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**
and	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	**CC Docket No. 96-98**

REPLY COMMENTS OF SPRINT CORPORATION

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SUMMARY

Sprint continues to believe it is much easier for the Commission to adopt a "safe harbor" list of equipment that clearly meets the "necessary" standard for collocation and an expedited procedure to resolve disputes that arise in the future, instead of attempting to fashion a definition that can give clear guidance in the face of changes in circumstances and technology. The only serious question raised with respect to equipment on Sprint's proposed safe harbor list relates to line cards. Because of the many problems that can arise in attempting to collocate in remote terminals, there will be many instances in which the only practicable way for CLECs to offer DSL-based services to their customers would be through collocation of line cards in NGDLCs. In such DLCs, line cards perform essentially the same function for xDSL services as DSLAMs, and are clearly necessary for CLEC access to subloop elements where customers are served via NGDLCs.

With respect to cross-connects, it is clear from the briefs in the *GTE* case that the only issue before the Court was whether CLECs themselves could provide cross-connects. The Commission's prior rule requiring ILECs to provide such cross-connect facilities has never been challenged on judicial review and is not implicated by the Court decision in the *GTE* case. Thus, the Commission should simply restore the original Rule 51.323(h).

As for space assignment policies, the Commission must make clear that CLECs have the right to challenge an ILEC's choice of space if that selection appears to gratuitously impose extra costs, inconvenience or service limitations on

CLECs or appears to favor an ILEC's (or ILEC affiliate's) operations. When an ILEC chooses to physically separate its equipment from that of a CLEC in a central office, the ILEC should be responsible for bearing the costs of this voluntary choice on its part. In addition, the Commission should not construe the *GTE* case allowing such physical separation in central offices, as also applying to remote terminals where space is far more constrained.

Turning to remote terminal collocation, CLECs must have detailed information about the characteristics of remote terminals in order to decide whether to collocate in a remote terminal. Although the Commission should not protect CLECs from improvident entry decisions, it should not tilt the competitive playing field in the ILECs' favor by withholding from CLECs the information that is essential for sound entry decisions.

Sprint adheres to its view that the Commission should adopt national standards for collocation provisioning intervals. Sprint's four categories of intervals for augment orders are far more realistic than attempting to adopt a "one-size-fits-all" approach to augment orders. In addition to these and other intervals proposed in Sprint's initial comments, Sprint also proposes a 60-day period for ILEC provision of power to adjacent collocation spaces.

Finally, the Commission must continue to require ILECs to provide unbundled network elements as they deploy new technology in their loop and transport plant. The RBOCs' claim that if they are required to "share" such technology they will not deploy it, is a bluff that the Commission should call.

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Sprint Corporation, on behalf of its operating subsidiaries, hereby replies to comments of other parties in response to the Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and the Fifth Further Notice of Proposed Notice of Proposed Rulemaking in CC Docket No. 96-98, released August 10, 2000 (FCC 00-297, "Further Notice").

I. IDENTIFICATION OF EQUIPMENT THAT IS "NECESSARY FOR INTERCONNECTION OR ACCESS TO UNBUNDLED NETWORK ELEMENTS"

In its initial comments, Sprint suggested a practical alternative to the inherently difficult task of attempting to craft a definition of "necessary" that could be easily applied in the face of certain changes in future technology. Sprint proposed that the Commission adopt a "safe harbor" list of equipment that, beyond dispute, is "necessary" for interconnection or UNE access, together with an expedited process for resolving disputes

as to whether additional forms of equipment (including multifunctional equipment) meet the statutory criteria in light of the facts and circumstances that prevail at the time the dispute arises. Sprint also proposed a specific list of equipment types that should be placed on the safe harbor list. *See* Comments at 5-12.

Sprint continues to believe it is preferable to define "necessary" on a case-by-case basis, examining the issue as it relates to a specific type of equipment in light of the technology and industry customs and conditions that prevail at the time the question is raised. As Qwest recognizes (at 5),

> we know too little about how new equipment will be structured or configured in the future to establish more precision at this time. The Commission should not try to anticipate every circumstance which may arise in the future … .

Drawing upon the collocation experience that has taken place over the past four years to develop a safe harbor list that no ILEC can seriously challenge is much easier than formulating a definition now to apply to conditions and functionalities that will undoubtedly evolve.

