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

In the Matter of

Inquiry Concerning Deployment of	)	
Advanced Telecommunications	)	
Capability to All Americans in a Reasonable	)	
And Timely Fashion, and Possible Steps	)	CC Docket No. 98-146
To Accelerate Such Deployment Pursuant	)	
To Section 706 of the Telecommunications	)	
Act of 1996	)	

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**REPLY COMMENTS OF AT&T CORP.**

AT&T Corp. ("AT&T"), by its attorneys, hereby replies to the comments filed in response to the Commission's *Notice of Inquiry* on advanced telecommunications capability deployment.<sup>1/</sup>

**INTRODUCTION AND SUMMARY**

As detailed below, most of the commenters in this proceeding agree that the Commission's current definition of advanced telecommunications capability should be modified to encompass services with asymmetric speeds; that the deployment of advanced telecommunications capability is reasonable and timely; and that the Commission should continue to let market forces work without burdensome and inappropriate regulation of new entrants. While various incumbent LECs have made self-serving requests for "regulatory parity" or other regulatory relief, they provide no justification for deregulating their advanced services or

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<sup>1/</sup> *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Notice of Inquiry*, CC Docket No. 98-146, FCC 00-57 (rel. Feb. 18, 2000) ("NOI").

regulating new entrants. The Commission has rejected these inappropriate demands in earlier proceedings, and should do so again here.

## DISCUSSION

### I. THE DEFINITION OF ADVANCED TELECOMMUNICATIONS CAPABILITY SHOULD FOCUS ON DOWNSTREAM SPEED

A wide range of commenters agree that the definition of advanced telecommunications capability should encompass services with asymmetric speeds.<sup>2/</sup> As SBC Communications states, a minimum 200 kbps speed would capture many of the downstream transmissions on the market that are considered broadband, but it is too high a threshold as a minimum upstream speed to be used in defining advanced services and advanced telecommunications capabilities.<sup>3/</sup> An asymmetric definition would more accurately reflect the range of advanced services in demand and available in today's marketplace.<sup>4/</sup>

For the reasons advanced by these commenters, the definition of advanced telecommunications capability adopted in the *First Order*<sup>5/</sup> should be modified to include technologies and services that offer enhanced download transmission speeds regardless of the return path. Such technologies and services clearly represent an advance over conventional

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<sup>2/</sup> See, e.g., AT&T at 4-6; Bell Atlantic at 3; Citizens Communications at 11; GTE at 8-9; National Cable Television Association ("NCTA") at 26; National Rural Telecommunications Association ("NRTA") at 6; National Telephone Cooperative Association ("NTCA") at 3-4; NorthPoint Communications, Inc. at 6-7; SBC at 8.

<sup>3/</sup> SBC at 6.

<sup>4/</sup> See, e.g., NCTA at 26 (revise definition to "include high-speed (in excess of 200 kbps) downstream delivery that is offered in combination with the upstream capability of standard telephone line"); Northpoint at 7 (definition should "include services that provide 200 Kbps in only one direction").

<sup>5/</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Report*, 14 FCC Rcd 2398, 2406 (1999) ("*First Report*").

telecommunications facilities.<sup>6/</sup> While some commenters claim the current definition is reasonable, they offer no real argument against changing the definition to reflect the current asymmetric nature of advanced telecommunications capability.<sup>7/</sup> For example, BellSouth states that modifying the definition of advanced services capability would “confuse the industry” and “fail to give the Commission a clear picture of deployment.”<sup>8/</sup> In fact, modifying the definition as proposed by AT&T would provide a more accurate picture of advanced deployment by bringing the definition in line with consumer expectations and demands (thus eliminating the discrepancy between what consumers consider “advanced” and how the Commission defines “advanced”).<sup>9/</sup>

Most commenters also agree with AT&T that the Commission’s definition of advanced telecommunications capability should be flexible, responsive to consumer demand, and change over time as the market develops.<sup>10/</sup> As NRTA states, the Commission should “avoid a strict definition” because “Congress enacted a gradual and dynamic *process* for defining and achieving

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<sup>6/</sup> AT&T at 4-6; Bell Atlantic at 3-5; Commercial Internet Exchange Association (“CIX”) at 3-4; GTE at 8-9; Northpoint at 6-7; NTCA at 3-4; SBC at 6-8.

<sup>7/</sup> See, e.g., BellSouth at 8; MCI WorldCom at 2 (retain current definition because no significant changes have occurred in the broadband market); Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”) at 3 (definition is reasonable because small ILECs that are able to provision DSL “should usually find this data rate to be reasonably achievable for a fair portion of subscribers who are located somewhat close to the central office”); U S WEST at 2 (no justification for changing the definition exists because it was established last year).

<sup>8/</sup> BellSouth at 8.

<sup>9/</sup> The Public Utilities Law Project (“PULP”) argues that the Commission’s definition should require symmetric speeds of 1.5 mbps or higher to avoid relegating businesses and institutions in low income areas to being “recipients” of information rather than “senders.” See PULP at 5-6. However, by using the term “reasonable” in Section 706, Congress intended the Commission to adopt a definition that is based on current consumer demand and technological ability, not theoretical, forward looking demand as PULP suggests. Although a symmetric speed of 1.5 mbps may adequately reflect advanced services in the future, it does not reflect current applications and consumer demands.

widespread and reasonably paced broadband deployment, not a static definition and compliance deadline.”<sup>11/</sup> Marketplace developments should continue to guide the Commission’s process of review and revision in the future, so that the definition continues to adequately encompass advanced capabilities while continuing to exclude conventional technologies.

