

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of )  
)  
Applications for Consent to the Transfer )  
of Control of Licenses and Section 214 ) CC Docket No. 98-141  
Authorizations from Ameritech Corporation, )  
Transferor, to SBC Communications, Inc., )  
Transferee )

**RESPONSE TO COMMENTS OF THE  
DSL ACCESS TELECOMMUNICATIONS ALLIANCE (“DATA”)**

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## **SUMMARY**

SBC seeks an interpretation, waiver or modification of the Merger Conditions involving the ownership of certain network equipment. In its March 3 Comments, DATA pointed out that a hasty approval of SBC's request could seriously threaten the competitive conditions the Commission has worked to foster. Other comments confirm that any action on the present record will detrimentally impact the ability of CLECs to provide competitive services. DATA, therefore, urges the Commission to recognize that implementation of SBC's proposal without a thorough review of all relevant information will result in a persistent, perniciously anticompetitive situation.

The single-technology, single-vendor network that SBC proposes to provide to all CLECs would be squarely at odds with the public interest goals of the Telecommunications Act of 1996, the Commission's rules and the Merger Conditions. SBC cannot dictate the advanced services alternatives available to consumers by effectively hindering the ability of competing DSL providers from utilizing other technologies and capabilities than those which SBC (or SBC ASI) chose to provide. Instead, the level of innovation in services and technology available to consumers in the market must be driven by competing providers making a variety of technology and service choices, not bounded by the dictates of the incumbent monopolist. Indeed that was the whole purpose of the Act. To the extent that the Merger Conditions are interpreted, modified or suspended, DATA urges that the Commission ensure that competitors will continue to have access to an open network platform they can utilize to provide an array of innovative services different than those offered by SBC.

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**RESPONSE TO COMMENTS OF THE  
DSL ACCESS TELECOMMUNICATIONS ALLIANCE**

The DSL Access Telecommunications Alliance (“DATA,”)<sup>1</sup>, submits this Response to Comments pursuant to the Commission’s invitation for comment regarding the Request for Interpretation, Waiver, or Modification of the SBC/Ameritech Merger Conditions on behalf of SBC Communications, Inc. (“SBC”).<sup>2</sup>

SBC’s *February 15 Letter* purports to raise two narrow questions concerning the ownership of certain network equipment. DATA filed comments on SBC’s request on March 3, 2000, urging the Commission not to examine these ownership questions in a vacuum, but rather to assess the proposal in its entirety including, how SBC will comply with its unbundling and collocation obligations within the new fiber-fed DLC network it proposed. DATA recommended that the Commission initiate an expedited technical forum to ensure that the

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<sup>1</sup> Rhythms NetConnections Inc. and the Rhythms Links Inc. subsidiaries (collectively “Rhythms”), Covad Communications Company, Bluestar Communications, NorthPoint Communications, Inc., and HarvardNet, Inc., participated in this Response.

<sup>2</sup> Letter from Paul K. Mancini, Vice President & Assistant General Counsel, SBC Communications, Inc., to Lawrence E. Strickling, Chief, Common Carrier Bureau, FCC (Feb. 15, 2000)(“ *February 15th Letter*”).

SBC's proposal will result in an open, pro-competitive network topology, as required by the Merger Conditions.<sup>3</sup>

In addition, in a March 6, 2000 meeting with Commission Staff, Rhythms urged the Commission to initiate an expedited investigation into SBC's proposal that would allow CLECs and the Commission to evaluate properly the proposed network topology before making any conclusions.<sup>4</sup> In this Response, DATA emphasizes—as the CLEC commenters unanimously agree—that the Commission must not inadvertently endorse the closed single vendor, single DSL technology network platform that SBC proposes, and should instead seek additional information and adequate time for resolution of the important questions presented here.

### **INTRODUCTION**

In its *February 15 Letter*, SBC presented the Commission with the allegedly “narrow” question whether SBC can own all combination voice/ADSL cards in the DLCs located in remote terminals, as well as the ATM switches (which SBC calls Optical Concentration Devices, or “OCDs”)<sup>5</sup> to be deployed in SBC's central offices. The comments provided by the CLECs uniformly concluded that these ownership questions cannot be evaluated in a vacuum. Rather, they emphasized, the Commission must look at the entire effect of SBC's proposed network architecture on the future deployment of local communications services, including advanced services throughout the SBC territory.<sup>6</sup> The CLEC comments demonstrate that SBC's proposal,

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<sup>3</sup> Comments of DSL Access Telecommunications Alliance on SBC's Request for Interpretation, Waiver, or Modification of the SBC/Ameritech Merger Conditions, CC Docket No. 98-141 (March 3, 2000)(“DATA Comments”).

