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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 26, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St., N.W.
Washington, D.C. 20554

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

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

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

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

Dear Ms. Salas:

The Competition Policy Institute, ("CPI") respectfully requests leave to file the attached Comments of CPI in the above-referenced proceeding one business day out of time. On the official filing date, June 23, 2000, CPI experienced unforeseen difficulties uploading Comments to the Commission's Electronic Comment Filing System ("ECFS"), rendering it impossible to file and serve the Comments in accordance with the Commission's rules. According to the ECFS help desk, the web server for the ECFS system has been experiencing difficulties over the past several days apparently causing CPI's inability to file timely comments. Because CPI will file the complete set of Comments less than one business day after the pleadings were due, CPI submits that no interested party will be prejudiced by the late filing. For the foregoing reasons, CPI respectfully requests that the Commission accept CPI's Comments as timely.

Respectfully submitted,

Joshua M. Bobeck, Policy Counsel
Competition Policy Institute
1156 15th St. NW Suite 520
Washington, D.C. 20005

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
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	)	
Common Carrier Bureau and Office of Engineering and Technology Announce Public Forum on Competitive Access to Next-Generation Remote Terminals	)	NSD-L-00-48

Association for Local Telecommunications Services Petition for Declaratory Ruling: Broadband Loop Provisioning

COMMENTS OF THE COMPETITION POLICY INSTITUTE

Ronald J. Binz, President
Debra R. Berlyn, Executive Director
Joshua M. Bobeck, Policy Counsel
1156 15th St. N.W. Suite 520
Washington, D.C. 20005
Phone: 202-835-0202
Fax: 202-835-1132

June 23, 2000

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COMMENTS OF THE COMPETITION POLICY INSTITUTE

The Competition Policy Institute ("CPI"),[1] respectfully submits these comments pursuant to the Federal Communications Commission's ("Commission") Public Notice,[2] in response to the Petition for Declaratory Ruling ("Petition")[3] filed by the Association for Local Telecommunications Services ("ALTS").

I. INTRODUCTION AND SUMMARY

The ALTS petition comes at an important time in the Commission's continuing effort to bring to fruition the 1996 Act's twin goals of opening local markets to competition and delivering advanced services to all Americans in a reasonably timely manner. CPI has consistently argued that these twin goals are inevitably intertwined. In other words, the best way to accelerate the arrival of broadband service for the vast majority of American is to accelerate local telecommunications competition.

This is an important time because telecommunications companies are beginning to market advanced services in response to growing consumer demand. This demand, however, is threatened when companies cannot deliver on their commitments to customers. Provisioning problems, particularly DSL provisioning, may impede the development of robust competition for advanced services as well as the progress of competition for basic service.

The traditional ILEC refrain is that freeing them from the 1996 Act's market-opening measures will speed broadband deployment. In contrast, CPI believes that the competitive threat from data CLECs and cable companies prodded ILECs to get into the broadband game. In our

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[1] CPI is a non-profit organization that advocates state and federal regulatory policies to bring competition to energy and telecommunications markets in ways that benefit consumers.

[2] *Pleading Cycle established for Comments on ALTS Petition For Declaratory Ruling: Loop Provisioning*, Public Notice, CC Docket 96-98, CC Docket No. 98-147, CC Docket No. 98-141, NSD-L-00-48, DA-00-1141, (rel. May 24, 2000).

[3] *Association for Local Telecommunications Services Petition for Declaratory Ruling: Broadband Loop Provisioning* (Filed May 17, 2000).

view, the Commission has successfully balanced competing concerns so as not to discourage investment and innovation in advanced services while promoting local competition. Although the broadband market is in its infancy, the Commission must guard against ILECs leveraging the monopoly of the old into a monopoly of the new.

There is no doubt that there is a growing consumer interest in broadband services. A cursory review of newspapers and trade press around the country reveals a constant stream of articles detailing the latest broadband technologies and the frustrations of consumers that want to use tomorrow's technology today.

But there is a dark side to this customer demand. A trip around the Internet reveals the deep frustration of consumers that are unable to obtain broadband service or face frustrating delays when they subscribe. In our view, much of the frustration emanates from the Kafka-esque service provisioning process.

