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

In the Matters 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 AT&T CORP.

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SUMMARY

ALTS is quite right that incumbent local exchange carriers ("ILECs")are falling far short of their loop access and provisioning obligations under the law. Despite the passage of the Telecommunications Act of 1996, and the Commission's implementation rules, ILECs continue to obstruct competition by new entrants seeking to use network elements, with adverse affects on traditional voice services, advanced services, and bundled voice and data service packages.

As other parties have asserted in several open pleadings before the Commission and as ALTS contends, there remain a number of serious anticompetitive issues concerning ILEC loop provisioning. Some of the more urgent problems requiring FCC action include: (1) the ILECs' unlawful refusal to enable carriers using the UNE-Platform from offering advanced services and voice services over the same loop; and (2) the ILECs' intolerable deficiencies in providing the "hot cuts" needed to transfer loops to CLECs. The provision of DSL by UNE-P carriers is fully briefed in the *Texas 271* and *Line Sharing* proceedings and requires an immediate decision to assure that end users may choose an entity other than an ILEC capable of offering bundled voice and data. Hot cuts also must be one of the agency's main priorities, to alleviate the delays, errors, and outages that frustrate consumers and undermine competition. The Commission should also reiterate that requesting carriers are entitled to obtain unbundled elements, combinations of elements, interconnection, collocation, and network information -- whether the network is last-generation or next-generation. New technologies must be deployed in ways that expand competitive opportunity and consumer choice, not used as opportunities for ILECs to create new barriers to entry.

AT&T also urges the Commission to:

- require ILECs to provide uniform detailed hot-cut processes and utilize technological advancements that automate the hot-cut process;
- clarify that ILECs have an obligation to provide to competitors the same information about their facilities as is available to the ILECs themselves, including, but not limited to, information about the presence of DLC technology on all requested loops;

- ensure that competitors have nondiscriminatory unbundled access to all loops, including, but not limited to, high-capacity loops at DS-1 levels and higher and xDSL-capable loops, and establish loop provisioning intervals;

- clarify that the ILECs' obligation to provide nondiscriminatory access to high-capacity loops includes the obligation to inform CLECs of the location and availability of those facilities prior to ordering collocation;

- clarify that nondiscriminatory access to high-capacity loops should mean at least equal-in-quality to that which the ILEC provides itself, its affiliates, or its end-user customers;

- clarify, consistent with TELRIC principles, that ILECs should not impose any loop conditioning charges for loops less than 18,000 feet long; and

- reiterate that ILECs may not discriminate against competitors in providing special access circuits. In particular, the Commission should make clear that it is wholly unacceptable to require one interval of time to install a special access circuit and a different interval to provide the same capability as a UNE when there is no technical justification for the difference.

Finally, in several of the areas raised by ALTS, the problems that have been identified require less in the way of clarifying existing rules and more in the way of enforcing them. AT&T urges the Commission not to shrink from either task.

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COMMENTS OF AT&T CORP.

AT&T Corp. ("AT&T") hereby responds to the petition of the Association for Local Telecommunications Services ("ALTS") for a declaratory ruling to clarify, interpret, and modify the Federal Communications Commission's ("FCC's" or "Commission's") rules governing loop access and provisioning by incumbent local exchange carriers ("ILECs").[1]

[1] Association of Local Telecommunications Services, Petition for Declaratory Ruling: Broadband Loop Provisioning (filed May17, 2000) ("ALTS Petition"). By Public Notice released May 24, 2000 (DA 00-1141), the Common Carrier Bureau established a pleading cycle for comments on the ALTS Petition.

INTRODUCTION

In the overall thrust of its petition, and in many of its particulars, ALTS is quite right. ILECs' performance on loop access and provisioning falls far short of their statutory obligations.[2] It has been more than four years since the passage of the Telecommunications Act of 1996,[3] which was intended to bring an end to local telephone monopolies by enabling competitors to access local bottleneck facilities. Yet, even now, competitive local exchange carriers ("CLECs") routinely encounter significant difficulties, frustrations, and unnecessary delays in accessing the most essential of all unbundled network elements -- the local loop.

Particularly disturbing is that, after four years of rulemakings, reconsiderations, negotiations, arbitrations, and appeals, the loop access difficulties that competitors face are not just minor inconveniences or logistical glitches at the tail-end of successful implementation. Rather, ILECs continue to impose difficulties that delay, hinder, or even foreclose competitors from offering traditional voice services, advanced services, and bundled voice and data service packages to residential and business customers through ILEC network elements. Critically, these difficulties persist at a time when CLECstruggle to secure an initial foothold and raise capital for further competitive expansion. Moreover, the competitive viability of new entrants rests largely on factors uniquely in the ILECs' power to provide – or withhold: (1) the quality and capabilities of the loops provided; (2) the quality, timeliness, and volume capacity of supporting operational processes, including but not limited to loop provisioning; and (3) the opportunity for competitors to fully utilize all of the features and capabilities of the loop, limited only by its inherent technical characteristics.

AT&T agrees with ALTS that material problems exist in all of these areas. An especially urgent problem involves the ILECs' refusal to negotiate reasonable terms, conditions, and operating procedures to permit UNE-P carriers to provide both voice and advanced services over

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[2] ALTS Petition at 2.

[3] Pub. L. 104-014, 110 Stat. 56, *codified as* 47 U.S.C. § 151 *et seq.* (Feb, 8, 1996) (hereinafter "1996 Act"), amending the Communications Act of 1934 (collectively hereinafter "Communications Act").

unbundled loops obtained as a part of the UNE-Platform. Instead, ILECs have insisted that UNE-P carriers dismantle the platform and inefficiently reassemble the piece-parts, thereby ensuring that the ILEC – and no one else – can offer all of the pieces of a voice and data bundle. It is no coincidence that the value and utility of UNE-P as an entry strategy will be seriously undermined if UNE-P carriers cannot add high-speed data services to their voice offering.

