

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

In the Matters of	)	
	)	
Deployment of Wireline Services Offering	)	CC Docket No. 98-147
Advanced Telecommunications Capability	)	
	)	
and	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions of the	)	
Telecommunications Act of 1996	)	

**COMMENTS OF IP COMMUNICATIONS CORPORATION IN SUPPORT OF THE  
PETITION OF AT&T CORP. FOR EXPEDITED CLARIFICATION  
OR, IN THE ALTERNATIVE, FOR RECONSIDERATION**

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February 29, 2000

## TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION AND SUMMARY .....	2
I.    CRITICAL NEED FOR DLECS TO BE ABLE TO PROVIDE INTEGRATED SERVICES IN A MANNER COMPARABLE TO LINE SHARING WITH ILECS.....	3
II.   EXPERIENCE TO DATE.....	4
III.  HOW THE DISAGREEMENT OVER THE <u>LINE SHARING ORDER</u> IMPACTS THE PROBLEMS DISCUSSED .....	7
IV.   WHY IS EXPEDITED RESOLUTION CRITICAL? .....	9
CONCLUSION.....	12

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On February 8, 2000, AT&T Corp. (AT&T) petitioned the Commission for clarification, or alternatively reconsideration, of one aspect of its Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, FCC 99-355, released December 9, 1999 (“Line Sharing Order” or “Order”) and published in 65 Fed. Reg. 1331 (January 10, 2000).<sup>1</sup> IP Communications Corporation (IPC) was referenced in that petition as a Digital Subscriber Line (DSL) Competitive Local Exchange Carrier (CLEC) (collectively referred to as a “DLEC”) that attempted to jointly provide with AT&T an integrated bundle of voice and data services over a single copper loop (hereinafter referred to as an “integrated voice/data offering”). Although IPC recognizes that the Commission is likely to provide a notice for comment on AT&T’s petition, given the request is for expedited relief and the fact that the petition, in part, relates to activities that involve IPC, IPC believes it would be to the Commission’s benefit to receive the perspective of IPC in support of AT&T’s petition.

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<sup>1</sup> Petition of AT&T Corp. for Expedited Clarification or, in the Alternative, for Reconsideration, CC Docket Nos. 98-147 and 96-98, (February 9, 2000) (AT&T Petition).

## INTRODUCTION AND SUMMARY

The Line Sharing Order amends the Commission's rules to require incumbent local exchange carriers ("ILECs") to provide, as a network element, access to the high-frequency portion of the local loop to a requesting competitive local exchange carrier ("CLEC"), on loops that carry the ILEC's basic telephone service. The Commission reasoned that enabling such "line sharing" would accelerate the ability of residential and small business customers to access competitive data services (such as digital subscriber line ("xDSL")-based services) from their choice of providers by placing competitive data service providers on a more equal footing with ILECs.

IPC is a DLEC whose business plan is consistent with the purpose of the Line Sharing Order, i.e. IPC is attempting to extend the existing commercial reach of DSL to broader market segments with a focus on residential and small business customers. Unfortunately, the manner in which the Line Sharing Order is being implemented is contrary to the Commission's intent. Rather than construing the language consistent with the goal of tearing down artificial barriers to the delivery of such services, at least in the SBC region, the order is being interpreted narrowly in such a way to create exceptions to a broad-based and effective deployment of DSL-based services. To the extent artificial barriers are created that either increase costs or shrink the potential pool of customers, DLECs will have to reconsider the breadth of their market deployment.

AT&T's requested clarification is necessary because ILECs have invoked language of the Line Sharing Order to undermine the practical use of the UNE-Platform. Such a practice, effectively limits a DLEC's ability to market to a growing segment of the market. Moreover, this harm disproportionately affects DLECs as compared to ILEC retail/affiliated data services.

A quick resolution is necessary to require methods, procedures and rates to be implemented by the June 4, 2000 date for full line sharing implementation. If ILECs are permitted to discourage DLECs from serving this market, the goals of the Line Sharing Order, as well as sections 251 and 706, will be frustrated.

