

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

In the Matter of	)	
	)	
ALTS Petition for Declaratory Ruling: Loop Provisioning	)	
	)	
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

**REPLY COMMENTS OF  
ALLEGIANCE TELECOM, INC.**

Allegiance Telecom, Inc. (“Allegiance”) submits the following reply to the comments filed in response to the Petition for Declaratory Ruling (“*Petition*”) submitted by the Association for Local Telecommunications Services (“ALTS”). Allegiance limits this reply to the erroneous claims that the ALTS *Petition* is procedurally defective.<sup>1</sup> For the reasons set forth below, Allegiance urges the Commission to reject those claims.

Contrary to the assertions made by SBC and other incumbent local exchange carriers

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<sup>1</sup> The fact that Allegiance does not address all of the arguments made in opposition to the ALTS *Petition* should not be construed to suggest that Allegiance agrees with those contentions.

(“LECS”), the declaratory relief requested by ALTS is both appropriate and necessary. Under the Administrative Procedure Act, an agency may use “its sound discretion [to] issue a declaratory order to terminate a controversy or remove uncertainty.”<sup>2</sup> Such “uncertainty” exists where an agency needs “to clarify and state [its] interpretation of an existing statute or regulation.”<sup>3</sup> As explained in Allegiance’s initial comments, the problems competitive LECs currently are experiencing in obtaining unbundled loops demonstrate a pressing need for the Commission to clarify or interpret its existing rules that obligate incumbent LECs to provision such loops in a timely and non-discriminatory manner.

As the comments of Allegiance and other competitive LECs plainly show, incumbent LECs continue to create significant obstacles to competition for local services by denying new entrants timely access to loops. This problem persists despite the fact that the Commission’s existing rules clearly require such access. For instance, the Commission has previously ruled that “an incumbent LEC may not impose unreasonable restrictions on the time period within which it will consider applications for collocation space.”<sup>4</sup> Yet, as Allegiance showed in its initial comments, incumbents often impose sequential provisioning requirements that prohibit a competitive LEC from ordering (much less obtaining) transmission facilities in a timely manner.<sup>5</sup> Such requirements unreasonably delay a new entrant’s commencement of service in local markets. Further, sequential provisioning requires them to incur the cost of maintaining

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<sup>2</sup> 5 U.S.C. § 544(e). *See also* 47 CFR § 1.2.

<sup>3</sup> *British Caledonian Airways, Ltd. v. Civil Aeronautics Bd.*, 584 F.2d 982, 990 (D.C. Cir. 1978).

<sup>4</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 (rel. March 31, 1999), ¶ 53.

<sup>5</sup> Incumbents, for instance, often prohibit a competitive LEC from ordering transmission and transport facilities until after its collocation cage has been installed. *See Allegiance Comments* at 3-6.

collocation space for a period when that space cannot be used to offer service because the incumbent LEC has not furnished the necessary transport facilities. The Commission should therefore issue a declaratory ruling clarifying that the imposition of sequential provisioning periods violates existing Commission rules that require incumbent LECs promptly to provide unbundled elements and interconnection services (including both collocation space and access to the high-frequency portion of loops).

A similar example described in Allegiance's initial comments involves the tendency of some incumbent LECs to use their deployment of remote terminals as an excuse for increasing both the delay in, and cost of, obtaining loops. The persistence of these practices, in spite of the clear requirement that copper loops must be provided in a timely manner,<sup>6</sup> highlights the need for the Commission to issue a declaratory ruling that such practices are contrary to its existing rules. In a related vein, Allegiance urged the Commission in its initial comments to clarify that its existing rules do not permit an incumbent LEC to use the deployment of remote terminals as a justification for retiring copper loops in a manner that will undermine facilities-based competition. The need for such a ruling is made all the more pressing by the growing use of the nation's copper infrastructure for xDSL services.<sup>7</sup>

As these two examples demonstrate, ALTS' request for declaratory relief is procedurally sound.<sup>8</sup> SBC is incorrect in suggesting that the issues raised by ALTS would require the

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<sup>6</sup> See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999), ¶¶ 181-187.

<sup>7</sup> See *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, FCC 99-355, ¶ 38.

<sup>8</sup> See *ALTS Petition* at 3-4 (listing eight specific requests for declaratory relief).

Commission to “read into the [Commission’s] rules policies and procedures that were simply not contemplated when the rules were drafted.”<sup>9</sup> To the contrary, the Commission’s existing rules clearly require that loops be provided in a timely manner. All that is needed are clarifications or additional interpretations to ensure that the existing rules serve their intended purpose.<sup>10</sup>

Given its “wide discretion . . . to determine whether a declaratory ruling is necessary,”<sup>11</sup> the Commission plainly has authority to issue the requested declaratory relief with respect to the key loop-provisioning problems identified in the *ALTS Petition* and the comments filed in response. Allegiance urges the Commission to use this opportunity to remove obstacles that incumbent LECs have erected to limit the access of competitive LECs to timely provisioned unbundled loops.

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<sup>9</sup> SBC Comments at 4.

<sup>10</sup> Even assuming, *arguendo*, the Commission were to conclude that declaratory relief is inappropriate for some of the issues raised by ALTS, that conclusion would not justify a wholesale denial of ALTS’ *Petition*. Rather, in that event, the Commission should grant declaratory relief where appropriate and address any remaining proposals either through new rulemaking proceedings or in proceedings already pending before the Commission.

<sup>11</sup> *Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, First Order on Reconsideration, IB Docket No. 96-111, FCC 99-325, 1999 FCC LEXIS 5448, ¶ 22 (1999) (*cited in ALTS Petition* at 3, n.4).

Respectfully submitted,

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July 10, 2000

**CERTIFICATE OF SERVICE**

I, Richard D. Mallen, hereby certify that on this 10<sup>th</sup> day of July 2000, copies of the foregoing Reply Comments of Allegiance Telecom, Inc. were delivered by messenger and first class mail to the parties listed on the attached service list.

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