The most serious challenge to Sprint's candidates for the safe harbor list relates to line cards.[1] There can be no question that, in order to be eligible for collocation, line cards must be technically compatible with the ILECs' NGDLC equipment. Thus, to the extent these parties rest their objections on allegations that incompatible line cards could harm or disrupt the functioning of the NGDLCs, this is simply a "red herring." As Sprint has stated (Comments at 19), equipment manufacturers should identify the line cards that

[1] *See* Alcatel USA at 15-16; BellSouth at 6; SBC at 15-16; and Verizon at 8-11.

are compatible with their NGDLCs, and ILECs should identify the DLCs that are capable of supporting advanced services.

Similarly specious is the contention of SBC (at 16) and Verizon (at 8) that a line card is not a piece of "equipment" because it cannot function on a standalone basis. It is hard to imagine any component of a telecommunications network that would satisfy this definition of "equipment" — each piece-part is dependent on connections to other piece-parts in order to perform its intended function.

For a carrier wishing to offer advanced services to end users who are served by ILECs through NGDLCs, line cards can clearly be "necessary" for access to UNEs. They perform the same function as a DSLAM, and in cases where the collocation of a DSLAM is not practical, either because of a lack of space or the lack of economic subscriber density, collocation of a line card is the only feasible way the CLEC may have of accessing the ILEC's subloop elements in order to offer broadband services. Nothing in §251(c)(6) compels a CLEC to utilize uneconomic forms of provisioning its services. Rather, the CLEC has the right to collocate technically compatible equipment at <u>any</u> ILEC premises so long as the equipment it wishes to collocate is necessary for access to ILEC UNEs (or interconnection), as is clearly the case with line cards.

SBC also objects (at 15) to other items on Sprint's proposed safe harbor list, including alarm panels, routers, cabinets and cross-connect equipment.[2] Its only reason for opposing the collocation of these types of equipment is that they duplicate functions

[2] The Battery Distribution Fuse Bays (BDFBs) to which SBC also objects (*id.*) should not be confused with the fuse panels on Sprint's list. The BDFBs are the size of a full bay, while the fuse panels on Sprint's list (also known as Power Distribution Panels) occupy no more than a single shelf and are necessary to distribute power to the other collocated equipment.

performed by the ILEC as part of its collocation provisioning. Obviously, if such equipment were merely duplicative of equipment that the ILEC was already providing (at very considerable expense), the CLEC would have no economic incentive to invest in that equipment itself. However, such equipment is being collocated today by Sprint for the simple reason that it is necessary in order to assure the proper functioning of the other collocated equipment. Cross-connect panels provide a demarcation point between the CLEC's collocation arrangement and the ILEC's network. They also enable CLECs to perform testing within their space. Without cross-connect panels located within the collocation space, a CLEC would have to take the cable from the ILEC (*e.g.*, 100 pairs of DS0s), put amphenol connectors on the ends of the cables and connect them directly to its DSLAM or other equipment. This would not give the CLEC any flexibility to move the pairs, *e.g.*, from one DSLAM to another, or to rearrange the cabling, which may need to be done from time to time. Both would be nearly impossible without some kind of cross-connect panel. A router can be used as a Network Management Device that provides connectivity and alarm capabilities (so a CLEC can know if or when something goes wrong) to the other equipment in the collocation space. Portable test equipment is needed so that loops can be tested before turning a customer's service up. Without test equipment, CLECs would be dependent upon the ILEC for testing loops prior to service turn-up, which results in inefficiencies for both parties. In many instances, Sprint installs cabinets in its collocation space to secure equipment from possible misuse (*e.g.*, preventing a phone being used by others to make unauthorized long-distance telephone calls).

II. CROSS-CONNECTS BETWEEN REQUESTING CARRIERS AND AN ILEC CENTRAL OFFICE

In its initial comments (at 12-13), Sprint explained the critical business need for a CLEC collocated at an ILEC central office to be able to connect its facilities to that of other CLECs collocated in the same office. The practical effect of a failure to permit such collocation would be to endow the ILECs with continued monopolies over interoffice transport: individual CLECs would be faced with the prospect of either having to rely on the ILEC as the sole-source supplier of transport or would have to self-provision its own transport network, a possibility that would be uneconomic for most (if not all) CLECs because of a lack of scale. Three of the RBOCs raise broad objections to CLEC cross-connection, arguing that it goes beyond the bounds of collocation for interconnection with the ILEC or UNE access and that the decision in the *GTE* case[3] forecloses such cross-connection.[4] The vigor with which the RBOCs now press this point is ironic in light of the fact that in the initial rulemaking in CC Docket No. 98-147, none of them objected to allowing CLECs themselves to provide such cross-connect facilities. Indeed, in the *GTE* case, the Commission pointed to this fact and argued that the exhaustion doctrine precluded consideration of their challenge to CLEC-provided cross-connects (*see* Brief for Respondents at 30). The RBOCs replied to this exhaustion argument (Reply Brief for Petitioners, n.3 at 4) stating that the cross-connect issue was simply "emblematic" of the flaws in the Commission's definition of "necessary" and was

