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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matters 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 And Technology Announce Public Forum on Competitive Access to Next-Generation Remote Terminals	)	**NSD-L-00-48**

REPLY COMMENTS OF AT&T CORP.

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REPLY COMMENTS OF AT&T CORP.

AT&T Corp. ("AT&T"), by its attorneys, hereby replies to the comments filed in response to the petition of the Association for Local Telecommunications Services ("ALTS")[1] for a declaratory ruling to clarify, interpret, and modify the Federal Communications Commission's ("FCC's" or "Commission's") rules governing loop access and provisioning by incumbent local exchange carriers ("ILECs").[2]

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[1] Association of Local Telecommunications Services, Petition for Declaratory Ruling: Broadband Loop Provisioning (filed May 17, 2000) ("ALTS Petition"). By Public Notice released May 24, 2000 (DA 00-1141), the Common Carrier Bureau established a pleading cycle for comments on the ALTS Petition.

[2] AT&T Corp., along with the following commenters, filed in response to the ALTS Petition: @Link Networks, Inc. ("@Link"), Association of Communications Enterprises ("ASCENT"), Allegiance Telecom, Inc. ("Allegiance"), Bell Atlantic, BellSouth Corporation ("BellSouth"), BlueStar Communications, Inc. ("BlueStar"), Competitive Policy Institute ("CPI"), Competitive Telecommunications Association ("CompTel"), CoreComm Incorporated along with MGC Communications, Inc. and Vitts Network, Inc. (collectively "CoreComm et al."), Covad Communications Company ("Covad"), CTSI, Inc. along with Network Plus, Inc. and Network Telephone Corporation (collectively "CTSI et al."), DSLnet Communications ("DSLnet"), Focal Communications Corporation ("Focal"), GTE, Jato Communications Corp. ("Jato"), KMC Telecom, Inc. along with NewSouth Communications

INTRODUCTION AND SUMMARY

The comments overwhelmingly demonstrate that the central premise of ALTS' Petition was undoubtedly correct. Despite all the efforts of this Commission and the state commissions over the past four-plus years (and even before the 1996 Act),[3] local telephone markets are not fully opened to competition. A host of loop access and provisioning problems continue to hinder new entrants.

The challenge for the Commission is to sort through these issues, prioritize them, and then choose the most appropriate avenue to address them. In doing so, the Commission must remove ILEC-imposed barriers to competition effectively, efficiently and expeditiously.

The inability of UNE-P carriers to offer integrated voice and DSL on the same line, for example, is a critical ILEC-imposed barrier that AT&T has raised in at least three other proceedings and is ripe for decision. As AT&T and CPI discussed in their comments, a new entrant's ability to compete in the residential and small business markets is heavily dependent on non-discriminatory ILEC provisioning of UNE-P, and, for a growing number of customers, UNE-P carriers will be unable to compete unless they can offer voice and data services over the same line. Given this impact, the Commission should immediately address these concerns in its *Line Sharing* and *UNE Remand* proceedings.

In addition, there are several other issues that the Commission should address immediately in this proceeding. Specifically, the FCC should address: (1) the ILECs' refusal to provide a uniform and commercially reasonable process for hot cuts, including a measurement process for the ILECs' performance; (2) the ILECs' failure to allow competitors access to subloops for DLC-served lines; and (3) the ILECs' refusal to provide special access in a non-

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and Nextlink Communications, Inc. (collectively "KMC et al."), McLeod Telecommunications Services, Inc. ("McLeod"), Network Access Solutions Corporation ("NAS"), NewPath Holdings, Inc. ("NewPath"), Prism Communications Services, Inc. ("Prism"), RCN Telecom Services, Inc. ("RCN"), Rhythms NetConnections, Inc. ("Rhythms"), SBC Communications, Inc. ("SBC"), Teligent, Inc. ("Teligent"), Time Warner Telecom ("Time Warner"), United States Telecom Association ("USTA"), US West Communications, Inc. ("US West"), and WorldCom, Inc. ("WorldCom").

[3] Pub. L. 104-104, 110 Stat. 56, *codified as* 47 U.S.C. § 151 *et seq.* (Feb. 8, 1996) ("1996 Act"), amending the Communications Act of 1934 (collectively "Communications Act").

discriminatory manner. As discussed below, these problems severely constrain local competition.

Despite the ILECs' claims, it is procedurally appropriate for the Commission to address these, as well as other issues presented by ALTS, in this proceeding. The ILECs maintain that the federal complaint and state arbitration processes are sufficient to resolve many, if not all, of the problems detailed in the ALTS petition. However, as the Commission is aware, the complaint and state arbitration processes can be expensive and time consuming. Further, while those processes can be effective at resolving issues on an individual basis, the magnitude and scope of the problems competitors have identified demonstrate that broad clarification of existing law is needed. Since the passage of the 1996 Act, ILECs have erected new roadblocks to competition as quickly as the Commission creates rules designed to eliminate others. Further, as demonstrated by Covad and others, clear federal rules and standards will facilitate application of the complaint process, thus minimizing the "battle of data" and making the complaint process more effective.

