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October 11, 2000

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Federal Communications Commission
Office of the Secretary
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket Nos. 98-147 and 96-98

Dear Madam/Sir:

On behalf of Network Telephone Corporation, I am enclosing for filing and distribution the original and 9 copies of the Comments of Network Telephone Corporation on Further Notices of Proposed Rulemaking in the above Dockets.

Thank you for your assistance.

Yours truly,

Joe A. McGlothlin

Joseph A. McGlothlin

JAM/kmr
Enclosures

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

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In the Matters of

Deployment of Wireline Services Offering Advanced Telecommunications Capability	CC Docket No. 98-147
and	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	CC Docket No. 96-98

_____/

COMMENTS OF NETWORK TELEPHONE CORPORATION ON SECOND FURTHER NOTICE OF PROPOSED RULEMAKING IN CC DOCKET NO. 98-147 AND FIFTH FURTHER NOTICE OF PROPOSED RULEMAKING IN CC DOCKET NO. 96-98

I. INTRODUCTION

Network Telephone Corporation (hereinafter, "Network Telephone"), which has its corporate headquarters in Pensacola, Florida, currently holds certificates of authority to operate as a Competitive Local Exchange Company (CLEC) in the states of North Carolina, South Carolina, Georgia, Tennessee, Kentucky, Florida, Alabama, and Mississippi. A recent entrant in the local exchange market, Network Telephone is in the process of deploying a state-of-the-art, ATM-based network with which it will provide POTS, xDSL, data services, IP gateway services, packet switching, and other services. Network Telephone intends to offer advanced services at affordable

prices in markets that include smaller Tier 2 and Tier 3 cities. In order to compete effectively in these markets, Network Telephone must be able to avail itself of the efficiencies and related cost savings of the latest technological advances in the design and manufacturing of network equipment. To that end, Network Telephone has configured and designed a network that utilizes a physically compact access server which also functions as a digital subscriber line access multiplexer, an IP gateway, a router, and a class 5 switch. However, while some ILECs have agreed to allow Network Telephone to collocate this integrated, multi-functional equipment in their central offices to accomplish interconnection and access to elements, in Florida one ILEC has cited the decision of the United States Court of Appeal for the D.C. Circuit in GTE Service Corporation v. FCC, 205 F.3d 416 (D.C. Cir., 2000) as a basis for denying twelve separate applications to collocate portions of the equipment in the ILEC's central offices.[1]

Network Telephone believes that its situation illustrates graphically the importance of regulatory measures, such as the instant rulemaking proceeding, to the development of competition

[1]On August 31, 2000, Network Telephone submitted a complaint to the Florida Public Service Commission alleging the ILEC had violated collocation obligations imposed by law.

in the local market. If an ILEC can refuse to allow Network Telephone and other CLECs to collocate efficient, integrated, multifunctional equipment in the offices of the ILEC for the purpose of interconnection and access, the CLECs will be forced to incur the unnecessary costs of less efficient equipment and/or more costly arrangements (unnecessary space, excessive interoffice transport), which in turn will render the costs of their services higher and make them less competitive in their markets. Such a result would seriously impede the achievement of the goals of increased competition in the local market and the availability of advanced services to all markets at affordable prices, in contravention of the intent of the Telecommunications Act of 1996.

II. DISCUSSION

In its order initiating further rulemaking, the Commission sought comment regarding whether section 251(c)(6) of the Act permits it to allow collocation of multi-functional equipment. It also asked parties to address whether Congress intended to restrict collocators to deployment of equipment that can be used only for interconnection or access to unbundled network elements, even if that equipment is not the most efficient for providing telecommunications service. Network

Telephone will limit its comments to these aspects of the Commission's notice and inquiry.

Significantly, in the order in which it vacated certain of the Commission's collocation rules, the Court acknowledged that, in context, the wording of the statutory collocation obligation does not lend itself to a readily discernible "plain meaning." The Court also acknowledged that the legislative intent underlying the Act is the desire of Congress to foster competition in areas of advanced technology in telecommunications. Id, supra, at 421. In vacating the rules that the Commission interpreted in its Advanced Services Order, the Court concluded only that, in adopting a "used and useful" standard, the Commission had failed to explain adequately how the parameters of its rules relate to the wording of the statute. Most significantly of all, the Court stated it would not prohibit the Commission from adopting rules that go beyond the "minimalist" concept of limiting collocation to equipment that is "directly related to" and therefore "indispensable" to achieving interconnection and access, as long as the Commission supports broader requirements with a rational interpretation of the Act. A review of the language of the Act-particularly the interplay between Section 251 (c)(6) and Sections 251 (c)(2) and (3)- demonstrates that the scope of the collocation obligation that the Commission articulated in the the Advanced Services Order is fully supported by a fair reading of

the law.

In its decision, the Court concluded that the standard of "used and useful", on which the Commission relied in its Advanced Services Order, was "disconnected" from an interpretation of Section 251(c)(6), which states:

> (6) collocation-The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State Commission that the physical collocation is not practical for technical reasons or because of space limitations.

Network Telephone submits that the scope of the above collocation requirement comes into focus only when Section 251 (c)(6) is "connected" to the larger statutory framework of which it is a part. The meaning of ". . . equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier" cannot be determined by looking at paragraph (6) in isolation: The portion of the statute that imposes "collocation" obligations is a subpart of the statutory provisions governing interconnection and access to unbundled elements. To understand the meaning of the above language, then, it must be related to Sections 251(c)(2), and 251(c)(3).

Section 251(c)(2), "interconnection," imposes on the ILEC a duty to provide interconnection for the facilities and equipment of any requesting telecommunications carrier for the transmission and routing of telephone exchange service and exchange access at any technically feasible point within the carrier's network. Such interconnection must be at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary or affiliate. Section 251(c)(3), "unbundled access," requires the ILEC to provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point for the provision of a telecommunications service on terms and conditions that are just, reasonable, and nondiscriminatory.

Indisputably, collocation is a *means of accomplishing* the interconnection and access to unbundled elements required by Sections 251(c)(2) and 251(c)(3). Therefore, the provisions governing collocation are amplified by the language governing interconnection and access, to which the collocation provision is indeed "connected." The statutory provisions governing interconnection and access emphasize that interconnection and access must be allowed where technically feasible and must be permitted on a nondiscriminatory basis. In order for nondiscriminatory collocation to occur, the CLEC must be able to collocate equipment providing the same functionality that the

ILEC provides to itself within its network. Under this interpretation, objections to collocation requests should be based--not on the additional functionality of equipment used to interconnect and gain access to elements--but on issues of technical feasibility and space limitations. With these considerations in mind, it becomes apparent that, for purposes of Section 251(c)(6), at a minimum equipment is "necessary" and therefore subject to the collocation requirement if the collocated equipment enables the CLEC to achieve interconnection and use unbundled elements to provide telecommunications services in the same manner in which the ILEC does so.

This interpretation is consistent and harmonious with the Commission's past interpretations of the meaning of the provisions governing interconnection and access. It is also consistent with the intent of Congress, acknowledged by the Court, to foster competition in the provision of telecommunications services. Simply stated, Congress, which enacted the Telecommunications Act of 1996 to promote competition for the benefit of the consumer of telecommunications services, could not have intended a result in which the ILEC can take advantage of efficiencies made possible by technological improvements but the CLECs cannot.

For these reasons, the Commission should conclude that, properly interpreted, the Act

supports rules requiring ILECs to permit collocation (and full use) of integrated, multi-functional equipment that is used to interconnect with the ILEC's network and/or to access unbundled network elements, subject to objections based on space limitations and technical feasibility.

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