

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

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

**REPLY COMMENTS OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association (“TRA”), through undersigned counsel, hereby replies to the oppositions of the Bell Atlantic Companies (“Bell Atlantic”), BellSouth Corporation (“BellSouth”), GTE Service Corporation (“GTE”) and SBC Communications, Inc. (“SBC”), collectively, the “ILEC Commenters”, on petitions for clarification and/or reconsideration filed by AT&T Corp. (“AT&T”) and MCI WorldCom, Inc. (“MCI WorldCom”) in the above-referenced matter. Each of the ILEC Commenters insists on mischaracterizing the requests of AT&T and MCI WorldCom for a clearcut Commission statement that an incumbent local exchange carrier (“LEC”) may not refuse to perform for a competitor the very same support functionalities to facilitate the provision of advanced services by the incumbent LEC which it provides for itself or its advanced services affiliate. Not a single ILEC Commenter addresses the issue set forth in the petitions. Rather, each ILEC Commenter insists upon mischaracterizing the request as an attempt to impose additional line sharing obligations upon incumbent LECs. As demonstrated in the petitions, the line sharing obligations of

incumbent LECs are in no manner implicated, and would in no manner be enlarged, by Commission issuance of the requested policy statement. What such a policy statement would do, however, is prevent incumbent LECs from refusing to provide necessary support services to competitors seeking to provide voice and data services over a competitive LEC line while continuing to provide such services to themselves and their advanced services affiliates. TRA thus urges the Commission to ignore the “straw-man” arguments advanced by the ILEC Commenters and to issue the policy statement sought by AT&T and MCI WorldCom.

No participant in this proceeding disputes the nature and extent of an incumbent LEC’s line sharing obligation under the Line Sharing Order.¹ The Commission, in furtherance of the pro-competitive goals underlying the Telecommunications Act,² has determined that as historical monopoly providers which have long enjoyed a protected regulatory status instrumental to the deployment by such entities of a ubiquitous telecommunications network, it is both appropriate and necessary for incumbent LECs to undertake certain obligations in connection with the advancement and deployment of competitive telecommunications services to all segments of American society.³ And interwoven throughout the Telecommunications Act is the requirement,

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, Fourth Report and Order), 14 FCC Rcd. 20912 (1999) (“*Line Sharing Order*”).

² Pub. L. No. 104-104 (1996).

³ *Line Sharing Order*, 14 FCC Rcd. 20912 at ¶ 54. (“Our decision to unbundle the high frequency portion of the loop is consistent with the 1996 Act’s goals of rapid introduction of competition and the promotion of facilities based entry. Moreover, our decision to require spectrum unbundling is consistent with Congress’s mandate that the Commission encourage the deployment of advanced telecommunications capability in Section 706 of the 1996 Act.”)

absolutely critical to the development of such competition that such incumbent providers be prohibited from acting in a manner which would unduly disadvantage their newly-emerging competitors.

Identifying line sharing as “vital to the development of competition in the advanced services market, especially for residential and small business consumers,”⁴ the Commission has required “incumbent LECs to provide unbundled access to the high frequency portion of the loop to any carrier that seeks to deploy any version of xDSL that is presumed to be acceptable under [the Commission’s] rules. XDSL technologies that meet this presumption include ADSL, as well as Rate-Adaptive DSL and Multiple Virtual Lines (MVL) transmission systems, all of which reserve the voiceband frequency range for non-DSL traffic.”⁵

Recognizing that “the Act explicitly makes distinctions based on a common carrier’s prior monopoly status,”⁶ the Line Sharing Order imposes the above line-sharing obligations upon those carriers whose ability to create a “lack of access [would] impair the ability of the requesting carrier to provide the services that it seeks to offer.”⁷ As the Commission specifically noted,

[t]here is no question that incumbent LECs are offering xDSL on the same line as their voice service, and competitive LECs are at a significant disadvantage in offering xDSL-based services over the same line that is used to provide voice service . . . we are convinced that line sharing will level the competitive playing field and enable requesting carriers to accelerate the provision of voice-compatible xDSL-based services to residential and small business

⁴ Line Sharing Order, 14 FCC Rcd. 20912 at ¶ 5.

⁵ Id. at ¶ 71 (internal citations omitted).