In sum, the Commission should ensure that its rules and regulations effectively embody the letter and spirit of the 1996 Act to promote local telecommunications competition. While, as noted below, additional actions may well be required in certain instances (in the form of NPRMs or resolution of pending matters in other proceedings), the clarification requested by ALTS and others is certainly the appropriate starting point.

Other critical concerns, most notably the issues relating to loops provisioned over digital loop carrier ("DLC") technologies, require the Commission to open a rulemaking as soon as possible. The Commission can most effectively address still other critical issues, such as the establishment of performance measurements and guidelines, by initiating and actively participating in a national industry collaborative. Finally, as the comments overwhelming demonstrate, there are issues that, even if clarified, will not be truly resolved until the Commission aggressively uses its enforcement powers to compel ILECs to fully open their local markets.

DISCUSSION

I. IMMEDIATE ACTION IN THE *LINE SHARING* AND *UNE REMAND* PROCEEDINGS IS NEEDED TO ENABLE UNE-P PROVIDERS TO OFFER INTEGRATED VOICE AND DATA SERVICES.

The ability to offer both voice and high-speed data services using network elements is critical to competitive viability and consumer choice in the residential and small business markets. It is anticipated that the DSL market will grow exponentially from 300,000 lines in 1999 to 2.5 million lines by the end of this year because of consumer demand for increasing speeds of Internet access.[4] However, the ILECs' aggressive pursuit of strategies calculated to ensure that only they can offer "all the pieces" that consumers want[5] threatens to squelch competition in this important growth area.

The ILECs' control over the local loop and their refusal to provide competitors an efficient means to offer bundled voice and data enable them to create and maintain a dominant market position. For example, in Texas, nine out of every ten DSL subscribers in SBC's territory receive their DSL service from SBC.[6] Moreover, no customer that purchases DSL and voice service over a single loop in SBC's territory in Texas receives his or her voice service from any of SBC's competitors. *Id.*

As CPI has noted (at 5-6), and as the Commission has previously recognized, *UNE Remand Order* ¶¶ 253, 273, 296,[7] UNE-P is the most broad-based entry strategy for serving most residential and small business customers. UNE-P carriers, therefore, *should* be well positioned

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[4] Business Wire, April 12, 2000, "Three of Nation's Largest Cities to Experience Major New DSL Rollout." By the end of 2004, the Yankee Group estimates that cable industry's market share in high-speed Internet access services is expected to shrink to about 42 percent, as DSL services become more widely available. *Id.*

[5] *See, e.g.*, SBC Communications, Inc., "SBC Launches $6 Billion Initiative To Transform it into America's Largest Single Broadband Provider," SBC News Release at 5 (Oct. 18, 1999) ("SBC Pronto Press Release")(quoting SBC Chairman Edward E. Whitacre, Jr.).

[6] *Application by SBC Communications Inc. et al Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, AT&T June 7, 2000 *Ex Parte* letter to Magalie Roman Salas, FCC Secretary, from James L. Casserly, counsel for AT&T at 13 (AT&T June 14, 2000 *Ex Parte* Letter).

[7] *Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, CC Docket No. 96-98, FCC 99-238 (rel. Nov. 5, 1999).

to compete with ILECs for bundled voice and data services. ILECs, however, have precluded CLECs from effectively offering a competing voice and data package using the UNE-platform. The ILECs' actions have positioned them to take advantage of the new marketplace reality that a growing number of consumers, especially the ones most desirable from a marketing perspective, seek more than just local service.

As a result of the ILECs' actions, AT&T is unable to offer bundled voice and DSL service to even a single residential customer. Unlike the ILECs, which estimate between 200,000 (pre-merger GTE)[8] and 1,000,000 (SBC)[9] DSL customers by year-end, AT&T cannot now project any DSL growth by the end of this year. This is not for want of effort. AT&T first sought to establish the necessary procedures to add DSL service to UNE-P last fall. AT&T is in the process of establishing arrangements with data-only CLECs to provide the DSL portion of the service, and is making plans to roll out a combined voice/data service offer in several cities. But for now, AT&T cannot take the further steps needed to introduce a new DSL service -- such as the development of operations support systems ("OSS") and market readiness testing -- unless and until the ILECs provide technically feasible and nondiscriminatory access to the functionalities associated with their network elements and define in detail the procedures that CLECs can use to obtain such access and the costs of doing so.

This matter has already been briefed extensively before the Commission, particularly in the *Line Sharing* and *UNE Remand* proceedings, and should be resolved in those proceedings immediately. For example, the Commission should eliminate the ILECs' ability to mischaracterize the *Line Sharing Order* to deny UNE-P CLECs the right to access "all" of the functions of an unbundled network element (47 C.F.R. § 51.307(c)) and to provide "any" telecommunications service that can be offered by means of that element. *Id.* As the

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[8] "GTE Introduces New Self-Install DSL Kit, Paving Way to Triple DSL Subscribers This Year" (March 2, 2000) at www.gte.com/AboutGTE/NewsCenter/News/Releases/ DSLSelfInstall.html.