## **II. ADVANCED TELECOMMUNICATIONS CAPABILITY IS BEING DEPLOYED TO ALL AMERICANS ON A REASONABLE AND TIMELY BASIS**

Most commenters, including cable operators,<sup>12/</sup> incumbent LECs,<sup>13/</sup> competitive LECs,<sup>14/</sup> and ISPs,<sup>15/</sup> agree that deployment of advanced telecommunications capability is reasonable and timely. As GTE explains, deployment can be reasonable and timely even if the availability and the consumption of broadband services are not completely uniform across the country.<sup>16/</sup> While not all providers will serve all customers in all geographic areas, all Americans nonetheless will

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<sup>10/</sup> AT&T at 6-7; Bell Atlantic at 4-5; CIX at 4; NRTA at 6-7; OPASTCO at 3; Pegasus at 3.

<sup>11/</sup> NRTA at 5, 7 (emphasis in original).

<sup>12/</sup> See, e.g., Cox at 12-15; MediaOne at 15, NCTA at 5.

<sup>13/</sup> See, e.g., Bell Atlantic at 8, BellSouth at 4, GTE at 5, 14-19. U S WEST is the only ILEC to argue that advanced capability is not being deployed to all Americans on a reasonable and timely basis. U S WEST at 3. U S WEST offers no support for its claim, except to argue that regulation of ILECs is having a negative impact on deployment of advanced services. *Id.* at 6-7. If U S WEST’s customers suffer from a lack of advanced or basic services, however, the problem is entirely U S WEST’s, which has shown itself to be incapable of providing such services at an acceptable level of quality. See, e.g., *In the Matter of Investigation of U S WEST Communications, Inc.*, Public Utilities Commission of the State of Colorado Docket No. 99C-371T, Decision No. C00-34 (ordering U S WEST to refund approximately \$12.9 million to customers for violations of the Commission’s quality of service rules). On January 31, 2000, U S WEST was also required to pay \$1.5 million in fines for violations of an Arizona service quality plan initiated in 1995. *In the Matter of the Application of U S WEST Communications, Inc. For a Hearing to Determine the Earnings of the Company for Ratemaking Purposes*, Arizona Corporation Commission Docket No. E-1051-93-183, Decision No. 59421 (December 20, 1995).

<sup>14/</sup> See, e.g., ALTS at 3, Prism Communications at 2-3.

<sup>15/</sup> See, e.g., CIX at 9.

<sup>16/</sup> GTE at 14-19. See also NRTA at 4 (noting that Section 706 does not require full broadband deployment overnight).

have a choice of several providers and service options.<sup>17/</sup> As AT&T suggested in its comments, the Commission should focus on the industry's continued commitment to investment in advanced capability, its ability to meet the needs and demands of the market, and its continued ability to offer consumers the next level of products and services.<sup>18/</sup> Using these guidelines, deployment is indeed reasonable and timely.

A few commenters, including Alcatel and iAdvance, claim that a digital divide is being created between urban "haves" and rural "have nots."<sup>19/</sup> However, these claims are contradicted by the comments of companies that are actually serving rural areas. For example, the National Rural Telecommunications Association, the National Telephone Cooperative Association, and the Organization for the Promotion and Advancement of Small Telecommunications Companies demonstrate that their members are actively deploying advanced telecommunications capability to rural America in a reasonable and timely manner.<sup>20/</sup> While the National Exchange Carrier Association ("NECA") cautions that the growth of advanced capability in rural areas is likely to lag behind that in suburban and urban areas, it agrees that many small, rural carriers are presently deploying broadband facilities.<sup>21/</sup> Claims about rural "have nots" are also inconsistent with the findings of the Economics and Technology, Inc. study that AT&T referenced in its comments and with AT&T's own experience.<sup>22/</sup> Any disparities that may exist between urban and rural

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<sup>17/</sup> See, e.g., SBC at 12-13 (stating that it is too early to tell whether deployment of advanced capability is reasonable and timely, but there is no shortage of industry players or competing technologies); CIX at 8 (noting that each technology is uniquely adept at providing advanced capability in particular geographic situations, so that no part of the population will be unserved by some form of advanced capability).

<sup>18/</sup> AT&T at 34.

<sup>19/</sup> See Alcatel at 4; iAdvance at 3-4.

<sup>20/</sup> See, e.g., NRTA at 2, 7-9; NTCA at 5-6; OPASTCO at 5-6.

<sup>21/</sup> NECA at 3-5.

<sup>22/</sup> See AT&T at 28-30.

deployment will be erased by increased deployment of wireless and satellite broadband services in the near future,<sup>23/</sup> and advances in technology.<sup>24/</sup>

The Alliance for Public Technology and the Public Utility Law Project argue that low income “have nots” are being left out of the digital age, but provide no facts or statistics to back up their claims.<sup>25/</sup> AT&T and the cable industry as a whole have shown that they will invest in the facilities necessary to bring advanced services to every neighborhood, including those that are economically disadvantaged or ethnically diverse. AT&T explained that it upgrades entire metropolitan areas, including the less affluent sections of cities, and does not selectively upgrade only more affluent areas.<sup>26/</sup> MediaOne likewise provides detailed information about its deployment of cable modem service to all racial, geographic, and economic segments of the communities in which it operates.<sup>27/</sup> And NCTA explains that, both in practice and by law, when cable operators deploy their systems and services, there is no redlining or cream skimming.<sup>28/</sup>

With respect to backbone facilities, such facilities are being deployed in a reasonable and timely fashion, with the notable exception of connectivity at peering points. As AT&T discussed in its comments, backbone connectivity at public peering points has been and continues to be

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<sup>23/</sup> See Sprint at 1-2 (arguing that broadband fixed wireless service represents “the single most effective means” of providing broadband service to rural areas); Hughes at 2-3 (explaining that satellite-delivered broadband services have large coverage areas, can serve anyone in the covered area, and are essential to narrowing the digital divide); Bruce Branch, *DBS Has Record Year, Reaching 11.5 Million Households*, Communications Daily at 7-8 (March 29, 2000) (citing SBCA’s Charles Hewitt “We are the answer for closing the digital divide in rural America.”).

