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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
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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 Authorization from Ameritech Corporation Transfer 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

**REPLY COMMENTS
OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (“USTA”) files these reply comments in response to comments filed regarding the Commission’s Public Notice¹ involving the Petition for Declaratory Ruling filed by the Association for Local Telecommunications Services (“ALTS”).

As comments make clear, the ALTS Petition is procedurally defective. The Commission may not adopt new competitive regulations through a declaratory order, as

¹ Public Notice DA 00-1141, released May 24, 2000.

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ALTS proposes, when a rulemaking process is required.² The Commission has consistently recognized that a declaratory order cannot be used as a substitute mechanism when a rulemaking proceeding is clearly required, as is the case with the relief sought by ALTS.³

As a matter of public policy, the Commission should deny ALTS the relief it seeks. Even if the ALTS request had merit, the avenue for relief for individual CLECs is through existing processes. These existing carrier remedies have been overlooked by ALTS and those parties that favor the relief sought by ALTS in its Petition. As USTA explained in its comments:

ALTS argues that the Commission must issue a declaratory ruling regarding ILEC loop provisioning because it alleges that “many CLECs experience continued delay and frustration in obtaining UNE loops.” If true, individual CLECs may pursue a number of remedies. Through separate merger agreements with the Commission, SBC and Bell Atlantic are subject to significant financial penalties should they fail to meet specific obligations to provide access to UNE loops. CLECs may also bring complaints against any ILEC to the Commission and have the complaint processed through the Commission’s “rocket docket” complaint process. In addition, proceedings before state commissions under Section 252 of the 1996 Act

² Bell Atlantic Comments at 1-2 (“ALTS seeks ... adoption of new rules ... for provisioning UNE loops This request ... is inappropriate in the context of a petition for declaratory ruling.”); BellSouth Comments at 1-2 (“ALTS’s petition seeks a declaratory ruling that “governs all aspects of the provisioning process for UNE loops that support broadband technologies” without benefit of notice, opportunity to comment or record evidence. The Commission has no legal authority to grant such relief outside of a rulemaking proceeding.”); SBC Opposition Comments at 4 (“ALTS’ requests for substantive rule changes are wholly inappropriate for a declaratory ruling.”); US WEST Opposition at 2 (“The Commission is not authorized to adopt rules in a declaratory ruling proceeding....”).

³ See SBC Opposition Comments at 4. SBC sets forth a litany of prior Commission decisions acknowledging that “substantive modifications to the Commission’s rules for an entire class of companies require a rulemaking proceeding rather than a declaratory ruling.”

provide CLECs with an opportunity to negotiate the terms and conditions for interconnection and access to UNEs with a further opportunity to challenge state commission rulings in federal district court as mandated by Section 252(e)(6) of the 1996 Act.⁴

USTA agrees that “ALTS has made no showing that these existing mechanisms for relief are inadequate to address whatever problems it perceives. If ALTS’ perceived problems are true violations of the Commission’s existing rules ... ALTS’s members should seek relief under these measures. The fact that they have not done so suggests that ALTS’ allegations are fiction, not fact.”⁵

Frivolous filings, like the ALTS Petition, should be dismissed summarily by the Commission.⁶ USTA urged the Commission to “[D]eclare a moratorium on issuing public notices requesting comment on filings such as that made by ALTS.”⁷ The Commission should reject request for relief “when issues are pending resolution, when an individual CLEC has not filed a complaint against an ILEC in which specific evidence of rules violations is provided, or when the petitioning CLEC fails to file timely pleadings consistent with Commission regulations.”⁸ Absent such requirements, the Commission’s regulatory processes are ignored and redundant proceedings are initiated, which are “administratively burdensome, costly to address, create confusion, and simply renew

⁴ USTA Comments at 2.

⁵ SBC Opposition Comments at 5.

⁶ US WEST Opposition Comments at 3 (“It is frankly disheartening that the Commission seemingly encourages filings in violation of its rules by not summarily dismissing them as they deserve.”).

⁷ USTA Comments at 3-4.

⁸ *Id.* at 3.

battles over issues previously resolved or pending before the Commission and the courts.”⁹

Substantively, the record is abundantly clear that there is no basis for commencing a rulemaking. ALTS makes various allegations about access to broadband loops and supposedly discriminatory treatment by incumbent LECs. ALTS, however, fails to substantiate any of these allegations or establish a record basis for new rules. The Commission has recognized that Section 251 of the Act only requires ILECs to furnish xDSL loops on a non-discriminatory basis. ALTS requests a national performance standard for the provisioning of xDSL loops based on an interim “placeholder” performance measure used in Texas. But ALTS has not established that such a benchmark would accurately measure nondiscriminatory performance for ILECs in other states. In addition, such a requirement would violate prior rulings that the Commission may not mandate superior quality service than ILECs currently provide. Moreover, the Commission “must carefully weigh the consequences of ... micro-managing the provision of broadband services over ILEC facilities.”¹⁰

⁹ USTA Comments at 3-4.

¹⁰ BellSouth Comments at 5.

The ALTS Petition is procedurally and substantively defective. The Commission should the deny the requested relief.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

July 10, 2000

By:

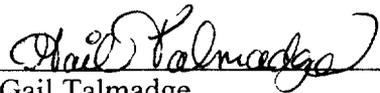
A handwritten signature in black ink that reads "Keith Townsend". The signature is written in a cursive style and is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

I, Gail Talmadge, do hereby certify that on July 10, 2000 a copy of *Reply Comments of the United States Telecom Association* in CC Docket Nos. 98-147, 96-98, 98-141, and NSD-L-00-48, was either hand-delivered or sent via U.S. Mail, first-class, postage prepaid, to the persons on the attached service list.



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