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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
Petition of Bell Atlantic Corporation For Relief from Barriers to Deployment of Advanced Telecommunications Services	)	CC Docket No. 98-11
	)	
Petition of U S WEST Communications, Inc. For Relief from Barriers to Deployment of Advanced Telecommunications Services	)	CC Docket No. 98-26
	)	
Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Technology	)	CC Docket No. 98-32
	)	
Petition of the Alliance for Public Technology Requesting Issuance of Notice of Inquiry and Notice of Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act	)	CCB/CPD No. 98-15 RM 9244
	)	
Petition of the Association for Local Telecommunications Services (ALTS) for a Declaratory Ruling Establishing Conditions Necessary to Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996	)	CC Docket No. 98-78
	)	
Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell Petition for Relief from Regulation Pursuant to Section 706 of the Telecommunications Act of 1996 and 47 U.S.C. § 160 for ADSL Infrastructure and Service	)	CC Docket No. 98-91

ORDER ON RECONSIDERATION

Adopted: August 3, 2000 **Released: August 4, 2000**

Before the Commission:

I. INTRODUCTION

1. On September 8, 1998, Bell Atlantic and SBC filed petitions for reconsideration of two aspects of our *Advanced Services First Report and Order*.[1] Petitioners challenge our determination that section 706(a) of the Telecommunications Act of 1996 (1996 Act) does not constitute an independent grant of forbearance authority.[2] Petitioners also challenge our determination that, under then existing rules, incumbent local exchange carriers (LECs) must provide unbundled loops conditioned to carry advanced services, even if the incumbent is not itself providing such services.[3] For the reasons set forth below, we deny Bell Atlantic's and SBC's petitions.[4]

II. BACKGROUND

2. Sections 251(c)(3) and (4) of the Communications Act of 1934, as amended, (Communications Act) require all incumbent LECs, including the Bell Operating Companies (BOCs), to provide nondiscriminatory access to unbundled network elements and to offer for resale, at wholesale rates, any telecommunications service the carrier provides at retail.[5] Section 271(b)(1) provides that a BOC or BOC affiliate "may provide interLATA services originating in any of its in-region States" only "if the Commission approves the application of such company

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[1] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147, *et al.*, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, 13 FCC Rcd 24012 (1998) (*Advanced Services Order*), *remanded U S WEST Communications, Inc. v. FCC*, No. 98-1410 (D.C. Cir. Aug. 25, 1999) (granting the Commission's motion for remand), *on remand* 15 FCC Rcd 385 (1999) (*Advanced Services Remand Order, appeals pending sub nom. MCI WorldCom, et al. v. FCC*, Nos. 00-1002, *et al.* (D.C. Cir. filed Jan. 3, 2000).

[2] Pub.L. 104-104, Title VII, § 706(a), Feb. 8, 1996, 110 Stat. 153, *reproduced* in notes under 47 U.S.C. § 157.

[3] For purposes of this order, we use the term "advanced services" to mean wireline, broadband telecommunications services. Today's broadband services include services that based on digital subscriber line technologies (commonly referred to as xDSL), such as ADSL (asymmetric digital subscriber line) and HDSL (high-speed digital subscriber line).

[4] An appendix to this *Order* lists the parties filing comments and replies in response to these petitions for reconsideration.

[5] *See* 47 U.S.C. §§ 251(c)(3), (4).

for such State under [section 271(d)(3)]."[6] Under section 271(d)(3), the Commission may grant a BOC authorization to originate in-region, interLATA services only if it finds that the BOC has met the competitive checklist set forth in section 271(c)(2)(B) and other statutory requirements.[7]

3. Section 706(a) instructs the Commission and each state commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment."[8]

4. Section 10 of the Communications Act requires the Commission to forbear from applying any regulation or any provision of the Communications Act to telecommunications carriers or telecommunications services, or classes thereof, if the Commission determines that certain conditions are satisfied.[9] Section 10(d) specifies, however, that "[e]xcept as provided in section 251(f), the Commission may not forbear from applying the requirements of section 251(c) or 271 under subsection (a) of this section until it determines that those requirements have been fully implemented."[10] Section 10(e) provides that "[a] State commission may not continue to apply or enforce any provision of this Act that the Commission has determined to forbear from applying under subsection (a)."[11]

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[6] 47 U.S.C. § 271(b)(1). Section 3(25) of the Communications Act defines local access and transport area (LATA) as:

> [A] contiguous geographic area --
>
> (A) established before the date of enactment of the Telecommunications Act of 1996 by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or
>
> (B) established or modified by a Bell operating company after such date of enactment and approved by the Commission.

