

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Petition of NewPath Holdings, Inc.) CC Docket No. 00-50
For an Expedited Declaratory Ruling on the)
Scope of Unbundled Access to the)
High-Frequency Portion of Loops)
)

**BELL ATLANTIC’S¹ COMMENTS ON NEWPATH HOLDINGS INC.’S
PETITION FOR EXPEDITED DECLARATORY RULING**

I. Introduction and Summary

NewPath Holdings Inc. (“NewPath”) has asked the Commission to extend the unbundling obligations in the *Line Sharing Order* to lines on which a reseller – not an incumbent local exchange carrier (“ILEC”) – is providing the voice service.² The Commission’s *Order* imposed no such requirement, however, and there is no reason to expand the scope of the line sharing requirement here.

First, contrary to NewPath’s broad interpretation of the *Order*, the *Order* makes clear that line sharing obligations do not extend to lines where the incumbent is not providing the voice service. In a resale context, the reseller – not the incumbent– is the

¹ Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

² *In the Matter of 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 in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, FCC 99-355 (rel. Dec. 9, 1999 (“*Order*”).

voice carrier so the unbundling requirement does not apply. Moreover, UNEs and resale are two distinct methods of entry for competing carriers and are subject to two different statutory regimes. There is no legal justification for mixing the two requirements by requiring the incumbent to simultaneously unbundle and make available for resale the same loop.

Second, NewPath's request does not meet the standards in section 251(d)(2) because carriers are not impaired in their ability to offer data services without unbundled access to part of a loop that is being used to provide resold voice service. A review of current market activity – which is a necessary aspect of any impairment analysis – shows that data carriers already have ample opportunities to provision their data services.

Finally, and in any event, incumbent carriers could not reasonably be required to implement line sharing on resold lines until some point after the implementation period outlined in the *Order* for line sharing where the incumbent is providing the retail voice service. Line sharing over resold lines differs from line sharing where the incumbent provides the voice service from both a technical and operational standpoint, and involves yet another layer of operational complexity which has not been addressed in connection with the industry's current line sharing implementation efforts.

II. The *Order* Does Not Require Line Sharing When a Reseller Provides the Voice Service, and The Commission Should Not Blur the Distinction Between UNEs and Resold Services By Combining Them On a Single Line.

Contrary to NewPath's expansive claims, the *Order* does not require line sharing where a reseller is providing the voice service. Rather, the *Order* makes clear that the incumbent need only provide line sharing on loops on which it provides the voice service. *Order* at ¶ 72. It notes that “[t]he record does not support extending line sharing

requirements to loops that do not meet the prerequisite condition that an incumbent LEC be providing voiceband service on that loop” *Id.*

To the extent that NewPath claims that it does not matter whether a customer’s voice service is provided by an incumbent carrier directly or through a reseller, it is mistaken. *See* NewPath at 5. The Commission specifically considered and rejected the notion of requiring line sharing where the result would be to have multiple carriers on a line. As the *Order* explained, “the complexities involved with implementing line sharing dramatically increase where more than two service providers share a single loop.” *See Order* at ¶ 74. NewPath’s claim is inconsistent with the *Order*’s disapproval of multiple carrier sharing because it would place three carriers – the reseller, the incumbent and the data carrier – all on a single line.

Moreover, NewPath’s claims completely fail to contend with the fact that the Act establishes two separate and distinct statutory schemes for UNEs and resale under sections 251(c)(3) and 251(c)(4), respectively.³ Indeed, incumbent carriers have two very different obligations under each of these statutory sections. In fact, the Commission appears to recognize that resale and UNEs are mutually exclusive by noting that “a new entrant may offer services to one group of consumers using unbundled network elements,

³ For example, requiring incumbents to facilitate a connection between a facilities-based data provider and a voice reseller on a single loop as NewPath proposes would conflict with the D.C. Circuit’s recent collocation decision. *See GTE Service Corporation v. Federal Communications Commission*, slip op. at 7 (D.C. Cir. Mar. 17, 2000). There the Court found that requiring incumbents to allow collocated carriers to interconnect their collocation cages imposes an obligation on incumbents that “has no apparent basis in the statute” explaining that “the Commission [did] not even attempt to show that cross-connects are in any sense ‘necessary for interconnection or access to unbundled network elements.’” *Id.* And there is even less basis in the statute for a requirement to now allow collocated carriers to interconnect with non-collocated carriers, *i.e.* resellers of incumbent carrier services, which is what NewPath’s petition would require.

and it may offer services to a *separate* group of consumers by reselling an incumbent LEC's services." *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd. 15499 at ¶ 341 (1996) (Emphasis added). In short, NewPath is unable to point to anything in the Act or the Commission's prior decisions that requires an incumbent to both unbundle and provide services for resale over the same loop.