This issue is already ripe for resolution and urgently requires immediate action by the Commission -- even before the pleading cycle closes on the ALTS Petition. Specifically, AT&T urges the Commission to clarify immediately the ILECs' obligation to enable UNE-P carriers to provide DSL to their voice customers.[4] As the Justice Department has urged, this issue should be "promptly resolved" because otherwise UNE-P carriers will inevitably be at a "competitive disadvantage" to ILECs.[5]

Also of critical importance is the ILECs' failure to provision loop hot-cuts in a commercially reasonable manner. Although not mentioned by ALTS, hot cuts are vital to the development of, and continued investment in, facilities-based competition. In absence of a federal mandate, CLECs seeking to serve customers though the use of unbundled loops and self-deployed switches (UNE-L) have been subjected to inconsistent, error prone, expensive, and limited loop delivery processes. To exacerbate matters further, the general lack of adequate and comprehensive performance monitoring, based upon complete and verifiable data, inhibits

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[4] This issue has been briefed extensively in the Commission's line sharing proceeding, the second Texas 271 proceeding, and in the Commission's review of SBC's request for interpretation, waiver, and modification of the SBC/Ameritech merger conditions. *See In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, i.e.*, Petition of AT&T for Expedited Clarification, or in the Alternative, for Reconsideration, CC Docket Nos. 98-147 and 96-98 (filed Feb. 9, 2000); *In the Matter of Application of 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*, Supplemental Comments of AT&T Corp. in Opposition to SBC's Section 271 Application for Texas, CC Docket No. 00-65 (filed Apr. 26, 2000) at 13-25; *In re Application of Ameritech Corp, Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, Comments of AT&T Corp. in Response to SBC's Request for Interpretation, Waiver or Modification of the SBC/Ameritech Merger Conditions, CC Docket No. 98-11 (filed Mar. 3, 2000).

[5] Letter from Donald J. Russell, Justice Department, to Magalie Roman Salas, FCC, CC Docket No. 00-65, at 7 n.17 (June 13, 2000).

regulators' efforts to resolve these issues. As a result, CLEC customers face unnecessary service delays and outages, and the ILECs maintain their hold on their local services customer base. At least one ILEC (BellSouth) has repeatedly refused to disclose complete details of its hot-cut process. Moreover, many ILECs are not providing sufficiently reliable hot cuts or even informing the requesting CLECs when they are unable to meet their commitments. This, in turn, makes retail customers especially reluctant to switch their service to a new entrant.

Lack of appropriate and necessary coordination of the hot-cut process is not limited to a few states; rather, it is a systemic national problem that disrupts CLECs' telecommunications offerings and results in degraded service to CLEC customers. Hot-cut failures have left the CLECs' customers without telephone service, or severely impaired service. Worse, because the ILECs' commercially unacceptable provisioning is not directly apparent to the retail customer, the marketplace reality is that CLECs -- not ILECs -- are held accountable for service outages and delays caused by the ILECs. Thus, lack of uniformity in hot-cut processes, failures to follow established processes, cutovers that are too early or too late or performed incorrectly, and post-cutover service disruptions are all among the litany of problems that will not be resolved without additional leadership from the Commission.

Similarly, ILECs seek to deny the CLECs' full use of all the capabilities of the loops (or subloops) provided through the use of their new network architectures. For example, if a retail customer is served by next-generation digital loop carrier ("DLC") facilities, some ILECs require that UNE-P carriers engage in needless collocation to access the customer's loop while others outright deny UNE-P CLECs the opportunity to provide local voice service, whether on a standalone basis or in combination with advanced services. In both instances, there is absolutely <u>no</u> technological or legal justification for the ILECs' actions. By refusing to accommodate the CLECs' requests, the ILECs are necessarily discriminating in favor of themselves (and their affiliates) and against companies like AT&T that wish to compete with the voice, data, and bundled voice and data services that only the ILECs (and their affiliates) can now efficiently offer and provide.

With respect to the myriad of other loop access issues cited by ALTS, many of these concerns have already been addressed in previous proceedings, including the *Local Competition Order*,[6] the *UNE Remand Order*,[7] and the *Line Sharing Order*.[8] The continuing existence of many of these problems is attributable less to the need for further clarification of the ILECs' legal obligations and more to the need for strong enforcement measures. Undoubtedly, enforcement efforts can proceed more rapidly where ambiguities over legal obligations have been eliminated. Thus, in order to ensure that competitors have nondiscriminatory access to loops, AT&T suggests that the Commission pursue a two-track strategy: (1) ensure that ILECs fully understand their loop provisioning responsibilities by reiterating its current rules and promptly clarifying any unaddressed or ambiguous issues surrounding them; and (2) enforce loop access and provisioning rules with swift and decisive action.

DISCUSSION

I. THE COMMISSION MUST ENSURE THAT ILECS' LOOP ACCESS AND PROVISIONING PROCESSES ARE CONSISTENT WITH THEIR STATUTORY OBLIGATIONS AND BASED ON TELRIC PRICING.

The loop provisioning process that competitors must endure is rife with ILEC failures. For far too long, competitors have had to fight with the ILECs over seemingly settled obligations -- to provide unbundled access to any loop, as long as it is technically feasible to do so, regardless of whether that loop is a high-capacity loop, DSL-capable loop, or POTS line. As discussed in Section I.A., ILECs jeopardize competitors' ability to acquire new customers by failing to establish a sufficiently detailed and uniform hot-cut process and by failing to execute their purported processes, thereby reducing the quality, timeliness and reliability of the service CLECs can offer to end users. Moreover, the absence of national performance standards allows

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[6] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, et al.*, First Report and Order, 11 FCC Rd 15499 (1996) (hereinafter "*Local Competition Order*").

[7] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, CC Docket No. 96-98 (1999) (hereinafter "*UNE Remand Order*").

[8] *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, et al.*, Third Report and Order, CC Docket No. 98-147, and Fourth Report and Order, CC Docket No. 96-98 (rel. Dec. 9, 1999) (hereinafter "*Line Sharing Order*").

the ILECs excessive leeway to avoid meeting their legal obligations to CLECs and to delay the competition Congress intended the Act to engender.

In addition, as discussed in Section I.B., ILECs have accorded themselves a competitive advantage by failing to provide competitors access to the same information about network facilities that they provide to themselves. Further, as indicated in the ALTS Petition and discussed in Section I.C., ILECs have resisted their basic obligation to provide high-capacity loops and this resistance is compounded by too-frequent ILEC delays in loop delivery. Again, taking advantage of the absence of standard provisioning intervals, the ILECs deliver loops on unreasonable intervals while spurning simple and feasible steps that would accelerate loop access for competitors. For example, ILECs insist on forcing competitors to order high-capacity loops as a sequential step after the completion of collocation build-out, despite the fact that it is technically feasible and inherently practical to process such orders in parallel. Finally, as discussed in Section I.D., ILECs have imposed outrageous charges for conditioning loops, in a clear effort to resist TELRIC pricing obligations.