⁶ Id. at ¶ 59.

⁷ Id. at ¶ 31, citing an incumbent LEC’s obligations pursuant to 47 U.S.C. § 251(d)(2).

customers who, to date, have not had the same level of access to competitive broadband services as larger businesses.⁸

The Line Sharing Order also recognizes, however, that while competitive carriers are entitled to share the high frequency portion of an incumbent LEC's wet loop, they are not required to do so in order to effectuate their service objectives. Such carriers may also choose to provide voice-compatible xDSL-based services, thereby speeding the deployment of such services to residential and small business customers, by "obtain[ing] combinations of network elements and us[ing] those elements to provide circuit-switched voice services as well [as] data services."⁹ In such a circumstance, the competitive provider would not be obtaining merely the high frequency portion of a loop from an incumbent LEC; rather, it would possess all the functionalities of the loop. In such a circumstance, as BellSouth opines, the "ILEC has nothing to share."¹⁰ Since "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,"¹¹ it is axiomatic that an incumbent LEC's line sharing obligations would not be implicated in this type of situation. This is precisely the situation which the AT&T and MCI WorldCom petitions present; accordingly, the ILEC Commenters arguments, all of which cast the petition requests as attempts to expand incumbent LEC line-sharing obligations, are misplaced and irrelevant.

⁸ Id. at ¶¶ 33, 35.

⁹ Id. at ¶ 47.

¹⁰ BellSouth's Opposition to Petitions for Reconsideration and/or Clarification at 9 ("BellSouth Opposition").

¹¹ Bell Atlantic's Opposition to AT&T's and MCI's Petitions for Clarification, or, in the Alternative, Reconsideration at 2 ("Bell Atlantic Opposition").

In the above-described situation, a competitive provider which chooses not to or is technologically precluded from providing service over the high frequency portion of the loop on its own, may choose instead to partner with another competitive provider. As the Line Sharing Order indicates, the Commission “supports this type of cooperation” between competitive providers and notes that “if a 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.”¹² Of pivotal importance to this situation is the following: it is not the universally accepted position of incumbent LECs that competitive LECs are indeed permitted to share a line with each other.¹³ Incumbent LECs are ideally situated to thwart the ability of competitive LECs to “obtain combinations of network elements and use those elements to provide circuit-switched voice services as well [as] data services”¹⁴ in contravention of the spirit of the Line Sharing Order simply by refusing to perform the identical functions for that competitive carrier which it performs on its own behalf, or on behalf of its advanced services affiliate, when the incumbent LEC’s line is being shared.

TRA agrees with AT&T’s position that “an ILEC’s failure to provide and support fully functional and nondiscriminatory operational procedures that enable CLECs

¹² *Line Sharing Order*, 14 FCC Rcd. 20912 at ¶¶ 53, 73, fnnt. 163.

¹³ *See generally*, Petition for Clarification of MCI WorldCom at 5-6.

¹⁴ *Line Sharing Order*, 14 FCC Rcd. 20912 at ¶ 47.

who are employing a UNE-P architecture to provide voice services to offer xDSL capabilities, either on their own or with others, constitutes unreasonable discrimination in the provisioning of loops and OSS, which also violates Section 251(c)(3).”¹⁵ BellSouth indicates it “must question why exactly MCI and AT&T need clarification.”¹⁶ MCI and AT&T don’t need clarification; the purpose behind the statement sought from the Commission is to make clear to incumbent LECs that their obligation to provide “unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service”¹⁷ extends to performing such support functionalities as they provide for themselves and their affiliates in order that the competitive LEC may take as full advantage of the capabilities of the loop as the incumbent may.

Indeed, it is ridiculous for the ILEC Commenters to suggest that even though they can and do connect equipment to their own lines to facilitate the provision of advanced services for their own benefit and for the benefit of their advanced services affiliates, that they can refuse to do so when a competitor is in need of these support functions in order to provide the same type of service. Such a position could only constitute “unjust or unreasonable discrimination in . . . practices, regulations, facilities, or services . . . directly . . . by any means or device, or [the making or giving] any undue or unreasonable preference or advantage to any particular person, class of persons, or

¹⁵ Petition of AT&T Corp. for Expedited Clarification or, in the Alternative, for Reconsideration, at 16.

