Federal Communications Commission
Washington, D.C.

July 17, 2000

Covad Communications Company
c/o Tom Koutsky, Vice President-Regulatory Affairs
600 14th Street, N.W., Suite 750
Washington, D.C. 20005

Re: Acceptance of Comments As Timely Filed in (CC Docket No. 98-147)

The Office of the Secretary has received your request for acceptance of your pleading in the above-referenced proceeding as timely filed due to file corruption related to the Electronic Comment Filing System (ECFS). Pursuant to 47 C.F.R. Section 0.231(I), the Secretary has reviewed your request and verified your assertions. After considering arguments, the Secretary has determined that this pleading will be accepted as timely filed. If we can be of further assistance, please contact our office.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas WTC
Secretary

RECEIVED
JUN 26 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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 DA 00-891
	)	
Association for Local Telecommunications Services Petition for Declaratory Ruling: Broadband Loop Provisioning	)	DA 00-1141

MOTION TO ACCEPT AS TIMELY FILED THE COMMENTS OF COVAD COMMUNICATIONS COMPANY

Jason D. Oxman
Senior Government Affairs Counsel
Covad Communications Company
600 14th Street, N.W., Suite 750
Washington, D.C. 20005
202-220-0409 (voice)
202-220-0401 (fax)
joxman@covad.com

Tom Koutsky
Vice President – Regulatory Affairs
Covad Communications Company
600 14th Street, N.W., Suite 750
Washington, D.C. 20005
202-220-0407 (voice)
202-220-0401 (fax)
tkoutsky@covad.com

On Friday, June 23, 2000, the undersigned, on behalf of Covad Communications Company (Covad), made several attempts to file comments in the above-captioned proceeding electronically via the Commission's Electronic Comment Filing System (ECFS). Despite repeated attempts to utilize ECFS between the hours of 7 PM and Midnight, the system was inaccessible. As a result, Covad is filing a paper copy of its comments with the Office of the Secretary at the first practicable opportunity on Monday, June 26, 2000.

On the morning of June 26, 2000, Covad informed the Office of the Secretary that ECFS had been unavailable on June 23. As a result of the inaccessibility of ECFS, Covad hereby submits this motion for acceptance of late-filed comments. It is Covad's good faith belief that no party will be harmed if the Commission accepts these comments, which are be filing on the first business day after the comment deadline.

Respectfully submitted,

dated: June 26, 2000

Jason D. Oxman
Senior Government Affairs Counsel
Covad Communications Company
600 14th Street, N.W., Suite 750
Washington, D.C. 20005
202-220-0409 (voice)
202-220-0401 (fax)
joxman@covad.com

Tom Koutsky
Vice President – Regulatory Affairs
Covad Communications Company
600 14th Street, N.W., Suite 750
Washington, D.C. 20005
202-220-0407 (voice)
202-220-0401 (fax)
tkoutsky@covad.com

RECEIVED

JUN 26 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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 DA 00-891
	)	
Association for Local Telecommunications Services Petition for Declaratory Ruling: Broadband Loop Provisioning	)	DA 00-1141

COMMENTS OF COVAD COMMUNICATIONS COMPANY

Jason D. Oxman
Senior Government Affairs Counsel
Covad Communications Company
600 14th Street, N.W., Suite 750
Washington, D.C. 20005
202-220-0409 (voice)
202-220-0401 (fax)
joxman@covad.com

Tom Koutsky
Vice President – Regulatory Affairs
Covad Communications Company
600 14th Street, N.W., Suite 750
Washington, D.C. 20005
202-220-0407 (voice)
202-220-0401 (fax)
tkoutsky@covad.com

I. Introduction

Covad Communications Company, by its attorneys, hereby submits these comments in support of the petition of the Association for Local Telecommunications Services (ALTS) for a declaratory ruling concerning crucial aspects of the Commission's loop unbundling rules. As the nation's leading provider of broadband services using digital subscriber line (DSL) technology, Covad is one the largest users of unbundled local loops in the nation. In the four years since Congress opened the local telecommunications market to competition, the loop provisioning practices of incumbent LECs have stood as the single greatest impediment to the deployment of competitive broadband services to consumers. Because of the lack of specific, enforceable federal rules requiring incumbent LECs to provision functioning loops to requesting carriers in a timely manner, incumbents have been given a four year free pass to deny, delay, and degrade the loops they provide to competitive LECs. A loop provisioned a month late is no better than a loop never provisioned at all. No customer is going to await service for so long, especially when another option – retail broadband service from the very same incumbent LEC that denied Covad a timely wholesale loop – is usually available in a matter of days.