**I. CRITICAL NEED FOR DLECS TO BE ABLE TO PROVIDE INTEGRATED SERVICES IN A MANNER COMPARABLE TO LINE SHARING WITH ILECS**

For DLECs to have a reasonable opportunity to compete, certain basic needs must be met. One of the key basic needs is line sharing, particularly if high-speed services are to be made available to residential customers at reasonable rates.<sup>2</sup> IPC is dedicated to bring such high-speed services bundled with competitive voice services to residential customers not only in Tier 1 and 2 cities but also to cities that currently lack any reasonable means of obtaining high-speed services. For such a business strategy to be effective, IPC has sought the capability to be as inclusive as possible. In other words, IPC has attempted to stretch its network to as many locations within its service territory as reasonably possible to have the maximum customer reach that the commercial and regulatory environments will allow. To reach beyond the Tier 1 and 2 cities and bring these services to larger segments of the public, it is critical that no customers are artificially walled-off, as a practical matter, from IPC's DSL service offerings. As voice competition accelerates lowering incumbent local exchange carrier (ILEC) market share in the voice markets, DLECs, like IPC, need to have a reasonable capability to provide services to potential customers who no longer receive their voice services from the ILEC.<sup>3</sup> To the extent that integrated voice/data offerings are not allowed when SBC Communications (SBC) is not providing the voice services to the customer or the procedures are inefficiently designed to effectively preclude such integrated offerings, DLECs, particularly those that seek to push the

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<sup>2</sup> The Commission made a similar determination in its Line Sharing Order. In that order, it found that the absence of line sharing "diminishes the ability of competitive LECs to provide certain types of advanced services to residential and small business users, delays broad facilities-based market entry, and materially limits the scope and quality of competitor service offerings." Line Sharing Order at ¶ 5.

<sup>3</sup> It should be noted that while AT&T's petition and this response focus on a CLEC providing voice services over unbundled network elements (UNEs), the rationale in this pleading is equally applicable to the situation where a CLEC is providing voice services through total service resale.

envelop to broaden the availability of broadband services to less urbanized areas will have to reevaluate the scope of their networks.<sup>4</sup> Such a result would frustrate the goals embodied in FTA § 706.

## **II. EXPERIENCE TO DATE**

IPC's experiences to date have come in two forums. First, as discussed in AT&T's petition, IPC attempted to cooperate with AT&T to provide an integrated voice/data service on the same line. Secondly, IPC has actively participated in SBC's line sharing trial. As is discussed below, in both forums, IPC's attempts to develop a simple, parity process for providing an integrated voice/data offering have been frustrated.

### **A. SUBMISSION OF PRODUCTION ORDERS**

All production orders requesting an integrated voice/data service were rejected. IPC was informed that in order to implement such a service, IPC would be required to (1) order a new loop for xDSL (instead of using the customer's existing loop), (2) submit a second order for an unbundled port to connect the back end of the splitter to the ILEC's port serving that customer, after which (3) SBC/Southwestern Bell Telephone Company (SWBT) would disconnect the existing UNE-P line. Such a format would be problematic at best and would clearly not be at parity with SBC's retail process.

The process recommended by SWBT creates many potential fault points that impair a voice provider's highest concern, minimum disruption to its customer's voice service. First, because the customer is being transitioned to a new loop, additional opportunities for facility or provisioning problems exist. Second, the requirement to initiate a port conversion order creates additional possibilities for translation errors within the ordering and conversion process of the ILEC. Third, the requirement to send multiple LSRs rather than handling the entire transaction

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<sup>4</sup> IPC is a regional carrier. As such, IPC's direct experience is limited to SBC.

on one LSR, creates numerous-additional areas for fault within SBC's back office systems. Particularly for SWBT territory, a mechanized process does not currently exist to relate separate LSRs. Because multiple LSRs are required, the DLEC would be required to choose between two unacceptable options: either require the LSRs to fall-out for manual processing so a service representative can attempt to relate the LSRs, or submit the LSRs for processing through a mechanized process knowing that the voice services could potentially be inadvertently disconnected if the LSRs are processed out of sequence.<sup>5</sup>

Beyond problems created in the SWBT systems, the process suggested by SWBT creates a number of additional problems. If IPC is required to convert the port to itself, for purposes of billing, switch usage, etc., IPC has been inserted between SWBT and the voice provider. In other words, the DLEC may be required to develop systems, methods and procedures to manage the voice business simply because of the process preferred by SWBT. In effect, the voice provider becomes a reseller of the DLEC's unbundled port. This complex process is completely absent when SBC/SWBT is the voice provider. Moreover, in addition to the systems and management costs placed on the DLEC as a result of the SWBT process, there would be additional inefficiencies, such as the DLEC being required to provide its own splitters for these integrated orders rather than the approach whereby the ILEC provides the splitters on an UNE basis, which is being trialed by SBC and is preferred by other incumbent local exchange carriers (ILECs).<sup>6</sup> Even if the port remains with the voice CLEC, the cumbersome process negates all of the operational efficiencies created when the UNE-P processes were developed.<sup>7</sup>

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<sup>5</sup> In stating this concern, IPC gives SWBT the benefit of the doubt that a mechanized process will be available for the method recommended by SBC. If such a process is not mechanized so as to flow through SWBT's back office systems, DLECs will be at a significant competitive disadvantage when compared to SBC's retail operations. Also, pursuant to the general structure of SWBT's performance measures, if IPC were to force its LSRs to fallout for manual handling the response times required by SWBT, e.g. return of firm order confirmations (FOCs), would be extended. Additionally, the multiple LSR process creates an addition point of error by IPC personnel as well.