A. The Commission Must Require ILECs to Improve Their Substandard Hot-Cut Performance by Providing Detailed Uniform Hot-Cut Processes, Utilizing Technological Advancements and Complying With Rigorous National Standards.

One of the most important loop access issues is the current inadequacy of the ILEC processes for loop conversion, *i.e.*, "hot cuts." It is clear that an ILEC must provide "unbundled loops through hot cuts in a manner that offers an efficient competitor a meaningful opportunity to compete."[9] Fundamentally, this "meaningful opportunity to compete" requires that CLECs and their customers be protected against unnecessary occurrences of service outages during the switch between providers.[10] Seamless and reliable cutovers are essential, because consumers are

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[9] *In the Matter of 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*, Memorandum Opinion and Order, CC Docket No. 99-295, FCC 99-404 (rel. Dec. 22, 1999) (hereinafter "*New York 271 Order*") ¶ 291.

[10] *In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterALTA Services in Louisiana*, Memorandum Opinion and Order, CC Docket No. 98-121 (rel. October 13, 1998) (determining that "to provide nondiscriminatory access to

not willing to risk service problems that arise as a result of changing local service providers. Indeed, many of AT&T's small business customers, such as florists and delivery companies, *cannot* afford to risk even a few hours of outage. It is further critical that the cutover processes do not constrain the pace of competition due to an inability to achieve both market volume and minimally acceptable performance – measured in terms of quality, timeliness, and reliability.

Because the current cutover process involves substantial interaction and coordination between the ILEC and competing provider, it is critical that both parties have a mutual understanding of the steps and timing of the process. Any misunderstandings or information lapses can result in a failed cutover process and lead to extended service disruptions. Moreover, because the ILEC controls the hot-cut process, it is critical that competitors know the ILEC's process in order to coordinate effectively.

Accordingly, AT&T has attempted to obtain from each ILEC a uniform hot-cut process for its various service areas, and to have the ILEC provide competitors with a complete description of that process, including time frames for each step. Despite the obvious logic of this request, AT&T has faced significant resistance in obtaining ILEC commitments to both uniformity and disclosure.[11]

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unbundled loops, the BOC must be able to deliver unbundled loops, of the same quality as the loops that the BOC uses to provide service to its own customers, to the competitor carrier within a reasonable timeframe with a minimum of service disruption."). The Commission and DOJ have focused extensively on hot cuts in the New York and Texas 271 proceedings. *New York 271 Order* ¶ 291 n.925; *In the Matter of Application by New York Telephone Company (d/b/a/ Bell Atlantic - New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Services in New York*, Evaluation of the United States Department of Justice, CC Docket No. 99-295 (filed Nov. 1, 1999) at 14-22; *In the Matter of 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*, Evaluation of the United States Department of Justice, CC Docket No. 00-4 (filed Feb. 11, 2000) at 29-35; Letter from Donald J. Russell, Justice Department, to Magalie Roman Salas, FCC, CC Docket No. 00-65, (June 13, 2000) at 8-17. The Commission has recognized that performance of the sort seen in New York was "minimally acceptable." Indeed, in AT&T's judgement BA-NY was not capable of delivering the reliability that consumers deserve and competitors are entitled to under the law.

[11] For example, AT&T has not been able to obtain such comprehensive information from BellSouth. BellSouth's provisioning is deficient in several ways: (a) BellSouth has failed to disclose the steps that it intends to take in completing the hot-cut process or to disclose completion timeframes; nor has it disclosed the relevant timeframes for the individual steps in the process; (b) BellSouth has failed to provide AT&T documentation that would allow AT&T to notify customers when service conversion will occur; (c) BellSouth has failed to provide Firm Order Confirmations ("FOCs") that are reliable (in other words, its "firm order commitments" are neither firm nor commitments); and (d) BellSouth has failed to provide critical information AT&T needs at least 48 hours in advance of the loop cutover.

Although the hot-cut process is manual, it is indisputably an operations support system ("OSS"). Particularly with respect to electronic OSS, this Commission has encouraged, and in some instances explicitly required, that processes (as experienced by the CLEC) be uniform across the entirety of the ILEC operating area.[12] Furthermore, there can be no debate that the Commission has required full disclosure and comprehensive documentation for other areas of OSS. The identical needs exist with respect to hot cuts. Thus, the Commission should explicitly require ILECs to: (1) establish uniform procedures; (2) comprehensively and accurately document and disclose those procedures; (3) demonstrate compliance with the procedures; and (4) adhere to documented, collaborative change control procedures when instituting process changes that may have an impact upon CLECs' business operations. All these requirements should be encompassed within a structured framework and implemented according to a specific and short timeline. In order to do so, it may be efficient to address the matter at the holding company level through an industry collaborative effort with oversight and issue resolution by the Commission.

In addition, just as there are industry forums that address the implementation of network technologies and ordering procedures, the Commission should consider instituting a similar mechanism for hot-cut procedures. In particular, one of the responsibilities for such a body could be to focus on development of new technologies and procedures that simplify and improve the hot-cut process. For example, technologies now exist that can increase the efficiency and

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[12] *In the Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries,* Memorandum Opinion and Order (rel. Aug. 14, 1997) (requiring uniformity throughout the Bell Atlantic-NYNEX region) ¶ 183; *In re Application of Ameritech Corp, Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rule,* Memorandum Opinion and Order, CC Docket No. 98-141, FCC 99-279 (rel. Oct. 18, 1999) ¶ 381 (requiring uniformity through out the SBC-Ameritech region); *In the Matter of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License,* Memorandum Opinion and Order CC Docket No. 98-184 (rel. June 16, 2000) ¶¶ 285-287 (requiring Bell Atlantic and GTE to provide uniform OSS interfaces and business rules within their respective regions).

reliability of the hot-cut process and minimize the amount of necessary manual intervention and coordination.[13]

Moreover, there is a need to develop new procedures for prioritization of CLEC hot cuts. The actual process of providing hot cuts takes just a few moments, yet in practice it can take ILECs five days to complete. Part of this problem is due to the way in which ILECs prioritize competitors' work orders in comparison to their prioritization of their own orders. Another part of the problem appears to be that ILECs systematically assign competitors facilities that do not connect to the switch, while reserving facilities that are already connected for themselves, thus requiring longer implementation time for hot cuts. This practice of systematically reserving preferable facilities for themselves while denying competitors similar access is blatantly anticompetitive. Indeed, in response to such a similarly audacious exercise by SBC, the Commission ordered SBC to dismantle its "Selective Feeder Separation" technique, whereby SBC reserved for itself loops conditioned for xDSL services, while assigning loops with accredited devices to competitors.[14] In view of this determination, it is perfectly proper for the Commission to use an industry forum to determine whether such similar discrimination has aggravated competitors' loop conversions. Of course, in setting up a mechanism to address these issues, the Commission needs to ensure that the approach actually accelerates the unification and improvement of the hot-cut process, and does not give ILECs another opportunity for delay.

