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ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

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FEDERAL COMMUNICATIONS COMMISSION
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Jonathan Askin
General Counsel

May 17, 2000

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147;

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98

Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor to SBC Communications Inc., Transferee, CC Docket No. 98-141

Common Carrier Bureau and Office of Engineering and Technology Announce Public Forum on Competitive Access to Next-Generation Remote Terminals, NSD-L-00-48, DA 00-891

Dear Ms. Salas:

Please find attached an original and four copies of the Petition for a Declaratory Ruling on Loop Provisioning of the Association for Local Telecommunications Services.

Sincerely,

Jonathan Askin

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

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ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES
PETITION FOR DECLARATORY RULING:
BROADBAND LOOP PROVISIONING

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PETITION FOR DECLARATORY RULING: LOOP PROVISIONING

The Association for Local Telecommunications Services ("ALTS"), by its attorneys and pursuant to Section 1.2 of the Commission's Rules,[1] hereby submits this petition for declaratory ruling, requesting that the Commission clarify, interpret and modify its rules governing crucial aspects of loop provisioning by incumbent local exchange carriers ("ILECs").

INTRODUCTION

ALTS congratulates the FCC for its diligent work in ensuring that unbundled network elements ("UNEs"), including UNE loops, used in all telecommunications services are provided

[1] 47 C.F.R. § 1.2.

to CLECs under Section 251 mandates. These rules have spurred rollout and competition in telecommunications services to an extent unparalleled in communications history.

Despite the FCC's diligence, however, many CLECs experience continual delay and frustration in obtaining UNE loops — the cornerstone of local competition — from the ILECs. Obtaining loops is for many carriers at this time the most important step in serving customers, but is often the largest obstacle. Due to the extreme time-to-market sensitivity of the competitive telecommunications industry, provisioning problems are debilitating to many CLECs and deprive American consumers of meaningful competitive choices. Presently there is no federal regulatory scheme for loops that provides an incentive to ILECs to remedy this situation, save for the state-specific review of occasional ILEC 271 applications.[2]

For these reasons, ALTS in this petition proposes additional Commission attention to crucial aspects of ILEC network element provisioning. Specifically, ALTS seeks a Commission declaratory ruling that governs all aspects of the provisioning process for all loops, but most particularly for loops that support broadband technologies. ALTS herein petitions the FCC to clarify and modify the Commission's existing rules and policies in a comprehensive manner for the unique circumstances of the broadband environment. These clarifications and implementation guidelines, derived from the Commission's own precedents in its Section 706, broadband, collocation and related proceedings over the past several years, are a vitally needed step if the promise of competitive markets, and the rapidly accelerating competitive market for

[2] If the pro-competitive mandates of the Telecom Act is to become a reality, it is essential that the FCC ensure that its rules are clearly stated and that appropriate enforcement mechanisms are in place so that enforcement of the rules is swift and certain.

Digital Subscriber Line ("DSL")[3] and other broadband services, is to become and remain a reality.[4]

Specifically, ALTS requests that the Commission should:

- Hold that Rule 51.319 requires ILECs to provide high-capacity loops, including DS-1 and DS-3 level loops, to any requesting CLEC on an unbundled and nondiscriminatory basis;
- Hold that Rule 51.319 requires ILECs to provide entire loops to CLECs providing integrated voice and data services over a shared line;
- Adopt maximum intervals for provisioning of UNE loops;
- Require ILECs to provide access to subloops wherever possible in a manner that will support provision of multiple services over a shared line;
- Hold that ILECs must provision special access circuits within the same interval in which they provision these circuits for their own retail services;

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[3] This petition primarily references xDSL-based services because DSL is the most prevalent advanced services technology currently being deployed. Loops, however, are an essential component for the provisioning of most telecommunications services, not just DSL-based services. ALTS believes that the loop rule clarifications requested in this petition would help to promote deployment of a multiplicity of competitive services and technologies, not just DSL and not just broadband. ALTS is confident that the FCC will take the steps necessary to foster the deployment of both currently-contemplated and unanticipated technologies to bring a panoply of new, competitive, innovative services to American consumers. ALTS believes that the rule clarifications set forth in this petition are forward-looking and would serve as a valuable step in the direction of fostering deployment of competitive services.

[4] The Commission has ample authority to clarify, construe and (as necessary) modify its existing rules on loop provisioning, based on the extensive record before it in this and related proceedings, using the declaratory ruling procedure. Pursuant to Section 1.2 of the Commission's Rules, the FCC may issue a declaratory ruling at any time to terminate a controversy or remove uncertainty. The Commission "has wide discretion within this framework to determine whether a declaratory ruling is necessary." *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States,* First Order on Reconsideration, IB Docket No. 96-111, FCC 99-35, 1999 FCC LEXIS 5448, ¶ 22 (1999). *See also Yale Broadcasting Co. v. FCC*, 478 F.2d 594, 602 (D.C. Cir. 1973). The Commission has used this authority in the past to clarify rules and policies, including in the manner requested by ALTS in this petition, without initiating a new rulemaking. *E.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Area Code Relief Plan for Dallas and Houston Ordered by the Public Utilities Commission of Texas, and Administration of the North American Numbering Plan*, Third Order on Reconsideration of Second Report and Order and Memorandum Opinion and Order, 14 FCC Rcd. 17964 (1999) (clarifying whether states may allow wireless customers to retain wireless telephone numbers in an area code subject to a geographic split). ALTS believes that initiating another Commission rulemaking on the crucial, highly time-sensitive issues discussed herein would be largely duplicative with this record and would only further delay competitive deployment of broadband services. Clarification and interpretation of the rules is plainly within the scope of a declaratory ruling. Should the Commission deem it procedurally necessary, however, the limited number of rule modifications suggested in this petition could alternatively be implemented by means of an NPRM.

- Determine a federal deadline by which all ILEC OSS interfaces must electronically provide all loop information to which the ILEC has access;
- Ensure that all loop de-conditioning charges and other recurring and non-recurring charges adhere to TELRIC principles; and
- Set *prima facie* federal penalties for ILEC failure to comply with these rules.

BACKGROUND

Since passage of the 1996 Act, the Commission has worked to implement Congress' mandate in Section 251 that ILECs must "provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis."[5] Today, after four years, three mergers, several orders and appeals and one major Supreme Court decision, efficient unbundling remains in many cases a distant goal for the competitive telecommunications industry. This result is especially glaring in the case of timely, efficient and nondiscriminatory access to unbundled loops.

All CLECs, including competitive telephony providers, DSL carriers and integrated communications providers ("ICPs"), are today forced to rely on ILEC compliance with federal law in order to obtain access to the "last mile" of connectivity. Despite the unbundling mandates of Section 251, "the ILECs control the essential facilities over which broadband services are being provided."[6] Unfortunately, the Commission's existing rules are not clear with respect to all of the pieces to the provisioning puzzle, leaving crucial aspects of loop provisioning, such as delivery intervals, largely to the discretion of the ILECs. ALTS therefore believes that the Commission should and must clarify the regulatory scheme for unbundled loop provisioning in several key respects.

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[5] 47 U.S.C. § 251(c)(3).

