

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

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In the Matter of

Implementation of the Local Competition
Provisions of the Telecommunications Act
of 1996

CC Docket No. 96-98

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BELLSOUTH REPLY

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BELLSOUTH REPLY

BellSouth Corporation, on behalf of its affiliated companies¹ (“BellSouth”), and pursuant to Section 1.429(g) of the Commission’s Rules, 47 C.F.R. § 1.429(g), respectfully submits this reply in the above-captioned proceeding.

I. THE RECORD CLEARLY DEMONSTRATES THAT THE COMMISSION SHOULD RECONSIDER THE OVERLY BROAD DEFINITION OF INSIDE WIRE ADOPTED IN THE *UNE REMAND* PROCEEDING.

Only one commenter, AT&T, objects to BellSouth’s request that the Commission reconsider the definition of inside wire adopted in the *UNE Remand Order*.² In that order, the Commission radically expanded the definition of inside wire – whether intentionally or not – to include “all loop plant owned by the incumbent LEC on end-user customer premises as far as the point of demarcation . . . including the loop plant near the end-user customer premises.”³ In its Petition, BellSouth demonstrated that the Commission’s new interpretation of inside wire: (1) is inconsistent with the Commission’s longstanding use of the term; (2) would result in confusion

¹ BellSouth Corporation is a publicly traded Georgia corporation that holds the stock of companies which offer local telephone service, provide advertising and publishing services, market and maintain stand-alone and fully integrated communications systems, and provide mobile communications and other network services world-wide. BellSouth participated in all aspects of the pleading cycle in this rulemaking proceeding.

² *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999)(“*UNE Remand Order*”).

³ 47 C.F.R. § 51.319(a)(2)(i).

and disputes regarding ownership of facilities; and (3) would require incumbents to reclassify facilities under the Commission's accounting rules.⁴

There is broad consensus among the commenting parties that some form of reconsideration or clarification is needed regarding the definition of "inside wire."⁵ As Bell Atlantic states, "the Commission should eliminate the confusion created by its use of the term 'inside wire.'"⁶ Even carriers competing with incumbents recognize the confusion and uncertainty created by the Commission's and others' misuse of the term. For example, Teligent correctly points out that "[t]he definition of 'inside wire' is used and applied loosely by various fora and, depending upon the context in which it is used, it sometimes is assumed to include wiring within a multi-tenant building that is *not* located on the customer premises."⁷

Aside from the confusion and possible accounting modifications the Commission's expanded definition would create, use of the term "inside wire" to describe incumbent LEC network elements is incorrect. "Inside wire" is not controlled by the ILECs, was deregulated by the Commission, exists on the customer's side of the demarcation point and, as such, cannot be considered a component of the incumbent LECs' networks. On that basis alone the Commission has sufficient grounds to modify the definition.

It is also important to note that neither Teligent nor MediaOne, two competing local exchange carriers, objects to a more accurate use of the term "inside wire." Teligent expressly states that it "would not oppose the continued use of the more traditional inside wire definition and the use of the term 'intrabuilding network cable' to identify the subloop elements that must

⁴ BellSouth Petition at 1-4.

⁵ See, e.g., Bell Atlantic Opposition at 2 n.2; GTE Comments and Opposition at 2-4; MediaOne Comments at 5 n.7; SBC Opposition at 2 n.3; Teligent Comments at 2-7.

⁶ Bell Atlantic Opposition at 2 n.2.

⁷ Teligent Comments at 4 (emphasis included).

be unbundled, insofar as the definition contains safeguards to ensure that the ILEC could not impair the Commission's subloop unbundling objectives."⁸

In its comments, Teligent expressed some concern that the phrase "on one customer's same premises" (as quoted in BellSouth's abbreviated description of the Part 32 definition of "intrabuilding network cable" ("INC"))⁹ could be construed as not requiring an incumbent LEC to unbundle any sub-loop facilities that traverse multiple customer premises.¹⁰ Based upon the abbreviated definition used by BellSouth, Teligent is correct. BellSouth agrees with Teligent that sub-loop unbundling of that portion of an incumbent LEC's network should not be restricted to only those facilities that are located on one customer's premises. In offering an abbreviated definition, BellSouth did not intend to restrict the offering of sub-loops as Teligent might have concluded and seeks to address Teligent's concerns below.