Four years after passage of the Act, incumbent LECs have universally refused to embrace competition. Incumbent LECs have chosen to treat competitive LECs not as the "valuable wholesale customers" they claim (when looking for regulatory favoritism), but rather as retail competitors who can be suppressed with consistent discrimination in the provision of wholesale services. The litany of court challenges, regulatory obstacles, and legislative initiatives aimed at undoing the central marker-opening provisions of the Act

are too numerous to recount here. It is sufficient to note the fundamental economic reality that incumbent LECs have the clear incentive, and even clearer ability, to suppress competition by denying loops entirely, delaying them when outright denial does not work, and degrading the loops' condition when delay does not cause the competitor to lose a customer.

When the Commission first adopted its loop unbundling rules in 1996, it did not adopt a specific provisioning interval, but rather noted that "it is vital that we reexamine our rules over time in order to reflect developments in the dynamic telecommunications industry."[1] Four years later, the most significant barrier to competitive entry is the loop provisioning practice of incumbent LECs. The ALTS petition for loop provisioning intervals now affords the Commission the ideal opportunity to honor its commitment to reexamine its rules to see what competitive barriers can and should be lifted.

This Commission is at a crossroads in its efforts to open the local market to effective competition. The ALTS petition at issue in this proceeding presents a choice. The Commission can deny the petition, and rely on its limited (and reluctantly exercised) enforcement authority to ensure that incumbent LECs cannot capitalize on their ability to stifle competition by delaying the provisioning of loops. Or the Commission can grant the petition and establish once and for all a concrete and specific federal requirement for the time and manner of loop delivery.

Covad respectfully submits that this second path – granting the ALTS petition and establishing the loop provisioning interval advocated herein – is the only way the Commission can protect consumers' ability to secure the widest possible range of competitive broadband services. The very serious problems associated with loop

provisioning should not be swept under the rug or hidden away in the attic—the Commission must address them fully, openly and aggressively. If the Commission fails to preserve the ability of competitive LECs to secure timely and reasonable access to loops, the Commission risks the eventual loss of an entire industry of competitive providers that it has fought so hard to promote. All that will be left in the DSL world will be the incumbent LECs, who will have won their battle to crush competition and regain their longstanding monopolies.

As it stands today, Covad and other competitive LECs have been without an effective remedy for the discriminatory loop practices of incumbent LECs. The obligation on incumbents to provide unbundled access to loops capable of supporting xDSL services has been in place since 1996, but incumbent LECs have devised numerous tricks to handicap competitive LECs in their quest to secure the loops to which they are entitled by law. Despite the fact that federal rules have been on the books for nearly four years, enforcement of those rules has been mired in the minutiae of court challenges, political fights, and bureaucratic handwringing. It is time to put in place loop provisioning rules that will make the ILECs obligations abundantly clear to ILECs, CLECs, and enforcement authorities.

The most pervasive ILEC maneuver around the current federal rules is the timeliness of loop provisioning. Without a federal rule requiring incumbent LECs to provide a loop in a certain, predictable period of time, Covad has been severely hampered in its efforts to compete effectively in the broadband marketplace. A loop provisioning interval will accomplish numerous goals vital to the protection of the competitive broadband industry.

---

[1] *Local Competition First Report and Order* at para. 58.

II. Adoption of a federal loop provisioning rule is the most procompetitive, simplest step to preserving broadband competition.

The absence of a provisioning interval is a gaping hole in the Commission's otherwise pro-competitive loop rules. No amount of reconsiderations, reassertions, and restatements of the fundamental principles of loop unbundling (all of which the Commission has undertaken on numerous occasions) can overcome one simple fact: taking a long time to provision a loop is the easiest and safest way for an incumbent LEC to stifle competition. It is easy because it requires only the passage of time, and no other effort, to successfully prevent competitive LECs from turning up service to a customer. It is safe because in the absence of a federal provisioning rule, incumbent LECs are effectively insulated from any FCC enforcement action.