The ILECs' obligation to provide nondiscriminatory access to loops is neither new nor startling. Since the Commission's release in August 1996 of its First Report and Order in the *Local Competition* docket,[7] ILECs have operated under a federal obligation to unbundle any transmission facility that runs from a central distribution frame to the customer premises.[8] The Commission, in a remarkable act of foresight, held that this obligation includes not only two-wire and four-wire voice-grade loops, but also loops capable of transmitting digital signals, including ISDN, ADSL, HDSL and DS-1 loops.[9] With these rules, the FCC broke the barrier to the last mile, spawning competition in telephony service and, quite astoundingly, causing the emergence of technologies such as DSL, which otherwise might never have come to be.

The Commission's revisitation of the UNE loop rules on remand from the United States Supreme Court[10] served only to strengthen ILEC loop provisioning obligations. In the *UNE Remand Order*,[11] the FCC reinstated its loop unbundling rules,[12] emphasizing this time the importance of CLEC access to high-capacity and xDSL-capable loops "to facilitate the rapid and efficient deployment of all telecommunications services, including advanced services."[13] With respect to xDSL-capable loops specifically, the Commission concluded that "[w]ithout access to these loops, competitors would be at a significant disadvantage, and the incumbent LEC, rather

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[6] HAI Consulting, Inc., "Economics and Technology of Broadband Deployment" at i (Sept. 25, 1998). Available at http://www.hainc.com/main/papers.html.

[7] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd. 15,499 (1996) ("*Local Competition First Report and Order*").

[8] *Local Competition First Report and Order*, 11 FCC Rcd. at 15,691 ¶ 380; 47 C.F.R. § 51.319(a).

[9] *Local Competition First Report and Order*, 11 FCC Rcd. at 15,691 ¶ 380.

[10] *AT&T v. Iowa Utils. Bd.*, 119 S. Ct. 721, 735 (1999).

[11] *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*"). ALTS notes that both Bell Atlantic and the United States Telephone Association have appealed this order to the Court of Appeals for the D.C. Circuit, Cases No. 1015 and 1025, but that these appeals are held in abeyance pending resolution of petitions for reconsideration of certain Commission conclusions within the *UNE Remand Order*. *See* FCC Report No. 2390 (Feb. 28, 2000) (setting pleading schedule for reconsideration).

[12] *UNE Remand Order* ¶ 176 (altering slightly the definition of loop to refer to 'transmission facilities' running between a central distribution frame and the point at which ILEC control of the facilities ceases), ¶ 190.

than the marketplace, would dictate the pace of the deployment of advanced services."[14] The Commission also held that ILECs must unbundle dark fiber facilities for any CLEC,[15] as well as subloops, *i.e.*, those "portion[s] of the loop that can be accessed at terminals in the incumbent's outside plant."[16] Again the Commission recognized the crucial importance of CLEC access to last mile connectivity as the *sine qua non* of telecommunications competition.

Attendant with the loop unbundling obligation is the ILEC's obligation to provide CLECs with information about the physical characteristics of a loop, sometimes referred to as "loop make-up data." The Commission's First Report and Order in the *Advanced Services* docket, released August 7, 1998,[17] established the specific requirement that the pre-ordering functions of ILEC Operations Support Systems ("OSS") must provide CLECs with loop information for determining xDSL-capable loops.[18] In that order, the Commission concluded that access to this information is a necessity for giving CLECs "a meaningful opportunity to compete."[19] The Commission established not only an information requirement, but a parity of access standard for this requirement, holding that "[a]n incumbent LEC does not meet the nondiscrimination requirement if it has the capability electronically to identify xDSL-capable loops . . . while competing providers are relegated to a slower and more cumbersome process to obtain that information."[20] This holding was affirmed in the *UNE Remand Order*, which reiterates that an ILEC "must provide the requesting carrier with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent" in both the same form and the

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[13] *Id.* ¶ 14.
[14] *Id.* ¶ 190.
[15] *UNE Remand Order* ¶ 196; 47 C.F.R. § 51.319(a)(1).
[16] *UNE Remand Order* ¶ 206; 47 C.F.R. § 51.319(a)(2).
[17] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order, FCC 98-188 (rel. Aug. 7, 1998) ("*Advanced Services First Report and Order*").
[18] *Id.* ¶ 56.
[19] *Id.* ¶ 56.
[20] *Id.* ¶ 56.

same timeframe in which the ILEC accesses it.[21] These rules are a clear indication of the premium that the Commission places on nondiscriminatory, competitive access to local loops.

It is because the Commission has recognized the competitive importance of loops that ALTS now seeks further Commission attention on the issues surrounding loop provisioning. The competitive services industry continues to focus all efforts on reaching customers and providing high-quality, low cost services to American consumers. Reliance on ILECs for timely, nondiscriminatory access to loops, however, remains, for most CLECs, the only avenue of reaching customers. For loop access, ILECs are still the only game in town. Thus, the competitive industry is paradoxically requesting a crucial network element from their chief rivals. Conversely, ILECs operate under an ambiguous and incomplete regulatory mandate to help their competitors attain customers, placing them in the awkward position of balancing two equal but opposite incentives. For these reasons, Commission compilation of federally-binding minimum requirements for provisioning of all loops is needed at this time to ensure finally the successful rollout of competitive services to consumers. Based on its clear statutory authority and significant record compiled in this and other lengthy proceedings, the Commission has a solid basis on which to adopt these requirements.

Finally, the Commission should not wait to address loop provisioning issues solely within the context of individual ILEC applications for Section 271 relief. The regulation of ILEC loop provisioning on a piecemeal basis will result in piecemeal deployment. Moreover, Commission review of these applications fairly *requires* adoption of rules at this time, because, as was the quandary within the Bell Atlantic-New York proceeding, there are few or no federal benchmarks

[21] *UNE Remand Order* ¶ 427-28.

for reviewing ILEC practices with respect to many loops, especially xDSL-capable loops.[22] Thus, a positive declaratory ruling on this petition will both advance the interests of national deployment of services and provide ILECs with certainty in their Section 271 checklist obligations. ALTS believes that this juncture provides the optimal time for the Commission to apply its acquired knowledge of ILEC unbundling and adopt rules that will complete the regulatory scheme for provisioning of loops.

I. THE COMMISSION SHOULD DECLARE THAT THE 1996 ACT REQUIRES THAT CLECs HAVE TIMELY AND NONDISCRIMINATORY ACCESS TO ALL BROADBAND LOOPS

As a matter of law, the ILECs' obligation to provide any requesting CLEC with any type of local loop is by now unquestionable. As a matter of fact, however, the ability of CLECs to obtain many loops, especially high-capacity loops and DS-1 and DS-3 facilities, is often encumbered or precluded by delays or arcane ILEC processes. In virtually no case do CLECs obtain loops in the same period of time that the ILEC can deploy the same loops for itself, demonstrating a clear discrimination against competitive carriers in violation of Section 251 of the 1996 Act. Strikingly, the advent of line sharing has for some CLECs, namely ICPs, actually precluded loop access altogether — in direct contravention of the Commission's decisions and policies. ALTS therefore requests the Commission clarify that, as part of their unbundling obligations, ILECs must provision voice-grade and high-capacity loops within an interval reasonably calculated to mirror the interval ILECs presently provide to themselves, and to provide any type of loop to a CLEC providing one or multiple telecommunications services.

[22] "We note at the outset that our previous section 271 orders have not addressed the ordering or provisioning of xDSL-capable loops and that no previous applicant has made a separate showing on the provision of xDSL loops." *Application by Bell Atlantic-New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404 ¶ 316 (rel. Dec. 22, 1999) ("*Bell Atlantic-New York 271 Order*").

