

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

In the Matter of)
)
Deployment of Wireline Services Offering) CC Docket No. 98-147
Advanced Telecommunications Capability)
)
Further Notice of Proposed Rulemaking)

**BELL ATLANTIC'S OPPOSITION TO AT&T'S AND MCI'S PETITIONS FOR
CLARIFICATION, OR, IN THE ALTERNATIVE, RECONSIDERATION¹**

I. Introduction and Summary

The petitions filed by AT&T and MCI should be denied. Both the Commission's *Line Sharing Order*² and the accompanying rules are clear that the line sharing requirement does not apply to so-called unbundled network element platform ("UNE-P") lines or to any other situation in which the incumbent local exchange carrier is not providing voice service on a line. The long distance incumbents provide no reason to reverse that decision here. Likewise, the Petitioners' request that the Commission require incumbent local exchange carriers ("ILECs") to provide their xDSL service to competing voice carriers who provide service using unbundled elements should also be rejected.

¹ The Bell Atlantic companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

² *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, FCC 99-355 (rel. Dec. 9, 1999) ("*Order*").

This is nothing more than a request that the incumbent carrier provide unbundled access to the various elements that are used to provide their xDSL service. But the Commission has already found that section 251(c)(3) of the Act does not, as a general matter, require incumbent carriers to unbundle advanced services equipment. Moreover, contrary to their claims, Petitioners already have the ability to offer a bundled service that includes data where they already are the voice provider on a single line, and they can thereby compete with incumbent carriers, by purchasing individual UNEs.

II. Neither the *Line Sharing Order* Nor the Act Requires Incumbent Local Exchange Carriers To Provide Line Sharing On UNE Platforms.

AT&T asks the Commission to "clarify" that the *Order's* line sharing obligation extends to so-called UNE-P lines. It argues that the *Order* itself requires incumbent carriers both to offer line sharing capabilities over UNE-P lines and to provide advanced services when competing carriers provide voice services on a line.³ It also claims that the Act itself requires incumbents to provide line sharing on UNE-P lines. AT&T is wrong on all counts.

A. The *Line Sharing Order*

As an initial matter, the Commission's *Order* expressly held that "incumbent carriers are not required to provide line sharing to requesting carriers that are purchasing a combination of network elements known as the platform." *Order* at ¶ 72. According to the Commission, the line sharing requirement only applies where the incumbent local exchange carrier is providing, and continues to provide, analog circuit-switched voiceband services on the particular loop. *See e.g. Order* at ¶ 72 ("line sharing

³ The *Order* recognizes that UNE "platform" refers to a collection of *unbundled* network elements by noting the "platform" is a "combination of loop, switching and transport." *Order* at n. 161. Emphasis added.

contemplates that the incumbent LEC continues to provide POTS services on the lower frequencies while another carrier provides data services on higher frequencies" and n. 160 "we do not find impairment where the incumbent LEC is not providing voice service on a customer's loop . . . "). As a result, the line sharing obligation does not extend to UNE-P lines because in such arrangements the incumbent local exchange carrier is no longer the voice carrier. *See Order at ¶ 72.* On the contrary, as the Commission correctly recognized, a competing voice carrier -- not the incumbent carrier -- would be providing the voice service, thereby making the loop ineligible for line sharing. *See id.*

Accordingly, contrary to AT&T's and MCI's so-called requests for "clarification," there is no ambiguity in the *Order*. An incumbent carrier is expressly *not* required to provide line sharing over UNE-P arrangements or under any circumstance where the incumbent is not providing the voice service to the end user.