<sup>6</sup> To avoid any misunderstanding, SBC has not agreed to provide splitter capacity on an incremental UNE basis at this time. The incremental UNE approach is included in the SBC trial at the request of the CLEC participants even though SBC's current corporate policy is to require DLECs to own all splitters used for line sharing.

<sup>7</sup> In contrast to the positions taken by SWB in the line sharing trial see SWBT's reply comments in its 271 proceeding at footnote 19 where SWBT states as follows:

## B. LINE SHARING TRIAL

IPC is an active participant in SBC's line sharing trial. In that trial IPC is working with other industry participants to develop the processes that will be used to support line sharing on an ongoing commercial basis. Although requested by a majority, if not all of the participating DLECs, the methods, procedures, and processes for voice and data CLECs to provide an integrated voice/data offering will not be included in the trial contemporaneously with trialing for line sharing when SBC is the voice provider. This limitation threatens to impact the ability for such integrated offerings to be viable in the marketplace simultaneously with the line sharing obligations in the Line Sharing Order.

SBC stated during its line sharing meetings that it does not intend to trial the DLECs preferred method of provisioning the integrated voice/data offering as part of its line sharing trial. Instead, the only scenarios that SBC has offered are considerably more complex and inefficient.<sup>8</sup> IPC continues to be concerned that the delay will prevent the development of an

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The operational specifics of ASI's relationships with the SBC incumbent LECs, which have been questioned by DOJ and other commenters, are further detailed in the Reply Affidavits of Lincoln Brown (ASI compliance), Sherry Ramsey (ILEC SBC compliance), and Jeffrey Weber (ASI compliance). Contrary to AT&T's claims, SWBT need not provide AT&T line sharing via the voice channel of a line in order to demonstrate that ASI does not receive preferential treatment from SWBT. See AT&T Comments at 11-13. **AT&T is free to offer both voice and data service over the UNE Platform or other UNE arrangements, whether by itself or in conjunction with its xDSL partner, I[P] Communications.** The Line Sharing Order did nothing to alter those options; it merely allowed data CLECs to access the high-frequency portion of loops over which the incumbent already provides voice service. See 47 C.F.R. § 51.319(h)(3). (Emphasis added)

In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas, CC Docket No. 00-4 (February 22, 2000).

In spite of this statement, it was clearly stated multiple times during the line sharing trial meetings that data cannot be integrated with the UNE Platform. Instead, ordering for such an integrated offering would require separate ordering of the loop and the port.

<sup>8</sup> To date, SBC has only committed to testing a scenario by which the full spectrum of the loop is swung over to the DLEC-owned splitter. The voice portion would then be cabled back to SWBT's intermediate distribution frame (or to a voice CLEC's collocation arrangement). From that point a separately ordered cross-connect would be provisioned to cable the voice portion to the switch port. This scenario is far more complex than the architecture recommended by IPC and others whereby SBC would provide the splitter functionality. When SBC provides the splitter functionality, SBC does not need to seek assistance from the DLEC to cable the voice portion back to SBC.

efficient process to handle these orders particularly since operational support system (OSS) requirements are likely to be more complex for the integrated offering and second because of SBC's policy decision to date to treat, as operationally different, the situation where the high frequency portion of the loop is split from a UNE loop purchased by a voice CLEC.