A popular website, DSLreports.com, provides a revealing look into the frustration of ordinary consumers as they wait for broadband hookups. On DSLreports.com, users post their experiences waiting for DSL and evaluate the service they eventually receive. These postings provide insight into the "Twilight Zone" experience of DSL provisioning, a world ZDNet coined "DSL Hell."[4]

CPI cannot convey the depth of frustration and anger many consumers develop from the DSL provisioning experience. We urge each Commissioner and the Common Carrier Bureau staff to check the DSLreports.com reviews to get a first-hand view of how consumers feel they are being treated.

The consumer reviews on DSLreports.com highlight the importance of provisioning standards for timeliness and quality. In previous comments on section 271 applications, we

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[4] James Taschek , Eric Carr, Steven J. Vaughan-Nichols, *Stuck in DSL Hell* http://www.zdnet.com/sp/stories/issue/0,4537,377228,00.html.

argued that hot cut performance is an important measure for assessing the potential for competition because of the degree to which service disruptions resulting from the cutover would adversely effect the CLEC's relationship with its consumer. This same concept applies equally to DSL provisioning and is evident in the reviews DSL customers post on the DSLreports.com site. These postings show that customers generally blame their ISP or the CLEC for provisioning errors, even in cases where the provisioning delay or problem is the ILEC's responsibility. This is evidently very damaging to the reputation of the CLEC and will evidently affect the ability of these new suppliers to grow in this market. It is therefore imperative that the Commission provide ISPs, CLECs and their customers clear groundrules that ILECs must follow when provisioning loops for DSL. Only then will DSL providers be able to give their customers reliable estimates of installation due dates.

The ILECs have responded to the surge in consumer demand for DSL. Competition to meet this demand requires ILECs to develop ambitious and costly strategies to reclaim the momentum they have lost to the early CLEC entrants. CPI recognizes incumbents' right to upgrade and re-engineer their networks to efficiently provide voice and increase the reach of their broadband services. Incumbents must, however, recognize that they "face loop unbundling obligations no matter which technology they deploy."[5]

As SBC's Project Pronto proposal demonstrates, ILEC Digital Loop Carrier ("DLC") deployment poses challenges for regulators charged with fulfilling Congress' goals of opening former monopoly markets and fostering delivery of broadband service to all Americans. Fortunately, the Commission wisely anticipated some of the emerging problems with DLC systems in the *UNE Remand Order*.

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[5] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Third Report and Order, Fourth Further Notice of Proposed Rulemaking*, FCC 99-238 ("*UNE Remand Order*") ¶ 199.

In that order, the Commission sought to ensure that competitors could access copper loops.[6] In addition, the Commission requires ILECs to permit competitors to collocate their equipment at any accessible point when technically feasible.[7] In explaining that obligation, the Commission acknowledged that the Remote Terminal is becoming the central office and that the collocation rules applied with equal force to remote terminals and central offices.[8]

Even when CLECs can access clean copper loops they face a disadvantage if the ILEC can deploy DSL on the same loop on which it provides voice while the CLEC needs to obtain a second, separate loop.[9] Recognizing this disparity, the Commission established the high frequency portion of the loop ("HFPL") as a UNE.[10] The Commission correctly concluded that making the HFPL available to CLECs when the ILEC provides voice service on a loop would narrow the cost disparity between CLECs and ILECs providing advanced services.[11] Unfortunately, the rules do not address one remaining disparity: the case where competitors seek to offer integrated services such as packages of voice and data. While the *Line Sharing Order* levels the playing field for CLECs providing stand-alone DSL service, it is insufficient for the CLECs that intend to offer DSL combined with voice service.

The *UNE Remand Order* and the *Line Sharing Order* each provide the rationale for leveling the playing field. The same rationale for allowing CLECs unbundled access to the HFPL supports a requirement to allow integrated service providers to use the HFPL on the loop

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[6] *Id.* ¶ 218.
[7] *Id.* ¶ 209.
[8] The Commission's Collocation rules were partially vacated and remanded by the DC Circuit. *GTE v. FCC*, 99-1201, slip opinion, (DC Cir. Mar. 17, 2000).
[9] *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket 98-147, *Third Report and Order*, FCC 99-355, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, *Fourth Report and Order*, (rel. Dec. 9, 1999) ("*Line Sharing Order*") at ¶ 20.
[10] *Id.* at ¶ 16-17.
[11] *Id.* at ¶ 25.

they have acquired from the ILEC. This is especially true whether the loop is a stand-alone UNE or part of the UNE-platform ("UNE-P").