By adopting a national provisioning rule, the Commission will provide, for the first time, a clear benchmark that will provide competitive LECs an enforceable remedy for discriminatory loop provisioning practices. Covad has experienced consistent, anticompetitive delays in loop provisioning from all incumbent LECs from which it as ordered unbundled loops – delays that result in a loop provisioning process that takes, at minimum, more than two calendar weeks (fourteen days) across all Bell Operating Companies. Despite the serious harm to competition and consumers, Covad has been unable to secure an effective regulatory remedy for these anticompetitive practices. The Commission has thus far been hesitant to exercise its Title II authority to pursue enforcement action against incumbent LECs for loop practices, most likely because of the absence of a clear rule that would facilitate such enforcement. At the state level, the vast majority of states do not have rules regarding provisioning intervals, and an even greater

number of states lack the resources to conduct enforcement proceedings. As such, in order to obtain effective loop provisioning remedies across the country, Covad would first have to win the implementation of a state provisioning rule, and then pursue an enforcement action, in every jurisdiction in the country. These very obstacles to effective competition led the Commission to conclude that only concrete national rules could protect and promote competitive entry: as the Commission first concluded in 1996, "national rules will reduce the need for competitors to revisit the same issue in 51 different jurisdictions, thereby reducing administrative burdens and litigation for new entrants and incumbents."[2]

A national loop delivery interval will also facilitate enforcement of interconnection agreements through private litigation and arbitration—because a national benchmark should facilitate the writing of clear interconnection agreements.[3] As the Commission recognized in the *First Local Competition Order*, interconnection negotiations between a competitive LEC and an incumbent LEC are characterized by disparate bargaining power—the incumbent LEC has a tremendous incentive to deny requests for interconnection, to delay the establishment of agreements, and to deftly draft agreement clauses that obfuscate and obliterate a competitive LEC's legal rights. A clear loop installation rule—rather than the always-shifting sands of "parity"—wil provide a clear baseline of what a competitive LEC is entitled to receive from an incumbent LEC.

---

[2] *Local Competition First Report and Order* at para. 56.

[3] Unfortunately, even the clearest of FCC rules require vigilant oversight and enforcement. Because of ILEC intransigence, the process of writing interconnection agreements that truly incorporate clear FCC rules is a process that the FCC itself must actively supervise. For instance, Commission Rule 51.323(i) clearly requires incumbent LECs to provide "24 hours per day, 7 days per week" access to collocated equipment—yet Covad has endured an asinine procedure with GTE in which GTE argues that it need only permit certain work to be performed between 10 pm and 6 am.

III. A Loop Provisioning Interval Will End the "Battle of the Data" in the 47 Remaining Section 271 Applications

As evidenced by the Commission's decision in the Bell Atlantic – New York Section 271 decision and the current review of the SWBT – Texas proceeding, there is a great deal of uncertainty surrounding the issue of loop provisioning performance by incumbent LECs for purposes of checklist compliance. Covad presented a large volume of loop data to the Commission in the New York proceeding, contending that Bell Atlantic in New York was not in compliance with checklist item (iv) because of the extensive delays Covad experienced in receiving unbundled local loops the from incumbent. The Commission also received a large amount of data from Bell Atlantic purporting to counter Covad's contentions. In the end, the Commission was unable to resolve the data presented, and noted that it was troubled by the lack of a definitive measure of loop performance criteria.[4] Such difficulty is understandable, because in the absence of a concrete rule, the Commission is left trying to determine if a loop that is three days late, or five days late, or a month late, is a violation of the incumbent LEC's section 251(c)(3) obligations. A loop provisioning interval codified as a federal rule wipes that problem away. By establishing a concrete interval, and ensuring that the parameters of that interval are defined concretely as well, the Commission will eliminate the "battle of the data" and resolve much more efficiently the question of loop checklist compliance.

A similar "battle of data" has occurred in the Texas 271 proceeding. In that case, SWBT did not wait until the Texas Commission had established DSL-related

performance measurements required by the Covad/Rhythms Texas DSL Arbitration proceeding.[5] In the pending docket, SWBT has decided to file DSL loop performance data based upon the "parity" performance measurements that it has only *proposed* that the Texas Commission establish. Without access to the data underlying SWBT's performance to its retail operations, competitive LECs are not in a position to verify or examine SWBT's "parity" [6]claims. Clear loop installation intervals are the only means of ensuring that CLECs receive at least a minimum level of service quality from the ILEC—and such minimum standards will greatly assist the FCC and state commissions in their evaluation of BOC 271 applications.