Teligent also expressed concern that BellSouth's use of the phrase, "or standard network interface" in its abbreviated definition of INC might exclude network facilities between the network interface device ("NID") and the demarcation point.¹¹ BellSouth is not aware of any scenario (at least in BellSouth's operating territory) where the demarcation point is beyond the NID (standard network interface), since the NID *is* the demarcation point. Nevertheless, to allay Teligent's concerns, BellSouth does not object to a definition of INC for purposes of sub-loop unbundling that refers only to the "demarcation point."

⁸ Teligent Comments at 5.

⁹ In its Petition, BellSouth stated that the Commission's Uniform Systems of Accounts describes "intrabuilding network cable" as "cables and wires located on the company's side of the demarcation point *or standard network interface inside subscribers' buildings on one customer's same premises.*" BellSouth Petition at 3 (emphasis added).

¹⁰ Teligent Comments at 7.

¹¹ *Id.* at 6. In its discussion of the definition of inside wire, Teligent states that it "continues to advocate universal relocation of the demarcation point to the minimum point of entry in all multi-tenant buildings upon request." Teligent Comments at 7. Although the issue of the location of the demarcation point is the subject of another proceeding, BellSouth continues to oppose a mandatory minimum point of entry demarcation point and has set forth its position on this issue in the *Competitive Networks* proceeding (WT Docket No. 99-217).

Building upon the Commission's existing rules and the suggestions of commenting parties such as Teligent,¹² BellSouth sets forth below a suggested framework for defining two sub-loop elements located on multiple tenant environments ("MTE") – "intrabuilding network cable" and "network terminating wire." By appropriately distinguishing these sub-loop elements, the Commission can avoid the confusion surrounding the meaning of "inside wire." BellSouth's proposed definitions slightly modify the existing definitions contained in 47 C.F.R § 32.2426 (for INC) and BellSouth's Accounts and Subsidiary Records Categories ("SRCs") (for NTW), which have previously been approved by this Commission for use by carriers subject to the Commission's accounting rules. The minor modifications we suggest do not impact the type of plant included therein but simply clarify certain aspects of the definitions, such as deletion of the phrase "or standard network interface" as proposed by Teligent. Moreover, use of these definitions should address Teligent's concerns regarding the unbundling of sub-loop between buildings on multi-tenant properties.

Based on 47 C.F.R. § 32.2426

Intrabuilding Network Cable (INC) includes cables and wires located on the company's side of the demarcation point inside subscribers' buildings, or between buildings on one customer's same premises. *Intrabuilding Network Cable does not include cables or wires that are classifiable as Network Terminating Wire (NTW).*

¹² GTE agrees with BellSouth that the Commission's use of the term "inside wire" to describe sub-loop UNEs is inappropriate and proposes a definition of "intrabuilding cable" that is based in part on the Commission's "inside wire" definition adopted in the *UNE Remand Order*. Specifically, GTE suggests the following definition: "all intrabuilding cable as defined in § 32.2436 that is owned by the incumbent LEC up to the point of demarcation as defined in § 68.3, including the loop plant near the end-user customer premises. Carriers may access the inside wire subloop at any technically feasible point including, but not limited to, the network interface device, the minimum point of entry, the single point of interconnection, the pedestal, or the pole." GTE Comments and Opposition at 3-4. GTE's proposed definition, however, borrows a phrase directly from the "inside wire" definition adopted in the *UNE Remand Order* – "near the end-user customer premises." This phrase is troublesome because it lacks specificity, is open to interpretation, and, thus, is likely to be challenged by various parties. Also, borrowing from the Commission's definition, GTE includes the list of interconnection points in its proposed sub-loop description. This separate enumeration of interconnection points in the description of INC is unnecessary and potentially confusing, given that interconnection access points are thoroughly addressed in the *Local Competition Orders* (including the *UNE Remand Order*) and the Commission's other accompanying rules.

Based on Accounts and Subsidiary Records Categories (SRCs)

Network Terminating Wire (NTW) includes cables and wires used to extend circuits from an Intrabuilding Network Cable terminal or from a building entrance terminal to an individual customer's demarcation point.

As can be noted from the definitions above, sub-loop facilities located outside of buildings on MTE properties are not included in the Part 32 description of INC or NTW, as Teligent points out. The outside plant located on MTE properties is actually included within the incumbent LEC's "distribution" loop and has been ordered unbundled by the Commission along with "feeder" and other network elements.¹³ Thus, it is unnecessary to formulate new descriptions to disaggregate outside distribution plant on MTE properties. Teligent's point regarding access to such facilities has therefore been addressed since distribution loop facilities are already required to be unbundled.

