, Inc., a wholly owned carrier subsidiary of Z-Tel Technologies, Inc. Before joining Z-Tel, I owned and operated a number of telecommunications ventures that applied new technology to conventional market needs. In 1983, I formed Pennsylvania Alternative Communications, Inc. and its long distance subsidiary, Pace Long Distance Service. In 1996 I sold Pace Long Distance to LCI International, which later merged with Qwest. In addition, I founded Pace Network Services, a provider of traffic and SS7 based signaling services to other carriers. I sold PNS to ICG Telecom Group in 1996.

2. As President of Z-Tel Network Services, Inc. I am responsible for the implementation of Z-Tel's overall network strategy. Z-Tel was formed in 1998 as an "applications-based" provider of telecommunications services. Unlike traditional "facilities-based" carriers that invest primarily in physical networks, Z-Tel's focus is on the development of a sophisticated applications control system that overlays the traditional network to provide customers an integrated voice, data and massaging environment.

3. Since its inception, Z-Tel has invested more than $30 million developing the necessary application and database software to provide its unique suite of integrated services, as well as acquiring a nationwide signaling and call processing network to serve as the delivery vehicle for those services. Z-Tel's initial network consists of 7 intelligent switching nodes (Z-Nodes), interconnected by a national frame-relay network to the Z-Tel applications center where Z-Tel's call control software is located. This basic architecture, organized around a centralized call logic center and distributed call processing, is modeled after the basic Advanced Intelligent Network (AIN) framework.

4. Z-Tel's software is designed to support a robust communications management system that seamlessly links individual communication services. Our focus is on integrating a customer's complete communications and messaging needs, eliminating artificial boundaries

between voice, data and email. Our initial focus has been to develop unique solutions for corporate and institutional organizations (such as universities) that represent "communities" of users with a common calling/communications need. For instance, Z-Tel's call management capabilities were used to integrate Delta Airline's pilot scheduling/communications system. Delta's pilots use a local or 800 access number to call into, and log onto, the Z-Node. From there, the pilots can access a number of real-time databases to obtain information on scheduling, receive individualized and group-based corporate and personal messaging, and gain instant access to real-time communication capability.

5. Having developed our software, integration and call processing systems to initially serve corporate, educational and similar large "communities", Z-Tel is now positioned to extend similar capabilities to the broad consumer market. We are particularly confident that our voice mail[1] and "follow-me"[2] call management applications will be well received by the consumer market. In order for these new options to be viable, however, Z-Tel must create an attractive *total* service package that includes local and long distance service; it must be able to offer the package across a broad geographic area; and, it must be able to provision a customer's service with a minimum of cost and delay. The *only* solution that provides Z-Tel a local serving arrangement that meets each of these requirements is the unbundled network element platform (UNE-P).

6. Over the next several weeks, Z-Tel will begin offering service to consumers located in LATA 132 (New York City). Z-Tel will offer consumers three pricing plans that combine local and long distance service with Z-Tel's voice mail, "follow-me" and group messaging capability. In addition, each plan provides unlimited local calling with a predefined block of long distance calling (200, 600 and 1,000 minutes). Customers will be able to configure the Z-Tel features through the Internet using Web-based configuration software, and access all their voice, data and outbound services remotely for a small additional charge (4¢/minute).

7. For those customers that subscribe to Z-Tel's service packages, Z-Tel will use UNE-P with simple call-forwarding, which will be displaced, as soon as available, with UNE-P using AIN terminating attempt switch trigger activation. Z-Tel will still be forced, however, to use NY

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1 With Z-Tel's voice mail service, customers receive a local central mailbox for all of their voice, fax and e-mail messages. Each customer will have their own e-mail address. A Z-Tel customer's family, friends and business associates will need to know only one of the customer's Z-Numbers in order to communicate on all available media. Z-Mail will be accessible from any touch-tone phone or web-browser. Z-Tel customers will be able to respond to all Z-Mail messages by a single key stroke (on either a telephone touch pad, computer keyboard or mouse pad). In addition, Z-Tel customers will be able to hear e-mails over the phone, view fax-mails on a web-browser and hear voice mails on any multi-media personal computer.

2 "Follow me" service allows Z-Tel customers to transfer inbound calls using up to six different "follow me" scenarios, each of which has 3 phone numbers which will be called sequentially to assure a completed call.

Telephone companies AIN database to route incoming calls to Z-Tel's database and switch node.[3] This configuration, though, enables Z-Tel to overlay its advanced services on the basic network platform needed for local (and access to) long distance services.