[3] *GTE Service Corp. v. FCC*, 205 F.3d 416 (DC Cir. 2000).
[4] *See* BellSouth at 7-8; SBC at 22-26; and Verizon at 12-14. Qwest, on the other hand (at 16-17), does not object to such cross-connections so long as each CLEC is not collocating solely or primarily in order to cross-connect to other CLECs in the central office.

offered simply to "illustrate a defect" in the Commission's analysis of what kinds of equipment CLECs may place in a central office.

As is clear from the RBOCs' filings with the Court (see above), the only cross-connect issue that was before the Court in the *GTE* case was whether CLECs should be allowed to construct their own cross-connects. *See also* Brief for Petitioners at 18, where the RBOCs took issue with the Commission for requiring ILECs to "permit a collocating carrier to construct cross-connect facilities to … another collocating carrier" (emphasis added). However, the issue of whether collocated CLECs should be able to interconnect with each other through *ILEC-provided* facilities was simply not at issue in *GTE*. Rather, the Commission had already decided, in the initial *Local Competition* order, that cross-connects should be allowed, but should be provided by the incumbent LEC. *See* Sprint's Comments at 13-14. The RBOCs did not challenge this aspect of the *Local Competition* order and are more than four years late in attempting to have the Commission reconsider that order at this time. Furthermore, the RBOCs' statutory argument also fails when it is the ILEC that supplies the cross-connect facilities, since in that case each CLEC is interconnecting with an ILEC facility. That facility is every bit as much a part of the ILEC's network as a loop that interconnects a CLEC with an end user. Thus, if the Commission concludes that CLEC provision of the cross-connects is impermissible, it should simply restore the original Rule 51.323(h), which obligated the ILEC to provide the cross-connect facilities.

III. SPACE ASSIGNMENT POLICIES

Notwithstanding the holding in *GTE* that "nothing in section 251(c)(6)" would allow CLECs "to pick and choose preferred space on the LECs' premises" over their

objections (205 F.3d at 426), some CLECs still argue that they should have the right, in the first instance, to decide which unused space in a central office should be used for collocation.[5] To adopt their approach would simply be to invite further litigation and judicial reversal when what is most needed by the industry at this time — nearly five years after the passage of the 1996 Act — is regulatory certainty so that business plans can be formulated and executed. At the same time, as Sprint pointed out (*see* Comments at 14-15), an ILEC's decision as to which space is to be made available for collocation can impact a CLEC's costs and the scope of services it can offer. In addition, an ILEC decision on space allocation could advantage an affiliated enterprise over unaffiliated carriers. Although the court in *GTE* appears to have given the ILECs the right, in the first instance, to select which unused space should be available for collocation, clearly the ILECs do not have unbridled discretion in this regard. Rather, section 251(c)(6) requires them to provide collocation "on rates, terms, and conditions that are just, reasonable, and non-discriminatory … ." Consequently, they must choose space in a manner that will not gratuitously impose extra costs, inconvenience, or service limitations on their competitors and will not favor their own or their affiliate's operations. Any ILEC selection of collocation space should be subject to challenge on any of these grounds.

While the *GTE* decision also appears to have given the ILECs the <u>right</u> to physically separate collocating carriers from their own equipment, nothing in the Act or in the court's decision can be fairly construed as <u>requiring</u> such physical separation. As a result, an ILEC's decision to construct walls, separate entrances and the like, in order to

[5] *See, e.g.*, Rhythms Net Connections at 35; Arbros Communications, Inc., *et al*. ("Joint Commenters") at 40-41.

separate its facilities from those of CLECs should be regarded as a voluntary act on the ILEC's part, the costs of which should be borne by the ILEC.[6] Otherwise, ILECs will have a ready means to artificially and unnecessarily increase the costs of their competitors.