[9] Communications Daily, March 10, 2000, "RBOC Chiefs Stress Data Growth Potential, Wireless, DSL" at 8.

Commission recently noted, AT&T is not requesting "line sharing" at all, but "line splitting."[10] Indeed, far from wanting to "share" the line with an ILEC, AT&T wants the whole loop to itself, both voiceband and high frequency, so that it can offer a bundled package of voice and data services to compete head-to-head with the ILECs.

The Commission explicitly recognized in the *Line Sharing Order* that competitive carriers are entitled to "obtain combination of network elements and use those elements to provide circuit switched voice service *as well as data services*." *Line Sharing Order* ¶ 47 (emphasis added). The Commission needs to clarify this paragraph to ensure that AT&T and other UNE-P carriers enjoy the same efficiencies that an ILEC provides itself when it adds DSL capabilities to the loops it uses to provide its own voice services. In asking for this clarification, AT&T is thus seeking only what the 1996 Act and this Commission's rules have long required – that ILECs make available to AT&T the full functionality of the loop in a nondiscriminatory manner so that AT&T can provide the "services it seeks to offer" (§ 251(d)(2)(B)) – both voice and the data services – over a single line.

In the *SBC-Texas Section 271 Order*, the Commission took some initial steps to address the CLECs' current inability to access the functionalities and processes that are necessary to provide both voice and data services over the loops they lease from ILECs using the UNE-P architecture. The Commission appears to have recognized the important distinction between line sharing and line splitting (*Id.* ¶ 324), as well as the ILECs' obligation to enable UNE-P carriers to provide voice and data services over a single line. (*Id.* ¶ 325) Other portions of that *Order*, moreover, reflect that immediate Commission action on this issue is critical to ensure that AT&T

[10] *See Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance et al.*, Memorandum Opinion and Order, CC Docket No. 00-65, FCC 00-238 (rel. June 30, 2000) ("*SBC-Texas 271 Order*") ¶ 324. Line sharing involves having the ILEC provide the voice service, while the CLEC provides the data services, on the same loop. *See, e.g., Deployment of Wireline Services Offering Advanced Telecommunications Capability, et al.*, Third Report and Order, CC Docket No. 98-147, and Fourth Report and Order, CC Docket No. 96-98 (rel. Dec. 9, 1999) ("*Line Sharing Order*") ¶ 4. Line splitting, in contrast, enables competitive voice and data services to be provided over a single loop.

and other UNE-P carriers are able to provide voice and data services over UNE-P on terms comparable to the ILEC.

For example, the Commission must immediately address some ILECs' current practice of forcing AT&T to disconnect its existing UNE-P and reassemble the network elements through a complex ordering process involving hot cuts in order to add the data service.[11] The ILECs' refusal to effectively accommodate the addition of DSL to UNE-P necessarily hinders AT&T's ability to compete in the markets for data services, voice services, and bundles of services. Indeed, by insisting on a "rip-it-apart-and-rebuild-it" approach to the existing loop-port-transport combination, ILECs are necessarily discriminating in favor of themselves (and their affiliates) and against competitors that wish to offer the voice services the ILECs provide, and the voice/data bundles that only ILECs can now efficiently offer. The value of UNE-P as an entry strategy will be seriously undermined if UNE-P carriers such as AT&T cannot efficiently add advanced services to their voice offering.

Finally, as the Commission suggested in the recent *SBC-Texas Section 271 Order*, the *UNE Remand* proceeding is an appropriate vehicle in which to make the necessary clarification that CLECs are entitled to obtain access to ILEC-provided splitters on UNE-P loops. As AT&T has previously noted, a stand-alone splitter is properly considered part of the loop because it plainly constitutes "attached electronics" necessary to provide CLECs the ability to take advantage of the full functions, features, and capabilities of the loop.[12] Conversely, the stand-alone splitter (not integrated into a DSLAM) that AT&T seeks is not equipment "used for the provision of advanced services, such as a DSLAM." *Id.* Unlike a DSLAM, which is used exclusively for the provision of advanced services, a splitter is a passive piece of equipment that – like the loop itself – is necessary to enable a carrier to provide *both* voice and data services on the same loop.

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[11] AT&T at 3.

[12] AT&T June 14, 2000 *Ex Parte* Letter at 5-6.

Notably, the FCC has "define[d] packet switching as the routing of individual data units, or 'packets,' based on address or other routing information contained in the packets." *UNE Remand Order* ¶ 304. The DSLAM functionality is included in packet switching, because the DSLAM provides routing based on address information. *Id.* ¶¶ 303, 304. Conversely, the splitter performs no such "routing" function; it simply separates the signals it receives based on the frequencies of those signals, without regard to the content of the signals. *See Line Sharing Order* ¶ 66. This separating of signals is the essence of the splitter rather than the DSLAM. Thus, the Commission was careful to note that, although "DSLAM equipment sometimes includes a splitter," it need not, in which case "a separate splitter separates the voice and data traffic." *UNE Remand Order* ¶ 303.