8. Significantly, Z-Tel's residential offering is possible *only* because the full complement of unbundled network elements is available in *all* central offices in LATA 132. Because NY Telephone will not support UNE-P used to serve business customers from all central offices[4] -- and intends to impose additional non-cost charges even in those central offices where it will -- Z-Tel must limit its offer to residential customers. Clearly, Z-Tel would be able to compete more effectively if it were able to offer services to *both* business and residential customers. Over time, Z-Tel hopes that other carriers are able to supply local serving platforms that are comparable to UNE-P in terms of geographic reach and transactions cost. Until such alternatives develop, however, Z-Tel is dependent upon cost-based access to the incumbent's serving platform to offer its services.

9. Z-Tel does not have the option to construct a local network in order to pursue its applications-oriented entry strategy. Z-Tel capital is prioritized to expand our data network, migrating it to an ATM network, and to develop additional call management enhancements to support new services. Z-Tel's capital budget anticipates adding additional service nodes and expanding our entry strategy to other states as UNE-P is implemented. While our hope is to ultimately begin developing local networks where economic, our first priority is to expand the services in our applications suite and to expand our geographic reach to new markets. If we are denied access to any of the network elements necessary to form our underlying local exchange product (i.e., the UNE-P) our ability to provide service would be seriously impaired.

10. Although the above affidavit addresses the specific constraints of *Z-Tel's* business strategy, its overall conclusions would apply more generally to the *class* of applications-based entrants. While 20th century telecommunications technology largely integrated services with facilities, the future will be defined by software-based applications that overlay generic transmission, switching (and routing) functions. The key to fostering innovation is assuring that basic serving platforms are available on a nondiscriminatory basis to entrants in the same manner they are available to incumbents. This is the promise of the Telecommunications Act. The most fundamental of these serving platforms are the network elements that comprise the UNE-P. Without access to this basic arrangement -- as well as each of the elements that comprise it -- an applications-based competitive environment simply will not be possible.

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3 A more efficient configuration would allow Z-Tel to have AIN inquiries directly access Z-Tel's database. Because such connection is not currently allowed, however, Z-Tel must use NY Telephones AIN capability to, in effect, route calls to Z-Tel's AIN system.

4 Because NY Telephone will not currently provide UNE-P combinations in end offices where two or more CLECs are collocated, Z-Tel is foreclosed from some of the densest central offices in the LATA. Z-Tel expects that this unjustified restriction will be lifted by the Commission in this proceeding.

Executed this 26th day of May 1999

David Malfara

SWORN TO and subscribed before
me this 26th day of May, 1999

Notary Public

My Commission expires: FEB 05, 2002

DANIEL L. FOSTER
MY COMMISSION EXPIRES
FEB
05
2002
CLAYTON COUNTY, GEORGIA
NOTARY PUBLIC

D

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-98
Local Competition Provisions of the	)	
Telecommunications Act of 1996	)	
	)	

AFFIDAVIT OF MARTÍN J. ARIAS

1. My name is Martín J. Arias. My business address is 50 Monument Road, Bala Cynwyd, Pennsylvania 19004.

2. I am Legal Counsel and a participant in the Local Service Business Operations for ATX Telecommunications Services, Ltd. ("ATX"). Prior to joining ATX, I was Assistant City Solicitor - Telecommunications/Cable Television Unit for the City of Philadelphia.

3. I hold a Juris Doctor degree from Boston University and a Bachelor of Arts from Florida International University.

4. Founded in 1984, ATX provides long distance telecommunications services to a substantial base of business and residential customers. ATX also is a local exchange service provider reselling Bell Atlantic's services throughout the Bell Atlantic region. ATX has recently purchased a Lucent 5E switch, which is installed in the Philadelphia LATA, and plans to offer facilities-based services throughout the Bell Atlantic region as soon as practicable.

5. Even though ATX has recently decided to deploy a local switch, ATX would experience a material increase in cost or encounter a material delay in the provision of service if it is denied unrestricted access to UNE-P and extended loops in order to serve customers, whether large or small, business or residential. Acquisition and installation of a local exchange switch is extremely costly and time consuming. For example, ATX estimates that it will have taken it almost two years and cost several million dollars in order to install a single switch in the Philadelphia LATA. ATX does not have the financial resources to deploy enough switches to replicate even a substantial portion of Bell Atlantic's existing network. Moreover, in order to utilize its local switch to serve customers, ATX must establish a collocation arrangement and obtain transport facilities between the collocation facility and its switch for each end office where it serves a customer. With over 300 end offices in the Philadelphia LATA alone, it is infeasible for a small carrier like ATX to obtain the necessary collocation arrangements in all of these end offices.