<sup>4</sup> Letter from Kristin L. Smith, Blumenfeld & Cohen, to Magalie Roman Salas, Secretary, Federal Communications Commission (March 7, 2000).

<sup>5</sup> *February 15<sup>th</sup> Letter* at 6.

<sup>6</sup> Comments of AT&T Corp. in Response to SBC's Request for Interpretation, Waiver, or Modification of the SBC/Ameritech Merger Conditions, CC Docket No. 98-141 (March 3, 2000)(“AT&T Comments”) at 5; Comments of MCI Worldcom on SBC's Request for Interpretation, Waiver, or Modification of the SBC/Ameritech Merger Conditions, CC Docket No. 98-141 (March 3, 2000)(“MCI Comments”) at 2; Comments

as currently proffered, will artificially restrict the type and scope of advanced services that CLECs will be able to offer to consumers. The Commission cannot be rushed to judgment on inadequate information. If the Commission is rushed to judgment with inadequate information, the Commission may inadvertently set in motion the creation of a closed, single vendor, single technology platform for advanced services. DATA therefore urges the Commission to conduct a thorough review of SBC's proposal in its entirety, including the certain and substantial negative effects it will have on competitors' ability to utilize an open telephone network platform to provide the widest range of service choices to consumers.

### **DISCUSSION**

#### **I. THE COMMENTS CONFIRM THAT THE IMPLEMENTATION OF SBC'S PROPOSAL WILL STIFLE COMPETITION IN CONTRAVENTION OF THE MERGER CONDITIONS AND COMMISSION DECISIONS**

Any interpretation, modification or waiver of the Merger Conditions must be based on a careful inquiry into the effect of that action on competition. The Commission imposed the Merger Conditions to alleviate the potential harm to the public interest associated with the SBC/Ameritech merger.<sup>7</sup> One of the principal components of that public interest determination was the merger's likely anti-competitive effect. Thus, in allowing the merger to proceed, the Commission stated that it had to "be convinced that it will enhance competition."<sup>8</sup> The

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of MGC Communications, Inc. d/b/a Mpower Communications Corporation on SBC's Request for Interpretation, Waiver, or Modification of the SBC/Ameritech Merger Conditions, CC Docket No. 98-141 (March 3, 2000)("Mpower Comments") at 1; Comments of Sprint Corporation on SBC's Request for Interpretation, Waiver, or Modification of the SBC/Ameritech Merger Conditions, CC Docket No. 98-141 (March 3, 2000)("Sprint Comments") at 2; Comments of Prism Communication Services, Inc. in Opposition to SBC's Request for Interpretation, Waiver, or Modification of the SBC/Ameritech Merger Conditions, CC Docket No. 98-141 (March 3, 2000)("Prism Comments") at 3; Comments of the Association for Local Telecommunications Services with regard to SBC's Request for Interpretation, Waiver, or Modification of the SBC/Ameritech Merger Conditions, CC Docket No. 98-141 (March 3, 2000)("ALTS Comments") at 2; DATA Comments at 3.

<sup>7</sup> *In re Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC Communications, Inc., Transferee, CC Docket No. 98-141, Memorandum and Order*, ¶ 357 (rel. Oct. 8, 1999) ("*Merger Conditions Order*").

<sup>8</sup> *Merger Conditions Order* ¶ 49.

Commission also recognized its statutory obligation of the Telecommunications Act of 1996 (“the Act”) to open local telecommunications networks to competition.<sup>9</sup> The Commission noted that it was required to “assess future market conditions” and that it would make “informed predictions about . . . the likelihood of success of individual market participants.”<sup>10</sup> Because the Commission concluded that the SBC/Ameritech merger would tend to encourage discrimination against advanced services competitors, the Commission imposed Merger Conditions.<sup>11</sup>

The Merger Conditions were thus intended to ensure that competitors would have a sufficient opportunity to enter the market and offer services that rival and surpass those provided by SBC/Ameritech. The Commission concluded that without the Merger Conditions, the SBC/Ameritech merger “will lead the merged entity to raise entry barriers that will adversely affect the ability of rivals to compete in the provision of retail advanced services . . . thereby reducing competition and increasing prices for consumers.”<sup>12</sup> Such anticompetitive conduct is of particular concern in the advanced services market, given the Commission’s mandate to encourage investment and innovation in this market.<sup>13</sup>

Given that competitive considerations were a central focus of the public interest determination that underlay the Merger Conditions, the Commission should be equally vigilant in protecting competition when evaluating a request to alter those conditions. Specifically, the Commission imposed the condition to establish a separate subsidiary to protect competition in the advanced services market from any discriminatory practices that might favor of SBC’s own advanced services. As it stands, SBC’s proposal effectively eliminates the goals advanced by

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<sup>9</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd. 15,499, ¶1 (1996) (“*First Report and Order*”) (Local Competition Order).

