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

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| In the Matter of | ) | |
| | ) | |
| Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 | ) | CC Docket No. 96-98 |
| | ) | |
| Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers | ) | CC Docket No. 95-168 |

**REPLY OF @LINK NETWORKS, DSL.NET AND MPOWER**

@Link Networks, Inc. ("@Link"), DSL.net, Inc. ("DSL.net") and MGC Communications, Inc., d/b/a Mpower Communications Corp. ("Mpower") (collectively referred to as "Petitioners"), through their undersigned counsel, respectfully submit their reply to the Oppositions and Comments to the Petition for Reconsideration (the "Petition") filed by them in this proceeding.[1] In the Petition for Reconsideration, Petitioners requested that the Federal Communications Commission (the "Commission") reconsider certain portions of its Third Report and Order, released on November 5, 1999, in the above-captioned proceeding.[2] Specifically, Petitioners asked: (i) that the Commission reconsider its conclusion that CLECs

[1] Three BOCs – SBC Communications Inc. ("SBC"), US West, Inc. ("US West"), and BellSouth Corporation ("BellSouth") – and GTE Service Corporation ("GTE", and collectively with the BOCS, the "Respondents") filed oppositions to Petitioners' request for reconsideration. *See* SBC's Consolidated Opposition to Petitions for Reconsideration and Clarification ("SBC Opp."), at 27-32; Response of US West, Inc. to Petitions for Reconsideration and Clarification ("US West Resp."), at 15-17; BellSouth Opposition/Comments on Petitions for Reconsideration/ Clarification ("BellSouth Opp."), at 7-8; and Comments and Opposition of GTE ("GTE Comments"), at 7-10. Three other parties – Sprint Corporation, AT&T Corp., and the Association for Local Telecommunications Services – filed pleadings that supported the Petitioners' position.

[2] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 90-238 (rel. Nov. 5, 1999) ("*UNE Remand Order*").

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compensate ILECS for conditioning local loop facilities; and (ii) that if the Commission continued to allow conditioning charges to be imposed, it clarify that ILECs not be permitted to impose such charges where conditioning is not required for a requested loop.

## I. ILECs SHOULD NOT BE PERMITTED TO CHARGE CONDITIONING FEES

The *UNE Remand Order* obligates ILECs to provide competitors with access to "raw copper" local loops.[3] In their submissions opposing the Petition for Reconsideration, Respondents argue that CLECs should bear the costs of the ILECs' compliance with this obligation by permitting ILECs to impose conditioning charges for removing repeaters, load coils and bridge taps from their local loops.

Petitioners recognize that providing CLECs with clean loops will, in some instances, require the ILECs to remove equipment that the ILECs have added to the basic loop facility. Returning loops to their original, unaltered state may require the ILECs to incur certain costs. However, these costs are not properly charged to CLECs. CLECs are not asking ILECs to upgrade or enhance their facilities.[4] Rather, competitors are simply asking for access to the underlying facility, without later enhancements added by the ILECs. That equipment was not installed at the request of CLECs or to meet the demands of a competitive telecommunications market. Rather, it was installed by the ILECs to meet their own needs. Allowing ILECs to impose conditioning costs thus effectively requires competitors to pay for the ILECs' past investment in their local loop facilities, *i.e.*, embedded costs. It is therefore inconsistent with Commission rules that require ILECs to apply forward-looking and most efficient network

[3] UNE Remand Order, ¶ 173.

[4] SBC's assertions that Petitioners' request runs afoul of *Iowa Utilities Board* because Petitioners are seeking to obligate ILECs to grant CLECs access to an "unbuilt superior" network are meritless. SBC Opp., at 28; *see also* US West Resp., at 16 (claiming that conditioning constitutes an "upgrade" to the ILEC's network). To the contrary, CLECs are requesting, and the Commission has found that they are entitled to, access to the underlying local loop facilities – *without* the enhancements added by the ILECs. The Commission already has addressed and rejected Respondents' contention that loop conditioning is an enhancement to local loop facilities, stating that conditioning "merely enables a requesting carrier to use the basic loop." *UNE Remand Order*, ¶ 173.

cost-based pricing methodology for provision of conditional loops and other UNEs.[5] Paying ILECs to remove unneeded load coils cannot possibly be part of such a methodology.