As the Commission addresses these issues, it should also develop rigorous standards for hot-cut performance. Given business customers' strong aversion to any kind of change that could disrupt their communications with their own customers, the standards for hot cuts should be higher than the levels determined to be "minimally acceptable" for purposes of Section 271

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[13] For example, AT&T and Pacific Bell are currently testing a proprietary technology known as the "Kieren Konnector" to automate the hot-cut process. Currently, preparations for hot cuts can and routinely are made and tested in advance, under the "due date minus two" approach that AT&T uses with several ILECs. But on the appointed date and time, the connection from the loop to AT&T's collocation space requires a "lift and lay" process at the distribution frame. The new Pacific Bell approach will allow this to be done automatically, when the CLEC sends the appropriate tone to the "Konnector." This avoids the complications, errors, and expenses of coordinated manual hot cuts, thereby benefiting CLECs, ILECs, and consumers.

[14] *Line Sharing Order* ¶¶ 215-26.

compliance in the *New York 271 Order*. An ILEC must provide "unbundled loops through hot cuts in a manner that provides competitors with a meaningful opportunity to compete."[15] Under the facts and circumstances presented in that application, the Commission tolerated on-time performance of as little as 90 percent, service outages approaching five percent, and installation troubles of nearly two percent, but it also warned that these levels were "minimally acceptable" and that a decline in any area would lead to enforcement action.[16] The Commission also expressly relied on the existence of a state-approved performance plan that "provid[ed] incentives to improve [on-time] performance above the[] 90 percent level."[17] The Commission did not, however, suggest that these levels of performance were appropriate performance *targets* or that performance at these levels would avoid significant harm to consumers or competitors.

AT&T is currently working with state commissions to establish hot-cut performance targets that are significantly better for consumers and for competition than the "minimally acceptable" performance discussed in the *New York 271* Order and strongly urges the Commission to support this effort. AT&T is also continuing to work with ILECs to develop and implement reasonable hot-cut processes, and to submit orders in quantities that test those processes. However, these efforts must be tempered with AT&T's concerns to limit the risk to its potential local customers that the hot cut will result in an unacceptable service outage. It is simply untenable for AT&T or other CLECs to place both its customers and its own reputation at risk in order to prove that an ILEC is not meeting its obligation. AT&T is currently working with state commissions to seek recognition of the risks, and establish realistic limits or "pain thresholds" at which AT&T will cease to submit orders until root cause analysis is completed and necessary changes implemented to ensure the problems have been addressed.

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[15] *New York 271 Order* ¶ 291.
[16] *Id.* ¶ 309.
[17] *Id.* ¶ 298.

B. The Commission Must Clarify that ILECs Have an Obligation to Provide to Competitors the Same Information About Their Facilities as Is Available to the ILECs Themselves.

ALTS has asked the Commission to ensure that competitors have nondiscriminatory access to information about the facilities that they are ordering, specifically xDSL-capable loops.[18] AT&T agrees that, in order for competitors to be able to order ILEC facilities that are appropriate for their intended uses, it is critical that competitors have sufficient information about the availability and technical characteristics of those facilities. Further, in order to offer competitively viable services, competitors must be able to access this information as quickly as the ILEC can access this same information .

This is unquestionably true in the instance of loop qualification information[19] -- the information that is needed to ensure that loops exist to a particular customer's location and have the necessary technical characteristics to permit the services to function as intended. The Commission has already determined that competitors have a right of access to all loop qualification information that an ILEC has "in any of its own databases or other internal records" and that "can be accessed by any of the ILEC's personnel."[20] Further, the Commission recognized that ILECs must provide loop information to competitors in the same time frames in which their own personnel (or employees of their affiliates) can access the information, with the further proviso that the information provided shall not be summarized or otherwise interpreted by the ILEC.[21]

While the ILECs' responsibility to provide information about their facilities has most recently been articulated in the *UNE Remand Order*, this principle is by no means new and governs all facilities, not just xDSL loops. In the *Second Local Competition Order*, the

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[18] ALTS Petition at 22-24.

[19] Although recent attention has bee focused upon the information necessary to determine availability of and to qualify loop for DSL services, access to loop qualification information is more generic. Loop qualification information must be reasonably available so as to permit a CLEC to offer any service it desires, not just POTS or DSL.

[20] *UNE Remand Order* ¶¶ 427, 430.

[21] *Id.* ¶ 431.

Commission highlighted the direct relationship between the competitors' knowledge of the ILEC's network and their ability to offer alternatives to consumers. Accordingly, the Commission required ILECs to detail changes to the network and available facilities. Specifically, the Commission stated ILECs must afford CLECs "complete information about network design, technical standards, and planned changes to the network [, including] (1) the date changes are to occur; (2) the location at which changes are to occur; (3) types of changes, [and] (4) the reasonably foreseeable impact [on CLECs] of changes to be implemented . . . ."[22]

Yet despite these mandates, competitors are still unable to access pre-ordering information about facilities in a timely manner. In the instance of loop qualification, the fundamental issue with respect to loop qualification information is that ILECs routinely mechanize loop qualification information that is useful to meet their own (or their affiliates') purposes. Experience shows that ILECs typically study their manual records and then extract, summarize and load into a database, only the information that is useful to the deployment of the services they elect to offer. This approach provides the ILECs with efficient electronic access to summarized information derived from manual records. But providing CLECs with mechanized access to such data does not comply with the parity standard for information access. This only provides CLECs with parity access to summary information that is of marginal use to their specific business plans. In order to obtain other ILEC data they need to provide their own services, CLECs must use costly "parity" manual access to the detailed information underlying the summarized data. AT&T acknowledges that it would be a costly undertaking to require the ILECs to provide mechanized access to all possible loop qualification data. Where it is currently available on a mechanized basis, however, the ILEC should be required to provide equivalent access to CLECs by a date certain, and failure to do so should subject the ILEC to monetary

[22] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Local Competition Order, 11 FCC Rcd. 19,392, 19,479 (1996); *see* 47 U.S.C. § 251(c)(5); 47 C.F.R. §§ 51.325-335.

consequences for non-compliance.[23] Furthermore, if an ILEC implements further mechanization of access to detailed information, the CLECs should be provided the option of electronic access at the same time. Moreover, the Commission should also clarify that, if an ILEC elects to mechanize access to summary information, CLECs must be afforded electronic access to the subtending detailed information at no additional charge. In the alternative, the CLECs could be provided with the electronic access to similarly summarized information, provided the summarized information meets the needs of the CLECs.