Likewise, AT&T is simply wrong that the *Order* does not permit incumbent carriers to terminate their xDSL service if a customer switches to a competing carrier that provides voice service using a UNE-P arrangement. Again, the Commission itself emphasized that the entire concept of "line sharing" contemplates that the incumbent local exchange carrier continues to provide the POTS service. *See Order at ¶ 72.* Instead, the whole purpose of line sharing was to allow competing providers of high-speed data services to provide service without purchasing the entirety of the unbundled loop. *See e.g. id. at ¶¶ 35, 39.* Consequently the *Order* never even contemplated, let alone imposed, a requirement on incumbent local exchange carriers to provide advanced

services to customers when they are no longer the voice provider.⁴ On the contrary, the *Order* expressly contemplates that under these circumstances, it is up to competing carriers to make arrangements to provide advanced services. And, as the Commission explained, they can do so either by purchasing the entire loop and providing advanced services themselves, *see id.* at ¶ 72 ("[I]n the event that the customer terminates its incumbent LEC provided voice service, for whatever reason, the competitive data LEC is required to purchase the full stand-alone loop network."), *or* they can do so by entering into *voluntary* arrangements with other carriers to provide advanced services on the line, *see id.* n. 163 ("if the customer switches its voice provider from the incumbent LEC to a competitive LEC that provides voice services, the xDSL-providing competitive LEC may enter into a voluntary line sharing agreement with the voice-providing competitive LEC"). But there is no requirement that the incumbent carrier provide advanced services under these circumstances.

B. Sections 251(c) of the Act

AT&T also claims "an ILEC's denial of its xDSL offering to customers who obtain voice service from a CLEC that uses UNE-P violates section 251(c)(3)" of the Act. *See* AT&T at 13.⁵ Again, however, it is wrong.

AT&T characterizes its request as one of simply wanting to add xDSL capabilities to a new or already operating UNE-P line. *See* AT&T at 5. But, reduced to its

⁴ Because AT&T's and MCI's claims go beyond issues addressed in the *Order*, there is nothing in the Commission's *Order* to reconsider or clarify. The petitions must be rejected for that reason alone.

⁵ *See also* AT&T Petition at 14 ("[A]ny attempt by an ILEC to deny its xDSL service to a customer who switches to a CLEC that uses UNE-P to provide voice service is unlawful under section 251(c)(3).")

fundamentals, AT&T simply wants incumbent carriers to connect equipment capable of providing xDSL service (*i.e.* packet switching and DSLAMs) to AT&T's UNE-P arrangements. The critical question then is whether incumbent carriers are required to unbundle advanced services equipment such as packet switching functionality and DSLAMs.⁶ The Commission expressly answered this question in the negative in the recent *UNE Remand Order* by declining to impose a general unbundling obligation on advanced services equipment.⁷

AT&T and MCI have no real response to any of this. Instead, they are left to point weakly to language in the *Order* that says "requesting carriers could obtain combinations of network elements and use those elements to provide circuit-switched voice service as well as data services." *See Order* at ¶ 47. By its terms, however, that language merely acknowledges that requesting carriers can use "combinations of network

⁶ The critical question is not whether ILECs should have to provide the higher frequency portion of the loop on UNE-P because voice CLECs using UNE-P already have access to the entire loop facility.

⁷ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238 (rel. Nov. 5, 1999) at ¶ 306. Because Bell Atlantic is not required to unbundle packet switching functionality and DSLAMs to provide its xDSL service to competitive voice carriers under Section 251(c)(3), it need not address AT&T's section 201(b) argument.

elements" --including loops and other elements --to provide their own voice and data services.⁸ But that language is of no help to AT&T and MCI who do not want to provide data service on the line themselves, but rather want to compel others to do so.

III. Competing Voice Carriers, Like Incumbent Carriers, Have the Ability to Provide Their Customers with "One-Stop" Shopping By Providing Both Voice and Data Services Over the Same Line.

As the Commission itself has recognized, the claim that competing carriers will be unable to provide both voice and data services over a single line unless a line sharing requirement is extended to UNE-P arrangements is unfounded. Indeed, as noted above, the Commission recognized that inevitably some incumbent local exchange carrier customers in line sharing arrangements will switch their voice service away from the incumbent carrier to a competing voice carrier. In those situations, it is up to the competing carrier to purchase the entire UNE loop facility. Having done so, they may choose either to provide their own advanced services on the line or to enter into voluntary agreements with other competing carriers to provide data services on the UNE loop. According to the *Order*, "in the event that the customer terminates its incumbent LEC provided voice service, for whatever reason, the competitive data LEC is required to purchase the full stand-alone loop network element if it wishes to continue providing

