

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

In the Matter of	)	
	)	
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

**COMMENTS OF BELLSOUTH CORPORATION ON ALTS PETITION FOR  
DECLARATORY RELIEF**

BellSouth Corporation, by its attorneys, submits these comments on the Association For Local Telecommunications Services Petition For Declaratory Relief: Broadband Loop Provisioning (Petition).

**INTRODUCTION**

ALTS's petition seeks a declaratory ruling that "governs all aspects of the provisioning process for UNE loops that support broadband technologies" without benefit of notice, opportunity to comment or record evidence. Petition at 2. The Commission

has no legal authority to grant such relief outside of a rulemaking proceeding. ALTS has neither presented nor cited to record evidence that would guide the Commission in promulgating sensible declaratory rules in this area, even if the rules sought by ALTS could legally be promulgated. Further, Commission action here to engage in the extremely detailed, one-size-fits all national micro-management of provisioning processes that ALTS seeks would fly in the face of the Telecommunications Act, the realities of local conditions, and the Commission's reliance on competitive forces to assure the provision of broadband local access over cable facilities to competing providers. Ever more detailed regulation of incumbent LEC broadband facilities, given the Commission's hands-off policy towards the incumbent cable providers that lead the broadband race today, would raise substantial legal issues.

#### I. ALTS IDENTIFIES NO LEGAL BASIS FOR THE COMMISSION TO ISSUE THE DECLARATORY RELIEF IT REQUESTS, AND NO LEGAL BASIS EXISTS OUTSIDE OF A NOTICE AND COMMENT RULEMAKING

There is no legal basis for the Commission to proceed by declaratory order to provide the relief that ALTS requests here. First, the proceedings cited by ALTS did not provide notice that detailed, national loop provisioning rules were under consideration. Reflecting this lack of notice, the records in those proceedings are absent of evidence that would support such rules. ALTS does not cite to any specific evidence in any proceeding that would support the rules it seeks.<sup>1</sup> ALTS's bald assertion that there is evidence in some record that supports its request is belied by ALTS's inability to cite to any specific evidence.

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<sup>1</sup> ALTS does cite to its own comments in the Commission's recent proceedings on the SBC-Ameritech merger conditions, ALTS Petition at 11-12, but those comments are general observations about network architecture, and do not supply evidence supporting the specific rules ALTS seeks. As a legal matter, the record in the SBC-Ameritech proceeding could only be considered in this proceeding if it is substantially related. *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971) It is very unlikely that the record

## II. CLECS HAVE THE ABILITY TO ORDER AND OBTAIN TRANSMISSION FACILITIES IN AN EFFICIENT MANNER, DESPITE ALTS'S BALD ASSERTION TO THE CONTRARY

ALTS asserts that CLECs cannot obtain transmission facilities as efficiently as ALTS would like because ILEC ordering systems are not as good as they could be. ALTS provides no examples that the current systems actually handicap competition or pose any concrete threat of impairing a CLEC's ability to compete. Petition at 8. At any rate, ALTS's entire complaint here is mistaken; the Act does not impose a requirement that ILECs design systems to meet ALTS's idea of maximum efficiency regardless of network practicalities. What the Act generally requires is non-discrimination, which BellSouth's systems provide.

As an example of "inefficiency," ALTS points to a general ILEC requirement that a CLEC's collocation arrangement in a particular office be complete before the CLEC may order loop facilities to that collocation space.<sup>2</sup> This requirement, of course, has no effect at all on CLEC orders involving the thousands of collocation arrangements already up and running. At any rate, the goal of this requirement is entirely reasonable. Without a termination point for a loop ordered to a collocation space, there is no way to properly assign facilities. Assuring that facilities end up with the correct termination point on the connector block is essential to ensuring that service works when the process is complete. Errors in assigning block locations and tie cables are all too easy, and the present system aims to minimize those errors.

ALTS's lukewarm opinion that "it *seems* a needless technicality to require a precise termination point," Petition at 9 (emphasis added), is not backed up with any

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in a debate over a particular condition in a particular merger could be considered related to a proceeding to implement broad national standards affecting entities not party to the merger.

citation to record evidence in any proceeding that would support this proposition. Nor is there any record evidence of the effect a Commission rule here would have, how it could be implemented and what the costs and benefits might be. Further proof that Commission action here is unwarranted is the simple fact that, as ALTS points out, carriers (including BellSouth and BlueStar) are already considering ways to address the issues involved. Petition at 10, n. 25.