Moreover, the Commission has already concluded, in the context of the *SBC/Ameritech Merger*, that stand-alone splitters are not used exclusively to provide advanced services and may not even be transferred from an ILEC to its advanced services affiliate.[13] Accordingly, such splitters do not fall into the exception for advanced services equipment. Moreover, adding a splitter to a loop involves procedures that are analogous, in all relevant technical respects, to the adding or removing of other loop electronics (such as bridge taps or load coils) that ILECs routinely provide and are obligated to provide as part of loop conditioning. And, as the Commission found in the *Line Sharing Order*, adding a splitter is necessary to provide voice service when a customer also requests advanced data service over the same line -- a configuration that is crucial to the development of a competitive market for advanced services. For all these reasons, the stand-alone splitter plainly falls within the definition of the loop element.

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[13] *See Application of Ameritech Corp, Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the commission's Rule*, Memorandum Opinion and Order, CC Docket No. 98-141, FCC 99-279 (rel. Oct. 18, 1999) ("*SBC/Ameritech Merger Order*") ¶ 365 & n.682, App. C at ¶ 3(d).

The ILECs' failure to provide UNE-P CLECs with splitters, and with the procedures needed to implement access to loops that include splitters, is flatly discriminatory. ILECs are denying UNE-P CLECs the arrangements needed to compete effectively with the ILECs and their affiliates, while at the same time offering data CLECs (including the ILEC affiliate) comparable arrangements so long as they do not attempt to offer voice service in competition with the ILEC.

Any further delay in resolving these issues will provide ILECs with an insuperable first-mover advantage that will foreclose meaningful residential voice competition for customers who also want data service and seriously impair competition in the markets for data service (and for long distance service in areas where the ILEC may also provide such services). Indeed, delay effectively will guarantee that the ILECs achieve their ultimate goal: to maintain control over the local loop and consequently remain the only carrier able to offer consumers a full package of voice and advanced services. Such a result – achieved because of the ILECs' ability to deny competitors a reasonable opportunity to compete – would preclude fulfillment of the procompetitive promise of the 1996 Act for the foreseeable future.

II. THE COMMISSION SHOULD REQUIRE ILECS TO PROVIDE A UNIFORM HOT CUT PROCESS THROUGHOUT THEIR REGIONS.

Like AT&T, several commenters have shown that the ILECs continue to jeopardize competitors' marketplace viability and reputations because of substandard hot cut provisioning.[14] Indeed, many of these commenters are so exasperated with the deficiencies in the ILECs' hot cut process that they have proposed that the Commission adopt a hot cut performance standard for the ILECs.[15]

The persistence of hot cut failures for over four years after the 1996 Act proves that the ILECs will do as little as possible to comply (barely) with the letter (but certainly not the spirit)

[14] @Link at 15-18; CoreComm et al at 21-24; CTSI et al at 13-16, DSLnet at 6, 16-18.

[15] @Link at 15-18; CoreComm et al at 21-24; CTSI et al at 13-16, DSLnet at 6, 16-18; RCN at 11.

of the 1996 Act. Technically, the ILECs consider their acceptance of hot cut requests as a sufficient demonstration that they have made hot cuts "available". However, the ILECs' frequent failures in completing hot cut orders are tantamount to no access at all. In AT&T's experience, ILECs often (i) fail to inform competitors when the hot cut will take place, (ii) fail to meet their deadlines when they do provide a firm order commitment ("FOC") and (iii) fail to inform the competitor when those missed deadlines will occur. Most significantly, the ILECs' failure to complete hot cut orders can result in customer outages that may last for hours, or even days. Collectively, these failures make it virtually impossible for competitors to apprise customers of the need to reschedule service establishment. The result is that CLECs cannot give their customers a reliable commitment on the timeframes for service conversions, those customers often face significant periods of time without service, and they incorrectly blame the CLECs for this poor service.

Competition cannot succeed when the fundamental process of allowing a consumer to choose an alternative provider is fraught with such difficulties and confusion. As one commenter well stated, "a BOC's inadequate hot cut performance [has] a devastating effect on the development of local competition."[16] This is particularly true in the residential and small business markets, which are unable to withstand even minimal service interruptions.

The Commission must, therefore, prioritize the improvement of the hot cut process to ensure that ILECs are capable of performing hot cuts reliably and with a high degree of accuracy. As AT&T stated in its initial comments, the Commission should require full disclosure and comprehensive documentation with respect to ILEC hot cuts on a regionwide basis, just as it has in other area of OSS.[17] In particular, the Commission should explicitly require the ILECs to: (1) establish uniform procedures; (2) comprehensively and accurately document and disclose those procedures; (3) demonstrate compliance with the procedures; and

[16] CTSI et al at 14.

[17] AT&T at 8.

(4) adhere to documented, collaborative change control procedures when instituting process changes that may have an impact upon CLECs' business operations. All these requirements should be encompassed within a structured framework and implemented according to a specific and short timeline. In order to do so, it may be efficient to address the matter at the holding company level through an industry collaborative effort with CLEC input and oversight and issue resolution by the Commission.[18]

Any such collaborative effort should also undertake efforts to arrive at minimum hot cut performance measurements that are sufficiently clear to ensure that the performance results can truly verify whether ILECs are actually capable of performing hot cuts reliably and with a high degree of accuracy. Once properly defined, minimum hot cut performance measurements should not only prevent the delays, early cuts, and outages that currently impair the development of local market competition, they should also serve to minimize ILEC/CLEC disputes regarding the hot cut performance data and results.