⁸ In making that statement, the Commission was responding to incumbent carriers' arguments that "[data] competitors have the same competitive options as incumbents, that they are free to provide both analog voice and data services [of their own] in combination, using *unbundled* network elements, and that as a result, competitors are not impaired without access to the high frequency portion of the loop." *Order* at ¶47. Emphasis added. The "unbundled network element" referenced by the incumbent carriers is the UNE loop and refers to the fact that data carriers can offer both voice and data service by purchasing a UNE loop. See *Order* at n. 94 citing Bell Atlantic Comments at 5-6, GTE Comments at 24, 26.

xDSL service." *See Order* at ¶ 72⁹ And "if the customer switches its voice provider from the incumbent LEC to a competitive LEC that provides voice services, the xDSL-providing competitive LEC may enter into a voluntary line sharing agreement with the voice-providing competitive LEC." *Id.* at n. 163.

Of course, in a CLEC-to-DLEC¹⁰ sharing scenario, the competing voice carrier that purchases the UNE loop would be the incumbent carrier's *sole* customer. As such, the competing voice carrier would be ultimately responsible for coordinating and facilitating the sharing relationship between it and any data carrier it allows to use the higher frequency portion of its UNE loop. The incumbent carrier should not be in the business of managing the CLEC-to-DLEC sharing relationship or otherwise playing traffic cop between the two competitive carriers.¹¹

Moreover, depending upon the type of services that exist on a customer's line and the type of network configuration a competing voice carrier and its data carrier partner agree upon, there will be numerous scenarios and related technical issues for the carriers

⁹ *See also* ¶ 73 ("The same holds true if the customer voluntarily cancels incumbent LEC provided voiceband services on the shared loop. In those situations, in order to continue to provide data services to that customer, the competitive LEC must purchase the entire unbundled loop and must pay the incumbent LEC the forward looking cost for that unbundled network element.")

¹⁰ "DLEC" refers to data local exchange carrier.

¹¹ Having incumbent carriers referee CLEC-to-DLEC sharing arrangements would essentially involve having three carriers on a line and would be inconsistent with the *Order's* disapproval of multiple carriers sharing a line. In endorsing two-carrier line sharing only, the *Order* recognizes that "the complexities involved with implementing line sharing dramatically increase where more than two service providers share a single loop." *See Order* at ¶ 74.

to address.¹² In some circumstances, the transition to competing carriers' services will be less complex, such as when a customer who already has an ILEC/DLEC line sharing arrangement switches to a competing voice carrier who in turn opts to enter into a voluntary sharing arrangement with the same data carrier already on the line. In contrast, if the new voice carrier decides to enter a line sharing arrangement with a different data provider, a more complex transition would be required to re-wire the loop to the new data carrier's splitter.¹³ Bell Atlantic is prepared to provide necessary assistance to competing voice carriers as they transition to these various types of arrangements.¹⁴ The details of

¹² AT&T and MCI have already identified numerous scenarios that would have to be addressed. For an example of these scenarios and the types of issues AT&T has raised with Bell Atlantic-New York, *see* AT&T's Petition at Ex. B in which Bell Atlantic-New York addressed each scenario independently.

¹³ Because the methods, procedures and operational capabilities to accomplish a transition from ILEC/CLEC line sharing to a CLEC-to-CLEC sharing arrangement do not currently exist, Bell Atlantic would need to develop additional OSS functionality to support the transition.

¹⁴ If a competing voice carrier wants a new customer that was previously in a ILEC/DLEC line sharing arrangement to retain his or her data service, the competing voice carrier must, upon switching over the new customer, indicate to Bell Atlantic that it has entered into a voluntary sharing arrangement with the DLEC.

these transitional arrangements, however, should be the subject of private negotiations.¹⁵

IV. Conclusion

The Commission should deny AT&T's and MCI's petitions.

Respectfully Submitted,

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¹⁵ In projecting that incumbent carriers could upgrade their operational systems to accommodate "line sharing" within 180 days, the *Order* clearly contemplates only the implementation of incumbent carrier/competing carrier line sharing. Even MCI admits that "the primary focus of the decision [*Order*] was on line sharing with an ILEC . . ." See MCI Petition at 5.