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
	)	
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

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

REPLY COMMENTS OF THE COMPETITION POLICY INSTITUTE

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REPLY COMMENTS OF THE COMPETITION POLICY INSTITUTE

The Competition Policy Institute ("CPI"),[1] respectfully submits these reply 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

In its petition, ALTS asks the Commission to "clarify, interpret and modify its rules governing crucial aspects of loop provisioning by incumbent local exchange carriers."[4] CPI filed comments supporting the ALTS petition. Most commenters to this proceeding support the petition; the opposition to the petition consists chiefly of the large ILECs.

CPI believes the Commission should continue the effort it began with the *Local Competition Order* to develop national rules and standards to foster competitive entry into markets that are still near-monopolies. The Commission should seek to resolve issues in response to this petition that impede competition, rather than force CLECs to file repeated formal complaints with little hope of timely resolution.

In these reply comments, CPI argues that the Commission has the authority to implement the rules that ALTS advocates. Moreover, CPI believes that such rules are fully justified, based on the slow growth of competition for voice service and advanced services in the residential market.

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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).

[4] Petition at p. 1.

CPI specifically urges the Commission to clarify an ILEC's obligation to provide the splitter when a UNE-P-based CLEC seeks to add DSL to a customer's voice service. Such a requirement is consistent with the Commission's rules and the rationale found in both the *UNE Remand Order* and the *Line Sharing Order*. It makes little difference whether the Commission corrects this anomaly in this proceeding or another, as long as it achieves the correct result.

Lastly, CPI urges the Commission to clarify an ILEC's obligation to provide unbundled sub-loops and collocation when it deploys next generation digital loop carrier (DLC) systems. Contrary to ILEC assertions in comments in this docket, the Commission's decision on these issues should not be limited to consideration of SBC's request for clarification under the *SBC-Ameritech Merger Order*. Any clarification on these complicated issues should apply broadly, since ILECs other than SBC are planning similar changes to their network architecture.

II. THE COMMISSION SHOULD ISSUE NATIONAL STANDARDS FOR LOOP PROVISIONING

The Commission has already laid the foundation for the competitive deployment of both traditional switched voice service and advanced services. In prior proceedings, the Commission established the fundamental groundrules for local telecommunications competition. Yet four years after the 1996 Act became law, ILECs are still able to delay and impede competitive entry in their markets. In the past, the incumbent carriers could simply refuse to provide a facility or challenge the Commission's rules implementing the 1996 Act. Now the mode of discrimination is more subtle. By delaying delivery of facilities to a CLEC, an ILEC can impede a competitor's rollout of service and damage its reputation in the marketplace. A requirement to provide an unbundled loop is ineffective if there is no corresponding requirement that the ILEC provide the loop on a timely basis.

Faced with a petition that would eliminate this means of discrimination, the ILECs sponsor a grab bag of reasons for the Commission to reject ALTS' request for national loop

provisioning standards. Essentially, the ILECs maintain that the ALTS request is unlawful and unnecessary. CPI disagrees.

The ILECs first argue that a national standard would not be consistent with the 1996 Act's nondiscrimination standard.[5] SBC contends "the 1996 Act does not mandate a minimum service level."[6] But SBC ignores the fact that the Commission has the authority to establish a minimum baseline provisioning rule. Without such rule, an ILEC would be free to deliberately stall and delay provisioning the loop. We agree with Prism that:

> A CLEC's right to obtain an unbundled loop from an ILEC is only as good as the CLEC's ability to obtain the loop in a timely and accurate fashion. In the absence of timely delivery, the CLEC will lose customers and competition will never take hold in the advanced services market.[7]

Some ILECs argue that the Commission should leave the development of provisioning standards to state commissions. Bell Atlantic, for example, contends that the ALTS petition conflicts with an earlier Commission decision to leave the development of provisioning standards to the States.[8] Bell Atlantic also suggests that states are in the best position to develop specific performance standards.[9]

CPI recognizes that the Commission chose in 1998 to leave the task of developing provisioning standards to the States. However, the ground has shifted since 1998. When the Commission issued its Notice of Proposed Rulemaking in the *Performance Measures* proceeding, the Commission's authority to develop national unbundling rules was under heavy attack. In addition, no state had yet adopted such performance standards.

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[5] SBC Comments at p. 19.
[6] *Id*. at p. 20.
[7] Prism Comments at p. 7.
[8] Bell Atlantic Comments at p. 3 (*citing Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, 13 FCC Rcd 12817 (1998)).
[9] *Id*. at p. 4.

Since 1998, however, the Supreme Court affirmed the Commission's authority to develop national rules implementing the 1996 Act.[10] In addition, many states have developed provisioning standards, mostly in conjunction with RBOC section 271 applications.[11] This allows the Commission to choose among the performance measures states have already developed rather than formulate new ones. Most importantly, a new class of competitors—national data CLECs—has arisen since 1998. National provisioning standards are now both necessary and feasible.

