PIPER
MARBURY
RUDNICK
& WOLFE LLP

1200 Nineteenth Street, N.W.
Washington, D.C. 20036-2412
www.piperrudnick.com

PHONE (202) 861-3900
FAX (202) 223-2085

DOCKET FILE COPY ORIGINAL

WRITER'S INFORMATION

scott.perry@piperrudnick.com
PHONE (202) 861-3975
FAX (202) 223-2085

RECEIVED
JUL 10 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 10, 2000

HAND DELIVERY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-A325
Washington, DC 20554

Re: 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

Dear Ms. Salas:

Enclosed for filing is an original and seven copies of the Reply Comments of Digital Broadband Communications, Inc., to the Association for Local

No. of Copies rec'd 0+6
List ABCDE

Telecommunications Services' petition for declaratory ruling.

Sincerely,

Scott M. Perry

SMP/mwm
Enclosures

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

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
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Application 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 Announce Public Forum on Competitive Access to Next-Generation Remote Terminals	)	NSD-L-00-48 DA 00-891

REPLY COMMENTS OF
DIGITAL BROADBAND COMMUNICATIONS, INC.

Digital Broadband Communications, Inc. ("Digital Broadband"), by its attorneys and pursuant to the Public Notice, *Pleading Cycle Established for Comments on ALTS Petition for Declaratory Ruling: Loop Provisioning,* DA 00-1141 (rel. May 24, 2000), hereby submits its Reply Comments on the Petition for Declaratory Ruling (the "Petition") filed by the Association for Local Telecommunications Services ("ALTS") in the above-captioned proceeding.[1]

[1] Digital Broadband is a data and telecommunications carrier that provides high-speed data and telecommunications services, including broadband data transport, local and long-distance telecommunications, Internet and other value-added, integrated applications in the northeastern and mid-Atlantic United States.

I. The Commission Has Authority to Grant ALTS' Petition

Tellingly, opposition to ALTS' Petition is limited solely to the remaining incumbent local exchange carriers, BellSouth, SBC, US WEST, and the former Bell Atlantic and GTE. Their oppositions generally consist of two arguments: first, that granting the Petition would require the Commission to overstep the boundaries of its authority and intrude on the authority of the individual states, and, second, that there is insufficient evidence to justify clarifying their legal obligations.[2] Indeed, USTA goes so far as to assert that "there is no controversy to terminate or uncertainty to remove."[3] These arguments are an attempt to obscure the important pro-competitive issues raised by ALTS and supported by an overwhelming number of telecommunications and data service providers.

The ILECs' arguments are not new. In fact, they are strikingly similar to the arguments the ILECs asserted when the Commission – presented with compelling evidence of anti-competitive ILEC tactics directed at CLECs seeking entry into the central office – proposed to strengthen its original collocation rules. The ILECs' recycled oppositions must fare no better now than they did then, when the Commission flatly rejected arguments that national rules were unnecessary.[4]

As was the case when the Commission proposed strengthening its original collocation rules, no state has opposed ALTS' request. This fact discredits ILEC attempts to seize the mantle of protector of state powers. ALTS has not proposed precluding any state from adopting

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[2] *See* Comments of Bell Atlantic at 3-11, 11-16; Opposition of SBC Communications, Inc. ("SBC") at 3-5, 5-12, 23; Comments of GTE at 4-7, 7-15; Opposition of US WEST Communications, Inc. ("US WEST") at 3-9; Comments of BellSouth Corporation ("BellSouth") at 2-6. *See also* Comments of the United States Telephone Association ("USTA") at 1-3.

[3] Comments of USTA at 3.

additional requirements or from continuing to exercise its powers under the dual regulatory framework embodied in the Telecommunications Act of 1996, nor has ALTS suggested that the Commission overrule any state action.[5] ALTS only asks the Commission, in the first instance, to provide guidance under the existing rules.