To allow the existing loophole to persist could retard the development of broad-based DSL and voice competition for residential consumers. The Commission has recognized that the UNE-P is the single most effective tool for CLECs to mass-market local telecommunications services. At the same time, the Commission understands that consumers will increasingly desire to purchase bundles of local telephone service, long distance and high-speed Internet service. If consumers cannot readily obtain affordable bundles from CLECs using UNE-P, they may have only one source for the service -- the ILEC.

II. THE COMMISSION SHOULD CLARIFY ITS RULES TO ALLOW CLECS TO PROVIDE INTEGRATED VOICE AND DSL SERVICES USING THE UNE-PLATFORM

ALTS asks the Commission to clarify that its rules, particularly those implementing the *Line Sharing Order*, allow CLECs to provide "integrated voice and DSL services over a single copper loop."[12] The need for this clarification is apparent once the Commission examines CLECs' ability to offer bundles of voice and data services to residential consumers. We focus attention on the residential mass market because that is where the disparity will be most important: residential consumers are the more likely target for companies offering bundles of voice and advanced services on a single line.

Most observers recognize that consumers will increasingly desire to purchase a package of telecommunications services to reduce their cost and increase their convenience with a single, unified bill. ILECs also understand this trend; SBC's application for in-region, interLATA authority, for example, is part of its plan to offer its Texas customers a full menu of

[12] Petition at p. 14.

telecommunications services.[13] The Internet's growing importance in the economy and in consumers' daily lives means that high-speed access to the Internet through advanced services, such as DSL, is becoming an integral component in those service packages.

The Commission understands the connection between the availability of the UNE-P and the development of broad-based competition in the residential and small business telecommunications market.[14] SBC's own data supplied in its Section 271 application underscores the importance of the UNE-P to local competition, showing that approximately 80% of loops CLECs purchase from SBC in Texas are UNE-P loops.[15] Inherent in these numbers is the notion that, to serve the mass market, competitors must avoid the delays and provisioning errors inherent in the hot cut process. Competitors also understand that the costs and delays in collocating in ILEC central offices can retard efforts to penetrate the mass-market. Since the UNE-P avoids these problems, it is a more suitable vehicle for competitors that wish to enter the mass-market.

It follows that competitors using the UNE-platform must be able to compete effectively when offering packages of voice and data services to consumers. If the incumbent, through its control of bottleneck facilities in the local loop, can dictate the services available to competitors and the price customers pay, it is unlikely competition will ever develop on an appropriate scale.

Unhappily, this is the current state of local competition in many areas. The ILEC is usually the only carrier that can offer residential consumers an affordable package of voice and data services. Their fundamental advantage is that, while they can sell its voice and data package

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[13] *See* SBC Communications, Inc., *SBC Launches $6 Billion Broadband Initiative*, Press Release (Oct. 18, 1999) ("*Project Pronto Press Release*"), p. 2, 3 (Attachment 2 to AT&T Pfau/Chambers Decl., *SBC Texas 271*, CC Docket No. 00-4, filed Jan. 31, 2000).

[14] *See UNE Remand Order* ¶ 11-12.

[15] *See* SBC Conway/Dysart Supp. Aff. *Application by SBC Communications Inc. for Authorization under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of Texas*, CC Docket 00-65, filed April 5, 2000 ("*SBC Texas 271*") at ¶ 39.

using a single loop, ILECs require their competitors to use two loops, one for data and one for voice.

This competitive disparity is exactly the problem the Commission sought to eliminate in the *Line Sharing Order*. In that order, the Commission concluded that incumbents could leverage their monopoly over the local loop, dominating the advanced services market in their respective regions.[16] To alleviate this competitive imbalance, the Commission required ILECs to unbundle the high-frequency portion of the loop ("HFPL").[17] In this way, competitors can access the HFPL on the same terms as the incumbent's data affiliate. The *Line Sharing Order* thus levels the playing field for CLECs competing with an ILEC data affiliate selling DSL service to customers that already subscribe to the ILEC for voice service.[18] It does not solve the problem when a CLEC seeks to offer both voice and data using a platform of network elements.