The ILECs also suggest that uniform provisioning rules will be unworkable because of differences in networks and operational systems from state to state.[12] But, as Covad asserts, "there is not a single difference in loops over geographies and incumbents that could possibly interfere with the establishment of a national loop installation rule."[13] The local uniqueness argument is, in fact, the same argument the ILECs used to oppose the Commission's national unbundling requirement. We suggest the Commission view ILEC claims of differences in loops with the same skepticism applied to the arguments against national unbundling rules since the ILECs "have an incentive to exaggerate the regional differences of loop provisioning processes."[14]

Even Bell Atlantic recognizes that performance measures are easily transferable from one state to the next when it reports that " the New Jersey State commission has also adopted performance measurements and standards *which closely track those in New York*."[15]

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[10] *See AT&T v. Iowa Utils. Bd.*, 525 US 366 (1999).
[11] *See In the Matter of Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Services in the State of New York*, CC Docket No. 99-295, *Memorandum Opinion and Order*, FCC 99-404 rel. Dec. 22, 1999, at ¶ 54, *appeal pending sub. nom., AT&T v. FCC*, Case No. 99-1538 (D.C. Cir.)("*Bell Atlantic New York Order*").
[12] *See* GTE Comments at p. 14.
[13] Covad Comments at p. 9-10.
[14] *Id.* at p. 10.
[15] Bell Atlantic Comments at p. 8, (emphasis added).

We also think that the ILECs' allied argument, that minimum provisioning intervals could mean that ILECs would be required to provide competitors better service than they provide themselves, is simply posturing. The ALTS petition suggests the Commission develop loop provisioning standards to "establish the minimum requirements necessary to implement the nationwide competition that Congress sought to establish."[16] As we discussed above, some states already have standards in place that reflect the minimum performance ILECs must meet in order to satisfy their obligation for nondiscriminatory performance.[17] CPI is confident that the Commission can cull through existing state performance rules to develop a national minimum standard for nondiscriminatory loop provisioning, without forcing ILECs to provide CLECs with a higher standard of service than they provide themselves.

ILECs further assert that the Commission should resolve these issues only when CLECs bring formal complaints of discriminatory practices before the Commission or state commissions.[18] CLECs are certainly free to bring formal complaints. The question is how those complaints are resolved "when there are no standards in place for the Commission (and state commission) to use as the basis for making determinations."[19]

In our initial comments, we offered sound policy reasons supporting the ALTS proposed national loop provisioning standards. For example, we suggested that bringing order to the chaos of DSL provisioning would alleviate some of the frustration consumers feel when ordering DSL service from CLECs dependent on the ILEC for provisioning the loop.

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[16] Petition at p. 11 (*citing 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, ¶ 41, *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.*, 525 US 366 (1999) ("*Local Competition First Report and Order*")).
[17] *See Bell Atlantic New York Order* at ¶ 55.
[18] SBC Comments at p. 5, GTE Comments at p. 5-6.
[19] WorldCom Comments at p. 2.

Some consumer frustration stems from the fact that CLECs "quality of service varies on a state by state, ILEC by ILEC basis."[20] Although customers would expect a national provider to have uniform service quality, Covad, for example, cannot offer any expectation of timeliness in its customer contracts.[21]

CLEC comments on the instant petition also buttress our belief that provisioning delays benefit the ILECs at the expense of CLECs, even when the delay is attributable to the ILEC. Jato reports that an ILEC uses provisioning delays not only to benefit its own advanced services offerings but also to injure the reputation of its competitors. Therefore, "non-compliance represents a win-win situation for the incumbents."[22]

The Commission should not continue down a path where non-compliance with the Act's requirements is a rational choice for an ILEC. The Commission should spell out minimum rules and penalties for non-compliance. Enforcement of these penalties must be "swift and certain."[23]

III. THE COMMISSION SHOULD AMEND ITS RULES TO REQUIRE ILECS TO ENABLE CLECS TO ADD DSL TO UNE-P CONFIGURATIONS

In initial comments in this proceeding, CPI reiterated that the Commission should require ILECs to provide CLECs with the ability to efficiently add DSL service to consumers served using the UNE-P. We argued that such a requirement is consistent with the *UNE Remand Order* and the *Line Sharing Order*, and would level the playing field for competitors seeking to serve residential consumers with packages of voice and DSL service.

Since CPI filed initial comments in support of this position, the Commission has granted SBC in-region, interLATA authority. In its decision, the Commission rejected the argument that

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[20] Covad Comments at p. 10.
[21] *Id*.
[22] Jato Comments at p. 3.
[23] *Id.*

SBC must allow CLECs to add DSL to an UNE-P configuration in order to obtain section 271 authority.[24] Instead the Commission committed to give this issue "prompt and thorough consideration" and committed to resolving the issue "expeditiously in [its] reconsideration of the *UNE Remand Order*."[25]

CPI reiterates its view that, whether it is in this proceeding or in reconsideration of the *UNE Remand Order*, the Commission must eliminate a loophole in its rules. In the *SBC Texas II Order*, the Commission said it will determine whether to "impose on incumbent LECs a new obligation to provide access to the splitter," in reconsideration of the *UNE Remand Order*.[26] CPI continues to believe that there is a sound rationale for imposing such a requirement.