<sup>24/</sup> See BellSouth at 11 (arguing that slower deployment to rural areas stems from technology, not regulatory, issues, and that advances in technology will increase deployment in these areas).

<sup>25/</sup> Alliance for Public Technology at 5-7; Public Utility Law Project at 7-8.

<sup>26/</sup> AT&T at 30.

<sup>27/</sup> MediaOne at 7.

<sup>28/</sup> NCTA at 10.

prone to periodic congestion.<sup>29/</sup> To avoid this congestion, the larger Internet backbone providers (“IBPs”) have arranged private interconnection points among themselves and exchange traffic on a settlements-free basis. As a general rule, these arrangements are not available to smaller IBPs. Rather, the larger IBPs -- including MCI WorldCom and Sprint -- charge smaller IBPs “transit fees” for carrying and terminating their traffic. This prevents smaller IBPs from competing for the business of many larger customers that insist on private peering arrangements from their backbone providers in order to be assured of the maximum reliability.<sup>30/</sup>

Finally, AT&T agrees with those commenters who argue that Section 706, which is inherently deregulatory, should not extend to cover the issue of access for persons with disabilities to advanced services.<sup>31/</sup> As the Commission itself recognized in its Further Notice of Inquiry in the Section 255 proceeding, there is little evidence to suggest that government intervention is necessary today to guarantee the accessibility of communications technology in

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<sup>29/</sup> AT&T at 19.

<sup>30/</sup> See, e.g., James E. Gaskin, *Can the Industry Resolve Its Own Peering Debate?* Internet World Daily (April 26, 1999) <<http://www.iw.com/print/1999/04/26/ispworld/19990426-can.html>>; *Level 3 Assails the WorldCom-MCI Deal*, Wall Street Journal, May 20, 1998, at B 10; Courtney Macavinta, *PSINet to Peer with Small Potatoes*, CNETNews.com (Aug. 25, 1997) <<http://news.cnet.com/news/0-1004-200-321638.html?latest>>. These problems will only be exacerbated by MCI WorldCom’s proposed merger with Sprint. Under any reasonable standard, MCI WorldCom is the largest, and Sprint the second (or close to second) largest IBP. See Denise Caruso, *Digital Commerce*, New York Times, February 14, 2000, at C4 (“The backbone provider with by far the largest number of physical connections is UUNET, now owned by MCI WorldCom, which is on its way to becoming WorldCom Sprint. In rough descending order, UUNET is followed by Sprint; Cable and Wireless USA; GTE Internetworking and either PSI Net or AT&T Network Services. Upon completion of the WorldCom-Sprint merger, a single company would control nearly half of the Internet's backbone -- making it, literally and figuratively, without peer. Given the furious pace and high stakes of the telecommunications industry today, some fear that it is only a matter of time before one big backbone provider or another refuses to exchange data traffic with one of its peers. What happens then?”). While the Commission need not address the concentration issue here, it should condition approval of the MCI WorldCom/Sprint merger on the divestiture of one of the merging parties' Internet business in a manner that ensures that the divested assets will remain a viable competitor in the Internet backbone market.

the future.<sup>32/</sup> The record in the Section 255 proceeding demonstrates that the industry is acting to ensure accessibility by persons with disabilities to newly developed telecommunications services.<sup>33/</sup> Unless and until it is shown that these voluntary efforts will not ensure access by people with disabilities, the Commission should avoid regulatory intervention in either its Section 706 or Section 255 implementation proceedings.

### **III. COMMISSION ACTIONS NECESSARY TO PROMOTE REASONABLE AND TIMELY DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS CAPABILITY**

#### **A. The Commission Should Reject Requests for Increased Regulation of New Entrants**

AT&T agrees with the many commenters who argue that, given the reasonable and timely deployment of advanced telecommunications capability, the Commission should continue to permit market forces to work without burdensome and inappropriate regulation of new entrants.<sup>34/</sup> Consistent with letting the market work, the Commission should reject MCI WorldCom's request to impose forced access, either as a condition of the AT&T/MediaOne merger or on the cable industry as a whole.<sup>35/</sup>

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<sup>31/</sup> See Consumer Electronics Association at 3-4; GTE at 22, n.42.

<sup>32/</sup> *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities, Report and Order and Further Notice of Inquiry*, WT Docket No. 96-198, FCC 99-181, 1999 WL 770958, at ¶ 176 (rel. Sept. 29, 1999).

<sup>33/</sup> See, e.g., Comments of AT&T, WT Docket No. 96-198 (filed Feb. 14, 2000); Comments of iBasis at 3, WT Docket No. 96-198 (filed Feb. 14, 2000); Comments of CIX, WT Docket No. 96-198 (filed Feb. 14, 2000); Comments of Microsoft at 2, WT Docket No. 96-198 (filed Feb. 14, 2000).

<sup>34/</sup> See, e.g., Alcatel at 4; CIX at 2; Cox at 18; MediaOne at 15; NCTA at 5; NRTA at 5; Pegasus at 3.

<sup>35/</sup> See MCI WorldCom at 8-9.