This situation presents a curious set of choices for a consumer that wants both DSL and voice telephone service. First, the consumer can obtain both services from the ILEC. Second, once Line Sharing is available, the consumer can obtain voice service from the ILEC and DSL service from a CLEC without paying the cost of a second loop. If however, the consumer wants a local voice service provider other than the ILEC, the consumer faces a quandary when adding DSL service.

Without Commission clarification, UNE-P CLECs that offer integrated voice and data have two choices, neither of which allows them to compete effectively with the ILEC. First, the CLEC can choose to provide DSL over a second, stand-alone loop. Given the costs associated with that second loop, and the likelihood the DSL provider must include the cost in its price, the

[16] *See Line Sharing Order* ¶ 5.
[17] *Id.* ¶ 25.
[18] *Id.* ¶ 40-42.

consumer will likely choose to pay the lower prices with the ILEC providing the voice service in a line sharing arrangement with either a CLEC or its own DSL affiliate.

Second, the CLEC can choose to disconnect the UNE-P arrangement, convert it to a stand-alone unbundled loop and interconnect the loop with its own DSLAM and other equipment collocated in the ILEC central office.[19] Given the costs and delays inherent in hot cuts, collocation and DSLAM deployment, this option also makes it likely that the CLEC's UNE-P voice customer will migrate to the only carrier that can efficiently offer such service without unreasonable delays, costs and service outages--the ILEC. Either way, the ILEC maintains its advantaged position in the market for voice service and can leverage that position in the advanced services market.

The Commission has already built the foundation to eliminate this disparity. It is well settled that, under the 1996 Act and the Commission's rules, CLECs may obtain nondiscriminatory access to network elements that allow them to provide the services they seek to offer.[20] In the *UNE Remand Order*, the Commission recognized that competitors in the mass market "may be impaired in their ability to offer service without access to ILEC facilities due, in part, to the cost and delays of obtaining collocation in every central office where the requesting carrier provides service using unbundled loops."[21] Despite this impairment, the Commission declined to require ILECs to unbundle the DSLAM except in limited circumstances.[22] The exception provides that ILECs must unbundle the DSLAM when a requesting carrier is unable to collocate its own DSLAM at a remote terminal and is unable to obtain spare copper loops.[23]

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[19] This is SBC's proposed solution. *See* SBC Auinbah Supp. Reply Aff., *SBC Texas 271* at ¶ 12, 15.

[20] 47 U.S.C. § 251(d)(2)(B); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *First Report and Order,* FCC 96-325, rel. Aug. 8, 1996, ¶ 570, *aff'd in part and vacated in part sub nom Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and remanded, AT&T v. Iowa Utils Bd.*, 119 S. Ct. 721 (1999)("*Local Competition First Report and Order*").

[21] *UNE Remand Order* ¶ 306.

[22] *See Id.*

[23] *Id.* ¶ 313.

The Commission's rationale is most instructive for the scenario presented here. The Commission established this exception because, without access to the remote terminal or spare copper loops, the "incumbent LEC can effectively deny a competitor's entry" into the market.[24]

Although the Commission found that "collocating in incumbent LEC central offices imposes material costs and delays,"[25] it nonetheless determined that "requesting carriers providing data services do not face the operational impediment of obtaining a coordinated cutover of the loop on a timely basis, because they typically are providing service over a second line. Because such carriers purchase an additional unbundled copper loop to serve the customer, the customer's voice service is never disconnected and the requesting carrier faces none of the timing and quality impediments associated with the "hot cut" process."[26]

This is clearly not the case when a CLEC seeks to offer a customer integrated service over a single loop in direct competition with the ILECs similar offering. As the Commission recognized in unbundling the HFPL, requesting carriers are impaired when they must provision a second loop to serve a customer that the ILEC can serve with a single loop. Likewise, a requesting carrier is impaired when it must put the customer through the "hot cut" process and the inherent timing and quality impediments.