<sup>10</sup> *Id.* ¶ 51. *See also id.* ¶ 92.

<sup>11</sup> *Id.* ¶¶ 186, 254.

<sup>12</sup> Merger Conditions Order at 32.

that condition. Actually it is unclear what, if any, services ASI would be providing under the topology SBC proposes.

Additionally, the Merger Conditions must necessarily impose a requirement that SBC/Ameritech provide an open, non-discriminatory technology platform from which competitors may purchase UNEs to provide services and upon which they may install technology of their own choice to provide services. Such a platform must be designed to support not only the type and scope of services chosen by SBC/Ameritech or its advanced services affiliates, but must also be capable of supporting interoperable, multi-vendor equipment and software to ensure the most robust, facilities-based competition. Otherwise, consumers will be deprived of their right under the Act to choose from multiple technologies of multiple vendors developed by facilities-based competitors.<sup>14</sup>

As the Commission set forth the Merger Conditions to ensure that the merger would be in the public interest, SBC has the burden of proving how any modification, interpretation or suspension by the Commission to lift those conditions would continue to serve the public interest. Allowing SBC to own the equipment that the conditions unequivocally require ASI to own under its current proposal closes the network architecture and does not promote competition, thus accepting the proposal explicitly eliminates SBC's obligations under the Merger Conditions, as well as the 1996 Act and Commission rules. In sum, although SBC tries to posture this inquiry as presenting "narrow" questions, it is simply impossible for the Commission to make an informed decision regarding the competitive consequences of SBC's proposal without understanding the network architecture on which SBC's proposal depends.

## II. COMMENTERS DEMONSTRATE THAT THE COMMISSION SHOULD CAREFULLY EXAMINE THE OVERALL EFFECTS ON COMPETITION

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<sup>13</sup> Merger Conditions Order at 32.

<sup>14</sup> For further explanation of the statutory and regulatory obligations that SBC and SBC ASI must observe, *see* DATA Comments at 13-22.

## PRIOR TO RENDERING A DECISION ON SBC'S REQUEST

Simply put, SBC should not be allowed to set in motion a new network topology that will restrict competitors' ability to utilize the telephone network to provide innovative advanced services to consumers. The CLEC commenters agree that the supposedly "narrow" ownership questions SBC is asking the Commission to resolve have far-reaching technical implications for the scope and variety of advanced services competitors will be able to support using SBC's network. Competition can thrive only if CLECs have unfettered access to an open, technology-neutral network to support innovative new services. Yet, the Commenters agree that the manner in which SBC is proposing to implement its new network technology will have the opposite result.

### A. CLEC Commenters Have Demonstrated that SBC's Request for Waiver is Not Narrow and Express Unanimous Concern About SBC'S Proposed Single-Vendor, Single Technology

#### 1. SBC's Proposal Will Set In Motion A New Closed Network Topology

SBC has attempted to portray its request for a waiver of the Merger Conditions as merely raising two "narrow" legal issues regarding ownership of certain equipment. Ostensibly SBC is asking whether SBC or its advanced services affiliate, ASI, should own the DSL line cards in SBC's remote terminals and the ATM switches (which SBC calls Optical Concentration Devices ("OCDs")) to be placed in SBC's Central Offices. In reality, SBC is seeking Commission approval for the first phase of a plan that will set in motion a fundamental restructuring of the existing network in a way that restricts competitors ability to utilize the telephone network to provide an array of innovative advanced services to consumers.

The two pieces of equipment for which SBC seeks ownership guidance are components of a new network topology that relies on fiber-fed digital loop carrier ("DLC") equipment to support advanced services such as DSL. SBC's proposed DLC equipment will support only

ADSL, the sole type of xDSL supported by SBC and SBC/ASI. Thus, commenters agree, SBC's proposal will significantly restrict the ability of CLECs to use the new network topology to offer a variety of DSL or other advanced services.