A. CLECs Must Have the Ability to Order and Obtain Transmission Facilities in an Efficient Manner

One of the most severe obstacles to CLECs obtaining loops in a timely manner is the ILEC ordering process. Present ILEC ordering processes prohibit CLECs from ordering transmission facilities, including transport and dark fiber, to their collocation cage until cage completion. This forces CLECs to endure sequential provisioning intervals, needlessly delaying their ability to serve customers. For example, ILEC collocation tariffs typically impose a 90-calendar day collocation interval marked from the date on which it receives a CLEC down payment for facilities — requiring a complete interval of approximately 120 days from the time of initial application.[23] In addition, ILEC ordering literature, often called a "CLEC Handbook," indicates that the guideline for provisioning DS-1 loops is 45 days. Under present processes, however, CLECs cannot order any loops until completion and turnover of collocation facilities. Thus, the operative interval for receiving a DS-1 loop in the CLEC's crucial initial phase of deployment becomes, at a minimum, 165 days. It is unlikely that an ILEC waits more than five months to install a DS-1 for its own services.

Often the ILECs' explanation for this sequential imposition of provisioning periods is that no order can enter their systems unless identified by a Carrier Facility Assignment ("CFA") number or an Access Carrier Transport Location ("ACTL") number. These numbers designate locations at which the loop will terminate on the CLEC's multiplexer. Yet it is the ILEC that generates these numbers in the first instance; CLECs are forced to delay an order to use CFA/ACTL numbers that are solely within the ILEC's control to provide. Moreover, it seems a needless technicality to require a precise termination point prior to simply placing a facilities order for a specific CLEC that is assigned a specific place within the ILEC's central office. The

difference in order form is trivial, but the effect on the CLEC's ability to reach customers in a timely fashion is significant.

Related to this issue is the need for CLECs to be informed whether a central office is served by high-capacity facilities in the first instance. In order to plan in which ILEC central offices to collocate, CLECs must know which offices are served by sufficient transmission capacity. Unless CLECs can obtain this information prior to applying for collocation, they incur a risk that a particular central office is "stranded," or essentially cut off from the local network. Faced with a stranded central office, CLECs that have made a significant financial investment in collocation must either cancel the space or attempt to obtain transmission facilities from another carrier, if possible. Were ILECs required to provide information about the capacity of the transmission facilities serving a central office, CLECs could plan efficiently, enabling them to focus resources effectively and provide ILECs with accurate collocation demand forecasts.[24]

ALTS therefore seeks a Commission ruling making clear that CLECs in any region may order all loops in a manner that will enable them to provide service at the time that their collocated equipment is operational. In other words, CLECs should be able first to learn whether a particular central office is served by high-capacity transmission facilities, and secondly to place loop orders while the ILEC prepares the collocation facilities, in order that the loops are installed when the cage is "lit." This schedule will enable CLECs to serve customers as quickly as possible. ALTS notes that some carriers have negotiated such arrangements with individual carriers, permitting them to order high-capacity loops during the collocation preparation period.[25]

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[23] *See, e.g.*, Bell Atlantic-New York Tariff 218, Section II.B.2. Bell Atlantic's state collocation tariffs are generally uniform throughout the region, including provisions for collocation intervals.

[24] ILECs often condition their provisioning of collocation facilities upon receiving accurate, periodic CLEC demand forecasts. *See, e.g.*, Bell Atlantic-New York Tariff 218, Section II.B.2(b).

[25] BlueStar Communications has negotiated terms with BellSouth that permit concurrent ordering of collocation and high-capacity facilities. BlueStar-BellSouth Interconnection Agreement, Section 6.4.1 ("The Collocation Space Completion time period and the timeframe in which connection location on the DSX or LGX

These arrangements demonstrate that concurrent ordering of collocation and transmission facilities is technically feasible. By mandating this parity of treatment as a means of implementing its collocation and unbundling rules, the Commission will help to ensure that CLECs and customers face a minimal delay in the real-world deployment of competitive telecommunications services.

B. The Commission Must Ensure that Scarce Copper Loops Remain Available to Competitors Wherever Possible

As discussed above, the Commission's rules and decisions recognize that access to copper is the cornerstone of ensuring competitive deployment of many advanced services, most notably DSL-based services.[26] Copper loops are, however, increasingly scarce in the network, an observation that becomes especially true as ILECs push the deployment of fiber facilities closer to the home. The case of SBC's Project Pronto brings this point into glaring focus. As ALTS commented just recently, "by pushing fiber facilities closer to the edge of its local network, SBC has selected a network architecture for Project Pronto that reduces competitive options, eliminates the opportunity for facilities-based competition in advanced services, and reduces consumer choice."[27] In the face of this apparent trend among ILECs to diminish the proportion of copper loops in the network, the Commission must necessarily become more vigilant in adopting rules to preserve CLEC access to copper wherever possible.

Specifically, the Commission should clarify that as a matter of federal law, ILECs must provide alternatives to DLC-served loops. These alternatives may be in the form of "swapping" out an in-service fiber loop with a dormant copper loop, or a "work-around" configuration. Presently CLECs must attempt to secure copper access through interconnection agreements,

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frame for the time cables listed in the application will be provided to Bluestar during the joint planning meeting or soon as possible thereafter.")

[26] *Line Sharing Order* ¶ 38.

which is a lengthy, arduous and uncertain process that inevitably achieves unfavorable results. A Commission decision requiring ILECs to find copper solutions would provide the advanced services industry with the uniformity and certainty required to continue commercially meaningful deployment on a nationwide basis.

The members of ALTS have made their concerns regarding "alternative network architecture" clear to the Commission.[28] ALTS does not quarrel with the ILECs' decisions to upgrade their local network to improve its robustness and efficiency. ALTS does, however, wish to ensure that the local network remains amenable to the unbundling requirements of the 1996 Act. ILECs cannot circumvent their federal obligations to provide loops to CLECs simply by building a new network with which unbundling is impossible. ALTS is confident that the Commission will address its specific concerns with Project Pronto in the context of its proceeding in CC Docket 98-141 — including the May 10, 2000 public forum initiated at ALTS' urging[29] — and looks forward to participating in the Commission's review of the myriad issues that Project Pronto has raised.

C. The Commission Should Reaffirm the ILECs' Obligation to Provide Subloop Facilities in a Nondiscriminatory Manner

Existing federal law requires ILECs to provide subloops to any requesting CLEC. In the *UNE Remand Order*, the Commission expanded its definition of a loop "to include all features, functions, and capabilities of the transmission facilities, including dark fiber and attached electronics [excluding DSLAMS]."[30] This requirement includes subloops, that portion of the loop extending from a remote access terminal to the customer's premises, without which carriers

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[27] ALTS Comments, CC Docket No. 98-141, ASD File No. 99-49, at 7 (March 3, 2000).

[28] *See id* at 2-20.

[29] *Id.* at 2 ("the Commission should convene a public forum to discuss the concerns addressed here and to determine equitable means of resolving the complex and significant issues raised by the SBC proposal").

[30] *UNE Remand Order* ¶ 167; 47 C.F.R. § 51.319(a)(1).

cannot "minimize their reliance on the incumbents' facilities" in order to reach customers.[31] Yet despite the Commission's express finding and new rules on this point, CLECs face serious obstacles in obtaining subloops in a timely, efficient manner. In fact, in too many cases CLECs cannot obtain subloops at all. ALTS therefore seeks a Commission ruling that reiterates the ILEC's obligation to provide subloops to any carrier, for any service, on a just, timely and nondiscriminatory basis.