Notably, ILECs' arguments in this proceeding are inconsistent with arguments they regularly make to the states. For example, Bell Atlantic has urged Massachusetts regulators to adopt as the law of Massachusetts portions of an arbitrator's decision involving another ILEC (PacBell) in a state (California) that is not even in Bell Atlantic's footprint.[6] Thus, Bell Atlantic urges the Commission to defer to individual states because of the purported complexity of "the different network configurations, operational systems and processes, methods and procedures, and local performance requirements facing different incumbent carriers in different jurisdictions,"[7] yet urges individual states to defer to other states (more precisely, to any state that has resolved an issue in favor of any ILEC). Bell Atlantic and other ILECs, of course, never acknowledge that their network configurations and OSS are centrally planned and designed, taking into account their entire footprint, rather than on a central office-by-central office basis.

(footnote continued from previous page)

[4] *See In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *First Report and Order*, 14 FCC Rcd 4761 (1999), at para. 24.

[5] The ILECs' asserted preference for "complaints under Section 202 and 208 of the [Communications] Act and state enforcement actions" (Comments of SBC, at 2), rather than uniform, clear federal guidelines, obviously suits the ILECs for three reasons: it further delays competition by requiring piecemeal adjudication, it obscures the vast scope of the ILECs' obstructive behavior, and it takes advantage of the fact that many states do not have standards in place.

[6] Massachusetts D.T.E. 98-57, Phase III, Testimony of Amy Stern, Bell Atlantic, filed June 15, 2000, at 21-25.

[7] Comments of Bell Atlantic at 5. *See also* Comments of SBC at 21-22.

There can be no doubt that the Commission has primary responsibility for creating standards that the states must enforce and may supplement. The Commission itself has rejected arguments that it lacks power to prescribe national standards for "both interstate and intrastate aspects of interconnections, services, and access to unbundled elements."[8] The Supreme Court has made clear that the Commission has the power, and indeed is required, to implement a federal regime for unbundling networks.[9] Indeed, the Commission recently confirmed its authority to adopt minimum national standards for unbundled network elements.[10]

The Commission's authority to establish national rules plainly extends to clarification, interpretation, and enforcement of those rules. Indeed, Commission authority to "terminat[e] a controversy or remov[e] uncertainty" is expressly provided for in Section 1.2 of the Commission's rules. 47 C.F.R. § 1.2. ALTS has not broadly asked the Commission to create new rules or establish new policies. Rather, ALTS asks the Commission to invoke its authority under Section 1.2 to clarify already existing rules. Granting the ALTS Petition is unquestionably within the Commission's authority[11] and serves the Commission's commitment to fostering competition.

II. There Is an Immediate, Demonstrated Need for Commission Action

The comments make clear that the problems faced by CLECs in gaining access to network elements and deploying service are consistent across the country. State-by-state, issue-

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[8] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98, *First Report and Order,* 11 FCC Rcd 15499, 15544 (1996).

[9] *AT&T Corp. v. Iowa Utilities Board,* 525 U.S. 366, 378 (1999).

[10] *In the Matter of 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,* 15 FCC Rcd 3696 (1999), at para. 124.

[11] *See* ALTS Petition at 21.

by-issue adjudication will simply cause further service delays. Uniform national standards therefore are both appropriate and necessary, as they will lead to a prompt resolution and therefore will benefit carriers, regulators, and end-users alike.[12]

The comments filed in response to the ALTS Petition evidence substantial similarity in the anti-competitive obstacles faced by CLECs nationally. They include ILECs failing to make available non-discriminatory access to loop information, rejecting large numbers of orders for hypertechnical or nonexistent errors and manually typing rejection letters, delaying response time for confirmation of new orders, routinely failing to show up for installations, refusing to give notification of missed appointments, routinely claiming that no technicians are available for service, and routinely missing, without warning or adequate notice, Firm Order Commitment dates.[13] In short, virtually every interaction between incumbent and competitor results in the imposition of delay or cost, or both, on the competitor.

Relying on self-serving statements regarding the difficulty of complying with CLECs' requests, ILECs have submitted conflicting reasons for their dismal and anti-competitive performance. In some cases, ILECs claim that requests are not feasible – even though other

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[12] As several commenters note, clear federal standards will benefit ILECs by providing advance notice of the standards they must satisfy in order to gain Section 271 authority. *See, e.g.,* Comments of @Link Networks, Inc., *et al.* ("@Link"), at 2; Comments of Covad Communications Company ("Covad"), at 5; Comments of Rhythms Netconnections Inc., at 5. Digital Broadband agrees. Indeed, several states have advocated for greater Commission involvement in setting standards that will assist them in Section 271 proceedings. *See, e.g.,* Comments of @Link, at 5; Comments of Covad, at 5-8.