There is no need to impose a forced access requirement as a condition of the AT&T/MediaOne merger. AT&T is a new entrant in the competitive Internet services business, and post-merger, will not have either the ability or the incentive to “monopolize” Internet services. AT&T and MediaOne only have about 500,000 broadband Internet subscribers, compared with more than 22 million AOL customers. AT&T and MediaOne face vigorous competition from DSL and other broadband providers, as well as from traditional dial-up services. And dial-up will remain a viable alternative for a majority of consumers for years to come. In this competitive environment, any provider attempting to engage in coercive and discriminatory behavior would risk driving both customers and content providers into the arms of its competitors.

MCI WorldCom claims that the cable industry has developed methods that provide for open access while allowing cable operators to control the features and quality of their broadband and Internet services.<sup>36/</sup> As an example, MCI WorldCom cites the method favored by the Canadian Association of Internet Providers and the Canadian Radiotelevision and Telecommunications Commission.<sup>37/</sup> The Canadian “method,” however, is far from an established process. While Canadian regulators imposed a forced access requirement several years ago, it has not been implemented because technical and economic issues have yet to be worked out. In the meantime, Canadian regulators have been tied up with the myriad of issues that have arisen in connection with trying to implement such a requirement. The Cable Services Bureau recently observed that the type of regulatory delay that has occurred in Canada -- and the

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<sup>36/</sup> *Id.* at 8.

<sup>37/</sup> *Id.* at 9.

resulting uncertainty -- “threaten[] to slow down the nascent broadband industry and would be inimical to the intent of the 1996 Act.”<sup>38/</sup>

AT&T has never claimed that forced access is technically impossible, but it does pose some unique challenges. First, the “shared” nature of the cable plant could result in one customer interfering with another customer’s connection to the Internet. Second, cable operators do not have the capability to support many of the functions essential to the provision of Internet services. Addressing these issues will take a substantial commitment of time, attention, and resources. AT&T is prepared to make that commitment in order to give its subscribers a choice of ISPs, but it is neither necessary nor wise for the government to mandate how AT&T should engineer its cable systems in order to provide such choice.

MCI WorldCom also argues that forced access methods that involve access to an interconnection point at the cable headend may require more investment in a subscriber management system, but will reduce subsequent operations costs and allow ISPs to offer the same quality of service provided by AT&T@Home.<sup>39/</sup> While AT&T plans to allow ISPs to interconnect at more than one technically feasible point, interconnection at the cable headend poses significant technological challenges, including network management, the actual provisioning of service (*e.g.*, activating customers and assigning IP addresses), and maintaining the quality of service AT&T customers expect and deserve. Requiring interconnection at the cable headend would impose massive costs and could jeopardize cable system integrity and the quality of AT&T’s service.

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<sup>38/</sup> *Broadband Today: A Staff Report to William E. Kennard, Chairman, Federal Communications Commission, on Industry Monitoring Sessions Convened by Cable Services Bureau*, at 45 (Cable Services Bureau, October 1999) (“*Broadband Today*”).

<sup>39/</sup> MCI WorldCom at 9.

Finally, MCI WorldCom argues that the competitive pressures that will result from a forced access requirement will obviate the need for detailed rules.<sup>40/</sup> MCI's claims are specious. Forced access is a regulatory briar patch, which will embroil government and industry in contentious proceedings to resolve the very kinds of cost allocation and pricing disputes that competition is supposed to avoid. Forced access also will require ongoing government supervision to implement standards and resolve conflicts over limited resources, performance standards, network management, and other issues. As Chairman Kennard has explained, forced access would draw the government into the "quicksand of regulation" and "embroil[] what is a very nascent marketplace in a situation I do not think we will be able to work our way out of anytime soon."<sup>41/</sup> And the Cable Bureau recently concluded that "[e]ven if a regulatory scheme could be devised at this early stage, such a scheme would likely be very complex and burdensome. ... a complex regulatory and tariffing scheme would likely accompany broadband access requirements."<sup>42/</sup> Just as it has the past three times that it has been asked to impose forced access requirements on the cable industry,<sup>43/</sup> the Commission should reject MCI WorldCom's request.

**B. The Commission Should Lift the CMRS Spectrum Cap**

AT&T agrees with GTE, OPASTCO, and SBC Communications that the Commission

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<sup>40/</sup> *Id.*

<sup>41/</sup> Remarks by William E. Kennard, Chairman, Federal Communications Commission at the National Association of Telecommunications Officers and Advisors, Atlanta, Georgia (September 17, 1999).

<sup>42/</sup> *Broadband Today* at 44.

<sup>43/</sup> See *First Report ¶¶ 45-46; Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor, to AT&T Corp., Transferee, Memorandum Opinion and Order*, 14 FCC Rcd. 3160, 3205-3206, ¶¶ 92-94 (1999); *Broadband Today* at 44.

should lift the CMRS spectrum cap.<sup>44/</sup> As SBC discusses, the spectrum cap hinders investment in advanced wireless services and precludes advanced telecommunications deployment in areas where wireless services may be a viable alternative to broadband wireline services.<sup>45/</sup> Wireless carriers like AT&T are finding that the spectrum cap prevents them from obtaining adequate capacity to continue serving existing customers while introducing advanced wireless services.<sup>46/</sup> By lifting the CMRS spectrum cap, carriers will have the opportunity to obtain spectrum in markets where they would otherwise lack sufficient spectrum to provide third generation wireless and other advanced telecommunications services.<sup>47/</sup> Elimination of the spectrum cap, therefore, would be an “effective way to increase broadband deployment and would be most in keeping with the deregulatory intent of Section 706.”<sup>48/</sup>

**C. The Majority of Commenters Agree that Granting the ILECs’ Self-Serving Requests Will Not Advance the Deployment of Advanced Services**

The ILECs have advanced various self-serving requests for “regulatory parity” or specific regulatory relief that they claim would speed the deployment of advanced services. In fact, granting the ILECs’ requests would only enable them to extend their monopoly power over local telephony to advanced services. Rather than provide that opportunity, the Commission should “take immediate action to accelerate deployment of [advanced services] capability”<sup>49/</sup> by

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<sup>44/</sup> GTE at 24-25 (supporting lifting of the CMRS spectrum cap in the C and F block auction); OPASTCO at 6 (supporting lifting of rules that restrict or prevent rural carriers from obtaining and operating adequate spectrum); SBC Communications Inc. at 18 (supporting lifting of limits on amount of radio spectrum carriers can obtain). See 47 C.F.R. § 20.6.