1. CLECs Must Have Access to Subloops at Any Technically Feasible Point[32]

Again, SBC's Project Pronto proposal best illustrates the difficulties in obtaining unbundled transmission facilities, including subloops. Project Pronto, SBC's region-wide initiative to extend fiber facilities closer to the home, will require installation of over 20,000 remote terminals ("RTs") to house the interface between new fiber and existing copper loops.[33] CLECs will have access to this fiber-copper interface to a limited degree. The SBC Proposal flatly states that CLECs cannot obtain "DLC subloops" for voice services only.[34] Appendix DLE-DSL to the SBC Proposal states that CLECs may lease a subloop only as "a dedicated data only facility."[35] In addition, the proposal indicates that all loops, whether for DSL services or voice services, will be routed through SBC RTs but does not state whether voice CLECs may obtain subloops extending past the RT. This service restriction violates Commission rules.

ALTS here reiterates its significant concerns with Project Pronto to underscore its belief that this SBC initiative, as currently structured, is inherently anticompetitive. Project Pronto, as

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[31] *UNE Remand Order* ¶ 205; 47 C.F.R. § 51.319(a)(2).

[32] Although this Petition focuses primarily on loop elements critical to the competitive provision of advanced services, ALTS' requests regarding subloop element provisioning apply to all such elements, including inside wiring.

[33] Letter from Paul K. Mancini, Vice President and Assistant General Counsel, SBC, to Lawrence E. Strickling, Chief of the Common Carrier Bureau, FCC, at 2 (Feb. 15, 2000) ("SBC Proposal").

[34] SBC Proposal, Appendix DLE-DSL § 6.1; Attachment B at 20.

is apparent in this petition, has a significant bearing on several aspects of loop provisioning, including the ability of CLECs to obtain broadband loops at any point in the local network. To this end, ALTS urges the Commission to include subloop unbundling in its consideration of Project Pronto and other ILEC alternative architectures. In addition, ALTS requests that the Commission ensure CLEC access to subloops by interpreting Rule 51.319 such that ILECs must: (1) give unrestricted access to copper loops from any RT; or, in the alternative, (2) provide "work-arounds" wherever possible, enabling CLECs to obtain suitable connectivity to the home. Such a declaration would provide "teeth" to the Commission's rules in the *UNE Remand Order* in a manner likely to result in roughly uniform, reliable ILEC subloop provisioning on a nationwide basis.

2. CLECs Providing Integrated Services Must Have Access to Subloops in a Manner That Supports Provisioning of Multiple Services Over a Shared Line

The Commission's *Line Sharing Order* was a milestone in furthering rollout of CLEC broadband services.[36] These rules ensure that any CLEC providing advanced services can share an existing voice loop with the ILEC. The rules do not, however, ensure that a CLEC may line share for itself. An ILEC should not be able to configure its network such that competitive ICPs, such as Advanced TelCom Group, Inc. ("ATG"), cannot provide their integrated voice and DSL services over a single copper loop.

One such example of this problem was evidenced at a presentation of SBC's Project Pronto, during which SBC admitted that the company never "contemplated" how to treat ICPs

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[35] *Id.* § 7.1

[36] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Third Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Fourth Report and Order, FCC 99-355 (rel. Dec. 9, 1999) ("*Line Sharing Order*"). ALTS notes that US West has appealed this order to the Court of Appeals for the D.C. Circuit, Case No. 00-1048, but that the court has held this appeal in abeyance pending resolution of the several petitions for

within the proposed alternative network architecture.[37] Under Project Pronto, an ICP would have to order two loops to reach a customer with a voice and data offering while SBC would be able to provide voice and data to that customer over a single loop. In subsequent discussions, SBC initially refused to enable ATG to provide integrated services to customers served out of remote terminals, although operationally the solution ATG had proposed was entirely feasible.[38] SBC's refusal was based simply on its position that CLECs cannot line share for themselves. While SBC has recently changed its position and agreed to offer ATG a loop over which ATG can provision both voice and data services, SBC does not have a timeline for when this product will be offered. As ATG has written to the Commission, under Project Pronto, without the ability to provide voice and data over a single loop, "CLECs like ATG will be in exactly the same position that data CLECs found themselves prior to the Commission's Order on line sharing."[39] Indeed, until such time as SBC actually provisions a voice/data offering to CLECs, these CLECs will be in a far worse position, because they will be *precluded* from reaching the 40 percent of SBC customers that will be served out of remote terminals while SBC will be serving those customers with an integrated voice and data offering.[40] These same issues are likely to arise as other ILECs implement network architectures that make greater use of remote terminals to increase the availability of advanced services to telecommunication customers.

It would be an unreasonable application of the Commission's line sharing mandate, as well as an absurd policy result, if CLECs are to be precluded from using an entire loop to

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reconsideration filed in this docket. FCC Report No. 2390 (Feb. 28, 2000) (setting pleading schedule for reconsideration).

[37] SBC Project Pronto meeting, Dallas, March 1, 2000, Transcript at 50.

[38] *See* Letter from Kathleen M. Marshall, Executive Director, Regulatory Public Policy and Regulatory Counsel, ATG, to Carol E. Mattey, Deputy Chief, Common Carrier Bureau, and Anthony Dale, Common Carrier Bureau, CC Docket 98-141 at 5 (Apr. 27, 2000).

[39] *Id.*

[40] *Id.* at 5 n.9.

provide customers with integrated services. As an initial matter, such an application would preclude CLECs from doing what, as the Commission has long recognized, the ILECs have done in self-provisioning shared loops.[41] The 1996 Act forbids ILECs from providing elements to themselves in a manner superior to the manner in which CLECs can obtain them.[42] Therefore, so long as ILECs continue to provide voice and data services over a shared line, any requesting CLEC must be afforded the same opportunity.

Line sharing was not, however, adopted solely on the basis that the ILECs use it; line sharing ensures that carriers do not needlessly wait and pay for a stand-alone data loop when a single copper loop can support two services.[43] In addition, line sharing adds to the overall efficiency of the local network, which lowers costs for all carriers as well as consumers.[44] Finally, line sharing decreases demand for stand-alone copper loops needed for DSL services, obviating the need for additional copper deployment.[45] These substantial benefits of line sharing do not accrue only in cases of CLEC-ILEC shared loops. Indeed, the innovative business plans adopted by ICPs, providing consumers with a bundled option for voice and data services, demonstrate that line sharing is a necessary element within the competitive telecommunications framework. ALTS therefore requests a Commission clarification that all CLECs may obtain subloops to provide single or multiple telecommunications services, at their option.

D. The Commission Should Apply its Nondiscrimination Rules to Ensure Timely and Efficient Provisioning of Special Access Circuits

Special access circuits are a necessary component of wireline broadband services because they provide connectivity to the interexchange network and the packet switched Internet "cloud."

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[41] *Line Sharing Order* ¶ 33 ("There is no question that incumbent LECs are offering xDSL on the same line as their voice services[.]").

[42] 47 U.S.C. §§ 251(c)(3), (d)(2) .

[43] *See Line Sharing Order* ¶ 20.

[44] *Id.* ¶ 38.