AT&T therefore urges the Commission, at a minimum, to require ILECs to provide competitors with detailed and uniform hot cut measurement processes and standards for their respective regions. This will at least enable competitors to have concrete information from the ILECs that the CLECs can use to determine when hot cuts will occur and when coordinated CLEC activity is required.

III. THE COMMISSION MUST PROACTIVELY ENSURE THAT COMPETITORS HAVE UNBUNDLED ACCESS TO NEXT-GENERATION NETWORKS.

CLECs agree with AT&T that the implementation of next-generation networks should not limit competitors' ability to access network elements in a manner that promotes customer choice.[19] Several CLECs correctly acknowledge that an ILEC's next-generation architecture, if

[18] AT&T at 8.

[19] AT&T at 18-22; Allegiance at 6-7; CoreComm et al at 38-39; CPI at 11; CTSI at 23-24; DSLnet at 22-23; Jato at 6-7; KMC et al at 8-10; McLeod at 3; Prism at 4-7; WorldCom at 6-7.

properly designed and operated, has the potential to create an open, efficient, and forward-looking loop architecture that benefits consumers.[20] By significantly decreasing the length of the copper loop plant serving a subscriber's home, next-generation networks will increase the total number of consumers who will be able to obtain xDSL services and the value and bandwidth of the services they can obtain.

Given the magnitude and significance of the ILECs' plans to redesign their networks,[21] AT&T and other CLECs are concerned that the ILECs will extend their monopoly power over local telephony to advanced services by operating and controlling next-generation networks in a manner that ensures that only the ILECs (and their data affiliates) will be able to realize the full benefits of this architecture.[22] These concerns are not speculative. As the Commission has already recognized, "by choosing electronics that meet the incumbent's market need, without regard to that of its competitors, the incumbent may stifle competitors' ability to innovate." *SBC/Ameritech Merger Order* ¶ 205. Moreover, as numerous CLECs demonstrate, SBC intends to resist otherwise technically feasible and pro-competitive uses of its next-generation network architecture.[23] In particular, SBC's Project Pronto deployment plans contain several characteristics that discriminate against CLECs and unfairly favor only its own data affiliate.[24]

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[20] AT&T at 18-19; CPI at 11; CoreComm et al at 38-39.

[21] According to Sam Sigarto, SBC's executive director of ATM distribution network systems and broadband switching, SBC's $6-billion Project Pronto "represents the kind of fundamental change that only comes every 60 years." Peter Lampert, "New, Old Carriers Place Big Bets on ATM Switching," PhonePlus International (Jan. 15, 200). <http://www.phoneplusinternational/.com/articles/012.INSERT/.html>

[22] *See, e.g.*, AT&T at 18-22; Allegiance at 6-7; CoreComm et al at 39-40; CPI at 11; CTSI at 23-24; Jato at 6- 7; KMC at 8-10; McLeod at 3; Prism t 4-7; WorldCom at 6-7.

[23] *See, e.g.*, Allegiance at 8-9 (SBC blurs the distinction between treating the subloop as a "network element" that must be unbundled pursuant to section 251(c)(3), and treating it as a "telecommunications service" that must be offered for resale under section 251(c)(4)); CoreComm et al at 39; KMC et al at 12; Prism at 6-7.

[24] *See, e.g.*, Letter from DSL Access Telecommunications Alliance to Carol Mattey Deputy Chief, Common Carrier, Bureau, FCC, CC Docket No. 98-141 (Apr. 11, 2000) (addressing SBC's attempts to allow only its affiliate access to optical concentration devices); Letter from Rhythms NetConnections, Inc., Covad Communications Company, and NorthPoint Communications, Inc. to Carol Mattey, Deputy Chief, Common Carrier Bureau, FCC, CC Docket No. 98-141 (May 31, 2000) (addressing SBC's effort to have its affiliate construct new remote terminals and install DSLAMs without subjecting those facilities to the unbundling requirements of the Act or the access conditions proposed by CLECs).

While the Commission is currently addressing a few aspects of the Project Pronto deployment in another proceeding related to SBC/Ameritech Merger conditions,[25] AT&T believes that the Commission should take this opportunity to reiterate, or clarify, legal principles that generally apply when ILECs build-out next-generation network networks. In particular, the Commission should clarify that the deployment of next-generation technology does not alter the ILECs' fundamental legal obligations under federal law, such as unbundling (including subloop unbundling), remote terminal collocation, operations support systems, TELRIC pricing principles, and nondiscriminatory access to the high-frequency portion of an ILEC's loops. Such clarification is necessary, both to foster competition in existing monopoly markets and to prevent ILECs from extending their monopolies over traditional POTS services to new advanced services before competition has a chance to develop. In order for competition to develop and spur the provision of advanced service, it is imperative that the Commission take action in a manner that furthers Congress' carefully constructed attempts to enable new market entrants to compete and curb the ILECs' monopoly power.