<sup>45/</sup> SBC at 18.

<sup>46/</sup> See generally AT&T Wireless Services, Inc., *Petition for Waiver of the CMRS Spectrum Cap Requirements of 47 C.F.R. § 20.6 for the PCS Frequency Blocks C and F Auction To Begin on July 26, 2000*, DA 00-318 (filed Feb. 15, 2000).

<sup>47/</sup> *Id.*

<sup>48/</sup> GTE at 25.

<sup>49/</sup> Pub. L. No. 104-104, § 706(b).

ensuring full ILEC compliance with the letter and spirit of the Telecommunications Act of 1996 so that competitors can deploy advanced services on a “reasonable and timely” basis.

**1. Granting the ILECs' Requests for Regulatory Parity Would Not Promote the Deployment of Advanced Telecommunications Capability.**

The ILECs argue that the Commission imposes significantly greater regulatory burdens on their services, such as tariffing, unbundling, and collocation requirements, and that in order to speed deployment of advanced services, the Commission should eliminate disparities in the regulation of advanced services.<sup>50/</sup> The ILECs' argument, however, ignores the crucial distinctions that justify -- indeed, require -- differing regulatory treatment of these fundamentally different services. For example, as set forth by AT&T in its initial comments,<sup>51/</sup> imposing similar regulatory burdens on incumbent carriers and cable operators would be completely ungrounded in sound economic theory and ignore deliberately crafted distinctions in governing law and network architecture. The “regulatory parity” argument further disregards the clear differential in competition and risk faced by incumbent local telephone companies and cable companies as they deploy broadband services.

Congress deliberately adopted different regulatory models for different industries when it passed the 1996 Act. In particular, unbundling, interconnection, and other regulatory obligations were imposed on ILECs in order to break open their local monopolies. Congress weighed such regulatory burdens carefully. For example, access to a network element is required only where the failure to provide such access would impair a competitor's ability to provide service. The regulation of incumbent telephone companies remains necessary, both to foster competition in existing monopoly markets and to prevent them from extending their monopolies over traditional

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<sup>50/</sup> See, e.g., Bell Atlantic at 6; BellSouth at 4-7; GTE at 6; SBC at 15-17.

<sup>51/</sup> See AT&T at 36-39.

services to new services before competition has a chance to develop. In contrast, the regulation of new entrants is unnecessary because they lack market power comparable to that of the incumbents. For this reason, Congress deliberately did not extend unbundling requirements to any other common carriers, including CLECs, or to cable operators, which are not telecommunications carriers at all.

The Commission has recognized that differing regulatory burdens may promote the goals of the Communications Act. In the recent *Line Sharing Order*, the Commission explicitly rejected U S WEST's argument that imposing line sharing on ILECs and not cable operators "violates principles of competitive neutrality."<sup>52/</sup> The Commission determined that imposing line sharing obligations on ILECs would further the goals of the Communications Act, regardless of the regulatory status of cable modem service.<sup>53/</sup> It noted that its actions need only respond to current market, technology, and industry conditions, and concluded that a line sharing requirement for incumbent telephone companies is "appropriate," while regulation of cable is not necessary to prevent the risk of a bottleneck in broadband services.<sup>54/</sup>

The same rationale calls for the Commission to reject the ILECs' requests in this proceeding. Arguments for "regulatory parity" simply ignore the fact that market and industry conditions do not always warrant identical treatment for all market participants, and that regulatory parity in this instance would not advance any public policy interests. In order for competition to develop and spur the provision of advanced service, it is imperative that the Commission resist imposing regulatory burdens solely for the sake of parity, and implement

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<sup>52/</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order*, 14 FCC Rcd 20912, 20941, ¶ 58 (1999) ("*Line Sharing Order*").

<sup>53/</sup> *Id.* at 20941-20942, ¶ 59.

<sup>54/</sup> *Id.* at 20941, n.124 (citing *Broadband Today*).

policies in accordance with Section 706 that further Congress' carefully constructed attempts to enable new market entrants to compete and curb the ILEC's monopoly power.

**2. The Commission Should Reject the ILECs' Specific Requests for Regulatory Relief and Focus Efforts on Enforcing Policies Designed to Promote the Deployment of Advanced Telecommunications Capability.**

In addition to generalized requests for "parity," the ILECs have advanced a number of specific requests for regulatory relief, each of which would slow competitors' ability to deploy advanced services. The Commission should reject this group of proposals as a thinly-veiled attempt by the ILECs to translate their monopoly in the provisioning of local telephone service to advanced telecommunications services, and reiterate its intent to enforce policies that promote the deployment of advanced services.