As mentioned earlier, MediaOne is another CLEC that does not object to some modification of the Commission's expanded definition of "inside wire." However, MediaOne's definition of "network terminating wire" ("NTW") (a) conflicts with both existing USOA Part 32 Accounting rules and the existing interconnection agreements that MediaOne presently has with BellSouth and (2) would cause MediaOne and other CLECs to incur additional costs beyond those applicable to NTW only.¹⁴ Specifically, MediaOne defines NTW as "the facilities, including the intrabuilding network cable and house and riser cable that extends from an ILEC's wiring closet, garden terminal or other cross-connect distribution point to the end user's point of interconnection."¹⁵ The Commission's accounting rules explicitly state that intrabuilding

¹³ See *UNE Remand Order*, ¶206.

¹⁴ In supporting a modification to the definition of "inside wire," MediaOne states that "it is concerned that BellSouth intends to apply the USOA definition of 'intrabuilding network cable' to discriminatory effect. Indeed, providing unbundled access to the NTW . . . eliminates discrimination only if the costs of such access (in time and money) approximate those of the ILECs." MediaOne Comments at 5 n.7.

¹⁵ MediaOne Comments at 4 n.4 (emphasis added).

network cable does not include the cables or wires that are classifiable as network terminating wire.¹⁶

Moreover, by including intrabuilding network cable into the UNE for network terminating wire as a single sub-loop element, additional costs would be imposed upon those CLECs that need access only to NTW, not to both NTW and INC – as is the case with existing BellSouth/MediaOne NTW interconnection agreements. Under these existing agreements for NTW access, MediaOne is charged only for those costs associated with NTW. This outcome is lawful and, one would assume, acceptable to MediaOne. Thus, MediaOne’s misapplied definition highlights the need for more accurate sub-loop definitions.

As can readily be discerned from the preceding discussion, AT&T’s claim that BellSouth is merely “quibbling” over “semantic[s]”¹⁷ is a hollow allegation. The record in this proceeding convincingly demonstrates that use of the term “inside wire” to define sub-loop elements is inaccurate and will only amplify the confusion that already exists. In fact, in addition to the comments responding to the petitions for reconsideration, a number of *ex partes* have been submitted that further demonstrate the need for clear definitions. For example, Winstar recently asked the Commission to define the incidents of ownership and control of inside wiring in multi-tenant environments. As Winstar points out, “[i]t is often unclear whether the building owner or the ILEC owns a building’s inside wiring.”¹⁸ Likewise, Teligent has stated that “[n]ot only is it difficult to ascertain precisely which entity owns the inside wiring, it is difficult to determine what, if any, restrictions an ILEC may impose on CLEC use of inside wiring.”¹⁹

¹⁶ See 47 C.F.R. § 32.2426(c).

¹⁷ AT&T Opposition and Comments at 11.

¹⁸ *Ex Parte* Presentation, Letter to Magalie Roman Salas, Secretary, Federal Communications Commission, from Gunnar D. Halley, Counsel for Winstar Communications, Inc., WT Docket No. 99-217 and CC Docket No. 96-98, dated Jan. 27, 2000.

¹⁹ *Ex Parte* Presentation, Letter to Mr. Jeffrey S. Steinberg, Deputy Chief, Commercial Wireless Division; Joel D. Taubenblatt, Esq., Commercial Wireless Division, Vincent M. Paladini, Esq., Policy and Planning Division, Common Carrier Bureau, from David S. Turetsky, Senior Vice President, Law and Regulatory, Teligent, Inc., WT Docket No. 99-217 and CC Docket No. 96-98, dated Feb. 4, 2000.

The concerns raised by Winstar and Teligent arise from the fact that the Commission's definition of "inside wire" is essentially a function-based definition. Many carriers, however, believe that any facility that is physically present within a building constitutes "inside wire," and is therefore deregulated. Given the obvious need for clarification expressed by both CLECs and incumbents, BellSouth encourages the Commission to resolve this issue as expeditiously as possible. To minimize disputes and further promote local competition, BellSouth urges the Commission to reconsider the definition of inside wire set forth in the *UNE Remand Order* and adopt the definitional framework for "intra-building network cable" and "network terminating wire" proposed by BellSouth herein.²⁰

II. THE COMMISSION SHOULD NOT REQUIRE INCUMBENT LECs TO CONSTRUCT A SINGLE POINT OF INTERCONNECTION IN CERTAIN SITUATIONS.