ALTS also raises several issues concerning the efficient ordering of copper loops and sub-loops. Petition at 10-16. ALTS does not appear to seek resolution of these issues here, because, as ALTS observes throughout this section of its Petition, these issues are before the Commission in its consideration of SBC's Project Pronto, and ALTS is "confident" the issues will be resolved there. Petition at 11-12.<sup>3</sup>

Finally, ALTS requests that the Commission should regulate the provision of special access circuits, Petition at 16-19, including establishing "maximum special access provisioning intervals." Petition at 18. The only evidence that ALTS points to on this issues is in an unrelated Bell Atlantic-NYNEX merger proceeding, which provides no factual basis for the Commission to establish a national standard, and no legal basis on which to act. ALTS chooses to ignore the continuing debate at the Commission over just how competitive special access services are. Implementation of the Local Competition Provisions Of the Telecommunications Act of 1996, *Supplemental Order Clarification*, CC Dkt No. 96-98 (rel. June 2, 2000). Commission action to further micro-manage the delivery of special access services on a nation-wide basis would fly in the face of the Commission's past practice and the recent *Supplemental Order Clarification*.

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<sup>2</sup> ALTS also complains that DS1 provisioning takes 45 days. Petition at 8. This is simply wrong, at least in BellSouth's region, where DS1's are generally provisioned far more quickly.

### III. THE COMMISSION CANNOT AND SHOULD NOT SET NATIONAL STANDARDS FOR xDSL LOOP PROVISIONING

ALTS requests the Commission set a national minimum standard for ILECs to provision xDSL-capable loops. Petition at 19. ALTS's suggestion that the Commission has a legal or factual basis to do this can hardly be taken seriously. Its petition contains not a single cite to any record evidence or to any notice to carriers in any of the proceedings it has cited that the Commission could engage in such action.<sup>4</sup> Thus, the Commission cannot legally grant ALTS's request for declaratory relief here.

BellSouth supplies xDSL-capable loops to CLECs under the Act's nondiscrimination standard. BellSouth is meeting and will continue to meet this obligation. The Act's nondiscrimination standard is flexible enough to take into account variations among networks and geographies in a way that insulates CLECs from potential competitive harms. A national standard that sets out a fixed time for loop provisioning makes no practical sense given the substantial variation between local networks across the country and the variations between urban, suburban and rural areas. ALTS has demonstrated no need for this second and unrealistically inflexible standard for loop provisioning.

In addition, the Commission must carefully weigh the consequences of jumping into micro-managing the provision of broadband services over ILEC facilities. Today, cable companies enjoy a substantial lead in the race to provide broadband services to consumers. Cable companies have attributed their ability to invest in upgrading their

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<sup>3</sup> As noted above, the Commission's consideration of the specific merger conditions at issue in its review of the SBC-Ameritech merger do not provide a legal basis for issuing national rules affecting non-parties to the merger.

<sup>4</sup> ALTS admits that the "most germane" proceeding to this issue is the on-going review of SBC's 271 application for Texas. That proceeding concerns a specific application concerning one LEC in one state. It is not sufficiently related to the national action ALTS requests to provide a legal basis for Commission action.

networks to broadband to the Commission's refusal to require competitive access to the cable network. Instead of regulation, the Commission purports to rely on competition from ILECs, CLECs, wireless and satellite providers to force cable providers to offer access. Competition from cable providers leading the race, as well as CLECs, wireless and satellite providers is at least as equally likely to constrain ILECs. Further onerous regulation of ILEC broadband offerings may well cement the lead of cable providers. The Commission cannot continue to increase regulation of one competitor while taking a hands-off approach to a second without affecting marketplace results and running the risk that its actions will be viewed as arbitrary and capricious. Even threats of increased regulations, like that posed by this Petition, of increased regulation can have a chilling effect on ILEC deployment of broadband facilities.

#### CONCLUSION

For the reasons set out above, ALTS's petition for declaratory relief should be denied in its entirety.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I do hereby certify that I have this 23<sup>rd</sup> day of June 2000 served the following parties to this action with a copy of the foregoing COMMENTS OF BELLSOUTH CORPORATION by electronic filing, hand delivery or by placing a true correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed on the attached service list.

/s/ Ann Mittelstead

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Ann Mittelstead

Service List  
CC Docket No. 98-147  
CC Docket No. 96-98  
CC Docket No. 98-141  
NSD-L-00-48  
DA 00-891

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