The network design proposed by SBC in its Appendix DSL is clearly anticompetitive. It makes no provision for CLECs to specify the line cards that are to be placed in SBC's remote terminals. This omission directly implicates one of the two allegedly "narrow" questions posed by SBC: whether SBC could own all the line cards in its remote terminals. SBC's proposed interconnection agreement contract language similarly provides that SBC will own all the line cards in the remote terminal. In reaching this result, SBC dismisses out-of-hand the possibility of CLECs owning, or even specifying without owning, the line cards to be installed in the remote terminal to service CLECs' customers.<sup>15</sup> Even standing alone, this would mean the Commission could not decide in SBC's favor on the current state of the record.

SBC characterizes the DSL line cards in the DLC as "plug-and-play" equipment, but its proposal does not contemplate true "plug-and-play." Rather, it presumes that SBC will determine for all CLECs the line cards that will be used. By contrast, true plug-and-play would allow CLECs to specify the individual line cards each CLEC wanted to use to serve its customers. This would give consumers the freedom of choice they are promised by the 1996 Act by permitting CLECs to compete by differentiating their services from those provided by each other and ASI.

Bell Atlantic and GTE assert that SBC's proposal will provide all CLECs with the same access to facilities and services that ASI receives.<sup>16</sup> But competition is not based merely on a promise of equal access to the technology or services of the monopolist's choice. Competition,

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<sup>15</sup> *February 15<sup>th</sup> Letter* at 3; *see also* Attachment A at 162.

<sup>16</sup> BA-GTE Comments at 2.

instead, thrives on competing carriers' ability to distinguish their services and provide a variety of offerings, giving consumers a choice of available technologies and speed and quality of service. Consumers have the greatest range of choices when providers compete on innovation and technology on a facilities basis, and not just to resell the services of a monopolist. As explained in the DATA Comments, SBC's proposal limits advanced services offerings to "plain vanilla" ADSL technology with speed limitations of 1.5 Mbps so as not to exceed the capabilities of the DSL service that SBC, as have most ILECs, has chosen to provide.<sup>17</sup> The DATA companies, by contrast, routinely offer ADSL, IDSL, and SDSL, and routinely offer speeds up to and exceeding 7 Mbps.

In an analogous context, the Commission has explicitly prohibited ILECs from similarly restrictive practices, "[o]therwise, incumbent LECs would be able to discriminate against other xDSL technologies in favor of their own xDSL technology."<sup>18</sup> The CLECs must have the right to be facilities-based competitors, including the right to place their own DSL technology and deploy their own ATM switches, needed to provide the types of xDSL services that the CLECs have chosen to provision, in order for consumers to benefit from meaningful competition.<sup>19</sup> For these reasons, SBC's "narrow" questions cannot be answered in isolation from these overarching issues that affect competition nationwide. The need for an immediate, expedited fact-finding process could not be clearer.

2. Clear Evidence Exists that SBC's Proposal Will Have Far Reaching Effects on the Network

CLEC Commenters indicated a concern that SBC's new network topology is merely the first phase in a series of changes that will harm competitors' ability to support a variety of

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<sup>17</sup> DATA Comments at 5-9.

<sup>18</sup> *UNE Remand Order* ¶ 428.

<sup>19</sup> *UNE Remand Order* ¶ 427-431.

advanced services. Since the date on which those comments were filed, new evidence has come to light that suggests those fears were correct.

At an industry meeting with CLECs regarding a demonstration of line sharing in California, SBC announced a new test access system it plans to implement in the coming months. The testing system will improve on the current Mechanized Loop Testing systems, which provide basic data regarding the adequacy of a loop to support POTS, by providing additional test data regarding the adequacy of a loop for the provision of advanced data services. SBC's proposed system involves the creation of a new gateway and test system hosts, as well as new test heads manufactured by Hekimian. One version, the Copper Max A, will be placed in the central office, and a second version, the Copper Max RT, will be placed in SBC's new Remote Terminals being deployed as part of Project Pronto.