As the Commission is aware, special access has long been the method by which interexchange carriers provide private line voice service. As the ILECs quickly learned, special access is ideally suited for high-speed broadband services as well, providing dedicated connectivity between an end user customer and an Internet service provider's point of presence. Thus, every filed ILEC federal DSL tariff describes the service as a special access service;[46] it was upon these tariffs that the Commission relied in order to hold that DSL services are interstate services falling entirely within its jurisdiction.[47] Special access circuits thus retain a key role in the deployment of competitive broadband services.

Commission-generated evidence indicates that ILEC provisioning of special access circuits severely discriminates against competitive providers. For example, in its ongoing monitoring of Bell Atlantic's ("BA's") post-NYNEX merger UNE provisioning, the Commission has reviewed BA's public compliance filings and posted its analysis of the data they include.[48] The FCC's reports focus on three aspects of provisioning for the period of September 1997 through December 1999: average interval completed; missed appointments; and mean time to repair.

According to the FCC's analysis, BA's average installation period for "special service UNEs," which include special access circuits, for the last 13 months was much shorter than its average installation period for CLEC circuits. In fact, BA's provisioning of CLEC special access circuits has become increasingly slow, with many installations taking approximately 26 to 55 days to complete. In addition, BA has missed CLEC installation appointments an average of 20

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[45] *Id.* ¶ 38.

[46] *E.g.*, Bell Atlantic FCC Tariff No. 1, Transmittal No. 1976; GTE Tariff FCC No. 1, Transmittal No. 1148; BellSouth Telecommunications, Inc., BellSouth Tariff FCC No. 1, BellSouth Transmittal No. 476; Pacific Bell Telephone Co., Pacific Bell Tariff No. 128, Pacific Bell Transmittal No. 1986.

percent to 30 percent over the last year, while that percentage for BA self-installation has continued to drop to almost zero percent. Finally, the mean time to repair CLEC special access circuits has seen a dramatic increase for the last 38 months, and in December 1999 reached an average of 40 hours. Bell Atlantic continues to repair its own special access circuits at a virtually constant average of eight hours per circuit. In all three provisioning aspects that the Commission's reports monitor, BA's practices have worsened substantially in the last twelve months.

The poor provisioning of the magnitude that this BA evidence demonstrates significantly delays CLECs in bringing services to American consumers. It becomes all the more significant when one considers the problems CLECs are experiencing in obtaining unbundled enhanced extended loops ("EELs") as a substitute for special access circuits under the *Supplemental UNE Remand Order*.[49] Furthermore, the United States Court of Appeals for the District of Columbia Circuit's recent remand of the FCC's collocation rules creates uncertainty as to the utility of collocation as the panacea for CLECs to gain competitive access to the local network.[50] In the wake of the uncertainty surrounding the availability of EELs and the utility of collocation, special access circuits remain a critical means of obtaining connectivity for CLECs. And as CLECs continue to rely on ILECs to obtain special access circuits, Commission rules that impose federally-binding provisioning requirements become a crucial step in furthering competition in the advanced services market.

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[47] *GTE Telephone Operating Cos., Tariff Transmittal No. 1148*, CC Docket No. 98-79 (rel. Oct. 20, 1998), *recon.* FCC 99-41 (rel. Feb. 20, 1999); *Bell Atlantic Telephone Cos., Bell Atlantic Tariff No. 1, Bell Atlantic Transmittal No. 1076*, CC Docket Nos. 98-168 *et al.*, FCC 98-317 (rel. Nov. 30, 1998).

[48] The FCC's reports are posted at <www.fcc.gov/ccb/mergers/BA_NYNEX.html>.

[49] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order, FCC 99-370 (rel. Nov. 24, 1999) ("*Supplemental UNE Remand Order*").

[50] *GTE Service Corporation v. Federal Communications Commission*, No. 99-1201, slip opinion (D.C. Cir Mar. 17, 2000) ("*GTE*").

ALTS therefore asks that the Commission hold that ILECs must provision special access circuits within the same interval in which they install these circuits for their own retail services. Much like generic voice-grade POTS loops, special access circuits used by CLECs are indistinguishable from ILEC circuits, making ILEC self-provisioning intervals a perfect proxy by which to assess their provisioning for CLECs. In many cases, the Commission already has evidence of ILEC retail intervals, for example the BA-NYNEX post-merger reports cited above, that it can adopt as a benchmark for ILEC nationwide special access provisioning.

Adoption of these benchmarks is in keeping with the nondiscrimination mandate of Section 251. Only by imposing maximum special access provisioning intervals can the Commission ensure that ILECs do not favor their own retail advanced services over those of CLECs. In acting to eliminate this discrimination, the Commission will directly advance the progress of the competitive broadband industry as it continues to bring innovative services to all consumers.

Some CLECs rely on special access circuits to provide the functional equivalent of UNE loops because there are already established ordering and provisioning processes for special access circuits. The end user customer has every right to expect the same quality of service whether that end user receives service via a UNE loop or a special access circuit. Access to loop make-up information, time to provision a line and the quality of provisioning should not be dependent upon whether a CLEC orders a line as a UNE loop or as a special access circuit. As such, ALTS submits that CLECs ordering special access circuits must be afforded the same access to loop make-up information, and the same quality of line provisioning, as that to which the ILEC provides itself, its affiliates, and other CLECs ordering UNE loops.

II. THE COMMISSION SHOULD ISSUE A DECLARATORY RULING CONTAINING FEDERALLY-BINDING MINIMUM xDSL-CAPABLE LOOP PROVISIONING REQUIREMENTS

As addressed previously, the Commission's existing rules establish a sound legal basis for requiring ILECs to provide CLECs with loops capable of supporting advanced services such as DSL-based services. There can be no doubt that a CLEC providing DSL services must be able to obtain copper loops that are free of, as the FCC calls them, "accreted devices" such as load coils and repeaters.[51] Under both the *Advanced Services First Report and Order* and the *UNE Remand Order,* it is likewise clear that ILECs must provide CLECs with all information in their possession about the physical characteristics of a loop.[52] What is not yet solidified is the timeliness or efficiency with which loops and loop information must be provided. ALTS therefore urges the Commission to issue a declaratory ruling to implement the policies by setting minimum requirements for loop provisioning as a matter of federal law.

The state of competition in DSL services is progressing but, as HAI Consulting states in its recent report,[53] it is by no means irreversible. Although dozens of carriers have entered the DSL market and have successfully made substantial initial investment in deployment, competitive barriers remain that could prevent their continued rollout of services.[54] Even at this time, ILEC statistics indicate that they have four times as many DSL lines in service as the top three competitive DSL providers combined.[55] This disparity is certainly attributable to the fact that ILECs control every loop in their regional networks, "slow[ing] implementation of the procompetitive features of the [1996] Act through litigation and non-cooperation."[56] Due to the

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[51] *UNE Remand Order* ¶ 175.

[52] *Advanced Services First Report and Order* ¶ 56; *UNE Remand Order* ¶¶ 427-431; 47 C.F.R. § 51.5.

[53] HAI Consulting, Inc., "Consumer Benefits of the Telecommunications Act of 1996" (Feb. 2, 2000) (prepared for ALTS). Available at http://www.alts.org/NewsPress/HAIBenefitsoftheAct.pdf.

[54] *Id.* at i.

[55] *Id.* at 9-10.