As the Commission concluded in the *Local Competition First Report and Order*, concrete and specific national unbundling rules "help the states, the DOJ, and the FCC carry out their responsibilities under section 271, and assist BOCs in determining what steps must be taken to meet the requirements of [the] competitive checklist."[7] This is of particular importance as more BOCs file section 271 applications, and the time and resources of the Commission are severely strained by the sheer volume of applications.

---

[4] "The need for unambiguous performance standards and measures has been reinforced by the disputes in the record regading, for instance, what performance is being measured and whether it is properly captured by particular measures." *Bell Atlantic New York Section 271 Order*, FCC 99-404, at para. 334.

[5] *See* Comments of Covad Communications Company, CC Docket 00-4, *Application by SBC Communications Inc., et al. For Provision of In-Region, InterLATA Services in Texas* (Jan. 1, 2000); Comments of Covad Communications Company, CC Docket No. 00-65, *Application by SBC Communications Inc., et al. For Provision of In-Region, interLATA Services in Texas* (Apr. 26, 2000).

[6] There are two significant issues with "parity" approaches to performance. First, only the ILEC has access to its *true* retail performance. CLECs simply do not—and cannot—have sufficient information to determine what true "parity" really is. Second, as demonstrated in the 271 context, a "parity" concept requires "apples-to-apples" comparisons. With regard to DSL measurements, both Bell Atlantic/New York and SWBT/Texas have argued that because those incumbents had exclusive (discriminatory) acceess to line-sharing, comparing "line-sharing ILEC retail DSL service" to "stand-alone DSL loops to CLECs" was an apples-to-oranges comparison. SWBT has also utilized a variant of this argument to claim that its retail provision of ISDN service is not an adequate analog to its provision of BRI ISDN loops to CLECs. *See* SBC Reply Comments, CC Docket No. 00-65 (May 19, 2000).

[7] *Local Competition First Report and Order* at para. 57.

There is no question that the Commission will at some point in the very near future be virtually flooded with section 271 applications, and that loop provisioning issues will be of paramount importance (as they have been in the applications received thus far). The Commission has already concluded that national rules establishing the concrete and specific standards of loop unbundling pursuant to section 251(c)(3) of the Act provide the Commission "the standards to apply in adjudicating section 271 petitions in an extremely compressed time frame."[8] The "severely compressed time frame" that the Commission predicted in 1996 will soon be a reality as multiple applications pour in. The Commission has before it today an opportunity to reduce the burden on the parties – both incumbents and competitors – as well as the state commissions, the DOJ, and the Commission itself, by ensuring that all parties to a section 271 proceeding are working from the same concrete and definite loop provisioning rules. A federal rule that states unambigously that unbundled local loops must be provisioned in three business days – rather than the current amorphous "nondiscriminatory loop provisioning" – will streamline the section 271 process to the benefit of all parties concerned.

IV. There are no differences among states or incumbent LECs that would prevent the Commission from adopting a national loop provisioning interval.

In their zeal to avoid the destruction of their favorite tool of discrimination, incumbent LECs will likely argue – as they do in opposition to every federal rule – that there are regional differences in loops that would make a federal provisioning interval unworkable. Covad submits that, in its experience ordering and utilizing loops from every single large incumbent LEC in the country (experience that no incumbent LEC can claim), there is not a single difference in loops over geographies and incumbents that

[8] *Local Competition First Report and Order* at para. 57.

could possibly interfere with the establishment of a national loop installation rule. As detailed below, Covad agrees that loop provisioning intervals should vary slightly when conditioning work is necessary, but the conditioning that must be performed on a loop with load coils and bridged taps is the same in Bell Atlantic's region as it is in BellSouth's. Incumbent LECs have an incentive to exaggerate the regional differences of loop provisioning processes, because fighting implementation of a concrete and specific federal rule is the only means of preserving their favorite discriminatory tool.