Specifically, the Commission should immediately clarify or reiterate, either here or as part of the *SBC Waiver Proceeding*, several basic principles that will provide the legal foundation to ensure that an ILEC's deployment of next-generation networks fosters, rather than impairs, competitive opportunities and consumer choice. These principles should include, but not necessarily be limited to, the following:

- ILECs must permit competitors to use the full features and functionalities of the loop as next-generation architecture is deployed, not just the features made available to the ILECs' data affiliates;
- The definition of a UNE loop should be clarified to encompass all loop facilities between an ILEC central office termination/interconnection point and a demarcation point at an end user premises, and includes all copper and fiber facilities between these two end-points, as well as any associated electronic equipment located in the central office and/or outside plant locations. In particular, the Commission should make clear that an ILEC may not claim that it has no obligation to provide equipped loops simply because the

[25] *SBC's Request for Interpretation, Modification, or Waiver*, Public Notice CC Docket No. 98-141, ASD File No. 99-49 (rel. Feb. 18, 2000) (*"SBC Waiver Proceeding"*).

ILEC's affiliate, rather than the ILEC, deploys an integrated DSL/POTS line card with DSLAM capabilities at the remote terminal;

- ILEC loops configured as fiber-fed DLC loops must be unbundled by ILECs pursuant to section 251(c)(3) of the Act, and offered to CLECs in their individual subloop elements/functionalities (or any combination thereof) to minimize the ILECs' ability to discriminate in favor of itself and its affiliate;

- The Commission should clarify what physical and virtual collocation at a remote terminal means and ensure that ILEC data affiliates cannot simply use up all the available space to the exclusion of other competitors. For example, subject to a presumption of technical feasibility, CLECs should have the right to own a variety of DLC line cards supporting the full range of DSL technologies offered by the manufacturer of the DLC in a remote terminal and the right to plug such line cards into the ILECs' DLCs via physical or virtual collocation, at the CLEC's option;

- The rates for all functionalities (including bundled voice and data services) available through the next-generation architecture (from the customer's premises to the central office, including, specifically, from the remote terminal to the central office) should be priced at TELRIC and all terms and conditions relating to their use must be applied in a nondiscriminatory manner;

- ILECs must make UNE-P available with no collocation requirement;

- ILECs must maintain existing copper for at least a specified period of time in order to ensure that CLECs' investment is not stranded. However, existing home-run copper is not a substitute for access to shorter copper subloops because the latter permit a much wider delivery of bandwidth; and

- Any retirement of existing copper must be subject to a competitively neutral process.

While the above list is far from complete, it provides a basic "bill of rights" within the framework of existing law that should guide the deployment of next-generation networks immediately.

In the near-term, AT&T also believes that the Commission must issue further rules and guidance on the issues surrounding next-generation networks. Specifically, the FCC should issue a NPRM on next-generation remote terminal issues to ensure that potential problems are resolved before the ILECs deploy next-generation networks on a mass-market scale.

Several ILECs simply dismiss the need for the FCC to take additional action on this issue because the issue has surfaced in the *SBC Merger Docket* and in the FCC's forum on next-

generation networks.[26] The ILECs are wrong. The *SBC Merger Docket* is only focused on compliance with merger conditions, and not on compliance with section 271 and 251 provisions of the 1996 Act.[27] Further, the conditions in the *SBC/Ameritech Merger Order* only apply to SBC, and not to other ILECs building next-generation networks. Finally, while the Commission's forum on remote terminals was needed to identify and highlight the implications of next-generation networks, it was not a rulemaking proceeding. Undoubtedly, as the record here and the *SBC/Ameritech Docket* show, there is great opportunity for anticompetitive behavior as the network evolves, and it is essential that the Commission craft rules now to prevent irreversible anticompetitive behavior and diminished competition in the future.

IV. THE COMMISSION MUST REQUIRE THE ILECS TO CONFORM THEIR SPECIAL ACCESS PROVISIONING TO THE NONDISCRIMINATORY PRINCIPLES OF THE ACT.

Special access services are a critical component of a variety of service offerings. Competitors use these circuits to provide local services and interexchange ("IXC") services,[28] and more recently have particularly looked to these facilities to offer high-speed services.[29] These circuits are an especially important alternative when access to UNEs is not timely or cost-effective. However, as the comments demonstrate, the ILECs' provisioning of these facilities is often unacceptably poor.

For example, ILECs have failed to deliver such circuits in a timely manner. Specifically, ILECs have failed to provide special access circuits by the FOC dates they provided to

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[26] *See, e.g.*, BellSouth at 4, U S West at 9.

[27] "Nor are the conditions that we adopt today intended to be considered as an interpretation of the sections of the Communications Act, especially sections 251, 252, 271 and 272. . . . In particular we note that our adoption of SBC/Ameritech's proposed conditions does not signify that, by complying with these conditions, SBC/Ameritech will satisfy the nondiscrimination obligations under the Act or Commission rules." *SBC/Ameritech Merger Order* ¶ 357.