[56] *Id.* at ii.

fragile state of competition in these services, additional Commission action is required to provide certainty to the competitive DSL marketplace.

A. The Commission Has Both the Authority and a Sufficient Record to Issue a Declaratory Ruling Specific to ILEC Provisioning of xDSL-Capable Loops

Commission initiatives to adopt procompetitive loop rules would be squarely based in its 1996 Act authority. Not only does Section 251 grant the FCC the authority to implement rules in furtherance of Congress's unbundling mandate,[57] but Section 706 of the 1996 Act requires the Commission to take action wherever it perceives that the rollout of innovative advanced telecommunications services is endangered.[58] In addition, nothing in either the 1996 Act or Section 2 of the Communications Act of 1934[59] precludes the Commission from adopting federal rules to govern specific aspects of UNE provisioning. Thus, the Commission would act well within its jurisdiction in establishing explicit federal intervals and standards for loops and loop information.

The extensive records before the FCC in this and other dockets supports adoption of these rules. Most germane to this point is the ongoing review of SBC-Texas' 271 application.[60] As the Commission is aware, several commenters in this proceeding have voiced serious concerns regarding SBC-Texas' provisioning of unbundled loops and loop information.[61] These concerns represent just one body of evidence that supports the competitive need for Commission action with respect to these issues. This petition thus provides the Commission the opportunity to

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[57] 47 U.S.C. § 251(d)(1).

[58] 1996 Act, § 706(b).

[59] 47 U.S.C. § 2(b).

[60] *Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas*, CC Docket No. 00-4.

[61] Settled administrative law permits federal agencies to rely on evidence submitted in substantially related proceedings for purposes of issuing rulings of general application. *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971).

address carrier concerns comprehensively, providing uniformity and certainty in the law that will foster the competitive telecommunications marketplace.

B. The Commission Should Modify its Rules to Govern Several Crucial Aspects of xDSL-Capable Loop Provisioning

Competitive DSL providers require access to loops and loop information in a timely manner, at a level that is at parity with the access enjoyed by the ILEC itself. In the "new competitive paradigm"[62] of the 1996 Act, the race to the customer requires that all carriers have an equal chance of obtaining the components necessary to enter the telecommunications market. In a post-monopoly environment, some external regulatory oversight is required to ensure that the residual effects of the monopoly — in this case, ILEC ownership of all local loops and control over loop databases — is not leveraged into the newly-competitive market. As the evidence consistently indicates with respect to loop unbundling, there remains substantial leveraging in the DSL market, in which ILECs use their control of loops and loop information to boost their own ability to compete and disadvantage other carriers. For these reasons, the Commission should adopt binding federal rules to ensure the timely and nondiscriminatory provisioning of loops and loop information.

1. The Commission should issue federal performance guidelines for ILEC pre-ordering functions for xDSL–capable loops

Comprehensive information detailing the physical characteristics of a loop is a prerequisite for deployment of all telecommunications services and advanced services in particular.[63] In order to determine whether and to what degree a particular customer's loop can support DSL services, CLECs that provide DSL service must know: (1) whether the loop is

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[62] *UNE Remand Order* ¶ 2.

[63] It should also be irrelevant whether the CLEC purchases the line as a UNE loop or as a special access circuit. CLECs ordering out of a special access tariff should have equal access to loop make-up information available to the ILEC retail customers, ILEC affiliates, and other CLECs.

copper or fiber; (2) the actual length of the loop, including bridged taps; (3) the length and location of bridged taps; (4) the number and location of load coils on the loop; (5) whether any portion of the loop is served by Digital Loop Carrier ("DLC") and, if so, whether it is integrated DLC or universal DLC; and (6) the location of a repeater, if any, on the loop. The Commission has recognized CLECs' need for this information and has ordered ILECs to provide this information to any requesting CLEC in whatever form it resides within ILEC records.[64]

Although the Commission has provided clear policy guidelines requiring CLEC access to loop information at the pre-ordering stage, there remains a regulatory vacuum in terms of the specific parameters for such CLEC access. That is, the Commission has not established a federal benchmark for measuring ILEC performance in meeting CLEC requests for loop information. In fact, the sole instance of FCC evaluation of this issue occurred in the Bell Atlantic-New York 271 proceeding, in which the FCC expressly acknowledged that the loop information rules articulated in the *UNE Remand Order* were not yet binding as a matter of law.[65] Consequently, the Commission did not opine as to "whether Bell Atlantic complies with the requirements that resulted from that proceeding[.]"[66] Nor did the Commission's order approving Bell Atlantic-New York's application rest on any finding that CLECs obtained timely access to loop information; rather, the order merely stated that CLECs had access to the same databases as did Bell Atlantic retail personnel.[67] Thus, the Commission's determination that Bell Atlantic-New York satisfied the OSS pre-ordering requirements of Section 271 cannot inform other ILECs in their loop information provisioning obligations.

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[64] *UNE Remand Order* ¶ 437.
[65] *Bell Atlantic-New York 271 Order* ¶ 140.
[66] *Id.* ¶ 140.
[67] *Id.* ¶ 143.

The Commission's present review of SBC-Texas' 271 application has yielded considerable evidence to support issuance of federal loop pre-ordering guidelines. In their comments to the Commission, nearly every CLEC demonstrated that SBC-Texas continues to rely heavily on unreliable, delay-ridden manual processes for providing DSL loop information.[68] In addition, Rhythms indicates that SBC has flatly refused to update its pre-ordering OSS interfaces to enable real-time electronic access to loop information for CLECs.[69] This system is, as Rhythms and Covad proved, and as the Texas Commission found,[70] grossly out of parity with the access SBC provides to its retail DSL sales force.[71]

This patently discriminatory conduct has a simple explanation: ILECs provide better service to themselves than to CLECs because *they want to*, and because *they can*. ALTS therefore urges the Commission to adopt minimum guidelines for ILEC loop provisioning. These guidelines should govern the timeliness, accuracy and completeness of information.

2. The Commission should require ILECs to provide xDSL-capable loops in a timely fashion

Timely access to xDSL-capable loops is a competitive necessity for the advanced services market. In order for CLECs to win customers, and customer confidence, they must demonstrate that they can reach customers as quickly as can any ILEC. The ILECs, having owned and controlled all local loops, retain as always the advantage in this aspect of loop provisioning. Presently, the only incentive that motivates ILEC loop provisioning behavior is a business-driven need to keep customers away from CLEC DSL service. There is no

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[68] CC Docket No. 00-4, Rhythms Comments at 32-33 (Jan. 31, 2000), Covad Comments at 9 (Jan. 31, 2000), NorthPoint Comments at 13, 17-19 (Jan. 31, 2000), Comments of the CLEC Coalition at 18-20 (Jan. 31, 2000).

[69] Rhythms Comments at 29.

[70] *Petition of Rhythms Links Inc. for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company*, Docket Nos. 20226 et al., Arbitration Award at 69-70 (Pub. Util. Comm'n of Texas, Nov. 30, 1999) ("*Rhythms-Covad Texas Arbitration Award*").

[71] Rhythms Comments at 22-26, 33-34; Covad Comments at 10-13.

counterbalancing incentive to ensure ILEC compliance with the 1996 Act, unless it plans to seek long distance approval in the near future. A federally-binding maximum interval will provide this incentive.