Although it is certainly true that some state commissions have adopted loop provisioning intervals, the fact remains that the overwhelming majority of state commissions have not done so, and those that have done so have put different standards in place. As a practical matter, the policies of the different states – ranging from very pro-competitive intervals to no intervals at all – make service offerings extremely difficult for a national provider like Covad. As a result of the lack of a federal rule, Covad's quality of service varies on a state-by-state, ILEC-by-ILEC basis to take account of the widely different provisioning intervals put in place across different states. The vast majority of Covad's sales are through large, national ISPs that operate in multiple states, and Covad's sales are undertaken pursuant to national or regional contracts that cover those states. Because of the crazy-quilt lack of minimum national standards, Covad cannot, in its customer contracts, provide any expectation of uniform, national installation intervals or timeliness. This significantly impairs Covad's ability to sell its services and maintain a national, uniform expectation of service quality—which customers expect.

Establishment of a minimum loop installation interval is fully consistent with the Commission's approach to its unbundling rules since the 1996 Act was passed. As the

Commission noted in 1996 in the *First Local Competition Report and Order*, the adoption of uniform national unbundling rules is particularly pro-competitive, because it reduces "the likelihood of potentially inconsistent determinations by state commissions" and thus reduces "burdens on new entrants that seek to provide service on a regional or national basis by limiting their need for separate network configurations and marketing strategies, and by increasing predictability."[9] The Commission recognized that state commissions have an important role in adopting rules that "take into account local concerns," but in the case of loop provisioning intervals, there are no such concerns.[10] With regard to xDSL-capable loops in particular, it is indeed entirely within the Commission's authority and responsibilities to ensure that *purchasers* of interstate telecommunications services and elements receive a certain minimum level of service quality from the incumbent LEC—because the incumbent LEC clearly has market power and degradation of service quality is one of the "classic" methods in which a firm with market power may seek to exercise that power.

Because the incumbent LEC has no incentive to provide quality service to its customers (the monopolist benefits in this regard from a lack of customer choice – the consumer simply cannot switch service providers), competitive LECs suffer from the Commission's use of a "parity" standard to measure loop performance. Because incumbent LECs maintain their bottleneck monopoly control over loops plant, Covad and other broadband competitive providers do not have another wholesale supplier of loops to switch to, and as a result, cannot differentiate their services from the incumbent LEC by

[9] *Local Competition First Report and Order* at para. 47. Of course, even then the incumbent LECs fought hard against the implementation of ANY national rules. BellSouth, for example, "urge[d] the Commission merely to codify the language of the 1996 Act." *Id.* at para. 50.
[10] *Local Competition First Report and Order* at para. 53.

providing better service quality and timeliness. The use of "parity" as the benchmark ensures that incumbent LECs are able to wed competitive LECs to exactly the same poor quality loop delivery as the incumbents provide their own retail customers. Surely this could not have been the intent of Congress. Indeed, there is evidence of this perverse result throughout SBC's territory. Recently, the incumbent LEC reported that while it had over 200,000 xDSL lines in service, it had over 100,000 orders pending. SBC is clearly having difficulty provisioning its xDSL orders. With such a large backlog of orders, SBC's provisioning practices on the retail side are obviously going to suffer. As a result, the "parity" treatment to which competitive LECs are entitled will result in the migration of the same poor performance to competitive LEC customers.

In addition, one of the ostensible principles of the recent string of RBOC and ILEC mergers has been the "efficiencies" of running incumbent LEC networks across several states. In the context of both the SBC/Ameritech and Bell Atlantic/GTE mergers, those incumbents proposed multi-state service level commitments to this Commission. In addition, all providers of interstate telecommunications services[11] are currently subject to federal service quality rules and standards.[12] In obtaining unbundled loops utilized for the provision of interstate services, competitive LECs should be accorded a certain minimum level of service quality.

Finally, the development of loop intervals cannot be left to the negotiation process between incumbent and competitive LECs. As the Commission has recognized since 1996, "[n]egotiations between incumbent LECs and new entrants are not analogous to

[11] Which, according to the Commission in the *GTE ADSL Tariff* decision, includes the provision of DSL services for dedicated access to the Internet.

traditional commercial negotiations . . . [t]he inequality of bargaining power between incumbents and new entrants militates in favor of rules that have the effect of equalizing bargaining power." Incumbent LECs have demonstrated time and time again that they are fundamentally opposed to any notion of treating competitive LECs as "customers" rather than competitors, and that the fundamental economic motivation that drives their every interaction with competitive LECs is to discriminate in favor of their own retail service offerings. No negotiation can replace federal rules – without them, competitive LECs such as Covad would never have been able to access xDSL capable loops, due to the consistent and recurring incumbent LEC refusal to provide such loops. In addition, a competitive LEC must enter into potentially hundreds of interconnection agreements with incumbent LECs to provide national coverage—the likelihood of that iterative process resulting in anything remotely approaching a "national installation interval" is slim to none. If the Commission truly wishes to see competitive advanced services rolled out to "all Americans" with a certain minimum level of quality, a minimum loop installation interval is required.