47 U.S.C. § 153(25).

[7] 47 U.S.C. § 271(d)(3).

[8] 47 U.S.C. § 157 note.

[9] 47 U.S.C. § 160.

[10] 47 U.S.C. § 160(d).

[11] 47 U.S.C. § 160(e).

5. In the *Advanced Services Order*, we addressed, among other matters, petitions in which several BOCs, including Bell Atlantic and SBC, had requested that the Commission forbear from applying the provisions of sections 251(c) and 271 to their advanced services. In rejecting those requests, we explained in detail why, in light of the statutory language, the framework of the 1996 Act, its legislative history, and Congress' policy objectives, the most logical statutory interpretation is that section 706(a) does not constitute an independent grant of authority.[12] We concluded that the better interpretation of section 706(a) is that it directs us to use, among other authority, our forbearance authority under section 10(a) to encourage the deployment of advanced services.[13] We also recognized that section 10(d) precludes us from using our authority under section 10(a) to forbear from applying the requirements of section 251(c) or 271 prior to their full implementation.[14] Because the BOCs had not suggested that either section 251(c) or 271 had been fully implemented and because we had no record on which to determine that either had been fully implemented, we denied the BOCs' requests that we forbear from applying sections 251(c) and 271 to their advanced services operations.[15]

III. DISCUSSION

A. Forbearance Authority

6. In their petitions for reconsideration, Bell Atlantic and SBC challenge our determination in the *Advanced Services Order* that section 706(a) does not constitute an independent grant of forbearance authority. To a large extent, these challenges merely reiterate arguments that we fully addressed and properly rejected in the *Advanced Services Order*. We do not revisit those arguments here. Petitioners also present what amounts to a circular argument. They assume that section 706(a) grants independent forbearance authority. They then argue that this assumed authority cannot be subject to the limitations on forbearance stated in section 10(d) because the language of section 10(d) makes clear that those limitations come into play only with regard to forbearance "*under subsection (a)*" of section 10.[16]

7. This argument must fail because the language of section 10(d) has no bearing on whether section 706(a) constitutes an independent grant of forbearance authority in the first instance. As we determined in the *Advanced Services Order*, the text of section 706(a) does not make clear whether Congress intended that provision to constitute an independent grant of forbearance authority, rather than a directive that the Commission use forbearance authority

[12] *Advanced Services Order*, 13 FCC Rcd at ¶¶ 69-79.

[13] *Id.* at ¶ 77.

[14] *Id.* at ¶¶ 72 & 77.

[15] *Id.* at ¶ 77.

[16] Bell Atlantic Petition at 6; SBC Petition at 6-9.

granted elsewhere in encouraging the deployment of advanced services.[17] It was this lack of clarity that made it necessary for us to examine, in the *Advanced Services Order*, the relationship between section 706(a) and section 10(d).[18] For the reasons stated in that *Order*, we continue to believe that the broader statutory scheme makes clear that section 706(a) does not constitute an independent grant of forbearance authority.[19]

8. SBC also challenges our conclusion, in the *Advanced Services Order*, that the reference to "regulatory forbearance" in section 706(a) directs us to use, among other authority, our forbearance authority under section 10(a) to encourage the deployment of advanced services.[20] According to SBC, this conclusion essentially guts that reference of any meaning. SBC states that, because the preamble to the 1996 Act lists encouraging "the rapid deployment of new telecommunications technologies" as a statutory purpose, Congress had no need to enact section 706(a) simply to articulate a preference for speedy deployment of advanced services.[21] Like other provisions of the 1996 Act,[22] however, section 706(a) gives considerable specificity to statutory purposes stated in general terms in the preamble.

9. In the *Advanced Services Order*, we concluded that interpreting section 706(a) as not providing the statutory authority to forbear from sections 251(c) and 271 will better promote Congress' objectives in the 1996 Act than would a contrary interpretation.[23] SBC contends that this conclusion cannot be correct because "Congress designed sections 251(c) and 271 specifically to open to competition the markets for conventional local exchange service" and was not concerned with promoting competition for advanced services as well.[24] In the *Advanced Services Remand Order*,[25] we determined that incumbent LECs are subject to section 251(c) in their provision of advanced services.[26] For the reasons stated in that *Order*, SBC's argument regarding sections 251(c) and 271 provides no reason to alter our conclusion that section 706(a) does not constitute an independent grant of forbearance authority.

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[17] *Advanced Services Order*, 13 FCC Rcd at ¶ 70.