6. In particular, ATX will be impaired in its ability to serve business customers with multiple locations unless it has unrestricted access to UNE-P and extended loops. If ATX cannot offer to serve customers in every one of a business' office locations, ATX could be precluded from winning that customer's business. For example, if a customer has ten locations, ATX cannot, as a practical matter, collocate in each end office quickly enough to serve the customer. ATX does not believe that a typical customer will wait the several months (at a minimum) that it takes to establish a collocation arrangement needed to serve one or more of its offices. This problem exists even if all ten locations are within the same LATA (such as with ATX's Philadelphia switch), but is even more pronounced if a customer has multiple locations in different LATAs or different states.

7. ATX needs access to UNE-P and extended loops in order to serve the customers described above. ATX also needs to be able to use UNE-P and extended loops to provide a wide range of services to its customers. There are few customers in the market today that would be satisfied with a provider that could offer only voice and ISDN-BRI services. Thus, the number or scope of customers ATX could serve would be materially reduced if its access to UNE-P and extended loop is limited to certain services, such as voice and ISDN-BRI. Similarly, ATX would experience a material decrease in the number of scope of customers it could serve if UNE-P or extended loop were limited to certain classes of customers, such as residential customers.

8. In my view, resale is not a viable alternative to either the use of UNEs or the installation of facilities. The margin on resale generally is too small to permit a CLEC to compete for either business or residential customers by relying on resale alone. ATX needs to have full, unrestricted access to both UNE-P and extended loops in all central offices for all customers, all services, and all types of facilities in order to serve not only its residential customers, but also to serve its business customers.

9. This concludes my affidavit.

Executed this 26th day of May 1999

Martin J. Arias

SWORN TO and subscribed before me this __th day of May, 1999

Notary Public

Notarial Seal
Janet R. Mesirov, Notary Public
Lower Merion Twp., Montgomery County
My Commission Expires Aug. 26, 2002
Member, Pennsylvania Association of Notaries

My Commission expires: 8/26/02

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-98
Local Competition Provisions of the	)	
Telecommunications Act of 1996	)	
	)	

AFFIDAVIT OF RICHARD L. TIDWELL

1. My name is Richard L. Tidwell. My business address is 2020 Baltimore, Kansas City, MO 64108-1914.

2. I am Vice President, Industry and Regulatory Relations for Birch Telecom, Inc. ("Birch").

3. Birch is a local service provider offering service in the states of Kansas, Missouri and Texas. Birch offers switch-based service in Kansas City, Missouri, and is in the process of testing switches installed in Wichita, Kansas, and St. Louis, Missouri. Birch also offers local service through the resale of the incumbent local exchange carrier's retail services. In Texas Birch offers service through the use of UNE-P or UNE combinations.

4. Birch plans to use UNE-P as a market entry tool to build market share before making its investment in a switch. Birch plans to use UNE-P in conjunction with switch-based services in order to serve areas where

collocation is not justified. (SWB non-recurring charge to Birch for one collocation space in Wichita, Kansas was $224,845.)

5. Birch will be impaired without access to ILEC unbundled local switching. Even though Birch has recently installed three switches, we would experience a material increase in cost and encounter a material delay in the provision of service without unrestricted access to an ILEC switch. Acquisition and installation of a local exchange switch is extremely costly and time consuming. For example, Birch estimates that installation of its three switches cost an average of $4-6 million per switch and took up to 9 months per location to install. Installation of these switches diverted a substantial percentage of Birch's resources to the endeavor and delayed its entry as a local service provider. Moreover, in order to utilize a local switch to serve customers, Birch must establish a collocation arrangement and obtain transport facilities between the collocation facility and its switch <u>for each end office where it serves a customer.</u> With hundreds of end offices in Texas alone, it is infeasible for a small carrier like Birch to obtain the necessary collocation arrangements in all of these end offices. Indeed, although rates for collocation are substantially lower in Texas than elsewhere in Birch's markets, even in Texas it is impossible for Birch to collocate in all of these end offices anytime in the foreseeable future. In other markets, such as Kansas City, where Birch's collocation cost quotes ranged from $112,000 to $312,000, for different central offices even more modest entry levels are prohibitively expensive. Finally, although we

would like to purchase switching capacity from other sources if available, Birch is not aware of any existing carriers that offer switching on a wholesale basis to other carriers.