A majority of the parties commenting on BellSouth's petition agree that the Commission should clarify that its rules do not require an incumbent LEC to construct a single point of interconnection ("SPOI") where the incumbent neither owns nor controls the facilities.²¹ Even AT&T, despite its assertion that clarification is unnecessary, agrees with BellSouth.²² According to AT&T, "in this rather unusual circumstance, an incumbent should have no obligation to construct a single point interconnection."²³ Similarly, Teligent states "where the ILEC maintains no facilities at all on a multi-unit premises, there is little reason to require it to construct a single point of interconnection."²⁴

²⁰ It is not critical that the wording of the sub-loop elements be restricted to the definitions proposed by BellSouth. The primary goal of BellSouth's suggested definitions is to provide parameters that are linked (as closely as possible) to existing Commission accounting rules and definitions as well as the realities of the network arrangements. Many incumbents (including BellSouth) include more detailed information regarding access points, interconnection methodologies, etc. in the product descriptions for their sub-loop UNEs.

²¹ See, e.g., AT&T Opposition and Comments at 15; GTE Comments and Opposition at 5-6; SBC Opposition at 2 n.3; Teligent at 8.

²² AT&T Opposition and Comments at 15.

²³ *Id.* at 15.

²⁴ Teligent Comments at 8.

The Commission should not be fooled by AT&T's objection to clarification. Apparently, AT&T would prefer that the parties operate in a world of ambiguity and vagueness than seek clarity. This approach benefits no one and could lead to unnecessary disputes. Clarity in this instance is not only appropriate but also required.

BellSouth, however, cautions the Commission in considering Teligent's proposal. Teligent suggests that incumbents should be required to construct a SPOI "where the incumbent owns or controls facilities in a building – even if those facilities do not run to the end user . . ." ²⁵ Teligent states that a SPOI may be necessary to accomplish access or interconnection. The scenario contemplated by Teligent is not clearly understood by BellSouth. Under one possible scenario, an incumbent LEC may own facilities on a multi-unit property, but those facilities do not extend to the end user. For example, the situation may exist where an incumbent LEC owns INC, but another carrier or the owner of the building owns the NTW. Under these circumstances, the Commission's SPOI rule established in the *UNE Remand Order* could be interpreted as requiring the ILEC to build a SPOI for the NTW. BellSouth submits that an incumbent is under no obligation to construct a SPOI for the NTW in this situation.

Under another scenario, an incumbent may own drop wires on a multi-unit property but no INC or NTW. In this instance, the *UNE Remand Order* could be interpreted as requiring an incumbent LEC to construct a SPOI for the INC and NTW. However, common sense dictates that, since the incumbent does not own or control the INC and NTW, the incumbent LEC has no authority or responsibility to construct a SPOI or alter the facilities in any way.

There is no legal justification for requiring an incumbent to construct a SPOI solely for the benefit of other carriers. Moreover, as BellSouth demonstrated in its Petition ²⁶ and GTE confirmed in its comments, ²⁷ it is increasingly the case that a CLEC may wire a campus or

²⁵ *Id.*

²⁶ BellSouth Petition at 5.

²⁷ GTE Comments and Opposition at 6.

subdivision, and connect those facilities directly to its own network. If a second CLEC seeks to obtain access to serve customers in that campus or sub-division, the two CLECs should negotiate a solution. The incumbent has absolutely no stake in this arrangement, does not own the affected facilities, and therefore should play no role. Thus, it is nonsensical, not to mention unlawful, to require the incumbent to construct a SPOI in this situation. Accordingly, the Commission should clarify that its rules do not require an incumbent LEC to construct a SPOI where the facilities are neither owned nor controlled by the incumbent.

III. THE OPPOSITIONS DEMONSTRATE THAT THE COMMISSION SHOULD NOT INCREASE THE FOUR-LINE THRESHOLD.

In the *UNE Remand Order*, the Commission found that CLECs are not impaired without access to unbundled local switching in certain very limited geographic areas, provided that the customer they seek to serve has four or more lines and the incumbent LEC provides the enhanced extended link (“EEL”). Several commenters seek to support petitions to raise the four-line threshold that the Commission established.

BellSouth’s Opposition explained the failings of those petitions to meet the requirements of an impairment analysis, the statutory predicate that must be met. And, from a practical standpoint, virtually all residential customers and the majority of business customers use three lines or less.²⁸

The oppositions and comments add nothing substantive to those petitions. For the most part, the issues raised by the comments are administrative. Those comments point to difficulties inherent in administering any line threshold, not the particular one chosen by the Commission.²⁹

As Bell Atlantic properly points out, the Commission’s threshold is arbitrary because it is

²⁸ In fact, an Ameritech *ex parte* cited in the *UNE Remand Order* provides the best factual information on the Commission’s four-line threshold and clearly supports it. *UNE Remand Order*, ¶ 293 and n.580. As SBC points out, that *ex parte* “shows nearly three quarters of Ameritech’s business customers use three lines or less and that there is a marked drop-off in the percentage of business customers with three lines (12%) and four lines (6%).” SBC Opposition at 7.