SBC also announced that it will own the test head equipment in both the central office and the remote terminal, and that it could not commit to allowing CLECs to use test equipment from a vendor of their choice in either configuration. It is unclear why SBC did not disclose this new testing system associated with its fiber-fed DLC network topology in its *February 15th Letter*, or why SBC is not seeking guidance from the Commission on ownership of this testing equipment. The Hekimian test heads will support testing of both the DSL portion and the POTS portion of a loop. SBC has thus unilaterally decided to deprive CLECs of the requisite access to physically test the loops, in favor of SBC-controlled loop testing that reduces CLECs to complete dependency on SBC's own repair and maintenance operations. Moreover, this disclosure underscores CLECs' concerns that SBC will be able to implement a major reconfiguration of the public network without an analysis of the effect it will have on

competition, by piecemealing its disclosures and submitting a series of “narrow” requests for waiver to the Commission.<sup>20</sup>

**B. The Numerous Unanswered Questions Demonstrate that SBC’s Request for Waiver is Premature and the Proposal Requires Crucial Input from a Variety of Sources Prior to Rendering a Decision**

The CLECs' comments amply illustrate that the SBC proposal both lacks the factual support necessary to address the concerns expressed by CLECs and flies in the face of SBC’s statutory and regulatory obligations. Several commenters request that the Commission make any determination at this time contingent on clarification of the numerous outstanding technical and operational issues associated with the SBC proposal, and the creation of conditions sufficient to ensure an open network platform for use by CLECs to offer an array of innovative advanced services.

**1. Numerous Unanswered Questions Remain**

Numerous fundamental technical, ordering and other operational questions posed in the CLECs' comments remained unanswered even after SBC held a public meeting in Dallas, Texas on March 1, 2000 to discuss the "Project Pronto Product Overview." DATA has already described the minimal information presented at that meeting, as well as the types of questions which SBC was unable, or unwilling, to address there.<sup>21</sup> Moreover, DATA presented the Commission a list of 58 initial, unanswered questions that reflect the uncertainty and vagueness

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<sup>20</sup> SBC also announced at the Line Sharing meeting that the demonstration in California, including the testing of technology and testing of OSS to support line sharing, will apply to line sharing only in the existing central office-based configurations. A different set of processes and methods and procedures will apply to line sharing in the fiber-fed DLC configuration, according to SBC representatives. Further, SBC representatives would not confirm that they believe the Commission’s deadline in the Line Sharing order applies equally to line sharing whether offered in a CO-based configuration or an remote terminal configuration. Thus, SBC itself clearly views the Project Pronto, fiber-based DLC topology separate and apart from the existing, open network structure. Thus, SBC is proposing to use Project Pronto as an excuse for avoiding the FCC-mandated implementation schedule for the line sharing UNE.

<sup>21</sup> DATA Comments at 5-9.

of SBC's proposal—or perhaps reflect SBC's unwillingness to provide additional information.<sup>22</sup>

To provide the Commission with further perspective on the unproductive interaction at the Dallas meeting and to illustrate the numerous important questions that remain unanswered, DATA submits the transcript of the meeting with its Reply Comments, as Attachment A.

## 2. SBC's Proposal Continues to Change

While SBC submitted draft contract language with the *February 15th Letter*, SBC has admitted that that contract language is already outdated, but has declined to provide language that is current and binding.<sup>23</sup> For this reason alone, it is clear the Commission cannot now determine exactly how SBC plans to deploy its network topology. Thus, it is impossible to determine whether the proposal will have anticompetitive effects in violation of the Merger Conditions Order. Further, more recent events related to the SBC contract language have served to underscore that SBC's proposal is a constantly-moving target.

In response to a request for information from the Commission,<sup>24</sup> SBC's *February 15 Letter* included draft contract language (Appendix DSL-DLE) describing a new UNE based on the fiber-fed DLC arrangement SBC plans to deploy in remote terminals by May of 2000. However, the contract language did little to clarify SBC's proposal. Several important provisions of the contract would artificially restrict CLECs ability to offer a robust version of DSL-based service. When questioned at the Dallas meeting, SBC representatives claimed the language submitted to the Commission was out of date, but stated that SBC would not provide an amended version. Further, the contract language referenced other appendices on DSL and Line Sharing, but those appendices were not provided with SBC's filing at the Commission.<sup>25</sup> SBC

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<sup>22</sup> DATA Comments, Attachment A.

<sup>23</sup> See Attachment A at 43-44, 105-110 and 188-192.

<sup>24</sup> Attachment A at 190-92.

<sup>25</sup> See e.g., § 3.6.

finally provided CLECs with Appendix DSL at a March 1st meeting in Dallas.<sup>26</sup> Until SBC provides a final contract, it is impossible to determine whether SBC is meeting its obligations under the Merger Conditions and other Commission decisions. DATA, therefore, urges the Commission to solicit from SBC explicit terms, conditions and rates under which SBC will provision the proposed network topology in a just, reasonable and nondiscriminatory manner.