[18] *See id.* at ¶ 71.

[19] *Id.* at ¶¶ 72-74.

[20] *Id.* at ¶ 77.

[21] SBC Petition at 7 (*quoting* Pub. L. No. 104-104, 110 Stat. 56 (1996)).

[22] *See, e.g.*, 47 U.S.C. § 254.

[23] *Advanced Services Order*, 13 FCC Rcd at ¶ 76.

[24] SBC Petition at 8.

[25] *Advanced Services Remand Order*, 15 FCC Rcd at ¶¶ 7-14.

[26] We note that this determination is on appeal.

B. Loop Conditioning

10. In the *Advanced Services Order*, we concluded that the rules adopted in the *Local Competition First Report and Order* require that, to the extent technically feasible, an incumbent LEC must provide to competing carriers unbundled loops conditioned to carry advanced services, even if the incumbent is not itself providing such services.[27] Bell Atlantic and SBC seek reconsideration of this conclusion. They argue that it is inconsistent with the decision of the United States Court of Appeals for the Eighth Circuit in *Iowa Utilities Board*.[28]

11. In our *UNE Remand Order*,[29] we concluded that a loop conditioning requirement is consistent with this Eighth Circuit decision and that incumbent LECs must provide requesting carriers with unbundled access to local loops conditioned to provide advanced services. For the reasons stated in that *Order*, we deny Bell Atlantic and SBC's request that we reconsider the loop conditioning requirement.

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[27] *Advanced Services Order*, 13 FCC Rcd at ¶ 53. (*quoting Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15692, ¶ 382 (1996) (*Local Competition First Report and Order*), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) & *Iowa Util. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *affirmed in part, reversed in part, and remanded sub nom. AT&T v. Iowa Util. Bd.*, 119 S.Ct at 721, 726-38 (1999) (*Iowa Utilities Board*), *aff'd in part and vacated in part sub nom. Iowa Util. Bd. v.* FCC, No. 96-3321 (8th Cir. July 18, 2000), *Order on Reconsideration*, 11 FCC Rcd 13042 (1996) (*Local Competition First Reconsideration Order*), *Second Order on Reconsideration*, 11 FCC Rcd 19738 (1996) (*Local Competition Second Reconsideration Order*), *Third Order on Reconsideration and Further Proposed Rulemaking*, 12 FCC Rcd 12460 (1997) (*Local Competition Third Reconsideration Order*), *further recon. pending*.

[28] Bell Atlantic Petition at 3-4; SBC Petition at 4-5.

[29] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238, at ¶¶ 172-73 (rel. Nov. 5, 1999) (*UNE Remand Order*)), *appeals pending sub nom. USTA, et al. v. FCC*, Nos. 00-1015, *et al.* (D.C. Cir. filed Jan. 19, 2000).

IV. ORDERING CLAUSE

12. Accordingly, IT IS ORDERED, pursuant to sections 1-4, 10, 201, 202, 251-254, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 160, 201, 202, 251-254, 271, and 303(r), that the Petitions for Reconsideration filed September 8, 1998, by Bell Atlantic and SBC ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

APPENDIX A -- LIST OF PARTIES SUBMITTING COMMENTS AND REPLIES REGARDING PETITIONS FOR RECONSIDERATION

Comments

1. Allegiance Telecom, Inc.
2. Association for Local Telecommunications Services
3. AT&T Corporation
4. BellSouth Corporation
5. Commercial Internet eXchange Association
6. Competitive Telecommunications Association
7. Covad Communications Company
8. CTSL, Inc.
9. DSL Access Telecommunications Alliance
10. espire Communications, Inc.
11. GST Telecom Inc. and KMC Telecom Inc.
12. Hyperion Telecommunications, Inc.
13. Level 3 Communications, Inc.
14. MCI WorldCom, Inc.
15. Network Access Solutions, Inc.
16. Qwest Communications Corporation
17. RCN Telecom Services, Inc.
18. Sprint Corporation
19. Telecommunications Resellers Association
20. Transwire Communications, Inc.
21. xDSL Networks, Inc.

Replies

1. Bell Atlantic
2. Commercial Internet Exchange Association
3. CTSI, Inc.
4. DSL Access Telecommunications Alliance
5. KMC Telecom, Inc.
6. National Cable Television Association
7. Nextlink Communications, Inc.
8. Florida Digital Network, Inc.
9. RCN Telecom Services, Inc.
10. SBC Communications, Inc., Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell (SBC)
11. Telehub Network Services Corporation