[13] *See, e.g.,* Comments of Network Access Solutions Corp., at 2-4; Comments of Bluestar Communications, Inc., at 2-5; Comments of Allegiance Telecom, Inc., at 4-6; Comments of Time Warner Telecom, at 3-5.

ILECs routinely perform such tasks.[14] In other cases, ILECs complain of the expense of complying with requests, while other ILECs make no such complaints.[15]

Digital Broadband's experiences, primarily with Bell Atlantic, are comparable to those of other CLECs. One example is loop pre-qualification. ALTS asks the Commission to establish federal loop pre-ordering guidelines.[16] The need to grant this request is amply supported by the comments.[17]

The record supports not only the loop qualification and ordering standards proposed by ALTS,[18] but also clarification of the ILECs' obligation to make available loop information to CLECs "in substantially the same time and manner" as to the ILECs' affiliates. Bell Atlantic asserts that it is providing loop make-up information in a non-discriminatory basis and that there is no evidence to the contrary.[19] Its assertion does not in any way comport with reality.

The databases Bell Atlantic makes available to competitors for loop make-up information are not reliable and are inferior to the databases it relies on. The error rate for Bell Atlantic's Line Qualification Database ("LQD"), which Bell Atlantic forces its competitors to use, is extremely high; Digital Broadband has been unable to pre-qualify nearly one-third of all loops which it has queried to the LQD. This has forced Digital Broadband to request so-called "manual" loop qualification at significantly higher per-loop costs. This second-stage loop

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[14] *Compare* Comments of Bell Atlantic at 14 *with* Opposition of US WEST at 8 and Opposition of SBC at 6.

[15] *Compare* Opposition of SBC at 7 *with* Comments of GTE at 10 and Opposition of U S WEST at 6.

[16] ALTS Petition at 24.

[17] *See, e.g.,* Joint Comments of CTSI, Inc., *et al.*, at 6; Comments of DSLnet Communications, LLC, at 3; Comments of @Link at 7-9.

[18] ALTS Petition at 27-28.

qualification method is "manual" only to the extent that a Bell Atlantic employee "manually" enters the query into another database – the automated Loop Facilities Assignment and Control System ("LFACS") – which Bell Atlantic refuses to make available to competitors. As Bell Atlantic has described it, LFACS "inventories and assigns all loop facilities from the serving terminal to the main distribution frame in the central office," and includes substantial data on individual loops, including cable length and gauge; FDI location and type; electronics, location and type; bridged taps, location, distance from central office, and design; spare pair availability; cable and pair identification and other information; and the presence and type of DLC plant information.[20] Bell Atlantic fails to make access to LFACS available to competitors, yet claims that "competing carriers receive the vast majority of loop make-up information in real-time."[21]

Incredibly, Bell Atlantic has asserted elsewhere that it need not provide direct, real-time access to its OSS because "[t]he current access afforded to CLECs . . . is more than sufficient to allow them to provision line sharing in the coming months."[22] The LQD is not by any measure capable of qualifying the large volume of loop qualifications that Digital Broadband and other CLECs need to accomplish. Bell Atlantic's own projections contemplate over 3.4 million ADSL subscribers in the Bell Atlantic footprint.[23] Bell Atlantic cannot project such volumes, and, at the same time, assert that its competitors have a "meaningful opportunity to compete" if their OSS interface is so

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[19] Comments of Bell Atlantic at 11.

[20] *See* Massachusetts D.T.E. 98-57 Phase III, Bell Atlantic Response to RL/CVD 1-33 (June 5, 2000).

[21] Comments of Bell Atlantic at 12.