Furthermore, the Commission should determine that ILECs must provide competitors with information about the presence of DLC technology on all requested loops, not just for those loops that competitors seek to use for xDSL services. For AT&T, the presence of DLC on loops used to provide voice service, whether UNE-P or UNE-L, changes considerably the way in which AT&T must deploy services to that customer. Accommodating the presence of DLC also adds additional time to deployment, making it critical that AT&T be aware as soon as possible whether DLC technology is present on a loop it intends to use for voice service. Without this information, AT&T will face unnecessary delays that are inconsistent with the Commission's requirement that competitors be afforded a meaningful opportunity to compete.[24] The Commission should clarify that competitors have a right to obtain all pertinent information about a loop (such as the presence of DLC), regardless of whether that loop will be used (initially) to provide data or voice services.[25]

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[23] Further, the Commission should most certainly consider such noncompliance in 271 proceedings. As DOJ stated, and the Commission affirmed, "manual processing that results in the practical unavailability of services or elements at foreseeable demand levels can impede the development of competition, and thus obviously has a direct bearing on compliance with the competitive checklist and the Commission's rules." *In the Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, CC Docket No. 97-137 (rel. Aug 19, 1997) (hereinafter "*Ameritech Michigan Order*") ¶ 180.

[24] In New York, AT&T is too often informed -- only on the day when a hot cut is scheduled to occur -- that the loop is served by IDLC and therefore cannot be cut over.

[25] *Local Competition Order* ¶ 381 ("section 251(c)(3) does not limit the types of telecommunications services that competitors may provide over unbundled elements to those offered by the incumbent LEC").

Finally, the Commission should address ALTS's concern that ILECs deny competitors information on the availability of high-capacity loops in a particular central office.[26] Competitors are not always privy to ILEC data that indicates whether high-capacity facilities are available in a given central office. This inevitably complicates a CLEC's decisions regarding the timing and locations of its competitive initiatives. As a result, a competitor may order collocation at considerable cost, only to learn later that the central office is not served by the high-capacity loops that it needs to offer its services. At this point, the competitor must either devise an alternative means of access facilities at that central office (if such a means is available and is not prohibitively expensive) or cancel its collocation space and deployment plans, resulting in wasted time and expense. The Commission can address this problem simply by clarifying that ILECs' obligation to provide nondiscriminatory access to high-capacity loops includes the obligation to inform competitors as to the location and availability of those facilities *prior* to ordering collocation.

C. The Commission Must Ensure that Competitors Have Nondiscriminatory Unbundled Access to all Loops.

ALTS has asked the Commission to "[h]old 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," as well as provide "entire loops to CLECs providing integrated voice and data services."[27] In supporting this request, ALTS has identified two problems that competitors face in accessing unbundled high-capacity loops. First, in some instances, ILECs refuse to allow competitors, particularly providers of bundled voice and data services, to access loops. Second, even where ILECs have in theory agreed to provide a loop, their implementation is so mangled by delays and "arcane ILEC processes" that the result is as ineffective as if the ILEC had denied access in the first instance. This has particularly been true of access to high-capacity loops. As ALTS has shown, ILECs have failed to provide those loops

[26] ALTS Petition at 10.
[27] *Id.* at 3.

in a timely manner, and have also failed to provide competitors information on where those facilities are available.[28]

With respect to outright ILEC refusals to provide particular kinds of high-capacity loops, the solution lies in enforcement, not further clarification of existing rules. The Commission has already squarely held that ILECs are obligated to provide competitors with access to the local loop, including high-capacity loops at DS-1 levels and higher:[29]

> We conclude that incumbent LECs must provide access to unbundled loops, including high-capacity loops, nationwide. . . . We continue to believe that access to these high capacity lines is necessary for ubiquitous deployment of high-speed services, including high-speed Internet access.[30]

It is also unquestionable that practical denials of loop access that result from botched implementation violate the ILECs' obligation to provide unbundled access to high-capacity loops in a nondiscriminatory manner.[31] For those functions the ILEC provides to competing carriers that are analogous to the functions the ILEC provides to itself in connection with its own retail service offerings, nondiscrimination requires that the ILEC provide access to competing carriers in "substantially the same time and manner" as it provides to itself.[32] While some UNEs may not have a retail analog, high-capacity loops (such as 4-wire, coax, fiber, or xDSL-capable loops) are different, because ILECs provision high-capacity loops (or at least analogous functionalities) to their own customers, which permits a direct comparison to the provisioning of a new UNE.[33] Thus, the Commission should clarify that nondiscriminatory access for high-capacity loops

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[28] *Id.* at 8-10.

[29] *UNE Remand Order* ¶ 184

[30] *Id.* ¶¶ 165, 187; *see also id.* at ¶¶ 176-177, 184, 187.

[31] 47 U.S.C. § 251(c)(3).

[32] *New York 271 Order*¶ 44.

