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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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August 23, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St., SW, Room TWB-204
Washington, DC 20554

Re: Promotion of Competitive Networks in Local Telecommunications Markets – WT Docket No. 99-217; CC Docket No. 96-98

Dear Ms. Salas:

Yesterday C. Michael Pfau, Robert Quinn and I of AT&T along with representatives of Worldcom, Inc., Nextlink Communications, and Allegiance Telecom participated in a telephone conference with Katherine Farroba, Jake Jennings and Chris Libertelli, all of the Common Carrier Bureau's Policy and Program Planning Division to discuss issues raised in the aforementioned proceeding.

As AT&T and many commentors have previously stated in pleadings in this docket, the Commission should specify that the demarcation point must be established at the minimum point of entry ("MPoE"), except where the building owner has ceded ownership or control to the incumbent LEC.[1] Placing the demarcation point at the initial entry into the multiple tenant environment (or at the property line) has the effect of placing all of the riser cable and interior wiring under the exclusive control of the building owners, which would allow new entrants to bypass the incumbent LEC entirely by deploying its own facilities to the premises and utilizing the building's existing intra-building facilities. Placing the demarcation point at the MPoE, therefore, enables new entrants to provide their own facilities-based service free from discrimination, delays and other costs

[1] The Minimum Point of Entry ("MPoE") is "either the closest practicable point to where the wiring crosses a property line or the closest practicable point to where the wiring enters a multiunit building or buildings. The telephone company's reasonable and nondiscriminatory standard operating practices shall determine which shall apply." 47 C.F.R. § 68.3

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that invariably occur when new entrants are dependent on the incumbent LEC, a direct competitor. Additionally, a single demarcation point at the MPoE makes it possible for building owners and their tenants to obtain service from competing providers without facing the undesirable consequence of having their premises re-wired with multiple sets of redundant wiring.

In contrast, placing the demarcation point in an MTE closer to the individual customer than the MPoE may create significant barriers to facilities-based entry. As the demarcation point is place closer to the retail customer (in MTEs), it becomes more likely that the new entrant must undertake the often wasteful and costly task of deploying redundant riser cables and other interior wiring between the MPoE and the customer's premises -- an undertaking that building owners may find objectionable because they have no desire to have additional wiring running through their property. In the alternative, the new entrant must purchase a loop, including subloop intra-building facilities from its competitor, the incumbent LEC, and be constrained by the technology that the incumbent LEC has chosen to deploy. Neither alternative is conducive to robust competition

AT&T's position, however, in no way should be interpreted to mean that the Commission should remove its requirement that incumbent LECs provide subloop unbundling for any riser cable and inside wire that the incumbent may control. As AT&T has stated, establishing the demarcation point at the MPoE would be inappropriate where the building owner has chosen, either through a contractual agreement with the incumbent LEC or otherwise, to effectively grant the incumbent LEC exclusive access to the riser cable and inside wiring in the MTE's common spaces, because, in these instances, the incumbent LEC has control over the intra-building facilities.[2] Where the building owner has granted the incumbent LEC effective control over the wiring between the subscriber's premises and the point of entry in the MTE, it would be inappropriate to establish the demarcation point at the MPoE. In this situation, it is clear that the incumbent LEC has retained effective control over all wiring outside the subscriber's individual unit, and the demarcation point must be established in accordance with the existing rule for single unit installations – i.e., a point within 12 inches inside of where the telephone wire enters the individual customer's premises, or as close thereto as practicable. In these instances, the new entrant may obtain unbundled subloops in accordance with the Commission's rules.[3]

Admittedly, problems sometimes do arise when new entrants attempt to negotiate with the building owners for the use of the intra-building facilities.

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[2] As the Commission's rules make clear, the purpose of the demarcation point is to specify "[t]he point of demarcation . . . between telephone company communications facilities and terminal equipment, protective apparatus or wiring at the subscriber's premises. 47 C.F.R. § 68.3

[3] *See* 47 C.F.R. § 52.319(a).

Some building owners refuse to deal, unnecessarily delay negotiations, or attempt to impose burdensome and discriminatory conditions on new entrants, including excessive charges for building access. However, because the incumbent LEC continues to bear responsibility for the most significant barriers to entry, AT&T believes that the recommendations set forth in its comments would help to alleviate some of these issues.[4] For example, the Commission should prohibit incumbents from entering into exclusive marketing and/or service arrangements with the building owners. Such a prohibition would ensure that customers located in MTEs have access to their choice of telecommunications service providers. It also places competitive pressure on the building owner to assure that its tenants have the ability to choose their service provider. Therefore, the Commission should prohibit incumbent LECS from entering into or enforcing exclusive arrangements. Moreover, the Commission should clarify that access to utility-owned ducts, conduits, and rights-of-way, as required under Section 224 of the Act, apply to incumbent LEC rights-of-way located within MTEs.

I have submitted two copies of this Notice in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

Robert M. [illegible] for
Teresa Marrero

cc: Katherine Farroba, FCC
Jake Jennings, FCC
Chris Libertelli, FCC

Gunnar Halley, Wilkie, Farr & Gallagher
Kathy Massey, Nextlink Communications
Mary Albert, Allegiance Telecom
Chuck Goldfarb, Worldcom, Inc.
Larry Fenster, Worldcom, Inc.
Karen Johnson, Worldcom, Inc.

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[4] *See* AT&T *Ex Parte*, CC Docket No. 99-68, Inter-Carrier Compensation for ISP-Bound Traffic; CC Docket No. 96-98, Local Competition Provisions of the Telecommunications Act of 1996, August 14, 2000.