V. The Commission must adopt a minimum loop installation rule of 3 business days for loops that require no conditioning, and 10 business days for loops that require conditioning.

In the *Line Sharing Order*, the Commission cited with approval the provisioning interval adopted by the Texas PUC of 3 business days for standalone xDSL-capable loops. This interval is more than sufficient time for incumbent LECs to provision a loop, especially if the incumbents cease delaying the implementation of electronic pre-order

[12] *See, e.g.*, 47 C.F.R. §§ 63.60, *et seq.*, 63.100, 63.500-601, 64.401, 64.706, 64.1100-80, 64.1401-02, 64.1501, *et seq.*, 64.1600, *et seq.*, 64.1700, *et seq.*

and order capabilities. When the loop requires conditioning, and the competitive LEC requests such conditioning, the loop interval should be 10 business days so as to permit the incumbent to complete such conditioning activities as are necessary.

In the absence of a three business day loop interval, competitive LECs will continue to suffer egregious intervals that render effective competition with the incumbent all but impossible. For example, Bell Atlantic offers consumers a "sign up to turn on" interval for their retail DSL service of only 6 days.[13] Covad waits significantly longer than 6 days simply to receive a loop from Bell Atlantic. Because the loop provisioning process is largely computer-based, the incumbent has very little actual work to do in the field. Other than a truck roll to provision the loop to the customer's premises, and a central office cross connect of the loop to a competitor's point of interconnection, there is little other physical work for the incumbent LEC to do. Three business days is more than sufficient for loop provisioning, and it provides competitors a meaningful and fair opportunity to compete with incumbent LEC retail xDSL services.

It is of vital importance that the Commission put more teeth into its loop provisioning rules and provide competitive LECs a meaningful opportunity to compete with incumbents. The Commission's current "parity" standard measures the time period for loop delivery from incumbent LEC to competitive LEC and compares it with loop delivery from incumbent LEC to incumbent LEC retail customer. This purported parity measure actually measures the time at which a competitive LEC can *begin* to provide service to its customer and compares it to the time that an incumbent LEC has *completed* providing service to its retail customter. After receipt of a functioning loop, Covad

[13] Bell Atlantic-Massacusetts 271 Proceeding, DTE 99-271, BA Response to in-hearing data request DTE-RR-81 (Nov. 19, 1999).

begins the process of provisioning service to its broadband customers. The loop interval that the Commission has considered thus marks the beginning of Covad's provisioning process, which cannot commence until the loop is delivered. The incumbent LEC, on the other hand, *completes* its installation process with the installation of the loop. The "parity" that the Commission seeks to ensure is thus a false measure of the ability of competitive LECs to turn-up service to their customers. Only through an actual loop provisioning interval can the Commission ensure that competitive LECs can compete fairly and offer a true quality service to consumers – not the monopolist's version of quality.

To further facilitate the loop provisioning process, the Commision must establish concrete penalties for incumbent LEC failure to provision loops in compliance with the Commission's rules. Covad has argued on numerous occasions before the Commission that an efficient means of enforcing loop provisioning rules – and providing adequate incentive for incumbent LEC compliance – is to impose strict and immediate financial penalties on the incumbent LECs.

The interval established by the Commission must be measured concretely to avoid providing the incumbent LECs any opportunity to wiggle out of the otherwise procompetitive requirements. The interval must be measured from the time the competitive LEC submits the order to the incumbent LEC. Submission of the order is marked by the time that the competitive LEC delivers the order to the incumbent – not the transmission of a notice from the incumbent that the order has been received. In this way, the incumbent is not granted the ability to delay the interval by simply taking two or three days to transmit confirmation. The interval cannot be tolled by intervening

"queries" from the incumbent – another favorite delay tactic. For example, incumbents may choose to send an order back to the competitive LEC because the order states "Street" instead of "Str" – not because the incumbent's systems can't process the order, but rather because the incumbent is seeking to delay the provisioning of the loop. Incumbent LECs must not be permitted to toll the interval by "querying" the order back to competitors. If an incumbent LEC needs clarification on an order, the incumbent must seek such information from its own databases, which contain all information on addresses and loop location, and the order must be corrected by the incumbent – using the vast information resources available to it – and not simply rejected back to the competitive LEC. The loop order is "complete" when a functional loop is delivered to the competitive LEC's point of interconnection and the competitor is notified electronically that the loop has been delivered.