²⁹ See, e.g., Cable & Wireless Comments at 2-5; CompTel Comments at 2-5.

unnecessary based on evidence of CLEC switch deployment.³⁰ Increasing the threshold to some other number will not cure any of the administrative issues raised by these CLECs.³¹ Neither the petitions for reconsideration on this issue nor the comments supporting them provide new or persuasive arguments to increase the line threshold established by the Commission. The Commission should, therefore, reject those petitions.

IV. THERE IS NO BASIS TO RECONSIDER THE CONCLUSION THAT ILECS MUST BE PERMITTED TO RECOVER THE COSTS OF CONDITIONING LINES.

Several CLECs reject the blanket notion advanced by several petitioners³² that the Commission's TELRIC methodology precludes ILEC recovery of the costs of line conditioning.³³ However, some of these CLECs still contend that ILECs should not be allowed to recover the costs of conditioning loops shorter than 18,000 feet because copper loops of that length "*should* not require extra conditioning to support DSL services."³⁴ Note that AT&T makes no claim here that the loops *do* not require conditioning.

No party appears to dispute the reasoning underlying the Commission's conclusion in the *UNE Remand Order* that because ILECs incur costs to condition loops, they may recover those costs.³⁵ This cost recovery is not historical, it is based on real, forward-looking costs incurred by incumbent LECs as they respond to CLEC requests. No party has suggested any legal basis under which the Commission could require incumbents to bear these costs without compensation, or a policy basis for the Commission to alter its policy of assigning responsibility

³⁰ Bell Atlantic Opposition at 10-11.

³¹ Several carriers take indirect approaches to justifying a line-threshold increase. For example, Birch and Cable & Wireless argue that an end user with three or fewer lines forever qualify for UNE switching, regardless of that end user's growth. See Birch Opposition at 2-5; Cable & Wireless Comments at 2-4. This approach would, of course, clash directly with the Commission's finding that CLECs are not impaired in serving customers that have enough lines to exceed the threshold without unbundled local circuit switching. Again, the challenges associated with administering the line-threshold exist regardless of where the threshold is set; and such administrative issues are best left to negotiations.

³² See, e.g., Rhythms/Covad Petition at 1-7; @Link Petition at 4-6.

³³ AT&T Opposition and Comments at 16; Sprint Comments at 5-7.

³⁴ AT&T Opposition and Comments at 16 (emphasis added)

³⁵ *UNE Remand Order*, ¶ 193.

for costs to the cost-causer. As BellSouth pointed out in its Opposition, there are a variety of competing network design standards and quality considerations involved in ILEC network buildout. Whether voice enhancing devices exist on loops in accord with current standards, previous standards, or simply to improve network quality, an incumbent LEC incurs costs to remove the devices, and must be allowed the opportunity to recover those costs.³⁶

Certain CLECs here are trying to avoid the implications of this cost-causing by misusing the Commission's TELRIC methodology. Thus, invoking the TELRIC approach, they would establish prices based on a "network" designed solely to meet their particular copper-loop based DSL technology. This "network" would not require conditioning for the particular type of service they wished to offer even though the network design would conflict with the business needs of customers of other CLECs and the incumbent LEC. Of course, a truly forward-looking network, unlike the gerrymandered one sought by these CLECs, may very well substitute fiber and wireless technologies for copper loops altogether. That forward-looking network may contain no copper loops at all, leaving these particular CLECs, which depend on copper loops, high and dry. The Commission's TELRIC pricing methodology in no way supports the notion advanced here that pricing can be based on a network designed to create the lowest price for each individual carrier. The self-serving hypothetical network urged by these petitioners cannot overcome the undisputed fact that incumbent LECs incur costs to condition loops, and must be provided the opportunity to recover them. Thus, there is no basis for the Commission to reconsider its common sense conclusion that incumbent LECs must be permitted to recover the costs they incur to condition lines.

³⁶ BellSouth Opposition/Comments at 8-10.

V. CONCLUSION.

For the reasons above, BellSouth urges the Commission to take the actions suggested herein.

Respectfully submitted,

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I do hereby certify that I have this 5th day of April, 2000, served the following parties to this action with a copy of the foregoing *BELLSOUTH REPLY*, reference CC Docket No. 96-98, by hand delivery or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties as set forth on the attached service list.


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