[22] Massachusetts D.T.E. 98-57, Phase III, Testimony of Amy Stern, Bell Atlantic, filed June 15, 2000, at 38.

inferior to Bell Atlantic's, thus allowing Bell Atlantic to focus its marketing efforts on loops that Bell Atlantic already has pre-qualified.[24]

Bell Atlantic implies that it provides substantial information about loops.[25] What it does not provide, however, is access in the same time and manner to the same information that is available to Bell Atlantic. The Commission should clarify that Bell Atlantic's obligation under Section 51.319 to provide unbundled, nondiscriminatory OSS requires Bell Atlantic to immediately provide real-time electronic access to LFACS, as well as to the Trunk Integrated Records Keeping System – the same OSS that Bell Atlantic uses for its own and its affiliates' provisioning activities. The denial of such access clearly is discriminatory.

CLECs also need access to crucial information about the capacity of transmission facilities serving each central office. This information enables CLECs to determine whether they can provide the service that a customer desires. The ILECs respond in different ways. For example, SBC claims that such requests are onerous, extremely time-consuming, and would force it to develop a new and costly tracking system to monitor the information that CLECs request.[26] GTE avoids the issue by claiming CLECs have no need for the information.[27] US

(footnote continued from previous page)

[23] Massachusetts D.T.E. 98-57, Phase III, Testimony of Bruce F. Meacham, Exhibit 1, Workpaper, at 6.

[24] Bell Atlantic's claim that it "actually provides competing carriers with a better interval than it provides to its retail organization" ignores the fact that the processes it has set up for competitors are inferior to the processes available to its retail affiliate, thereby adding additional delays. *See* Comments of Bell Atlantic at 11-12. The additional time required for manual qualification, for example (*see id.* at 12) would not be necessary if the mechanized qualification process created by Bell Atlantic were adequate.

[25] Comments of Bell Atlantic at 12-13.

[26] Opposition of SBC at 7.

WEST, however, claims that it routinely produces such information to requesting CLECs.[28] The Commission has sufficient evidence to clarify this matter and confirm that ILECs' unbundling obligations require them to make such information available on a non-discriminatory basis.

There is substantial evidence that obstacles to providing service do not end at the loop qualification stage. Consequently, the Commission should grant ALTS' request for federal guidelines for all stages of loop ordering and provisioning. Here again, Digital Broadband's experience with Bell Atlantic is typical of other CLECs. Digital Broadband constantly encounters problems obtaining supposedly pre-qualified loops from Bell Atlantic. Approximately 25% of the "pre-qualified" loops that Digital Broadband orders from Bell Atlantic cannot be used. In many cases Bell Atlantic will respond to a pre-qualified loop order by stating that the loop facilities are not available; excuses subsequently provided by Bell Atlantic are frequently inconsistent and confusing, and, ultimately, wrong – if Digital Broadband pursues the matter loop facilities mysteriously become available. Resolving these matters, however, places a huge and wholly unnecessary burden on Digital Broadband's workforce. Once Bell Atlantic does accept a loop order, it is required to provide a "firm order commitment" ("FOC") date for loop delivery. However, all too often Bell Atlantic fails to provide FOC dates, misses FOC dates, or, without prior notice, reschedules FOC dates. The similar experiences of

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(footnote continued from previous page)

[27] Comments of GTE at 10.

[28] Opposition of U S WEST at 6.

numerous CLECs support Commission action clarifying ILEC obligations on all of these matters.[29]

Conclusion

The comments document the scope of ILECs' tactics to delay loop information and provisioning. Local competition disputes have moved to a new battlefield, from collocation to loop provisioning and other transmission-related issues. Notably, only after the Commission strengthened and clarified its collocation rules in March 1999 did ILECs begin to change their collocation provisioning tactics. Similar Commission action is needed now. More than four years after the Telecommunications Act and its promise of competition, it is beyond question that artificial obstacles created by the incumbents continue to be the most significant reason for delay of competition in the marketplace. Only uniform standards can prevent ILECs from continuing these tactics, which directly undermine the pro-competitive goals of the Act.

Respectfully submitted,

By: _____
E. Ashton Johnston
Scott M. Perry

PIPER MARBURY RUDNICK & WOLFE LLP
1200 19th Street, N.W.
Washington, D.C. 20036
(202) 861-3900

COUNSEL FOR
DIGITAL BROADBAND
COMMUNICATIONS, INC.