VI. The Commission should also adopt a provisioning interval for the linesharing UNE.

In order to further facilitate the deployment of competitive broadband services, the Commission should also take immediate steps to implement a linesharing UNE provisioning interval. As the Commission is well aware, the provisioning of line sharing requires only one simple installation step by the incumbent LEC: cross connecting between incumbent's frame and the competitive LEC's splitter. The loop is already in place, already functional, and fully ready for service. Simple cross connect work is all that is required – no field work, no truck roll, nothing other than cross connecting. This is part of the reason the Commission saw fit to adopt linesharing as a UNE in the first

place – it severely cuts down on the time it takes for competitive LECs to secure unbundled access to the loop.

As a result, the Commission should ensure that linesharing UNEs are available in a timely manner. In the same way that incumbent LECs will never make short provisioning intervals for standalone loops available unless ordered to do so, incumbent LECs have no incentive to facilitate rapid access to linesharing capability. Indeed, incumbent LECs universally opposed the notion of even adopting linesharing as a UNE – recognizing the threat their monopolies would face if their solo grip on linesharing capability came to an end. The Commission must adopt a rule requiring the linesharing UNE to be provisioned within two business days – utilizing the same interval parameters defined above – in order to preserve the ability of competitors to access linesharing in a timely manner. The interval for the linesharing UNE where conditioning is required should be five business days. The Commission should also ensure that state commissions view the two day interval as a maximum interval, permitting them to adopt a one day provisioning interval if deemed appropriate. These intervals provide more than sufficient time for incumbent LECs to do the cross connect work – for that is all the provisioning work that is required – necessary for the linesharing UNE. If the Commission is serious about ensuring that consumers benefit from linesharing, then it must be serious about imposing a provisioning requirement on incumbent LECs.

VII. The Commission must take affirmative steps to ensure the immediate and timely implementation of its rules.

As detailed in prior filings with this Commission, Covad experienced upwards of six months to a year of delay in securing the cageless collocation to which it was entitled

by the Commission's March 1999 order. As a result of the Commission's failure to specifically instruct incumbent LECs to implement the new collocation rules in a timely manner, Covad is *still* fighting incumbents that refuse to implement the procompetitive collocation rules adopted by the Commission. In this instance, the Commission should ensure that its procompetitive loop rules are immediately available to competitors. Possible points of delay include the time period between order adoption and rule effective date; commencing of negotiations for interconnection agreement modifications; arbitration of those modifications; implementation of the arbitration awards – all of these delays, which add up to months if not years of delay, can be avoided. The Commission must set out a concrete and definite timetable for implementation of its rules. In the *Linesharing Order*, the Commission adopted a six-month timetable for negotiation and implementation of interim interconnection agreements to ensure the rapid deployment of the linesharing UNE. In the context of the loop provisioning rule, there is nothing for an incumbent LEC to "implement," so the time period should be significantly shorter. An incumbent LEC, in order to submit itself to the Commission's three business day loop interval, must simply provide the loop – pursuant to longstanding methods and procedures already in place – in a shorter time period than it has traditionally been willing to do so.[14]

VIII. The Commission must also ensure that competitive LECs have the access to loop pre-qualification information to which they are entitled.

In the *UNE Remand Order*, the Commission again reiterated the obligation on incumbent LECs to provide unbundled access to their legacy OSS – including, most

[14] Indeed, the Commission already has a rule is place providing that it is a violation of the incumbent LEC's statutory duty to negotiate in good faith to refuse to permit an interconnection agreement "to be amended in

importantly for broadband providers, loop pre-qualification information. As Covad informed the Commission in its comments to that proceeding, incumbent LEC OSS policies of refusing access to loop pre-qualification information were forcing Covad to sign up a customer, order the loop from the incumbent, await the month-long provisioning process, and *then* discover that the loop was too long, or provisioned through a remote terminal, or otherwise unavailable for unbundling. Covad asserted the importance of the Commission ensuring that incumbent LECs were obligated to provide access to all loop prequalfication information in the incumbents' possession, and the Commission agreed. The *UNE Remand Order* thus concluded that incumbent LECs must provide, for example, access to all information on loop length, loop gauge, existence and number of bridged taps and loading coils, loop makeup, and other information on the loop. The Commission further clarified that incumbent LECs must make such information available regardless of whether or not the incumbents' retail representatives access or use such information.