The argument against imposing conditioning costs on CLECs is especially strong for loops of less than 18,000 feet. There is no debate that voice-enhancing equipment is not now, and never was, necessary, for such loops. The cost of removing such superfluous equipment is not properly imposed on CLECS. Therefore, even if the Commission permits ILECs to charge CLECs for returning loops to their original state, they should not be permitted to impose such charges for loops of less than 18,000 feet.

## II. ILECs SHOULD NOT BE PERMITTED TO IMPOSE CHARGES WHERE A REQUESTED LOOP DOES NOT NEED CONDITIONING

Even if the Commission permits ILECs to impose conditioning charges, it should clarify that ILECs can only impose those charges where they are actually incurred to condition a specific loop. ILECs should not be permitted to impose a general or averaged loop conditioning charge on every requested loop.

Only SBC appears to advocate that ILECs should be permitted to impose conditioning charges on every requested loop, regardless of whether that loop requires conditioning.[6] SBC appears to claim that it is overly burdensome to determine whether conditioning costs should be imposed for a particular loop, and, therefore, that the Commission should permit "states [to] approve conditioning charges that reflect a reasonable approximation of costs" based on the ILECs' average cost.[7]

SBC's argument fails for several reasons. First, SBC provides no support for its contention that it cannot determine whether a particular loop needs conditioning. Second, SBC

[5] 47 C.F.R. § 51.503(b)(1). The fact that ILECS may incur costs to restore loops to their original state does not mandate that they be considered forward-looking. Conditioning costs are the result of the need to remove equipment that is not necessary today and in many cases was not needed in the past.

[6] SBC Opp., at 31-32. By their silence, the remaining Respondents presumably concede that they should be permitted to impose conditioning costs only if a requested loop needs to be conditioned.

[7] SBC Opp., at 31.

wants to have its cake and eat it too. The rationale expressed by the ILECs (including SBC) for imposing conditioning charges is that the charges compensate ILECs for their cost to provide a conditioned loop.[8] Assuming for the sake of argument that this point is valid, it must work both ways: where the ILEC does not incur costs to condition a requested loop, it should not be permitted to impose a conditioning charge. SBC, however, appears to want to levy conditioning charges regardless of whether a particular requested loop requires conditioning. If that is SBC's position, its argument thus flies in the face of its own rationale for seeking to impose conditioning charges in the first place. In addition, SBC's position is contradicted by the other Respondents. GTE notes that it does not normally condition bundles of loops, but rather conditions a particular loop upon request.[9] Presumably, then, GTE has no problem in determining whether a specific loop needs to be conditioned. US West goes so far as to concede that an ILEC may recover only the costs incurred in conditioning a specific requested loop.[10] Therefore, SBC's argument that it should be able to impose a conditioning charge on all loops is meritless. The Commission should clarify that ILECs may not impose conditioning charges where a requested loop does not need conditioning.[11]

[8] SBC Opp., at 28; GTE Opp., at 10; US West Resp., at 16.
[9] GTE Comments, at 10.
[10] US West Opp., at 16.
[11] For the same reason, where more than one loop is available to fill the CLEC's request, and at least one of those loops does not require conditioning, the ILEC should be required to provide the unencumbered loop (without imposing a conditioning charge).

## V. CONCLUSION

The Commission's decision requiring CLECs to pay ILECs to remove encumbrances to local loop facilities in order to obtain access to clean loops is inconsistent with the Commission's forward-looking pricing principles and should be reconsidered. In addition, the Commission should make clear that ILECs may only impose loop conditioning charges when costs to condition loops are actually occurred.

Respectfully submitted,


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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply of @Link Networks, DSL.net and Mpower in CC Docket No. 96-98 was sent by United States First-Class Mail, postage prepaid, or hand delivered, on this 3rd day of April, 2000 to the parties on the attached list.

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