### **III. HOW THE DISAGREEMENT OVER THE LINE SHARING ORDER IMPACTS THE PROBLEMS DISCUSSED**

SBC views the obligations in the Line Sharing Order very narrowly. It views its obligation to unbundle the spectrum as limited to when it is the voice provider.<sup>9</sup> That narrow reading is the launching point for most of the operational difficulties. For example, that narrow reading appears to lead to SBC's conclusion that it is not required to provide comparable methods of ordering for an integrated voice/data offering than it does for the situation when SBC is the voice provider.<sup>10</sup> Similarly, if SBC agrees or is required to provide the splitter functionality as an UNE, as advocated by IPC to support line sharing, SBC is likely to take the policy position that this agreement/requirement does not apply to an integrated CLEC offering because "it is not line sharing if SBC is not the voice provider." Finally, ILECs are likely to argue that because the voice offering is separated into a separate loop and a separate port, that voice services provided by using UNE ports combined with UNE loops that pass through a splitter will no longer be analogous to ILEC plain old telephone services (POTS). These resulting outcomes cause undue costs and burdens on competitors that are not at parity with

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<sup>9</sup> SBC stated during the trial meetings that it would even exclude the scenario when SBC is the voice-facility provider but another carrier is the voice-service provider through total service resale. It is also not clear that SBC would agree that it has an obligation to unbundle the spectrum when SBC is the voice provider. Instead, based on its position on splitter ownership, it may be that SWB only believes it is obligated to provide CLECs the means to unbundle the spectrum themselves.

<sup>10</sup> Given SBC's heavy use of joint marketing between its data services and its voice services, competitive data providers will likely be disproportionately harmed by this complexity since proportionally, one would expect SBC's joint marketing campaign to lead to a larger percentage of its data retail/data affiliate customers to also be customers of SBC for voice services.

SBC's retail/affiliate operations. Moreover, they stem from a reading of the Line Sharing Order that misunderstands the order's intent and are in violation of section 251 of the federal act.

Despite the Commission's intent to require ILECs to provide this spectrum unbundling for its loops when requested by competing carriers, SBC's interpretation discussed above creates barriers that limit the application of the Commission's order in such a way that it creates a competitive advantage for ILEC voice services as well as impairing DLEC market initiatives in a way that have a lessened, if any, impact on ILEC/ILEC affiliated voice/data offerings.<sup>11</sup>

The following language from the Line Sharing Order appears to be used by SBC to support its position:

incumbent carriers are not required to provide line sharing to requesting carriers that are purchasing a combination of network elements known as the platform. In that circumstance, the incumbent no longer is the voice provider to the customer.<sup>12</sup>

SBC appears to argue that this language relieves it from the requirement to provide parity methods and procedures to enable customers of a CLEC-provided UNE-P voice service to obtain data service on the same line.<sup>13</sup> That reading is inaccurate. Instead, IPC reads the quoted language not as relieving ILECs of the obligation to perform the necessary work to provide line sharing capability to a UNE-P voice provider's loop but instead as protecting the UNE-P voice provider by requiring that provider's acquiescence before a loop it is purchasing is shared with another carrier. In other words, if a requesting DLEC were to seek line sharing on a loop being

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<sup>11</sup> IPC views much of the language in the Line Sharing Order as describing specific obligations, not as statements of limitation as to other spectrum unbundling requirements. If for no reason other than clarifying this point, AT&T's Petition should be granted.

<sup>12</sup> Line Sharing Order at ¶ 72.

<sup>13</sup> It should again be noted that the position taken by SBC at footnote 19 of its reply comments in the Texas 271 proceeding before the Commission is contradicted by the position articulated during both the line sharing trial and when SBC rejected production orders.

leased by another carrier, the ILEC would not be placed in the position of being required to make the high frequency portion of the loop available to the DLEC over the objection of the voice CLEC. This reading is consistent with the overall intent of the Line Sharing Order, to develop parity handling of orders and provisioning while protecting the ILEC from being ‘trapped’ between a DLEC/voice CLEC dispute.<sup>14</sup>

#### **IV. WHY IS EXPEDITED RESOLUTION CRITICAL?**

In what was supposed to be an example of a new competitive market unblemished by preexisting incumbency, the DSL marketplace is rapidly becoming skewed due to the historic incumbency of the ILECs.<sup>15</sup> The FCC recognized as much in the Line Sharing Order when it took the unprecedented step of suggesting to states that they bypass the FTA § 252 arbitration process to more rapidly develop interim line sharing terms, conditions, and rates. Similarly, the June effective date for line sharing is fast approaching and many complex issues need to be addressed. Moreover, systems modifications will be necessary meaning that the requirements need to be determined well in advance of June so the systems modifications are implemented and tested by June.