Covad has been implementing EDI OSS capability with several incumbent LECs over the course of the last several months, thanks in large part to the persistence of the Commission is ensuring that incumbent LECs actually deploy electronic application to application interface capabilities. In the quest to secure access to loop prequalification information, however, Covad has been stymied by numerous incumbent LEC tricks. For example, when Covad asked Bell Atlantic for access to its LFACS pre-order OSS database, Bell Atlantic (1) denied that there was anything in that database of use to competitors, (2) refused to inform competitors what information was actually in the database, (3) claimed that the database was proprietary and information on it and access

---

the future to take into account changes in Commission or state rules." 47 CFR sec. 51.301(c)(3).

to it were not permitted, (4) claimed that all loop pre-qualification information would be provided manually, not through electronic database access, and (5) contended that the only way to provide electronic access to loop makeup information was to create a separate database, populated by information in Bell Atlantic's existing databases, at a cost of millions of dollars.

GTE has refused – and continues to refuse post-merger – to provide any other loop pre-qualification tool than a web GUI based system that cannot be integrated with Covad's EDI back office interfaces. As a result, despite the Commission's clear mandate that incumbent LECs permit competitors to deploy application to application electronic interfaces that permit flow-through of pre-order and order transactions, GTE has effectively barred Covad from accessing in any meaningful way GTE's loop makeup information.

These are but two examples of the delays foisted upon competitors in their quest for the loop makeup information that the Commission has repeatedly held competitors are entitled to have. The Commission must take further steps to ensure the availability of timely and accurate loop information. Such information is vital to the provision of broadband services because Covad and other broadband providers simply cannot market service to customers without knowing what service parameters the customer's loop will support. The incumbent LEC possesses all of that information, and it will continue to refuse to provide it to competitors in the absence of a Commission order to do so.

The Commission must order incumbent LECs to provide, as part of their 251(c)(3) obligation to provide unbundled access to OSS, an electronic, application to application interface, including, but not limited to, the most recent ATIS-approved

version of EDI, offering direct access to all underlying loop makeup information resident in any incumbent LEC OSS or other back office computer. Moreover, the incumbent LEC must provide, upon request, a list of all loop makeup information the incumbent possesses in any form, the location of that information, and then, upon request, a pre-order electronic interface as described above to access that information directly and integrate it with the competitive LEC's pre-order and order back office systems, as well as the incumbent LEC's ordering system.

IX. Conclusion

The Commission has worked hard for four years to bring the benefits of competition to all consumers in this country. In particular, the Commission has actively fostered competition in the advanced services arena, in furtherance of both the market-opening provisions of the Act and the congressional mandate of section 706 of the Act. As the Commission has repeatedly recognized, the loop unbundling and OSS obligations of section 251(c)(3) are at the very core of those market-opening provisions. It is now time for the Commission to look at four years of competitive experience and take immediate action to close the gaps in its procompetitive rules. These gaps – the lack of specific loop provisioning intervals, and the lack of effective OSS access – are denying more and more consumers competitive broadband services every day. By granting the ALTS petition and establishing the limited loop and OSS rules advocated therein, the Commission will take a great step towards ensuring the further growth and development of the competitive broadband industry, an industry dedicated to meeting the demands of consumers for low-cost, high-speed, innovative broadband services.

Respectfully submitted,

dated: June 23, 2000

Jason D. Oxman
Senior Government Affairs Counsel
Covad Communications Company
600 14th Street, N.W., Suite 750
Washington, D.C. 20005
202-220-0409 (voice)
202-220-0401 (fax)
joxman@covad.com

Tom Koutksy
Vice President – Regulatory Affairs
Covad Communications Company
600 14th Street, N.W., Suite 750
Washington, D.C. 20005
202-220-0407 (voice)
202-220-0401 (fax)
tkoutsky@covad.com