In conclusion, the Commission should clarify in this proceeding that a requesting carrier is impaired when it seeks to offer integrated voice and data service over a single loop to a residential or mass-market customer. As part of such clarification, the Commission should require that ILECs make available, on a TELRIC basis, the functionality and operational support that permits the requesting carrier to use the entire loop, including the HFPL, to provide integrated service.

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[24] *Id.*
[25] *Id.* at ¶ 309.
[26] *Id.* at ¶ 310.

III. THE COMMISSION MUST CLARIFY THAT ILECS CANNOT USE NEXT GENERATION DIGITAL LOOP CARRIER SYSTEMS TO AVOID THEIR OBLIGATION TO PROVIDE UNBUNDLED NETWORK ELEMENTS

The ALTS petition asks the Commission to clarify that ILECs must provide CLECs the ability to serve customers that the ILEC serves with DLC-fed loops. ALTS seeks 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."[27] ALTS thus asks the Commission to clarify that ILECs "must provide alternatives to DLC-served loops."[28] CPI likewise believes that the Commission should clarify its rules to state that incumbents must accommodate CLEC requests for access to loops even when that ILEC deploys next generation DLC network.

The ILECs have employed DLC systems to improve the voice services they offer. The emergence of DSL services, however, has cast a new light on the significance of the DLC architecture since it implicates the ability of competitors to offer advanced services. The Commission is beginning to address issues that arise when ILECs deploy DLC systems to provide improved advanced services and increase the reach of these services. This attention by the Commission is timely. SBC claims, for example, that its DLC based advanced service initiative, "Project Pronto" will make SBC the leader in "speeding the widespread availability and meeting the demand for broadband and emerging broadband-powered services."[29]

CPI does not seek to have the Commission adopt rules that will discourage ILECs from deploying new technology that will improve basic services and bring broadband to more consumers. On the other hand, we remain concerned that DLC systems, while allowing ILECs

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[27] Petition at p. 12.
[28] *Id.* at 11.
[29] *Project Pronto Press Release* p. 1.

to deploy fiber closer to its customers, may impair CLECs' ability to compete with ILECs for those customers.

Both CLECs and the Commission recognize the implications Project Pronto may have for the ability of CLECs to compete. CLECs fear that Project Pronto will lessen their ability to offer services that distinguish them from the ILEC.[30] The Commission recognizes the potential impact Project Pronto may have on CLEC access to ILEC facilities for UNEs and collocation, noting that, "[f]or competitive LECs who want to provide telecommunications services, including advanced services, to customers served via remote terminals there is often little or no space available for collocation inside the structures used to house the remote equipment."[31]

The 1996 Act allows CLECs to choose among different entry options or to use combinations of these options. Moreover, the 1996 Act entitles CLECs to use ILEC network elements to provide innovative services that are distinct from those the ILEC provides. Any clarification of the Commission's rules must require ILECs to make available to CLECs arrangements that preserve the CLECs options for competitive entry, regardless of the technology and services the ILEC chooses to deploy.

The Commission must clarify that section 251 and its rules do not allow ILECs to deploy new DLC architecture to limit CLECs' opportunity to compete for all telecommunications services. The Commission should make clear that CLECs may collocate the necessary equipment (e.g., DSLAMs) at remote terminals, as the *UNE Remand Order* currently requires.[32] In addition, the Commission should clarify that ILECs must provide alternatives when their DLC

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[30] *See* Comments of DATA Alliance, *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control,* CC Docket 98-141, (*"SBC-Ameritech Merger Conditions Proceeding"*), filed March 10, 2000.

[31] *Common Carrier Bureau and Office of Engineering and Technology Announce Public Forum on Competitive Access to Next Generation Remote Terminals*, CC Docket 96-98, CC Docket No. 98-147, NSD-L-00-48, DA-00-891 (rel. April 19, 2000) ("*Competitive Access to Next Generation Remote Terminals Notice*") at p. 1-2.

[32] *See* 47 C.F.R. § 51.319(a)(2); *UNE Remand Order* ¶ 209-210, 217-218.

systems don't provide for spare copper loops or collocation in the Frame Distribution Interface ("FDI").