[33] For those functions that have no retail analog, the ILEC must demonstrate that the access it affords to competitors would offer an efficient carrier a "meaningful opportunity to compete." *Ameritech Michigan Order* ¶ 141. As noted in the *Ameritech Michigan Order*, this standard is intended to be a proxy for whether access is being provided in substantially the same time and manner and, thus, nondiscriminatory. *Id.* ¶ 45. While not applicable in the case of high-capacity loops for the reason noted above, the ILECs' record in provisioning high-capacity loops would nevertheless in many cases also fail the "meaningful opportunity to compete" standard.

should mean "at least equal-in-quality to that which the ILEC provides itself," its affiliates, or its end-user customers.[34]

ALTS further shows that ILECs have denied competitors nondiscriminatory access to loops by requiring competitors to order loops sequentially, rather than in "parallel."[35] This is inconsistent with the nondiscrimination requirement because it interferes with competitors' meaningful opportunity to compete. Sequential ordering is completely unrelated to any legitimate need of the ILECs but serves only to delay competitors' access to elements.[36] The practice of requiring sequential ordering is particularly questionable when the UNE loop standard interval is longer than the collocation delivery interval.[37]

Finally, ALTS describes concerns specific to the CLEC's ability to access loops for the provision of xDSL services. The *Line Sharing Order* represented a significant stride forward due to its potential to enable data-only CLECs to offer xDSL services over the same line that the ILEC uses to provide local voice service. The ILECs, however, have taken this otherwise pro-competitive order and deliberately misconstrued its language in a vain effort to justify denying UNE-P CLECs the same efficiencies of combining voice and data on a single loop. The *Line Sharing Order*, does not (and cannot) authorize this discrimination. Indeed, the Commission explicitly recognized in the *Line Sharing Order* that competitive carriers are entitled to "obtain [a] combination of network elements and use those elements to provide circuit switched voice service as well as data services."[38] Thus, as discussed *supra*, this is the xDSL issue that requires the most urgent attention, and the discussion in the following sections should not obscure the urgency of addressing this issue immediately in another proceeding.[39]

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[34] *Local Competition Order* ¶ 312.

[35] ALTS Petition at 10.

[36] *Id.* at 10-11.

[37] If the order cannot ultimately be worked because of a delay in the completion of collocation, the order can be supplemented to change the due date.

[38] *Line Sharing Order* ¶ 47.

[39] As indicated in n. 4 *supra*, this issue has been briefed extensively in several proceedings and is ripe for immediate decision.

D. The Commission Should Ensure that ILECs Provide Competitors with Access to Conditioned Loops at TELRIC Prices.

A CLEC's ability to offer competitive broadband services over a copper loop depends on its ability to obtain access to conditioned loops. For this reason, the Commission ruled that the ILECs' obligation to provide nondiscriminatory access to loops includes the obligation to condition loops.[40] Yet, the ALTS Petition shows that ILECs have effectively denied competitors access to conditioned loops by imposing simply outrageous "conditioning" charges -- charges as high as $2000 per loop.[41] These prices cannot possibly be consistent with the Commission's pricing principles. The fact that such prices are being charged suggest that the Commission should clarify the principles that state commissions must follow in establishing any loop conditioning charges.

The Commission has already determined that TELRIC principles apply to loop conditioning.[42] Under these principles, ILEC should not impose any loop conditioning charges for loops less than 18,000 feet long. Forward-looking network design requires that loops should be free of impediments to xDSL technology such as excessive bridge taps and load coils. Indeed, bridge taps should no longer exist on loops of any length. Bridge taps should have been eliminated on a going-forward basis as a result of the industry's adoption -- in 1972 -- of Carrier Service Area (CSA) design criteria, which require that distribution cable within an entire Distribution Area have the same transmission characteristics (*i.e.*, all loaded or all non-loaded), the same copper cable gauge, and non-bridged taps. Similarly, CSA guidelines should have precluded the ILECs' use of load coils on loops less than 18,000 feet long since the 1980s.[43] Therefore, the forward-looking cost of provisioning xDSL-capable loops should not include any charges for load coil or bridge tap removal unless the loop is longer than 18,000 feet. Moreover,

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[40] *UNE Remand Order* ¶¶ 190-191.

[41] ALTS Petition at 30-31.

[42] *UNE Remand Order* ¶ 194 n.369 (*citing* 47 C.F.R. § 51.507(e)).

[43] In older generations of network plant, voice grade copper loops typically only required the addition of load coils when loop lengths exceeded 18,000 feet. For those loops, inductors were placed at regular intervals to offset the effects of capacitance inherent in copper cable material design. Thus, even for old network plant, load coils were not required nor constructed for the large majority of copper loops.

to the extent that bridge taps or load coils must be removed from loops under 18,000 feet, the costs should be absorbed by the ILECs, because CLECs should not be charged for work necessary to bring ILEC loop plant into conformance with engineering standards that have been applicable for more than 20 years.[44]

II. PRO-COMPETITIVE PRINCIPLES AND POLICIES MUST BE PRESERVED IN NEXT-GENERATION NETWORKS.

Solving the loop provisioning problems of today is necessary, but not sufficient, to open the local markets to competition and keep them open. The Commission should assure that emerging issues will not become serious operational impediments to competition in the future. The 1996 Act was designed to apply to a dynamic market. Congress was surely aware that telecommunications technologies were changing, and the statute was specifically intended to "accelerate" the deployment of "advanced telecommunications and information technologies."[45] Thus, the Act necessarily intended to encompass future as well as present network technologies and configurations.[46]

The telecommunications industry is now witnessing the emergence of new equipment configurations, as new market entrants are able to deploy the most up-to-date technologies and as ILECs upgrade their legacy technologies. These network enhancements have the potential to bring significant benefits to consumers. Advances in miniaturization of electronic equipment, the reduction in power and heat loads, new signal processing techniques, progress in environmental hardening of equipment, and have improved capabilities of remote telemetry, coupled with dramatically decreasing costs, has made it increasingly feasible to push network functionality closer to the customer. The ability to do so cost-effectively makes it possible to

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[44] *ILECs that have not complied with industry standards benefited financially by their past decision to defer* the work. There is no justification for them to benefit a second time by permitting them to foist the cost upon the CLECs, who played no part in and received no benefit from such past ILEC decisions.

[45] *See* Conf. Rep. 104-458 at 1 (Feb. 8, 1996).

[46] *Advanced Services Order* ¶ 1 ("Congress provided the blueprint in the 1996 Act for ensuring that all markets are open to competition, while encouraging the rapid deployment of new telecommunications technologies"). Indeed, the "world envisioned by the 1996 Act is one in which all providers will have new competitive opportunities as well as new competitive challenges." *Local Competition Order* ¶ 4.

shorten the length of the copper facilities that serve customers. Moreover, the combination of short copper, remotely deployed electronics, and fiber feeder facilities allows more consumers to have access to higher transmission speeds. In turn, the availability of these higher speeds allows consumers to enjoy new bandwidth-intensive services, including video-on-demand and HDTV.