To help develop the rules of the line sharing road, the large ILECs are implementing line sharing trials. As discussed above, IPC is actively participating in the SBC trial. Such trials are

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<sup>14</sup> Moreover, other portions of the Line Sharing Order demonstrated that competing carriers are entitled to “obtain combinations of network elements and use those elements to provide circuit switched voice services as well as data services.” Line Sharing Order ¶ 47. Paragraph 47 is irrelevant if ILECs can develop disparate methods and procedures that make it costs prohibitive for such combinations to be created. Beyond cost, of course, CLECs would be faced with higher occurrences of outages that ILECs would argue are not comparable to the occurrences of line sharing with their voice services. Finally, to the extent any portion of SBC’s interpretation is correct, IPC supports the reconsideration aspect of AT&T’s Petition. IPC does not state a position in these comments regarding the appropriateness of the limitation in ¶ 72.

<sup>15</sup> It is well documented in this proceeding how ILECs have been able to competitively price their DSL products compared to DLECs in large part due to the fact that ILECs have imputed line sharing to their retail offerings while DLECs were required to purchase a separate loop.

important to ensure that as ideas are conceived, they will work in practice. Unfortunately, these trials are having the unintended consequence of delaying the resolution of key policy issues. CLECs are caught between collaborating in the trials and seeking regulatory intervention where there are policy disagreements that are not being resolved in the trial. By the time the policy disputes are addressed, it will be too late to have the critical systems modifications in place by the June effective date. The result would be a series of interim, inefficient, manual processes that will cause continued distortion in the marketplace defeating the goal of the Line Sharing Order to not have the existing market distortions exacerbated.

The issue raised in AT&T's petition is one of the critical issues.<sup>16</sup> A number of systems issues have to be addressed by the industry once the Commission clarifies that the ILECs must accommodate the spectrum unbundling requirements necessary for CLECs to offer a joint voice/data product on the same line. For example, a short partial list of issues is as follows:

- How should the elements be ordered?
- How many LSRs will be required?
- Who should order the elements (the voice CLEC or the DLEC)?
- How should letters of authorization be handled?
- What happens to the customer when the voice provider changes (what are the relative rights and responsibilities of the new voice provider and the data provider)?

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16 Another one of those issues is the splitter ownership. At least in SBC's territory, although SBC has taken the policy position that it is not required to provide the splitter functionality, it has agreed to trial that architecture. Therefore, some of the necessary systems and provisioning issues can be addressed in the trial.

- What happens to the customer when the data provider changes (what are the relative rights and responsibilities of the new data provider and the voice provider)?
- Will the ILECs systems be required to track the carrier identification codes for both the DLEC and the voice CLEC? If not, which provider will be the provider of record?
- How will the ILEC bill for the unbundled loop? Will the voice CLEC, DLEC or both be billed?
- What will be the process for standardizing any new codes and fields? (The sooner market needs are determined, the sooner national standards bodies can expedite the standardization of pre-order and ordering issues.)

Expedited resolution of AT&T's petition will allow the parties to focus on implementation and will increase the likelihood that come June, line sharing will be available in a nondiscriminatory manner.<sup>17</sup>

Unless the Commission quickly and forcefully clarifies the Line Sharing Order, the competitive efforts of both voice and data CLECs will be significantly and unfairly hampered. The greater the market distortion created at this fragile time, the more difficult it will be to have effective competition in the markets for data services, for voice services, and for bundled packages of services. Accordingly, expedited treatment on this matter is warranted.

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<sup>17</sup> As alluded to earlier, some additional policy issues may still remain such as: whether the ILECs are required to provide the splitter functionality as an UNE and whether a DLEC, when providing a splitter to be located in a common area, can be required to purchase office space a bay at a time rather than based on the number of racks needed. The Commission should also consider what remedies should be available if parity systems are not in place. Interim remedies such as loop rate reductions are inadequate since the DLEC incurs other costs, e.g. a greater likelihood of on sight installation, and obstacles, e.g. the potential for longer provisioning intervals.

## CONCLUSION

Accordingly, IPC supports the petition of AT&T that argues that:

the Commission must clarify that ILECs may not invoke the Line Sharing Order to restrict consumer choice by denying their xDSL services to customers who switch to a UNE-P CLEC or by refusing to enable voice CLECs using UNE-P to add their own (or a third party's) xDSL capabilities. The Commission should further affirm that ILEC(s) cannot utilize the Line Sharing Order as a defense to CLECs' efforts to develop nondiscriminatory operational procedures enabling CLECs to employ a UNE-P architecture to provide both voice and xDSL capabilities, either by themselves or through arrangements with other carriers. Finally, the Commission should affirm that nothing in the Line Sharing Order authorizes or compels ILECs (or their affiliates) to deny or withdraw their xDSL services to customers of a CLEC using UNE-P architecture.<sup>18</sup>

Respectfully submitted,

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<sup>18</sup> AT&T Petition at 16-17.