To provide a concrete example, Bell Atlantic has stated that it can provide retail DSL service to an end user within a maximum of 6 calendar days from the date of the order.[72] By contrast, CLEC loop orders often languish for weeks within the Bell Atlantic system and can be inexplicably cancelled or held by the ILEC. In the case of SBC-Texas, SBC's own evidence indicates that the average interval for loops provisioned in Houston was 11 days.[73] Often it takes days or weeks for ILEC notification of order and facility problems, a delay that is unlikely to occur within ILEC retail operations. Should this situation persist, customer confidence in the competitive DSL industry as a whole will vanish, having a devastating effect on competition, innovation, and customer choice.

ALTS therefore urges the Commission to issue a declaratory ruling adopting a specific provisioning interval for xDSL-capable loops. The adoption of a national xDSL loop provisioning interval will advance several of the Commission's longstanding goals in promoting competition and the rapid deployment of broadband services. Specifically, as the Commission concluded in the *Local Competition First Report and Order*, the adoption of national rules is appropriate "where they facilitate administration of sections 251 and 252, expedite negotiations and arbitrations by narrowing the potential range of dispute where appropriate to do so, offer uniform interpretations of the law that might not otherwise emerge until after years of litigation, remedy significant imbalances in bargaining power, and establish the minimum requirements

[72] Bell Atlantic-Massachusetts 271 Proceeding, D.T.E. 99-271, BA Response to In-hearing Data Request DTE-RR-81 (Nov. 19, 1999).

[73] NorthPoint Comments at 12 (*citing* Dysart Affidavit in support of SBC).

necessary to implement the nationwide competition that Congress sought to establish."[74] The adoption of provisioning intervals for xDSL loop provisioning advances each of those goals.

First, xDSL loop provisioning intervals facilitate administration of sections 251 and 252. As evidenced by the firestorm of debate over both the Bell Atlantic-New York and SBC-Texas section 271 applications, the issue of BOC compliance with the obligation to provide nondiscriminatory access to unbundled xDSL-compatible loops is an evidentiary nightmare. Because of the lack of specific provisioning intervals, Covad, Rhythms, Northpoint, and other xDSL providers have been forced to play a game of "he said-she said" in contending that the BOCs are discriminating in their loop provisioning practices. In the absence of specific provisioning intervals that would facilitate examination of loop data, the Commission has been forced to compare not only competing data, but also competing arguments about the appropriate legal standards to apply in evaluating discriminatory coduct. The Commission will undoubtedly face such evidentiary disputes with each subsequent application. By adopting provisioning intervals, the Commission will ensure that BOCs, commenting parties, and the Commission itself are able to use the same evidence and same legal requirements in evaluating checklist compliance, facilitating the section 271 process by bringing an end to the tangle of data and standards.

Perhaps more importantly, the lack of specific xDSL loop provisioning intervals leaves competitive LECs without a concrete enforcement remedy at the Commission. Although numerous competitive carriers are in possession of data demonstrating the inordinate and anticompetitive delays in loop provisioning across the country, in the absence of a clear Commission rule requiring a specific interval, enforcement of these anticompetitive practices is all but impossible. The Commission should support its mandate on stricter enforcement by

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[74] *Local Competition First Report and Order* ¶ 41.

giving itself the tools necessary to act against this most anticompetitive of incumbent LEC practices.

Finally, the adoption of xDSL loop provisioning intervals would "establish the minimum requirements necessary to implement the nationwide competition that Congress sought to establish."[75] The Commission's mandate to encourage the rapid deployment of competitive broadband services is beyond question. xDSL loop provisioning intervals serve that important goal by ensuring that competitive LECs seeking to offer a wide variety of innovative broadband services have timely access to the vital inputs to their service offerings. The adoption of xDSL loop provisioning intervals serves to advance broadband competition by ensuring that nationwide providers of competitive xDSL services are not subject to vastly different intervals across the country. The lack of intervals makes it virtually impossible for competitive LECs to market xDSL services with a promise of timely service delivery, because such delivery is contingent on widely variant provisioning intervals from state to state. A uniform, concrete federal requirement would serve to strip incumbent LECs of a powerful arrow in their quiver of anticompetitive acts.

ALTS proposes that this Commission adopt as a nationwide provisioning standard one already put into place by the Texas PUC – and one cited with approval by the Commission in other contexts. As the Commission noted in the *Line Sharing Order* in November 1999, the Texas Commission requires that the incumbent LEC "provision 95 percent of xDSL orders within 3 business days (for 1-10 loops), 7 business days (for 11-20 loops) and 10 business days (for 20+ loops)."[76] This procompetitive interval is more than sufficient for the incumbent LEC to

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[75] *Local Competition First Report and Order* ¶ 41.

[76] *Line Sharing Order* ¶ 174, *citing* SWBT Performance Measurements and Business Rules, Version 1.6, Measurement #55.1, Average Provisioning Intervals for Unbundled Network Elements, at 65 and 69, Installation Interval - DSL.

do the work necessary to provision a stand-alone loop to a requesting carrier, and the Commission should adopt this interval as a national rule. This provisioning interval runs in Texas from the application date to completion date for new, terminating, and change orders, and the Commission should adopt the same concrete requirement.[77] The Commission should also ensure that, in addition to the provisioning interval, incumbent LECs are subject to the nondiscrimination provisions of the Act with regard to their affiliates. As such, if a shorter loop provisioning interval is provided to an incumbent affiliate, the incumbent must provide that shorter interval to all competitive LECs.

3. The Commission should hold that ILECs must de-condition xDSL-capable loops in a timely manner

The Commission has held in both the *Advanced Services MO&O* and the *UNE Remand Order* that incumbent LECs must remove accreted devices from loops in order that CLECs may provide consumers with advanced services, such as DSL services.[78] As is the case with loop provisioning in general, the Commission has done a commendable job in clearly articulating the ILECs' obligation to remove all accreted loop devices, including load coils, bridged taps and repeaters but has not provided concrete, predictable provisioning guidelines to ensure that such removal is performed quickly, efficiently, or according to forward-looking cost principles.

The Commission should therefore require that loop de-conditioning for DSL loops be timely. ILECs have taken literally months to remove loop devices when requested. This delay creates a severely discriminatory result against CLECs, because ILECs have no need to de-

[77] *See Line Sharing Order* ¶ 174. The application date is the date that the requesting carrier authorizes the incumbent to provision the xDSL-capable loop based on the loop qualification. The completion date is the day that the incumbent completes the service order activity. If loop qualification determines that no conditioning is required, the application date is the date the incumbent returns the loop qualification. If the loop qualification concludes that conditioning is required, the carrier must notify the incumbent whether it wants the loop conditioned. If the requesting carrier supplements the request to order the conditioned loop, the application date becomes the date that the incumbent receives the supplement. *See* SWBT Performance Measurements and Business Rules, Version 1.6, at 65

condition loops for their own use. Either the ILEC adheres to an extremely distance-limited DSL deployment plan or has already, in the case of SBC, segregated "clean" xDSL-capable loops prior to their initial service launch.[79] Thus, CLECs that commence an aggressive, far-reaching rollout of DSL services would be disadvantaged for their industriousness — a decidedly un-forward thinking result. In addition, a Commission guideline for timely loop de-conditioning is necessary to prevent intervals for de-conditioned loops from swallowing any guidelines for non-de-conditioned loop intervals.

ALTS therefore requests that the Commission adopt a federally-binding maximum interval for ILEC loop de-conditioning that provides uniform guidance to all carriers and fosters rapid and widespread deployment of advanced services.