¹⁶ BellSouth Opposition at 2.

¹⁷ 47 U.S.C. § 251(c)(3).

locality, or to subject any particular person, class of persons, or location to any undue or unreasonable prejudice or disadvantage” which Section 202 of the Communications Act makes unlawful.¹⁸

As the petitions and the Line Sharing Order itself make clear, the instant issue is not about the “adopt[ion] of new rules”;¹⁹ neither has it anything to do with an ILEC’s receipt of compensation for the provision of voice service on a retail basis.²⁰ Indeed, it is illogical for SBC to assert that the clarification sought by AT&T and MCI WorldCom -- that incumbent LECs may not rely upon any language contained in the Line Sharing Order to withhold access to support functions essential to competitive LEC partnering activities -- is inappropriate because “petitioners are comparing ‘apples’ to ‘oranges’, i.e. ‘non-shared’ lines, and ‘shared’ lines on which the ILECs continue to provide the voice service and to collect the full retail rate for providing the voice service on the shared lines.”²¹ Incumbent LECs are adequately compensated for lines provided to competitors, regardless of whether they continue to receive compensation through the continued retail offering of voice service to end-users or merely received from the competitive LEC. More importantly, however, there is no connection between an

¹⁸ 47 U.S.C. § 202.

¹⁹ Comments of GTE at 8. Following GTE’s mischaracterization of the AT&T and MCI WorldCom requests as seeking the imposition of new rules, the carrier seeks to introduce unnecessary delay into the competitive process by requesting that the Commission allow a significant “lead time” during which incumbent LECs might ‘develop the requisite methods and procedures’ necessary to provide the precise support functions which they are currently providing on their own behalf and on behalf of their advanced services affiliates.

²⁰ Comments of SBC Communications Inc. on Petitions for Clarification and/or Reconsideration at 3 (“SBC Comments”).

²¹ Id.

incumbent LEC's receipt of compensation for the provision of voice service on a retail basis and an obligation to "perform the same services and support functions on UNE platform lines"²² as the incumbent LEC performs on lines which it provisions for itself or its advanced services affiliates.

In fact, the concept of compensation is irrelevant to what MCI and AT&T are asking. Simply put, they ask for a clear Commission directive that an incumbent LEC may not provide certain essential services and support functions on its own behalf while refusing to also provide those essential services and support functions to competitors. As set forth below, it is now likely that only the incumbent LEC will be in the position to fulfill those functions, and if it does not, the competitive LEC, which is precluded from carrying out those functions on its own, will lose a very valuable use of the high frequency portion of its own line.

BellSouth asserts that "[i]f it obtains a combination of elements from the ILEC and installs its own splitter and DSLAM, a CLEC is then free to partner with another CLEC, through a voluntary agreement, to provide both voice and data services to a single customer. Other than providing the network elements to provide the voice service, however, the ILEC should play no role in this transaction."²³ If competitive LECs were positioned to ensure that incumbent LEC would permit them to come into a central office to install their own splitters and DSLAMs, BellSouth's position would be

²² Id.

²³ BellSouth Opposition at 8.

more palatable. However, because this is not the case now, and it is unlikely to be the case in the future, the incumbent's assertion is untenable.

As the record in this matter makes clear, in a circumstance where two competitive carriers are collocated within the same central office, they "can only provide their services over a shared line if they both maintain co-located facilities in the same central office and establish a cross-connection between the facilities."²⁴ Perhaps with this technological imperative in mind, the FCC's Collocation Order prohibited incumbent LECs from refusing to permit the collocating carriers to cross-connect their equipment, subject only to the same reasonable safety requirements that the incumbent LECs impose on their own equipment"²⁵ The D.C. Circuit Court of Appeals has recently held the Commission's holding to be overly broad and has called into serious doubt the continued ability of competitive carriers to collocate cross-connects for their equipment.²⁶ Since the incumbent LEC is now the only entity which can perform these functions, a refusal to do so can only mean that "voice CLECs using UNE-P [which] already have access to the entire loop facility,"²⁷ may nonetheless be prevented by a recalcitrant

²⁴ Reply Comments of Northpoint Communications, Inc. at 3. ("Northpoint Reply Comments") Furthermore, when both competitive providers are not collocated in the same central office, the splitting of the high frequency portion of the competitive provider's loop can only be facilitated by the incumbent LEC. Thus, while "it is technically possible to perform the same ILEC service functions for both shared and non-shared lines," (SBC Comments at 4), "by prohibiting competitive LECs that seek to enter through the use of unbundled elements or resale from offering DSL over the same line, the incumbent LECs discriminate against the two methods of entry that account for most of the competition in voice services that incumbents face today." (Northpoint Reply Comments at 4.)