6. Birch will be impaired in its ability to serve business customers with multiple locations. It is a fundamental prerequisite of service to customers with multiple locations that Birch be able to serve every one of a business' office locations. However, if Birch were unable to serve even one of these locations due to the cost or delay of using non-ILEC facilities, Birch would be precluded from winning that customer's business. This problem exists even if all of the customer's locations are within the same LATA, but is even more pronounced if a customer has multiple locations in different LATAs or different states.

7. Birch plans to use UNE-P to provide service in any end office where it cannot at this time establish a collocation arrangement. Birch needs this access in order to serve a broad range of customers in the markets it seeks to enter. In our experience with UNE-P in Texas, we have found that the number and scope of customers we are able to serve is significantly higher in Texas than elsewhere. It is for this reason that we are convinced the lack of UNE-P access in other areas is materially limiting our service today. Importantly, Birch would be impaired by any restriction on the availability of UNE-P – such as restrictions adopted by some states that limit UNE-P to certain locations, certain customers or even to voice services.

8. In my view, resale is not a viable alternative to either the use of UNEs or the installation of facilities. The margin on resale generally is too small to permit a CLEC to compete for either business or residential customers by relying on resale alone. Birch needs to have full, unrestricted access to both UNE-P and extended loops in all central offices for all customers, all services, and all types of facilities in order to serve not only its residential customers, but also to serve its business customers.

9. This concludes my affidavit.

Executed this 26th day of May 1999

Richard L. Tidwell

SWORN TO and subscribed before
me this __th day of May, 1999

Cheryl J. Doty
Notary Public

CHERYL J. DOTY
State of Kansas
My Appt. Exp. 5-14-2001

My Commission expires: 5-14-2001

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-98
Local Competition Provisions of the	)	
Telecommunications Act of 1996	)	
	)	

AFFIDAVIT OF JERRY JAMES

1. My name is Jerry James. I am Executive Vice President of Governmental Affairs and Business Development of Golden Harbor of Texas, Inc. ("Golden Harbor"). I began my telecommunications career with Southwestern Bell almost thirty years ago and have held many key management positions. Prior to joining Golden Harbor I served as Vice President of Governmental Affairs for LDDS-WorldCom, one of the nation's largest long distance companies. I have been instrumental in the construction, maintenance and management of private line, voice data, and video networks. A primary focus of my experience includes designing, constructing and managing national switching networks, along with microwave and fiber optic systems. I was involved in implementing the first distance learning and telemedicine programs in the state of Texas. I represented my company as its lobbyist and expert witness on regulatory issues in 17 states and Washington, D.C. As a result, I was highly involved in the negotiations that resulted in the final drafts of the Texas and federal telecommunications legislation in 1995 and 1996. I continue to work with state and national organizations and elected officials in on-going efforts to implement new rules for the telecommunications industry, and am currently Chairman of the Board of CompTel.

2. Golden Harbor is a facility-based CLEC with local exchange facilities in 30 cities in Texas. In addition, there are other Golden Harbor affiliates which are facility-based CLECs in six other states. The Golden Harbor companies have significant investment in switching and other equipment necessary to provide local exchange services in Texas, Florida, Georgia, Indiana and other states in which these companies operate.

3. Even though the Golden Harbor CLECs are subsidiaries of a small privately held company, our CLEC business is an important part of our strategy. The companies are aggressively expanding to serve customers with non-ILEC facilities, but some customers need service in places where the company does not yet have facilities, and is unlikely to have facilities in the near term. Our need to serve multiple locations is particularly acute for larger business customers.

4. In order to serve customers in those places, the companies must have access to all network elements of the incumbent local exchange company. As the company deploys its own network facilities it intends to replace the unbundled network elements of the incumbent where it is economic to do so. But, in the meantime, our companies need the ability to serve customers where the customers need service. The companies simply cannot replicate the incumbent's network in every area that their customers may desire them to expand service availability.

5. Golden Harbor CLECs have only recently considered utilizing unbundled network elements because many issues surrounding their use have only recently been clarified. If this method of expansion is to be a viable part of the companies' expansion plans, the companies must know that they can obtain whatever pieces of the network they need in order to provide service to their customers. In order for a small company to be able to meet the aggressive growth plans of its customers, access to a full complement of unbundled network elements is critical, even where the company's business plan is founded on the installation of its own network facilities.

Executed this 26th day of May 1999

Jerry James

SWORN TO and subscribed before
me this 26th day of May, 1999

Marilyn W. Donnelly
Notary Public

MARILYN W. DONNELLY
MY COMMISSION EXPIRES
September 30, 2001

My Commission expires: _____