III. Competing Data Carriers Are Not Impaired From Serving Customers Purchasing Resold Voice Services.

Imposing a line sharing requirement on resold lines does not meet the Act's standards for requiring unbundling. Section 251(d)(2)(B) requires an element to be made available only where "the failure to provide access to such network elements would *impair* the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." (Emphasis added.)

Although the Commission found in the *Order* that purchasing a UNE loop is not an acceptable alternative to line sharing on lines in which the incumbent carrier is providing the voice service, that conclusion is currently the subject of pending appeals. Regardless of the outcome of those appeals, however, the same conclusion should not automatically apply to the resale context.

The Commission need not unbundle the higher frequencies on resold lines to, as NewPath claims, "level the playing field" between incumbents and competing data providers for the simple reason that incumbent carriers do not have anything remotely approaching an "entrenched data access advantage." *See NewPath* at 4, 5, 13. Competing carriers are deploying advanced services as rapidly as incumbents, and cable companies retain their historic lead over broadband access to the home. And competing

data carriers now have an additional and artificial advantage because they can use line sharing to deliver their services without having to recover the full cost of the loop as the incumbent is forced to do.⁴

IV. The Industry Could Not Implement A New Line Sharing Requirement On Resold Lines Without Additional Time.

In any event, the industry could not implement this new form of line sharing until it first has an opportunity to fully address all of the operational details specific to line sharing in a resale context. Implementing line sharing over resold lines adds an additional layer of complexity to the already difficult implementation process in which the industry is currently engaged. Accordingly, carriers could not reasonably be required to implement any order extending line sharing to resold lines within the Commission's 180-day implementation time-frame. At a minimum, therefore, carriers should not be required to implement line sharing on resold lines until after the industry has successfully implemented line sharing where the incumbent is the retail voice provider, and the industry has an opportunity to fully explore the operational challenges of adding line sharing capabilities to resold voice lines.

First, the resources required to implement line sharing in connection with resold voice service are already fully employed implementing the existing line sharing requirement. Incumbent carriers and competing data providers are working feverishly to

⁴ Moreover, the claim that competing carriers are somehow disadvantaged is especially strained in instances where the incumbent provides advanced services through a separate affiliate. Under the *Order*, the only lines on which line sharing is required are those on which the incumbent is providing the voice service. This means that under the *Order*, where a reseller provides the voice service, neither an incumbent carrier through its separate subsidiary nor any other data provider can offer a data service on top of the reseller's voice service *unless* the incumbent carrier decides to either voluntarily unbundle the high frequency portion of the loop for all data carriers or to voluntarily offer some type of line sharing service to all data carriers.

provide line sharing in accordance with the Commission's proposed implementation schedule.

Second, the cooperative efforts of incumbent carriers and competing data carriers to implement line sharing to date have not involved steps to implement line sharing on resold lines. In response to the *Order's* directive to provide line sharing only on loops in which the incumbent provides the voice service, the industry appropriately tailored its implementation work to facilitating line sharing under those circumstances. Throughout the line sharing proceeding, competing data carriers have underestimated the amount of time and difficulty associated with implementing line sharing. Given that experience, NewPath's attempt to minimize the amount of time and effort that would be required to adapt operational systems and develop appropriate methods and procedures to provision line sharing in connection with resold voice lines is unavailing.

Although neither the record in this proceeding nor the industry teams implementing ILEC-based line sharing have explored the operational impacts of combining a UNE with resold voice service, it is clear that the addition of a third carrier (*i.e.* a reseller) to the line sharing equation raises issues that the industry has not confronted. Unlike line sharing in situations where the incumbent maintains a retail business relationship with the end user, on resold lines, that relationship would be severed and Bell Atlantic would serve solely as a wholesale provider to both the reseller and the data provider. Consequently, this three-carrier sharing arrangement would require the industry to resolve questions such as: which carrier would have primary responsibility for coordinating end user trouble reports (related to voice and/or data) and other maintenance problems that impact the common loop facility; how would end user

and carrier requests for service changes that impact the loop facility be handled and which carrier would be responsible for coordinating the change; and how should a disconnection of an end user's resale voice service impact the data provider's data service. Implementing line sharing, in the resale context would require different, creative answers to these questions than where the incumbent is the voice provider.⁵ Certainly, reconciling the individual business agendas and relationships between three different carriers alone will require a significant revision of the methods and procedures currently under development for ILEC-based line sharing.

V. Conclusion

NewPath's petition should be denied.

Respectfully Submitted,

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⁵ For example, line sharing on resold lines would likely require the development of new Universal Service Order Codes and Field Identifiers.