B. Kelly Kiser
Vice President, Legal and Regulatory
Affairs, Deputy General Counsel

DIGITAL BROADBAND
COMMUNICATIONS, INC.
200 West Street
Waltham, MA 02451

July 10, 2000

[29] While the scope of this proceeding generally is restricted to loop provisioning issues, it has been Digital Broadband's experience that ILEC performance in providing access to inter-office transmission facilities and other network elements is comparably unacceptable and anti-competitive. That record is appropriately the subject of a separate review by the Commission. For that reason, the Commission should reject USTA's self-serving request for a moratorium on investigations into ILECs' performance records.

CERTIFICATE OF SERVICE

I, Mary W. Malone, hereby certify that on the 10th day of July 2000, I caused copies of the foregoing Reply Comments of Digital Broadband Communications, Inc., to be served by hand delivery or first-class United States mail to the following:

*Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals – Room TW-A325
445 12th Street, S.W.
Washington, DC 20554

*International Transcription
Service, Inc.
1231 20th Street, N.W.
Washington, DC 20036

*Janice M. Myles
Common Carrier Bureau
Federal Communications Commission
The Portals – Room 5 – C327
445 12th Street, S.W.
Washington, DC 20554

*Dorothy Attwood, Senior Legal
Advisor, Office of Commissioner,
William Kennard
Federal Communications Commission
The Portals – Room 5-A848
445 12th Street, S.W.
Washington, DC 20554

*Rebecca Beynon, Legal Advisor
Officer of Commissioner
Furchtgott-Roth
Federal Communications Commission
The Portals – Room 8 – A302
445 12th Street, S.W.
Washington, DC 20554

*Kyle Dixon, Legal Advisor
Office of Commissioner Powell
Federal Communications Commission
The Portals – Room 8 – A203
445 12th Street, S.W.
Washington, DC 20554

*Jordan Goldstein
Legal Advisor
Office of Commissioner Ness
Federal Communications Commission
The Portals – Room 5 – C433
445 12th Street, S.W.
Washington, DC 20554

*Sarah Whitesell
Legal Advisor
Office of Commissioner Tristani
Federal Communications Commission
The Portals – Room 8 – C302
445 12th Street, S.W.
Washington, DC 20554

*Jonathan M. Askin
General Counsel
ALTS
888 17th Street, N.W., Suite 900
Washington, D.C. 20006

Christopher A. Hold, Vice
President/Assistant General Counsel
CoreComm Incorporated
110 East 59th Street, 26th Floor
New York, NY 10022

Chuck Goldfarb
Richard S. Whitt
Cristin L. Flynn
WorldCom, Inc.
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Kent F. Heyman
Senior Vice President & General Counsel
Francis D.R. Coleman
Vice President, Regulatory Affairs
Richard E. Heatter
Mpower Communications Corp.
Vice President, Legal Affairs
171 Sully's Trail – Suite 202
Pittsford, MY 14534

Thomas S. Lyle
Regulatory Affairs Manager
Vitts Network, Inc.
77 Sundial Avenue
Manchester, NH 03103

Donna M. Epps
1320 North Court House Road
Eighth Floor
Arlington, VA 22201

Michael K. Kellogg
Austin C. Schlick
Rachel E. Barkow
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1301 K Street, N.W., Suite 1000 West
Washington, D.C. 20005-3317

Roger K. Toppins
Gary L. Phillips
SBC Communications Inc.
1401 I Street, N.W., Suite 1100
Washington, D.C. 20005

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W., Suite 1200
Washington, D.C. 20036

Jeffrey S. Linder
Melissa A. Reed
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006-2304

Thomas R. Parker
GTE Service Corporation
600 Hidden Ridge, MS HQ-E03J43
P.O. Box 152092
Irving, TX 75015-2092

Robert B. McKenna
Blair A. Rosenthal
US West Communications, Inc.
1020 19th Street, N.W., Suite 700
Washington, D.C. 20036

Lawrence E. Sarjeant
Linda L. Kent
Keith Townsend
John W. Hunter
Julie E. Rones
United States Telecom Association
1401 H Street, N.W., Suite 600
Washington, D.C. 20005

Laurence E. Harris
David S. Turetsky
Terri B. Natoli
Edward B. Krachmer
Teligent, Inc.
Suite 400
8065 Leesburg Pike, Suite 400
Vienna, VA 22182