[28] AT&T, for example, currently leases ILEC special access circuits for the provision of local services to its customers. While AT&T seeks to use UNE loops and UNE-P to provide local service wherever possible, AT&T will undoubtedly continue to use special access circuits to provide local service.

[29] Focal at 3.

competitors.[30] ILECs have failed to provide jeopardy notices that alert competitors of problems so that they can properly apprise their customers and reconfigure their service delivery schedules, thus causing unnecessary delays.[31] In addition, ILECs routinely justify their failure to deliver such circuits with the highly-subjective explanation "customer not ready," without providing details as to why the customer is not ready, which would inform competitors of the problems that must be addressed to allow for speedy resolution.[32] Finally, when competitors are able to identify specific problems, ILECs sometimes impose unnecessary delays by claiming that no staff is available during business hours to fix those problems.[33] All of these ILEC practices interfere with timely delivery of special access facilities.

In addition, ILECs have also failed to provide competitors with sufficient information about their special access facilities to enable CLECs to use those facilities for their intended purposes.[34] In view of these difficulties, several commenters, including AT&T, have urged the Commission to use its authority over these jurisdictionally interstate facilities to require the ILECs to comply with their obligations under sections 201(b) and 202(a) to provide special access circuits in a nondiscriminatory, just and reasonable manner.[35] In addition, some commenters have suggested that the Commission impose specific intervals and performance metrics.[36] Finally, WorldCom has requested that the Commission require ILECs to provide information about the availability and characteristics of special access facilities.[37]

Not surprisingly, the ILECs have resisted Commission scrutiny of their special access provisioning, and in doing so have erroneously suggested that the Commission should take a

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[30] *Id.* at 4; Time Warner at 4.

[31] Focal at 4.

[32] *Id.* at 4.

[33] Time Warner at 4.

[34] WorldCom at 13.

[35] AT&T at 22-24;

[36] Time Warner at 3-4; WorldCom at 8.

[37] WorldCom at 13.

hands-off approach because special access circuits are not UNE facilities.[38] Similarly, BellSouth and SBC suggest that special access services are competitive and thus, the Commission need not worry about establishing rules to ensure nondiscrimination.[39]

The ILECs' comments failed to recognize, however, that the unbundling obligations of the 1996 Act did not erase pre-existing requirements of the Communications Act and create a free-for-all in the delivery of non-UNE facilities. ILECs still must comply with the provisions of 201(b) and 202(a). Certainly, sections 201(b) and 202(a) do not sanction ILECs' provisioning of special access circuits to competitors more slowly than they provision similar facilities to themselves, thus placing competitors at a perpetual disadvantage. Moreover, it is discriminatory and unjust and unreasonable to require competitors to order facilities without access to readily available facilities information that would allow competitors to decide the appropriateness of the facilities being ordered. Further, while AT&T is not suggesting that the UNE rules should apply to special access facilities, ILECs should not be able to impose arbitrary distinctions between the two in order to steer competitors toward less favorable terms, when the facilities provided are the same.[40] As Time Warner states, a "CLEC should be able to rely on special access circuits to establish end user connections instead of unbundled loops when it is more efficient for the particular CLEC to do so."[41]

Thus, the Commission should require that competitors have access to special access circuits on intervals that are as least equal to the intervals for similar UNE facilities (and vice versa). Further, to guard against ILECs' temptation to thwart this requirement by offering equally poor treatment in its delivery of special access and UNE facilities, the Commission should require ILECs, at a minimum, to match the better of special access or equivalent private line delivery intervals provided to their largest customers. Finally, the Commission should

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[38] GTE at 12; SBC at 14.

[39] BellSouth at 4; SBC at 15.

[40] NextLink at 14-15.

[41] Time Warner at 5.

require ILECs to provide competitors with information about the availability and characteristics of special access facilities.

V. THE COMMISSION SHOULD ADDRESS LOOP PROVISIONING STANDARDS ON A NATIONAL LEVEL.

A common theme throughout the CLECs' comments is that the ILECs' poor loop provisioning performance is a national problem that can only be resolved by the adoption of national standards.[42] The primary reason for the overwhelming support for national standards is that competitors continue to face a myriad of pervasive loop provisioning problems, despite federal and state rules that proscribe discriminatory behavior. Competitors view national standards to spell out the ILECs' obligations with specificity as the last chance to ensure that ILECs will truly provide competitors with nondiscriminatory access.[43] As Covad aptly states, one of "the most significant barrier[s] to competitive entry is the loop provisioning practice of incumbent LECs . . . . [and the] Commission is [now] at a crossroads in its efforts to open the local market to effective competition."[44] Furthermore, commenters note that the only way in which the Commission can make national standards meaningful is if the Commission develops self-executing monetary penalties to accompany those standards.[45]

The ILECs have raised a host of misplaced arguments as to why the Commission should not impose national standards. First, the ILECs argue that national standards will usurp state authority or render obsolete the considerable work that state commissions have completed on loop provisioning standards.[46] Nothing could be further from the truth. The development of

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[42] @Link at 3-5; Allegiance at 12, 14; ASCENT at 9; CPI at 12; CompTel at 5; CoreComm et al at 3: Covad at 3-4, 6, 9; CTSI et al at 2-3; DSLnet at 3-22; Focal at 7; McLeod at 2; RCN at 5; Time Warner at 3; WorldCom at 3, 6.