**a. The Commission should reject requests for relief from interLATA data restrictions and should ensure that ILEC markets are open to competition before granting interLATA relief.**

A number of Regional Bell Operating Companies ("RBOCs") argue that the Commission should speed the deployment of advanced services by excluding the Bell Companies from Section 271's interLATA data restrictions.<sup>55/</sup> Bell Atlantic, for example, argues that removing the regulatory and statutory restrictions on its provision of interLATA data services will allow it to offer an integrated package of local and interLATA advanced services, and allow it to adopt more efficient equipment deployment strategies that would relieve congestion on the Internet backbone and thus promote the deployment of broadband Internet access points.<sup>56/</sup> However, as set forth above and discussed in AT&T's initial comments,<sup>57/</sup> there is no shortage of interLATA

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<sup>55/</sup> See Bell Atlantic at 6-8; BellSouth at 6-7; U S WEST at 5.

<sup>56/</sup> See Bell Atlantic at 7-8.

<sup>57/</sup> AT&T at 19-21.

transport or backbone facilities. Allowing the RBOCs to enter the interLATA data market before they have complied with the requirements of Section 271 would remove the incentive for them to comply with the competitive checklist and give them the ability to leverage their local monopoly power into the interLATA market. Such a result would be antithetical to the very purposes of Section 706.

iAdvance submits a July 1999 report by Erik Olbeter and Matt Robinson entitled *Breaking the Backbone: The Impact of Regulations on Internet Infrastructure Deployment*, an allegedly detailed statistical analysis of the deployment of high-speed, high capacity backbone hubs or points of presence in the United States.<sup>58/</sup> According to iAdvance, this report demonstrates that there would be twice as many of these hubs if the RBOCs were allowed to transmit data across LATA boundaries.<sup>59/</sup> According to a responsive analysis prepared by the Competitive Broadband Coalition, however, *Breaking the Backbone* uses manipulated statistics and carelessly collected data, and demonstrates a fundamental lack of knowledge regarding the basic nature of the Internet and how it works.<sup>60/</sup> In his analysis of the iAdvance report, Professor George S. Ford, a Senior Economist with MCI WorldCom, demonstrates that when the data in the iAdvance report is calculated correctly, it actually proves that there is an inverse relationship between RBOC interLATA relief and the ability to deploy broadband services.<sup>61/</sup>

AT&T agrees with the Commercial Internet Exchange Association that Section 271 provides the most effective means for restraining ILECs' anticompetitive behavior in both the

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<sup>58/</sup> iAdvance at 2.

<sup>59/</sup> *Id.*

<sup>60/</sup> George S. Ford, *A Response to Olbeter and Robison's "Breaking the Backbone"* (attached hereto as Exhibit 1).

<sup>61/</sup> *Id.* at 11.

voice and data markets.<sup>62/</sup> The record before the Commission is replete with evidence that ILECs discriminate against CLECs in the provisioning of the equipment and services necessary to provide service<sup>63/</sup> and impede competitors' efforts to offer their customers advanced services in conjunction with voice.<sup>64/</sup> Rapid deployment of advanced services must not occur to the detriment of local voice service competition. Instead of undermining the efficacy of Section 271 by granting ILECs relief from interLATA data restrictions, the Commission should ensure that ILECs reap the benefits of interLATA relief only when their markets are truly and irreversibly open to competition.

**b. The Commission should reject requests to refrain from requiring ILECs to unbundle advanced services equipment.**

The ILECs also argue that the Commission should exempt them from network unbundling requirements under Section 251(c)(3) of the Act.<sup>65/</sup> However, as AT&T explained in its initial comments, it is critical to advanced services deployment that ILECs be required to provide unbundled access to advanced services equipment, particularly xDSL-equipped Loops for UNE-P.<sup>66/</sup> While the Commission in its *Third Report and Order* in the UNE Remand proceeding declined to provide CLECs with unbundled access to ILECs' "packet switching functionality,"<sup>67/</sup> based on its finding that the market for advanced services was "nascent" and

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<sup>62/</sup> See CIX at 17-18.

<sup>63/</sup> See, e.g., NorthPoint at 6; Prism at 4-5.

<sup>64/</sup> See, e.g., AT&T at 41, n.124 (discussing SWBT's refusal to allow a customer to obtain its xDSL service unless he switched his voice service back to SWBT).

<sup>65/</sup> See U S WEST at 6; BellSouth at 8; OPASTCO at 7.

<sup>66/</sup> See AT&T at 42-43.

<sup>67/</sup> Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, FCC 99-238, 1999 FCC LEXIS 5663, at ¶¶ 306, 311 (rel. Nov. 5, 1999).

that unnecessary regulation at this point might serve only to “stifle burgeoning competition,”<sup>68/</sup> the Commission failed to recognize that these considerations did not support rejection of AT&T's request for access to xDSL-equipped loops. Prompt resolution of the petitions for reconsideration of the *Third Report and Order* in the UNE Remand proceeding filed by AT&T and others (*i.e.*, MCI) would ensure that CLECs can provide broad-scale advanced services capabilities, and thus, falls squarely within the Commission's responsibility under Section 706 to “promote competition in the telecommunications market.”

To fully realize the competitive benefits of UNE-P, the Commission should clarify that ILECs are obligated to accommodate CLEC line sharing.<sup>69/</sup> CLEC line sharing would promote the deployment of advanced services by allowing competitors to offer bundled voice and xDSL service. As AT&T argued in its initial comments, without such clarification, customers who want “one-stop shopping” for local voice, and data plus long distance will have no choice but to obtain service from the monopolist ILEC.<sup>70/</sup> MCI WorldCom correctly explains that CLEC line sharing functionality would require ILECs to make the necessary cross-connections and perform troubleshooting between the leased loop and CLEC equipment located in the central office.<sup>71/</sup>

The Commission should also review ILEC loop conditioning practices to eradicate another possible impediment to the success of UNE-P.<sup>72/</sup> As AT&T argued in response to petitions for reconsideration of the *UNE Remand Order*, ILECs should not be permitted to charge CLECs for unnecessary work in the provisioning of loops, and total charges for loop

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<sup>68/</sup> *Id.* ¶¶ 316-317.