4. ILEC Loop De-Conditioning Must Adhere to Federal Cost-Based, Forward-Looking Pricing Principles

It is by now well settled that any local loop, including broadband loops, is a UNE.[80] As a UNE, the price for obtaining any loop must be "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the . . . network element . . . and nondiscriminatory[.]"[81] This cost-based requirement governs all activities necessary to provision the loop, including removal of accreted devices, as the Commission explicitly held in the *UNE Remand Order*.[82] Yet ILECs continue to impose prohibitive de-conditioning charges on CLECs providing advanced services. ALTS therefore seeks an affirmative Commission ruling that

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[78] *UNE Remand Order* ¶ 172; *Advanced Services MO&O* ¶ 53.

[79] "Moreover, the likelihood of SWBT applying conditioning charges to a retail customer is lower because SWBT has segregated 'clean loops' for ADSL services." *Rhythms-Covad Texas Arbitration Award* at 99.

[80] *UNE Remand Order* ¶¶ 162-201; *Advanced Services MO&O* ¶¶ 52-54; 47 C.F.R. § 51.319.

[81] 47 U.S.C. § 252(d)(1)(A).

[82] "We defer to the states to ensure that the costs incumbents impose on competitors for line conditioning are in compliance with our pricing for nonrecurring costs." *UNE Remand Order* ¶ 194.

requires ILEC de-conditioning charges to reflect the forward-looking cost of provisioning loops in the most efficient, least costly telecommunications network.[83]

The Commission should explicitly hold that loop conditioning charges, and other recurring and non-recurring charges, must adhere to Total Element Long Run Incremental Cost ("TELRIC") pricing principles as a matter of federal law.[84] Pursuant to the June 10, 1999 Order issued by the Court of Appeals for the Eighth Circuit, TELRIC rules govern all UNE pricing pending the Court's final disposition of the issue on the merits.[85] Moreover, the Commission's authority to promulgate federal pricing policy was resoundingly upheld by the Supreme Court in *Iowa Utilities*, and certainly that authority applies equally to loop de-conditioning as to loop provisioning in general. And though a ruling to this effect would seem unnecessary or even superfluous, as state commissions examine this pricing issue more closely, it remains nonetheless true that any policy statement issued from this Commission provides both the industry and state commissions guidance that more assuredly leads to an equitable result. In the smoke-and-mirror world of loop de-conditioning costing that the ILECs have created, this effect becomes all the more necessary.

ILECs have filed state UNE loop tariffs that include fantastically high loop de-conditioning rates and other non-recurring charges. For example, Bell Atlantic filed its Digital Design Loop ("DDL") tariff in New York, which included a charge of up to $750 per loop for removal of accreted loop devices.[86] In Texas, SBC has filed a tariff that charges up to $2000 per

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[83] ALTS supports the petition for reconsideration filed by Rhythms and Covad, requesting that the Commission alter its holding that ILECs may impose de-conditioning charges for loops under 18 kilofeet. This holding is not in keeping with forward-looking pricing principles, and runs contrary to established industry deployment practices stating that conditioning of short loops is unnecessary. *See* Joint Petition for Reconsideration of Rhythms NetConnections Inc. and Covad Communications Company, CC Docket No. 96-98 (Jan. 21, 2000).

[84] ALTS notes that it supports generally the arguments raised by Covad and Rhythms in their petition for reconsideration of the UNE Remand Order, filed January 21, 2000.

[85] *Iowa Utils. Bd. v. FCC*, Cases No. 96-3321 *et al.*, Order (June 10, 1999).

[86] Bell Atlantic-New York Tariff No. 916, Section 5 (effective Mar. 18, 2000).

loop for de-conditioning.[87] Similarly, BellSouth charges can reach $2000, depending on the loop length and configuration.[88] These quite unbelievable rates have an obviously chilling effect on CLEC deployment. In the already-competitive advanced services market with ever-decreasing margins, no CLEC could recover these loop charges in its end-user rates. Yet, as ALTS has discussed, in many cases the customers whose loops require de-conditioning must depend on CLECs to receive advanced services, having been long abandoned by ILEC deployment plans. To prevent ILECs from pricing loop de-conditioning in this prohibitive manner, the Commission should hold that its TELRIC rules, which require forward-looking, cost-based pricing for all UNEs, fully apply to the provisioning of xDSL-capable loop provisioning.

III. THE COMMISSION'S DECLARATORY RULING SHOULD SET *PRIMA FACIE* FEDERAL PENALTIES FOR ILEC NONCOMPLIANCE

As the Commission has become increasingly aware,[89] the best crafted federal mandates have little effect if they are not linked to meaningful enforcement penalties. Further, any penalty must be of certain application and outcome to put all parties on notice of the consequences of noncompliance. ALTS therefore petitions for adoption of self-executing monetary penalties for ILEC failure to comply with the provisioning rules established in this proceeding. In the context of a declaratory ruling, ALTS suggests that the Commission announce *prima facie* penalties that would apply, in subsequent enforcement or remedial proceedings, by means of a rebuttable presumption of applicability.

In addition, the Commission should expressly hold that any finding of ILEC liability in this context will be considered part of the record of any subsequent Section 271 proceeding, and

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[87] Figure based on removal of load coils, bridged taps, and repeaters on a loop longer than 17.5 kilofeet (filed Apr. 10, 2000).

[88] See Att. 2 to BellSouth's standard agreement.

[89] *See, e.g.*, *Application by Bell Atlantic-New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 98-295,

will be given significant weight in the Commission's review. Only by adopting such certain and quantifiable remedies will the Commission ensure that consumers reap the benefits of the vast amount of energy, attention and rulemaking resources that the Commission has devoted to loop unbundling and competitive broadband issues over the past several years.

CONCLUSION

For all these reasons, ALTS respectfully requests that the Commission act promptly to issue a declaratory ruling clarifying, construing and, as necessary, modifying its rules applicable to provisioning of UNE loops. The Commission should:

- Hold that Rule 51.319 requires ILECs to provide high-capacity loops, including DS-1 and DS-3 level loops, to any requesting CLEC on an unbundled and nondiscriminatory basis;
- Hold that Rule 51.319 requires ILECs to provide entire loops to CLECs providing integrated voice and data services over a shared line;
- Adopt maximum intervals for provisioning of UNE loops;
- Require ILECs to provide access to subloops wherever possible in a manner that will support provision of multiple services over a shared line;
- Hold that ILECs must provision special access circuits within the same interval in which they provision these circuits for their own retail services;
- Determine a federal deadline by which all ILEC OSS interfaces must electronically provide all loop information to which the ILEC has access;
- Ensure that all loop de-conditioning charges and other recurring and non-recurring charges adhere to TELRIC principles; and
- Set *prima facie* federal penalties for ILEC failure to comply with these rules.

These loop provisioning rules are vitally needed if the promise of competitive markets,

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Order (rel. Mar. 10, 2000) (assessing a fine of up to $27 million against Bell Atlantic-New York in response to an

and the rapidly accelerating competitive market for DSL and other broadband services, is to become and remain a reality. Loop provisioning is the number one obstacle facing local and advanced services competition; doing nothing would jeopardize everything good the Commission has accomplished since passage of the 1996 Act.

Respectfully submitted,

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OSS failure that resulted in the loss of 10,000 CLEC orders).