With these benefits, however, there is also potential for competitive and consumer harm. As they are deploying new technologies, it is possible for ILECs to establish network configurations that reinforce rather than diminish their monopoly power. This would diminish competition, deprive CLECs of their rights under the law, and deny consumers the benefit of competition (competition which, ironically, is the main stimulus for the network improvements the ILECs are now making). As ALTS recognizes, the actions of at least one ILEC have already validated these concerns. As SBC has begun to deploy so-called "next-generation" architectures, it has increased its use of DLC technology and correspondingly increased the number of (and coincidentally decreased the size of) remote terminals that interface between DLC-fed loops and copper facilities in the loop plant.[47] The growing number of remote terminals creates new issues of access and interconnection and holds the potential either to increase or reduce the options available to competitors, depending on decisions the Commission has yet to make.

ILECs have an obligation first and foremost to allow competitors nondiscriminatory access to their networks. This obligation is not reduced in any manner by the ILECs' deployment of remote terminal or next generation technologies. Four years ago the Commission ruled that "incumbent LECs must provide competitors with access to unbundled loops regardless of whether the incumbent LEC uses integrated digital loop carrier technology or similar remote concentration devices, for the particular loop sought by the competitor."[48] The Commission

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[47] ALTS Petition at 11-12, 13-14. DLC systems, of course, are nothing new. They were originally conceived and introduced in the early 1970s and are in widespread use in some regions. But the burgeoning demand for broadband capabilities and the declining price/performance ratio of optical and electronic equipment is accelerating the deployment of RTs and generating many new issues of access and interconnection.

[48] *Local Competition Order* ¶ 383.

repeated this mandate in its *Advanced Services Order*.[49] Similarly, in its *Line Sharing Order*, the Commission held that "incumbent LECs are required to unbundle the high frequency portion of the local loop even where the incumbent LECs' voice customer is served by DLC facilities."[50]

The Commission also announced that it would not allow ILECs to skirt their unbundling obligations by merely changing technologies. "If we did not require incumbent LECs to unbundle IDLC-delivered loops, end users served by such technologies would not have the same choice of competing providers . . . . Further, such an exception would encourage incumbent LECs to 'hide' loops from competitors through the use of IDLC technology."[51] Thus, the Commission clearly determined that ILECs may not evade their unbundling obligations through their selection and use of emerging or remotely deployed technologies. Accordingly, the Commission needs to be especially vigilant to ensure that no ILEC uses its control over its evolving network architecture to constrain new entrants' ability to offer competitive services. In particular, the Commission should make certain that the ILECs' network upgrades do not permit them to evade any of their unbundling, resale, collocation, and interconnection obligations. Such scrutiny is necessary because the ILECs, who still control the local loops, continue to have a natural incentive to preserve that control and to develop an inaccessible network that would solidify their control and prevent customers from obtaining the benefits of competition.

The following is a non-exhaustive list of areas where cause for concern has already arisen:

- ILECs have sought to circumvent their unbundling obligation (*e.g.*, to provide equipped loops in certain cases) by making limited remote terminal space available that offer CLECs no practical ability to deliver equivalent functionality at a competitive cost;
- ILECs have continued their attack on the viability of UNE-P (*e.g.*, by requiring that voice signals be carried through the CLEC's collocation space in the central office or by making a bundled voice and data offer on UNE-P a practical impossibility);

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[49] "The LECs' obligation to provide requesting carriers with fully functional conditioned loops extends to loops provisioned through remote concentration devices such as digital loop carriers (DLC)." *Advanced Services Order* ¶ 54.

[50] *Line Sharing Order* ¶ 91.

[51] *Local Competition Order* ¶ 383.

- ILECs have attempted to circumvent their subloop unbundling obligations (*e.g.*, by imposing non-TELRIC rates for the loop segment between the remote terminal and the central office);
- ILECs have denied CLECs reasonable and nondiscriminatory support (*e.g.*, by limiting the options the CLEC may employ to differentiate service quality); and
- ILECs have deployed equipment at remote terminals that only takes into account the ILECs' needs (or those of the ILECs' data affiliate) and/or limits CLECs' ability to deploy new or differentiated services.[52]

At this time of rapid technological change, the Commission must actively monitor developments and ensure compliance with the 1996 Act and the Commission's rules. The Commission must deliver a clear message to the ILECs that pro-competitive rules and policies will be maintained and enforced, and that ILECs must assure that the implementation of next-generation technologies and architectures fully complies with the letter and intent of the law. In particular, AT&T urges the Commission to reiterate, and clarify if necessary, that the ILECs' on-going responsibilities to provide an unbundled loop (or subloop) facility[53] between the customer's premises and the traditional serving central office are not changed when new technologies are deployed; that the ILEC may not impose artificial limitations on the availability of UNE-P; and that ILECs may not impede the CLECs' ability to utilize the entire capability of the facility terminating at the customer's premises, regardless of how the ILEC transports the communications to the serving central office.

All of these potential problems require attention in the near-term. As a practical matter, ILECs will find it much easier to design for compliance beforehand (and the CLECs will experience less delay) rather than to redesign their networks after they have deployed hundreds,

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[52] Some of these issues have been raised in conjunction with SBC's pending request for interpretation, waiver, or modification of the SBC/Ameritech merger conditions. *In the Matter of SBC's Request for Interpretation, Modification, or Waiver*, Public Notice CC Docket No. 98-141, ASD File No. 99-49 (rel. Feb. 18, 2000). Others have arisen in the course of the Texas 271 proceeding. Texas Public Utility Commission, *Section 271 Compliance Monitoring of Southwestern Bell Telephone Company of Texas*, PUC Project No. 20400. To its credit, the Commission initiated a broader dialogue in a public technical forum convened on May 10, 2000. *Common Carrier Bureau and Office of Engineering and Technology Announce Public Forum on Competitive Access to Next-Generation Remote Terminals*, Public Notice, CC Docket Nos. 96-98, 98-147, NSD-LL-00-48, DA 00-891 (rel. Apr. 19, 2000)

[53] To the extent technically feasible, the CLEC must also have the right to access and interconnect to any individual subloop element or subset of subloop elements.

thousands, or even tens of thousands of remote terminals.[54] Moreover, the competitive disadvantage to CLECs will be extreme if customers who are making choices now are sewn up, not by a competitor who provides a superior offer but rather by an ILEC who by delay and litigation is, as ALTS puts it, "the only game in town."[55] Clarification of the ILECs' legal responsibilities at an early date will also enable the Commission, as it must, to assess the Bell companies' handling of next-generation design and deployment issues in proceedings under Section 271, where the Commission has the power to *incent*, and not just to coerce, in order to effectuate legislative goals.