<sup>69/</sup> See MCI WorldCom at 7-8. According to MCI WorldCom, at least one ILEC has indicated that it will not permit a CLEC to use the UNE platform together with its own DSL facilities, or those of a second CLEC, to provide service. *Id.* at 7.

<sup>70/</sup> AT&T at 40.

<sup>71/</sup> MCI WorldCom at 8.

conditioning should not exceed TELRIC costs.<sup>73/</sup> Furthermore, AT&T agrees with Jato Communications Group that ILECs should be required to provide loop conditioning within 30 days of the equipment order.<sup>74/</sup>

Finally, the Commission must ensure that CLECs have nondiscriminatory access to ILECs' Operations Support Systems ("OSS"), especially in areas where RBOCs have been granted Section 271 approval.<sup>75/</sup> By denying such access to its OSS, Bell Atlantic has significantly impeded AT&T's ability to provide services in New York. Bell Atlantic's actions have made a mockery of the competitive checklist of Section 271, and must be addressed by the Commission. Moreover, the Commission must act to ensure that competitors across the country are not further disadvantaged by the denial of adequate support services.

**c. The Commission should require the collocation of advanced services equipment in remote terminals.**

BellSouth argues that the Commission should not require collocation in Remote Terminals.<sup>76/</sup> This issue already has been resolved by the Commission,<sup>77/</sup> and the Commission's decision to require such collocation has been upheld by the D.C. Circuit.<sup>78/</sup> There is no need or

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<sup>72/</sup> See Jato at 13.

<sup>73/</sup> Opposition and Comments of AT&T Corp. on Petitions for Reconsideration of the Third Report and Order, CC Docket 96-98, at 16 (filed March 22, 2000). See also Jato at 13.

<sup>74/</sup> Jato at 13.

<sup>75/</sup> See also GSA at 10.

<sup>76/</sup> BellSouth at 8.

<sup>77/</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability, First Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 4761, 4776-77 ¶¶ 28-29 (1999).

<sup>78/</sup> *GTE Serv. Corp. v. FCC*, 2000 WL 255470, No. 99-1176 (D.C. Cir. March 17, 2000).

basis for reconsidering this issue. The Commission should take this opportunity to reiterate its commitment to ensuring that ILECs abide by its collocation decision.<sup>79/</sup>

**d. The Commission should not exempt the ILECs from line sharing requirements.**

NRTA argues that the Commission's line sharing requirement "involves handicapping in favor of competitors and against incumbents" and thus "provides a disincentive for incumbents to deploy broadband."<sup>80/</sup> This argument is without merit. As AT&T demonstrated in its initial comments, far from showing any evidence of investment disincentives, ILECs are aggressively deploying advanced services. DSL deployment has exploded in the past year, and there are now more DSL capable-residences than cable modem-capable residences.<sup>81/</sup> As discussed above, the Commission already has explicitly determined that imposing line sharing obligations on ILECs furthers the goals of the Communications Act, regardless of the regulatory status of cable modem service.<sup>82/</sup> AT&T joins a host of other CLECs in urging the Commission not to let frivolous requests for reconsideration detract from its vigorous enforcement of the *Line Sharing Order*.<sup>83/</sup>

**e. The Commission should continue to require reciprocal compensation.**

U S WEST argues that the payment of reciprocal compensation for traffic bound to ISPs gives CLECs and ISPs a "massive arbitrage vehicle based upon funneling ISP traffic through

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<sup>79/</sup> The Commission may want to consider the proposal advanced by Jato Communications Group that the Commission mandate procedures to expedite the provisioning of collocation requests by requiring ILECs to offer pre-fabricated, standardized, cageless collocation arrangements priced on a per-shelf basis. According to Jato's plan, the Commission should also require ILECs to treat augments to existing collocation space according to expedited procedures if adjacent space is unused. Jato at 12-13.

<sup>80/</sup> NRTA at 12.

<sup>81/</sup> See AT&T at 10.

<sup>82/</sup> See *supra*, Section III.C.1, citing *Line Sharing Order* ¶¶ 58, 59.

<sup>83/</sup> See, e.g., ALTS at 7; NorthPoint at 6.

circuit switches,” and thus “discourages deployment and development of superior technology.”<sup>84/</sup> AT&T strongly disagrees. Recent market developments simply do not support the notion that incumbents’ reciprocal compensation obligations impinge upon their willingness and ability to deploy advanced telecommunications capability. The pace of DSL deployment by incumbent LECs has exploded despite the almost universal holding by state commissions and the courts that incumbent must compensate CLECs for the costs such CLECs incur in terminating traffic originated by ILEC customers.

Moreover, the recent decision of the D.C. Circuit, vacating the Commission’s jurisdictional analysis with respect to ISP-bound traffic and remanding the case to the Commission for further rulemaking, ensures that this issue will be examined comprehensively in the near future.<sup>85/</sup> When the Commission acts on remand, AT&T believes it should conclude that the goals of Section 706 are best served by rules that require the payment of TELRIC-based, symmetrical reciprocal compensation for all local traffic, including ISP-bound traffic.

**f. The Commission should not lift the cap on universal service funding or provide universal service funds for advanced services.**

OPASTCO, NTCA, NRTC and others argue that the Commission should lift the interim cap on universal service funding or provide universal service funds for advanced services in order to speed deployment in rural areas.<sup>86/</sup> The Commission already has rejected such requests, and should do so again.

