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MAR 22 2000

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

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

COMMENTS OF COX COMMUNICATIONS ON AT&T CORP.'S PETITION FOR EXPEDITED CLARIFICATION OR, IN THE ALTERNATIVE, FOR RECONSIDERATION

Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits these comments in response to the Petition of AT&T Corp. for Expedited Clarification or, in the Alternative, for Reconsideration (the "Petition"), in the above-referenced proceeding.[1] As described below, Cox submits that the Commission should grant AT&T's petition, but only to the extent of clarifying that an incumbent LEC may not prevent a CLEC from reselling a portion of an unbundled loop back to the incumbent LEC or to another CLEC to allow the provision of digital subscriber line ("DSL") or other services separate from the services provided by the carrier purchasing the unbundled loop. Cox does not, however, support any clarification or reconsideration of the

[1] 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 and Fourth Report and Order,* CC Docket Nos. 98-147 and 96-98, rel. Dec. 9, 1999 (the *"Line Sharing Order"*).

Order that would require or regulate a CLEC's subdivision of unbundled loops or that, directly or indirectly, would require an incumbent LEC to unbundle the voice portion of the loop.

AT&T's Petition raises two separate issues. First, it describes certain practices by incumbent LECs that would appear to impede the development of competition. In particular, AT&T claims that ILECs will not permit AT&T or third party CLECs to provide DSL over unbundled loops used by AT&T for voice service. Petition at 2-3. The Petition further demonstrates that these ILEC actions do not arise from technical barriers, but from ILEC policy decisions. *Id.* at 6. In response to the ILEC actions, AT&T asks the Commission to clarify or reconsider the rules adopted in the *Order* and to hold that ILECs must permit CLECs to split unbundled loops between voice and other services. *Id.* at 13.

Second, AT&T states that some ILECs will not provide their own DSL service to customers who purchase voice service provided by AT&T via the unbundled network element platform ("UNE-P"). *Id.* at 2. AT&T asks the Commission to hold that an ILEC's determination not to provide DSL service to a customer who purchases voice service from a CLEC is unlawful. *Id.* at 13-14.

Cox supports the Petition to the extent that AT&T seeks a Commission determination that ILECs may not forbid or hinder the provision of DSL services over any unbundled loops purchased by a CLEC. Under Section 251(c)(3) of the Commission's Act, and the Commission's Rules, when a CLEC purchases an unbundled loop from an ILEC, it purchases the entire loop. This includes both the portions used to provide voice service and the portions used to provide DSL service, and the ILEC has no power to limit the services provided over the loop.

There can be no doubt that this is the case. Section 251(c)(3) contains no provision that would allow an incumbent LEC to limit the use of a loop to a particular telecommunications

service, such as voice, if the loop is capable of supporting multiple services.[2] Further, Section 51.307(c) of the Commission's Rules specifically provides that purchase of an unbundled network element includes "all of the unbundled network element's features, functions, and capabilities" and that the incumbent LEC providing the element must do so "in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element." 47 C.F.R. § 51.307(c). This rule is unambiguous and comprehensive, and is reinforced by Section 51.309(c), which states that a CLEC that purchases an unbundled element "is entitled to exclusive use of that facility[.]" 47 C.F.R. § 51.309(c).

When this principle is applied to loops, it means that a CLEC that buys an unbundled loop gets the entire loop and all of its capabilities. Where a loop can support DSL service, these capabilities necessarily include the capability to provide that service, both separately and concurrently with voice. Consequently, AT&T is correct in asserting that, under the Commission's Rules and the Communications Act, incumbent LECs cannot prevent the offering of DSL service over loops purchased to be used with UNE-P.

The Commission need not, however, make any other determinations in response to AT&T's Petition. Once the Commission establishes that all services available over a loop must continue to be available after the loop is unbundled, there is no need for further regulatory intervention. Rather, the interaction between the CLEC and other carriers should be left for private negotiation. Indeed, in the absence of an agreement with the CLEC, no other carrier has

[2] Indeed, Section 251(c)(3) requires that incumbent LECs provide "nondiscriminatory access" to network elements. 47 U.S.C. § 251(c)(3). Thus, to the extent that the incumbent LEC can use loops to provide both voice and DSL services, it cannot prevent CLECs from doing so.

the right to use any part of the loop because, as Section 51.309(c) requires, the CLEC's use of the loop is "exclusive."