Philip L. Verveer
Gunnar D. Halley
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036

Romona Maxwell
Connect Communications Corporation
124 W. Capitol, Suite 230
Little Rock, AR 72201

Wendy Bluemling
Assistant Vice President
Regulatory and Industry Affairs
DSLnet, Inc.
545 Wharf Drive, Fifth Floor
New Haven, CT 06511

Russell M. Blau
Heather A. Thomas
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116

Richard Metzger
Vice President, Regulatory Affairs
and Public Policy
7799 Leesburg Pike, Suite 850 North
Falls Church, VA 22043

Andrew R. Newell, Esq.
Staff Attorney – Carrier Relations
Jato Communications Corp.
1099 18th Street, N.W., Suite 2200
Denver, CO 80202

Constance L. Kirkendall
Regulatory Manager
@link Networks, Inc.
2220 Campbell Creek Blvd.
Suite 110
Richardson, TX 75082

Andrew D. Lipman
James W. Ferguson
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116
Jonathan B. Banks
Robert Sutherland
BellSouth Corporation
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610

Helen E. Disenhaus
Eric J. Branfman
Harisha J. Bastiampillai
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116

Patrick J. Donovan
James N. Moskowitz
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116

Steven A. Augustino
Ross A. Buntrock
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036

Tom Koutsky
Vice President, Regulatory Affairs
Jason D. Oxman
Senior Government Affairs Counsel
Covad Communications Company
600 14th Street, N.W., Suite 750
Washington, D.C. 20005

Jeffrey Blumenfeld
Chief Legal Officer and General Counsel
Rhythms NetConnections Inc.
6933 South Revere Parkway
Englewood, CO 80112

Christy C. Kunin
Kristin L. Smith
Blumenfeld & Cohen – Technology
Law Group
1625 Massachusetts Ave., Suite 300
Washington, D.C. 20036

Brad E. Mutschelknaus
Ross A. Buntrock
Michael Engel
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036

Randall B. Lowe, Chief Legal Officer
Julie A. Kaminski, Deputy Chief Counsel
Prism Communication Services, Inc.
1667 K Street, N.W., Suite 200
Washington, D.C. 20006

Jonathan Lee
Vice President Regulatory Affairs
Competitive Telecommunications
Association
1900 M Street, N.W., Suite 800
Washington, D.C. 20036

Donald H. Sussman
Director of Regulatory Affairs
Network Access Solutions Corporation
100 Carpenter Drive
Sterling, VA 20164

Rodney L. Joyce
Shook, Hardy & Bacon, L.L.P.
600 14th Street, N.W., Suite 800
Washington, D.C. 20005-2004

Norton Cutler, V.P. Regulatory & Gen. Counsel
Michael Bressman
BlueStar Communications, Inc.
5 Corporate Centre
801 Crescent Centre Drive, Suite 600
Franklin, TN 37067

David R. Conn
Associate General Counsel and
V.P. – Product & Policy
McLeodUSA Telecommunications
Services, Inc.
6400 C Street SW
Cedar Rapids, IA 52406-3177

Ruth Milkman
Richard D. Mallen
Lawler, Metzger & Milkman, LLC
1909 K Street, N.W., Suite 820
Washington, D.C. 20006

Robert W. McCausland
V.P., Regulatory and Interconnection
Mary C. Albert
Regulatory Counsel
Allegiance Telecom, Inc.
1950 Stemmons Freeway, Suite 3026
Dallas, TX 75207-3118

Sandra Adams
Director of Regulatory
NewPath Holdings Inc.
4363 114th Street
Urbandale, IA 50322

Brian Conboy
Thomas Jones
Christi Shewman
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036

Mark C. Rosenblum
Stephen C. Garavito
Teresa Marrero
AT&T Corp.
295 N. MapleAve., Room 1131M1
Basking Ridge, NJ 07920

James L. Casserly
James J. Valentino
Lisa N. Anderson
Mintz, Levin, Cohn, Ferris, Glovsky
& Popeo, P.C.
7012 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, N.W., Suite 701
Washington, D.C. 20006

* By Hand

Mary W. Malone