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<sup>84/</sup> U S WEST at 6.

<sup>85/</sup> *Bell Atlantic Tel. Co. v. FCC*, 2000 WL 273383 (D.C. Cir. March 24, 2000).

<sup>86/</sup> NRTC at 203; NTCA at 8-9; OPASTCO at 10-11.

In the *Universal Service Order*,<sup>87</sup> the Commission retained a cap on the growth of the universal service fund used to support high-cost loops until rural carriers calculate their support using forward-looking economic cost. It stated that the cap “will prevent excessive growth in the size of the fund during the period preceding the implementation of a forward-looking support mechanism;” “will encourage carriers to operate more efficiently by limiting the amount of support they receive;” and that “excessive growth in high loop cost support would make the change to forward-looking support mechanisms more difficult for rural carriers if those support mechanisms provide significantly different levels of support.”<sup>88/</sup> When challenged, the Fifth Circuit affirmed the reasonableness of the overall cap, stating that the “cap’s track record ... reflects a reasonable balance between the Commission’s mandate to ensure sufficient support for universal service and the need to combat wasteful spending.”<sup>89/</sup> Given the Fifth Circuit’s decision, and the fact that the Commission is scheduled to reexamine the basis of high-cost support for rural carriers after January 1, 2001, it would be entirely inappropriate to eliminate the overall cap on the size of high-cost loop support fund at this time.

Further, even if the cap were eliminated, carriers could not use the fund to invest in broadband facilities. Section 254(e) of the Act requires that a carrier that receives universal service support “use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” Since the current definition of universal service does not include broadband access, and the definition will not be addressed by the Federal-State Joint Board until the end of this year, lifting the cap on the high-cost fund would not further the objectives of Section 706.

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<sup>87</sup> *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776 (1997) (“*Universal Service Order*”).

<sup>88/</sup> *Id.* ¶ 302.

**g. The Commission should not exempt the ILECs from rate regulation and tariffing requirements.**

Several ILECs request regulatory relief from rate and pricing regulation and tariffing requirements,<sup>90/</sup> arguing that such requirements “constrain[] incumbent LEC development of new technology” and “artificially depress the price of more expensive services,” making it “extremely difficult for competitors to provide services.”<sup>91/</sup> These requests should be denied. Pricing flexibility for advanced services is inappropriate as long as the ILECs retain the ability to cross-subsidize their advanced services offerings, which will be the case as long as access charges far exceed costs. Absent regulation, ILECs will have the ability to migrate captive local telephony customers to their DSL services and compete unfairly against other providers of advanced services by offering advanced services at below-cost rates.

The Commission should not deregulate the ILECs’ advanced services offerings,<sup>92/</sup> but should address the source of the cross-subsidy. The current Coalition for Affordable Local and Long Distance Services (“CALLS”) proposal begins this process by moving interstate access rates closer to economic costs for incumbent price cap LECs. As AT&T has argued in the access charge proceeding, today’s inflated access charge levels and rate design will continue to hinder full and effective competition in all telecommunications markets (including advanced telecommunications services), and prevent consumers from reaping billions of dollars per year of additional benefits.<sup>93/</sup>

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<sup>89/</sup> *Alenco Communications Inc. v. FCC*, 201 F.3d 608, 620 ( 5th Cir. 2000).

<sup>90/</sup> BellSouth at 7-8; OPASTCO at 8; U S WEST at 6.

<sup>91/</sup> U S WEST at 6.

<sup>92/</sup> Pricing flexibility should not be granted until “facilities-based competition” is present, using the guidelines established in the AT&T non-dominance proceeding. *In the Matter of Motion of AT&T Corp. To Be Reclassified As A Non-Dominant Carrier*, 11 FCC Rcd 3271, ¶ 41 (1995).

<sup>93/</sup> See Comments of AT&T, CC Docket No. 96-262 (filed Nov. 12, 1999).

**D. There Is No Basis for Extending the Resale Requirements Set Forth in the 1996 Act**

TRA argues that the Commission's rules hinder the promotion of advanced services by limiting opportunities for resale and compelling providers to construct their own facilities.<sup>94/</sup> TRA contends that the Commission is in effect allowing ILECs to evade their resale obligation under Section 251 by exempting bulk xDSL offerings from the "wholesale discount" rule.<sup>95/</sup> While focusing its arguments primarily on ILECs, TRA also advocates that the Commission institute a "meaningful" resale policy.<sup>96/</sup>

AT&T agrees with TRA that the Commission should prevent ILECs from evading their duty under Section 251 to offer services for resale at wholesale rates. However, Congress appropriately limited this duty to the ILECs, given their dominant market position.<sup>97/</sup> To the extent TRA is advocating that the Commission extend Section 251(c)(4)'s obligations to other telecommunications carriers, such action is impermissible and inappropriate, and would not advance the pro-competitive goals of Section 706.

**CONCLUSION**

Because deployment of advanced telecommunications capability is proceeding in a timely and reasonable fashion, the Commission should continue its policy of "vigilant restraint" and allow market forces to work without burdensome and inappropriate regulation of new entrants. The Commission should not, however, grant the ILECs' requests for "regulatory parity" or other regulatory relief, but should ensure full ILEC compliance with the letter and

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<sup>94/</sup> TRA at 6.

<sup>95/</sup> *Id.* at 7-9.

<sup>96/</sup> *Id.* at 10.

<sup>97/</sup> *See supra* Section III.C.2.b.

spirit of the Telecommunications Act of 1996 to ensure even more widespread deployment of advanced services by competitors in the future.

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