Thus, AT&T's complaint that ILECs stop providing DSL service to AT&T customers served via UNE-P is misplaced. The ILECs that do so are not misinterpreting the Commission's policies, but are acknowledging that they no longer control the DSL portion of the loop. To continue to serve their DSL customers who purchase voice service from AT&T via UNE-P, they need to provide DSL over a separate loop or obtain AT&T's permission to use the loop that AT&T has purchased as an unbundled element.[3] This is the only interpretation that is consistent with the requirements of Sections 51.307 and 51.309, which both give the CLEC full control over any unbundled network elements it purchases.

This is not to say that ILECs and data CLECs cannot provide DSL service over loops purchased by AT&T. If, as the Petition suggests, AT&T is anxious to have ILECs and other CLECs continue to provide DSL service to its UNE-P customers, it should be relatively simple for AT&T to negotiate appropriate loop sharing agreements with other carriers. While the nature of such agreements should be a matter for the parties to determine, they could be modeled on interconnection agreements or other existing arrangements for sharing facilities. Based on AT&T's Petition, it would appear that both AT&T and carriers providing DSL service should

[3] The Petition acknowledges that the ILEC cannot continue to offer DSL without AT&T's consent. Petition at 5 (requesting clarification that the *Line Sharing Order* does not contemplate ILEC withdrawal of DSL service "so long as the CLEC agrees to the use of the loop for that purpose").

have ample incentives to enter into such agreements, which would eliminate any possible reason for regulatory intervention.[4]

Even if negotiations fail, however, the Commission cannot force AT&T or any other CLEC to enter into such agreements or to otherwise unbundle elements of their networks. As the Commission held in the *Local Competition Order,* the unbundling obligations of Section 251(c) apply only to ILECs, and cannot be extended to any CLEC absent a determination that the CLEC meets the specific criteria for being treated as an ILEC under Section 251(h)(2) of the Communications Act.[5] For the reasons described in the *Local Competition Order,* this conclusion was correct, and should not be revisited in this proceeding.[6]

Similarly, there is no basis for forcing ILECs to provide services over CLEC-controlled loops. There is no Commission policy or rule that requires ILECs to purchase any services from CLECs. In addition, in the absence of a requirement that CLECs provide portions of unbundled loops to ILECs, it would be impossible to enforce a requirement that ILECs use those loops for DSL or any other service.

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[4] Whether or not the ILEC is interested in continuing to serve its DSL customers, it is likely that data CLECs will want to do so and, of course, AT&T has stated that it does not object to sharing its loops with DSL providers. *Id.*

[5] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order,* 11 FCC Rcd 16499, 17094 ("We further anticipate that we will not impose incumbent LEC obligations on non-incumbent LECs absent a clear and convincing showing that the LEC occupies a position in the telephone exchange market comparable to the position held by an incumbent LEC, has substantially replaced an incumbent LEC, and that such treatment would serve the public interest, convenience, and necessity and the purposes of Section 251") (citation omitted); *see also* 47 C.F.R. § 51.223 (forbidding states from imposing ILEC obligations on CLECs except following a Commission determination that such obligations should apply).

[6] In any event, AT&T's Petition could not provide the basis for overturning this element of the *Local Competition Order.* AT&T does not ask the Commission to address this issue and certainly provides no grounds for changing this long-settled holding.

Consequently, the Commission should not grant AT&T's Petition to the extent that it seeks adoption of any requirement that CLECs disaggregate loops or that incumbent LECs purchase disaggregated loops from CLECs to provide DSL or other services. The Commission should, however, clarify that nothing in the *Line Sharing Order* permits incumbent LECs to prevent or hinder any otherwise lawful use of an unbundled loop purchased by a CLEC, including the disaggregation of that loop to permit provision of DSL service.

For all these reasons, Cox Communications, Inc., respectfully requests that the Commission act in accordance with these comments.

Respectfully submitted,

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March 22, 2000

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, hereby certify that on this 22nd day of March, 2000, I caused copies of the foregoing "Comments Of Cox Communications On AT&T Corp.'s Petition For Expedited Clarification Or, In The Alternative, For Reconsideration" to be served by hand delivery, except where indicated as by first-class mail, on the following:

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