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BLUMENFELD & COHEN
SUITE 300
1625 MASSACHUSETTS AVENUE, NW
WASHINGTON, DC 20036

202.955.6300
FACSIMILE 202.955.6460

http://www.technologylaw.com

SUITE 1170
4 EMBARCADERO CENTER
SAN FRANCISCO, CA 94111

415.394.7500
FACSIMILE 415.394.7505

August 4, 2000

VIA HAND DELIVERY

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

RE: Notice of Ex Parte Communication
CC Docket Nos. 98-147, 96-98

Dear Ms. Salas:

Yesterday, Christy Kunin and Mike McNeely, on behalf of Rhythms NetConnections Inc. ("Rhythms"), met with Jessica Rosenworcel, William Dever, Margaret Egler and Michelle Carey of the Policy Division of the Common Carrier Bureau.

In the meeting, Rhythms reiterated its position that the definition of line sharing in the *Line Sharing Order*[1] must not be seen as limiting CLECs' access to loop facilities to provide advanced services, including DSL services. Rhythms explained that the Commission's orders and rules make clear that CLECs providing DSL service (on a line-shared basis or otherwise) have a right of access to the fiber portions of ILECs' loops, and that nothing in the *Line Sharing Order* and related rules alters that right. Thus, the inclusion of the term "copper" in the definition of line sharing merely recognizes that xDSL technologies used in line sharing make it possible to transmit both voice and data signals over copper facilities, and does not restrict CLECs' right to transmit the data signal over the fiber portion of the loop facility for the provision of line shared service. Providing DSL service requires the use of all portions of the local loop, whatever the transmission medium.

Rhythms explained that some ILECs, citing the Commission's treatment of packet switching in the *UNE Remand Order*, have taken the position that they have no obligation under Section 251(c) of the Telecommunications Act to unbundle fiber portions of the loop when those

[1] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Third Report and Order, FCC 99-355 (rel. Dec. 9, 1999) ("*Line Sharing Order*").

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portions are used to provide DSL service. Rhythms reiterated the position taken in its Opposition to the Petition for Reconsideration of the *UNE Remand Order.*[2] That Response, among other things, urged the Commission to reaffirm that the fiber portion of the loop is a UNE in all circumstances, and does not become "packet switching" when used for DSL service. Rhythms therefore urges that the Commission confirm that CLECs providing DSL service have a right to unbundled access to the entire loop facility and any portion of it, including the fiber portion. This right is established by the Commission's rulings in the *Local Competition Order*[3] and the *UNE Remand Order.*[4]

Given this discussion, Rhythms again urged the Commission to reiterate that the reference to "copper" in the *Line Sharing Order* in no way limits an ILEC's obligation to provide CLECs with access to the fiber portion of the loop for provision of line-shared xDSL services. The definitions of the loop and subloop UNEs establish a CLEC's right to transmit data signals over the fiber portion of the loop and nothing in the *Line Sharing Order* or the packet switching provisions of the *UNE Remand Order* alters this right.

Pursuant to Section 1.1206 of the Commission's rules, two copies of this Notice are being submitted to the Secretary of the Commission.

Respectfully submitted,

Christy C. Kunin
Michael D. McNeely
Counsel for Rhythms NetConnections Inc.

cc: Jessica Rosenworcel
William Dever
Margaret Egler
Michelle Carey

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[2] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Rhythms and Covad Response to Oppositions to Petition for Reconsideration at 5-10 (Apr. 3, 2000).

[3] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket 96-98, First Report and Order (1996) ("*Local Competition Order*") ¶¶ 378, 383.

[4] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (rel. November 5, 1999) ("*UNE Remand Order*") ¶ 175; 47 C.F.R. § 51.319(a)(2). *See also Line Sharing Order* ¶¶ 91-92.