[43] Allegiance at 12, 14; Covad at 3-4, 6; Rhythms at 4

[44] Covad at 3.

[45] @Link at 29; Allegiance at 16; ASCENT at 10; CompTel at 7; CoreComm et al at 42-43; Covad at 15; DSLnet at 31-32; Focal at 7; Jato at 7; NAS at 14-15; NextLink at 20-21; Prism at 11; RCN at 12; Rhythms at 11; Time Warner at 3; WorldCom at 3, 6.

[46] Bell Atlantic at 6-10; GTE at 6; SBC at 23-24

national standards need not exclude state commissions or usurp their important role. The Commission could build on the work already completed by the states and set minimum national standards, which states can then amplify.[47]

In a second related argument, the ILECs have claimed that national standards would violate the parity requirement because some ILECs' performance to their own customers may be even worse than that of their peers.[48] There is no reason why the Commission, in conjunction with industry and state input, as well as utilizing evidence from existing contractual agreements, cannot craft standards that all ILECs should be able to meet, regardless of region. Furthermore, such standards are particularly critical in performance areas, such as hot cuts, where there is no retail analog to evaluate parity.

Some ILECs have further argued that the Commission's imposition of a separate affiliate requirement in the course of merger reviews ensures that there is no need for national standards, as though the separate affiliate requirement will cure all ILEC ills.[49] This is certainly not the case, because, as shown above, the Commission has already held that compliance with the separate affiliate requirement in such circumstances does not demonstrate compliance with the Act. *SBC/Ameritech Merger Order* ¶ 357. This is undoubtedly true. Although a fully operational separate affiliate may curb some ILEC discrimination, the mere existence of a separate affiliate rule (or, for the matter, the mere establishment of a putatively "separate" affiliate) cannot by itself prevent ILEC discrimination, nor does it reduce the ILEC's incentives to discriminate.[50] And in all events, the affiliate rules applicable to a merger only binds some ILECs and do not provide the national coverage that competitors require.

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[47] @Link at 5; CoreComm et al at 6; CompTel at 5; *see also* AT&T Comments, *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56, RM 9101 (filed June 1, 1998) at 6, 14.

[48] Bell Atlantic at 10; SBC at 21-22

[49] GTE at 6; SBC at 24-25.

[50] Supplemental Comments of AT&T Corp. In Opposition to SBC's Section 271 Application for Texas, *Application of SBC Communications Inc, et al. for Provision of In-Region InterLATA Services in Texas*, CC Docket 00-65 (filed April 26, 2000) at 24-26; *see also* Rhythms at 9.

The ILECs' last argument is their often-repeated claim that their networks are so varied by geography that they cannot possibly comply with national rules.[51] This argument is meritless. It is the same argument the ILECs have used for the past four years (most recently in the *Line Sharing Docket*)[52] to support a claim that they cannot accomplish a task they want to avoid. However, the ILECs invariably find a way to accomplish such tasks, such as line sharing, in response to a Commission mandate. Moreover, as Covad states, "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."[53]

Accordingly, AT&T recommends that the Commission establish a national collaborative to set national standards. Such a collaborative process can incorporate requirements developed by state commissions, and also ensure the development of general standards that all ILECs can meet, regardless of region. Further, to ensure the effectiveness of these standards, the Commission should establish an NPRM to develop stringent self-executing penalties for non-compliance with these national standards. Such an NPRM should also consider whether these penalties should be paid to harmed CLECs.

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[51] Bell Atlantic at 6-9; BellSouth at 8; GTE at 8, 14.

[52] BellSouth Petition for Reconsideration, *Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings*, FCC Public Notice, CC Docket No. 98-147, Report No. 2390 (rel. Feb, 28, 2000) published in 65 Fed. Reg. 12004 (Mar. 7, 2000) at 2-3; GTE Comments on Petitions for Reconsideration, *Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings*, FCC Public Notice, CC Docket No. 98-147, Report No. 2390 (rel. Feb, 28, 2000) published in 65 Fed. Reg. 12004 (Mar. 7, 2000) at 6-7; SBC Comments on Petitions for Reconsideration, *Deployment of Wireline Services Offering Advanced Telecommunications Capability et al.*, CC Docket Nos. 98-147 and 96-98 (filed Mar. 22, 2000) at 1-2.

[53] Covad at 9-10.

CONCLUSION

AT&T respectfully requests that the Commission proceed in accordance with the recommendations set forth above.

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I, Elizabeth A. Crowe, hereby certify that on the 10th day of July, 2000, I caused copies of the foregoing "COMMENTS OF AT&T CORP.," to be served by hand delivery (*) or by first class mail on the following:

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