As CPI has stated before, this reasoning follows directly from the Commission's prior decisions. In the *UNE Remand Order*, the Commission recognized that competitors entering the mass market prefer a UNE-P strategy to avoid the delays and provisioning errors inherent in the hot cut process and the delays and costs of collocating in every ILEC central office.[27] Likewise, the Commission recognized in unbundling the high frequency portion of the loop in the *Line Sharing Order* that requesting carriers are impaired when they must provision a second loop to serve a customer that the ILEC can serve with a single loop.[28]

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[24] *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket 00-65, *Memorandum Opinion and Order*, FCC 00-238 (rel. June 30, 2000) at ¶ 327 ("*SBC Texas II Order*").
[25] *Id*. at ¶ 328.
[26] *Id.*
[27] *See 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*") at ¶ 11-12, 306.
[28] *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 ¶ 11.

In the *SBC Texas II Order*, the Commission acknowledged that existing rules require that a competing carrier providing voice service over the UNE-P order an unbundled xDSL loop, collocate a splitter and DSLAM, and order unbundled switching and shared transport in order to provide that customer with both data and voice.[29] In our view, that carrier's ability to provide service is impaired compared to the ILEC that does not need to engage in such an inefficient process to provide bundled voice and data service. Without further action from the Commission, UNE-P carriers must "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."[30] CPI agrees that such a requirement seriously undermines "the value and utility of UNE-P as an entry strategy."[31] The current practices diminish the likelihood that robust competition will reach residential consumers anytime soon.

IV. THE COMMISSION SHOULD CLARIFY THAT ILEC UNBUNDLING OBLIGATIONS APPLY WHEN THE ILEC DEPLOYS NEXT GENERATION DIGITAL LOOP CARRIER SYSTEMS

ILECs generally suggest that the Commission should disregard the ALTS request to clarify the subloop unbundling rules since the rules are already clear.[32] In addition, ILECs contend that concerns with competitive access to remote terminals are best left to the *SBC-Ameritech Merger Conditions* proceeding where the issue first arose in context of SBC's Project Pronto.[33] Lastly, the ILECs urge the Commission to reject ALTS request that the Commission require ILECs to develop a "work-around configuration." CPI disagrees and replies on all three points.

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[29] *See SBC Texas II Order* at ¶ 325.
[30] AT&T Comments at p. 3.
[31] *Id*.
[32] *See* Bell Atlantic Comments at p. 17-18.
[33] *Id*. at p. 19.

First, it is obvious that the Commission's subloop unbundling rules are not completely clear. If they were, there would have been no need for the May 10 Public Forum on Competitive Access to Next Generation Remote Terminals.[34] If the rules were clear, all ILECs would understand that their loop unbundling obligations apply no matter what technology they choose to deploy.[35]

Instead, when an ILEC deploys new DLC-based networks, it creates a double whammy for advanced services competition. The shorter loops available through a DLC-based network will improve the speed and reliability of an ILEC's DSL service. In addition, the remote terminal equipment can eliminate the possibility of a CLEC obtaining collocation space, thus frustrating competitive entry.

If granted, the ALTS petition would not prevent ILECs from upgrading their network.[36] The petition merely seeks that an upgrade should not constrain facilities-based competition. CPI thinks the Commission must strike a balance that allows ILECs to upgrade and CLECs to compete fully. If an ILEC installs a remote terminal without room for collocated equipment, the vision of competition in the 1996 Act is vitiated. While the Commission was clear in the *UNE Remand Order* that ILECs are not obligated to build new space to allow collocation, that Order should not be read to permit a new network architecture that precludes the sort of competitive access an incumbent is obligated to provide competitors.

Second, CPI disagrees that the Commission's consideration of these issues should be limited to the *SBC-Ameritech Merger Conditions* proceeding.[37] We think the Commission

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[34] *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*").
[35] *See UNE Remand Order* at ¶ 199.
[36] ALTS petition at p. 11.
[37] *See* GTE Comments at p. 2.

should seek the broadest possible participation in the resolution of the complex issues associated with deployment of DLC systems. Although Project Pronto raised this issue to its current profile, other ILECs certainly intend to deploy DLC systems for the same reasons SBC plans to use them.[38] To limit consideration of those issues to the *SBC-Ameritech Merger Conditions* proceeding is counter-intuitive, given the global impact of any rules the Commission might promulgate.

Third, the Commission should encourage ILECs to develop solutions that will permit them to deploy DLC systems for delivering broadband while allowing facilities-based competitors to access those facilities to provide their own innovative services. The most important characteristic of any work around configuration is that a requesting carrier be able to provide its own unique services to consumers. Without such capability, ILECs will be able to use DLC systems to thwart competition, stifle innovation and extend their dominance in the voice market to the market for data services.

[38] *See* SBC Comments at p. 10-11, n. 3.

V. CONCLUSION

The ALTS petition affords the Commission 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,

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CERTIFICATE OF SERVICE

I, _____, hereby certify that on this _____ 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.

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