III. THE FCC SHOULD REITERATE THAT ILECS MAY NOT DISCRIMINATE AGAINST COMPETITORS IN PROVIDING SPECIAL ACCESS CIRCUITS.

ALTS correctly states that new entrants depend heavily on ILECs for the timely and efficient provisioning of special access circuits.[56] In some situations, special access circuits serve as an alternative to unbundled network elements; in other cases, special access does not replace a UNE but is nonetheless an essential input, controlled by a monopoly provider. The mere fact that special access is not subject to § 251(c)(3) does not mean that ILECs are free to manipulate their provisioning of special access services so as to disadvantage their competitors.

Sections 201 and 202 of the Communications Act compel appropriate behavior on the part of the ILECs with regard to services and facilities that are outside the ambit of section 251(c)(3). Under section 201(a), it is the "duty of every common carrier engaged in interstate . . . communication by wire or radio to furnish such communication service upon reasonable

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[54] In a different context, the Commission has recognized that technological advances, service upgrades, or product design create "natural opportunities" to make a service or product more accessible. *See In the Matter of Implementation of Section 255 and 251(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996*, WT Docket No. 96-198, ¶ 71 (rel. Sep. 29, 1999).

[55] ALTS Petition at 7.

[56] *Id.* at 16-19. Like the members of ALTS, AT&T has suffered from inadequate performance by the ILECs in the provisioning of special access circuits. These deficiencies have threatened AT&T's ability to compete in the market for local telecommunications services. There are a number of reasons why special access facilities might be used, in lieu of unbundled network elements, in offering local services. For one thing, certain units within AT&T are comprised of businesses that used special access before the passage of the 1996 Act and therefore before the creation of the "network element" construct. Even after passage of the Act, special access rather than unbundled loops or transport were ordered when an interconnection agreement had not yet been negotiated or arbitrated.

request therefor."[57] Section 201(b) requires that "[a]ll charges, practices, classifications, and regulations for and in connection with such communications service . . . be just and reasonable."[58] Further, section 202(a) makes it "unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person [or] class of persons . . . ."[59]

All of these statutory commands are pertinent to the special access provisioning problems that ALTS discusses. If and to the extent that ILECs provide faster installation, or superior service, to themselves or to their end-user customers -- and slower installation, or degraded service quality, to their CLEC customers -- it is a clear violation of the Communications Act. Excessive provisioning intervals and inadequate service quality constitute failure to provide service upon reasonable request (section 201(a)), failure to establish "practices" that are "just and reasonable" (section 201(b)), and "unjust or unreasonable discrimination" against the ILECs' competitors (and would-be competitors)(section 202(a)).

The statistics ALTS cites provide strong evidence that ILECs are not fulfilling their statutory responsibilities in the provisioning of special access circuits.[60] If ILECs provide such circuits faster to themselves and to their end-user customers than they do to their CLEC or interexchange access customers, it will inevitably hinder the evolution of competition. Missing a higher percentage of installation deadlines for CLEC special access circuits than for themselves or their end users and responding more slowly to CLEC repair requests have the same result. None of these behaviors is acceptable. And none is lawful.

Accordingly, the Commission should make it clear that, whether provisioning unbundled loops or special access circuits, if a substantially similar capability is delivered, the delivery

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[57] 47 U.S.C. § 201(a).
[58] 47 U.S.C. § 201(b).
[59] 47 U.S.C. § 202(a).
[60] ALTS Petition at 17-18.

intervals for both facilities should be similar.[61] The Commission should also make it clear that it is wholly unacceptable to require one interval of time to install a special access circuit and a different interval to provide the same capability as a UNE when there is no technical justification for the difference.

IV. THE FCC MUST ENSURE COMPLIANCE WITH ITS LOOP ACCESS REQUIREMENTS THROUGH EXERCISE OF ITS ENFORCEMENT AUTHORITY AND THOROUGH 271 REVIEW.

ALTS observes that "the best crafted federal mandates have little effect if they are not linked to meaningful enforcement penalties."[62] AT&T agrees. Indeed, given that several of the issues raised in the ALTS Petition have already been addressed in rulemaking decisions such as the *Local Competition Order*, the *UNE Remand Order*, and the *Line Sharing Order*, it is apparent that the problems ALTS describes may require less in the way of further clarification of legal obligations and more in the way of swift and decisive enforcement.

It is difficult to understand what -- other than obstinance -- accounts for the persistence of problems that the FCC has already ordered the ILECs to remedy. More than four years after passage of the 1996 Act, the time has long passed when ILECs should have solved most of the loop provisioning problems that still plague the industry. Thus, the Commission must commit to aggressive enforcement of its loop access and provisioning mandates.

AT&T also agrees with ALTS that any finding of ILEC liability in the provisioning of loops should be seriously considered in the Commission's review of section 271 applications under both the competitive checklist and the public interest test.[63] Nondiscriminatory access to local loops is unquestionably an obligation under the competitive checklist (items (ii) and (iv)). The Commission has properly directed considerable attention to this aspect of Bell company

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[61] Moreover, both intervals should be reasonable. Equality of poor performance in both areas is not acceptable.

[62] ALTS Petition at 31.

[63] *Id.* at 31-32.

performance in recent section 271 proceedings,[64] and these issues are likely to remain among the most important in any pending or future application.[65]

[64] *New York 271 Order* ¶¶ 268-336.
[65] *Id.* ¶ 330 (indicating a particular focus on loop provisioning for xDSL services).

CONCLUSION

AT&T respectfully requests that the Commission proceed in accordance with the recommendations set forth above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Cathy M. Quarles, hereby certify that on the 23rd day of June, 2000, I caused copies of the foregoing "COMMENTS OF AT&T CORP.," to be served by hand delivery (*) or by first class mail on the following:

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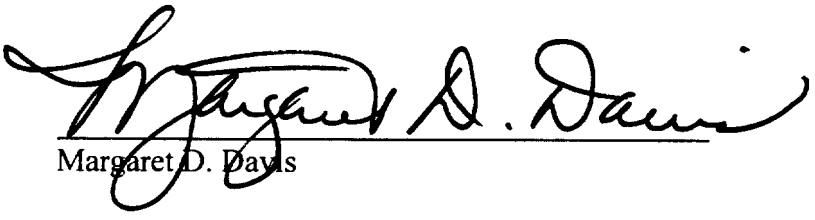

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