3. The Commission Should Not be Rushed to Judgment on a Proposal that SBC Has Been Planning for Almost Two Years

Due to the far-reaching implications of SBC's proposal, any decision without a complete record on the technical and operational details would be inappropriate and risky. SBC exhorts the Commission to make a quick decision on its "narrow" questions. Yet, in contrast to this sudden "need for speed," according to James Keown, SBC's General Manager of Project Management ATM/VTOA, SBC has been planning this new network architecture and the equipment needed for its implementation since 1998. SBC, however, has now reached the point in the product development process where SBC "need[s] to decide whether we're going to own this card or the CLECs are going to own this card."<sup>27</sup> And now, when SBC has finally made input from other service providers practically impossible, it suddenly needs the FCC to "expedite"—in reality, to truncate—that opportunity.<sup>28</sup>

SBC cannot be allowed to rush the Commission now into making a decision implicating competition wherever the proposed network topology is deployed. Instead, the Commission must postpone decision on the proposed network topology, including ownership of the equipment, until the Commission has assembled a record permitting meaningful participation by all parties and supporting a reasoned decision.

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<sup>26</sup> See AT&T Comments, Attachment.

<sup>27</sup> Attachment A at 108.

<sup>28</sup> February 15<sup>th</sup> Letter at 6.

C. COMMENTERS AGREE THAT SBC FAILS TO DEMONSTRATE ADMINISTRATIVE AND LOGISTICAL PROBLEMS WITH CLEC OWNERSHIP OF NETWORK EQUIPMENT

The information provided by commenters exposes the total absence of factual support for SBC's claim that it must own the combination voice/DSL plug/cards because it would be infeasible for CLECs to own them.<sup>29</sup> Sister ILECs, Bell Atlantic and GTE did not ratify with SBC's assertion that CLEC ownership of these cards somehow creates an unmanageable logistical and administrative problem.. The only support for SBC's argument came from Alcatel, which claims that CLEC ownership of cards would present insuperable logistical problems. Alcatel provides no factual support for this claim, and its assertions must be viewed with suspicion. Alcatel has everything to gain from SBC's proposal, since if SBC controls the technology, Alcatel stands to be the sole supplier of remote terminal equipment to all advanced services providers. Its effort to lock in this privileged position, however, is as short on actual facts as SBC's initial presentation, and should be seen as merely a mere request to be allowed on the gravy train.

Bell Atlantic and GTE offer a different explanation of why ILECs should own the DLC cards. In their comments, these ILECs assert that SBC ownership of DLC line cards would "avoid serious network capacity and efficiency concerns."<sup>30</sup> These ILECs raise the spectre of multiple circuits sitting idle in the remote terminal as CLECs install (and, presumably, pay for) excess line card capacity. This assertion is made with no factual support or significant explanation. It is facially absurd, because it assumes CLECs will squander deployment dollars, while all are in fact scrambling to deploy working service. It ignores, moreover, the

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<sup>29</sup> DATA Comments at 10. *See also* AT&T Comments at 8; MCI Comments at 4-6. *See February 15th Letter* at 3 for SBC's position.

Commission's conclusion that the CLECs are capable of making efficient decisions about the use of the network.<sup>31</sup> Specifically, the Commission has reasoned that "because competing carriers must usually compensate incumbent LECs for the additional costs incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect."<sup>32</sup> Bell Atlantic and GTE do not and cannot explain why the same analysis does not doom their argument.

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<sup>30</sup> Joint Comments of Bell Atlantic and GTE on Ownership of Plugs/Cards and OCDs from SBC's Request for Interpretation, Waiver, or Modification of the SBC/Ameritech Merger Conditions, CC Docket No. 98-141 (March 3, 2000)("BA-GTE Comments") at 2-3.

<sup>31</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd. 15499, 15608 (1996) ("*Local Competition Order*"). The FCC has long recognized that competitors have "more incentive to make economically efficient decisions about where to interconnect." *Local Competition Order* at 15608.

<sup>32</sup> *Id.*

## CONCLUSION

For all these reasons, DATA urges the Commission to:

1. Initiate an expedited investigation into SBC's proposal that would result in an adequate record on which the parties and the Commission can evaluate properly the proposed topology before making any conclusions; and
2. Solicit from SBC explicit terms, conditions and rates under which SBC will provision the proposed network topology in a just, reasonable and nondiscriminatory manner.

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