²⁵ Deployment of Wireline Services Offering Advanced Telecommunications Capability (First Report and Order), 14 FCC Rcd. 4761, ¶ 32 (1999).

²⁶ GTE Service Corporation v. FCC, Case No. 99-1176 (D.C. Cir. February 2, 2000).

²⁷ Bell Atlantic Opposition at 5, ftnt. 6.

incumbent LEC from utilizing the high frequency portion of the loop as it desires – *i.e.*, in precisely the manner in which the incumbent LEC itself uses it.

Therefore, unless and until BellSouth – and every other incumbent LEC – voluntarily commits itself, in a binding and irreversible manner, to allowing competitive LECs to come into central offices to collocate the cross-connects and related equipment necessary to perform the splitter and DSLAM functions essential to directing the high frequency portion of the loop to the competitive LEC’s data affiliate, the only possible way that a competitive LEC could provide both voice and data services to a single customer – which an incumbent LEC can do today – would be for the incumbent LEC to taken on the obligation to perform the necessary support functions for requesting carriers.

SBC asserts that “[r]equiring the ILEC to participate in that CLEC-to-CLEC relationship would only complicate matters and is in no way required by the line sharing orders.”²⁸ While it might be marginally more complicated for an incumbent LEC to provide to a competitor the support services necessary to that competitor’s efficient use of all functionalities of its line, SBC, itself, admits that “it is technically possible to perform the same ILEC services and functions for both shared and non-shared lines.”²⁹ Since the absence of an obligation upon incumbent LECs to perform these essential services and functions will allow incumbent LECs to preclude competitive LECs from offering voice and data services to the same customer in the same manner as the

²⁸ SBC Comments at 3.

²⁹ Id. at 4.

incumbent LEC may, any slight complication which may result (and it is unclear that any complication would result) would be more than fully justified.

TRA submits that the potential introduction of some slight level of complexity is not the motivating factor behind the ILEC Commenters' objections to the clarification requested by AT&T and MCI WorldCom. SBC inadvertently identifies the true motivation behind incumbent LEC reluctance to provide necessary support services to facilitate competitive LEC partnering arrangements when it admits, "obviously there is little and in most cases *no* economic incentive for the ILEC to do so in the case of non-shared lines."³⁰ SBC significantly understates its position. Incumbent LECs have a tremendous economic incentive to refuse to do so. Such refusal keeps potential competitors which choose to partner with data providers – which the Commission has said they may voluntarily do -- from providing the same service (voice and data) as the incumbent LEC. That deprives the competitive LEC of all economic benefit which would flow from the ability to utilize the high frequency portion of the loop as it sees fit – and as it is entitled to do.

As the Commission has repeatedly recognized, absent an obligation to allow the development of competition, monopoly providers will not willingly relinquish their market power. SBC and its compatriots demonstrate clearly here that incumbent LECs still have little or no incentive to assist competitors and still have no intention of allowing competitive efforts to flourish absent compulsion to do so. By issuing the statement requested by AT&T and MCI, the Commission could handily provide that

³⁰ Id.

compulsion and ensure that incumbent LECs cannot manipulate the Line Sharing Order into a tool for hindering, rather than promoting, competition.

Consistent with the foregoing, the Telecommunications Resellers Association urges the Commission to reject the oppositions of the incumbent LEC commenters and to expeditiously issue the affirmative statement requested by MCI WorldCom and AT&T that incumbent LECs may not impede the offering of competitive service through the UNE platform based upon anything set forth in the Line Sharing Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Catherine M. Hannan, do hereby certify that a true and correct copy of the foregoing Reply Comments of the Telecommunications Resellers has this 3rd day of April, 2000, been served by United States First Class mail, postage prepaid, on the individuals listed below

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