We applaud the Commission for holding the May 10, 2000 public forum on competitive access to next-generation remote terminals. CPI is optimistic that this roundtable forum was the beginning of the process where ILECs work together with CLECs towards maintaining an open network that is truly subject to competition.

IV. THE COMMISSION SHOULD ESTABLISH A NATIONAL STANDARD FOR LOOP PROVISIONING

The ALTS petition further asks the Commission to establish a nationwide loop-provisioning standard. ALTS contends that a standard will provide greater certainty for the competitiveness of the DSL market. In support of its request, ALTS argues that the Commission has a sufficient record and the legal authority to establish national provisioning rules. CPI agrees that the Commission has the authority to establish these rules. More importantly, we believe that as a matter of policy, the standards proposed by ALTS will bring some order to some of the provisioning chaos consumers' experience when they attempt to obtain DSL services.

At this point in the implementation of the 1996 Act there can be little doubt that the Commission has the authority to establish the national provisioning standards ALTS seeks in its petition. The Commission has consistently stated the view that national rules were an important step towards developing broad-based competition in the local telecommunications market. In the *Local Competition First Report and Order*,[33] the Commission determined that national rules for unbundling the ILEC network would best promote local competition.[34] The Commission found that national rules would allow new entrants to take advantage of economies of scale, provide greater certainty to investors, reduce litigation and facilitate state arbitrations.[35]

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[33] *UNE Remand Order* at ¶ 226.
[34] *Id.*
[35] *Local Competition First Report and Order* ¶ 226-248, 281-283.

Moreover, in the *UNE Remand Order* the Commission noted that the Supreme Court's *AT&T v. Iowa Utils. Bd.* opinion did not precisely confront the Commission's decision in the *Local Competition First Report and Order* to develop a national unbundling requirement.[36] Thus the Commission determined that its original decision on national rules was consistent with the language and legislative history of the 1996 Act.[37]

CPI believes that ALTS' proposed provisioning rules are a reasonable means of bringing some badly needed order to the DSL provisioning process. ALTS proposes rules that would establish a national provisioning interval for xDSL loops, a maximum timeframe for the ILEC to complete loop de-conditioning, and a requirement that ILECs base de-conditioning charges on forward looking costs. These rules will provide the ILECs with new incentives and guidance for complying with Section 251 of the Communications Act; they will provide CLECs with a platform on which national marketing efforts can be built; they will give consumers some reasons to trust CLEC providers of DSL services. By adopting uniform national rules for loop provisioning, the Commission will establish another forum, beyond the periodic consideration of Section 271 applications, in which it will track this increasingly important element of local competition.

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[36] *UNE Remand Order*, ¶ 117-123.
[37] *Id.*

V. CONCLUSION

The ALTS petition affords the Commission with an opportunity to clarify and extend its policies enabling competition in the advanced services market. For reasons developed above, we think the clarifications sought by ALTS will be especially important for the growth in competitive services offered to residential customers. The Commission has the authority and the existing policy basis to grant the ALTS petition, and we urge the Commission to do so.

Respectfully submitted,

COMPETITION POLICY INSTITUTE

Ronald J. Binz, President
Debra R. Berlyn, Executive Director
Joshua M. Bobeck, Policy Counsel

Competition Policy Institute
1156 15th St., NW Suite 520
Washington, D.C. 20005

June 23, 2000

CERTIFICATE OF SERVICE

I. Christina M Devlin, hereby certify that on this 23 day of June, 2000 copies of the foregoing Comments of the Competition Policy Institute were served by electronic filing or by first-class, United States mail, postage prepaid, upon each of the parties listed below.

Signed: _____

Magalie Roman Salas, Secretary
Federal Communications Commission
Room TW-B-204
445 12th St., SW
Washington, DC 20554

Glenn B. Manishin
Stephanie A. Joyce
Patton Boggs LLP
2550 M Street, N.W.
Washington, D.C. 20037
Attorneys for the
Association for Local Telecommunications Services

Jonathan M. Askin
General Counsel
Association for Local Telecommunications Services
888 17th Street, N.W., Suite 900
Washington, D.C. 20006