The Commission should also reject RBOC contentions (*see, e.g.*, BellSouth at 13; and Verizon at 29-30) that the *GTE* court's determination to allow ILECs to segregate their equipment from CLECs should apply in the context of remote terminals. The petitioners in *GTE* plainly argued their case in the context of central office collocation,[7] and the court certainly clearly understood that context. *See*, *GTE*, *supra*, 205 F.3d at 418 ("Petitioners also claim that the Collocation Order … allow[s] competitors to have too much say over the placement of their equipment in a LEC's central office … ."). Remote terminals and central offices are typically so dissimilar that it cannot be assumed the court in *GTE* would have reached identical results on the issue of equipment separation in the far different context of remote terminals, where space is far more highly constrained than in central offices. SBC recognizes the essential differences between remote terminals (RTs) and central offices (at 35):

> RTs are unique structures that have configurations and characteristics different than central offices. First, the size of and access to an RT precludes any active security measures such as partitioning areas to separate ILEC equipment from CLEC equipment. … This is, therefore, in contrast to the central office where the partitioning of equipment is possible.

[6] *Cf.* SBC Comments at 29, where SBC (although arguing that CLECs should bear the costs of physical separation of the ILECs' equipment) seems to endorse the proposition that where ILECs install partitions they should charge only the lesser cost of the partitions or other security measures such as cameras.

[7] *See* Brief for Petitioners at 10 (FCC allowed "competitors to intrude on incumbents' central office premises"); 25 ("a taking of incumbents' central offices is at issue"); and 27 ("space limitations" in section 251(c)(6) refers to space within central offices).

Although many remote terminals may simply lack any space to accommodate any form of collocation (other than, perhaps, virtual collocation of line cards in a DLC), where space does exist it should not be subject to the same physical separation criteria that were applied in the *GTE* decision to far more spacious central offices.

IV. COLLOCATION AT ILEC REMOTE TERMINALS

As suggested by the preceding discussion, collocation at ILEC remote terminals clearly presents a host of problems that are different from those in central offices. Many remote terminals are essentially self-contained cabinets that have no spare space, and when space is available, there may be questions of power availability, heat dissipation, and the like that may preclude collocation by others within the remote terminal (except for virtual collocation of line cards). In those circumstances, adjacent collocation is the only practicable option for a CLEC. However, where space does exist within a remote terminal, and power and heat factors do not preclude collocation, that option should be available to the CLECs. BellSouth, by contrast, would make adjacent collocation the favored form of collocation. BellSouth argues (at 17) that there are "numerous issues" (including its erroneous extension of the *GTE* case to remote terminals) that "make sub-rack collocation impractical" in remote terminals. However, even SBC — an RBOC not having the general reputation of being friendly to CLECs — allows collocation on a sub-rack/bay basis within remote terminals (Comments at 35).

The RBOCs also generally oppose having to maintain a certain amount of space available for collocator's equipment in constructing new remote terminals and the RBOCs seek CLEC forecasts for where and how much space they will require in order to reasonably accommodate CLEC collocation requests as existing remote terminals are

replaced or as new remote terminals are built.[8] Yet CLECs cannot give such forecasts to ILECs without detailed information about the characteristics of each central office and all of the remote terminals that subtend that office. The provision of such information is strenuously resisted by SBC (at 38) and BellSouth (at 17). For example, BellSouth (*id.*) states that the only information the ILEC should be required to provide is "whether space is available in a specific remote location." SBC (at 38) volunteers to provide only information about how a specific customer address is served, including the location of the serving premises and its identifying code. Such "one-at-a-time" responses are clearly insufficient to meet the needs of CLECs, particularly in view of the large number of remote terminals and customers served through such terminals.[9]

In its Comments (at 22-23), Sprint listed in detail the information that is necessary in order allow CLECs to make intelligent decisions about where and whether to collocate. A carrier, like Sprint, that is interested in deploying DSL-based services through collocation and use of ILEC loops or subloops has no way of knowing what the economic feasibility of deploying its service is without detailed knowledge of the characteristics of the ILEC's loop plant, including the extent to which ILECs rely on remote terminals serving end users, what type the remote terminal is, how many customers (and in which geographic areas) are served from each remote terminal. This is not, to use SBC's terms (at 38), a request that the ILECs simply do the CLECs' "market research" for them. Sprint is not asking for customer names or demographic data that would enable it to know whether a particular customer might be interested in purchasing a particular

[8] *See, e.g.,* BellSouth at 18, and Verizon at 30-31.
[9] Qwest (n. 29 at 28) states that it alone has "hundreds of thousands of remote terminals."

service. Rather, this is information, solely in possession of the ILECs about the networks they constructed at the ratepayers' expense, without which CLECs cannot be expected to make intelligent decisions on collocation.

The RBOCs cannot have it both ways. If they want to avoid a requirement that they must make some fixed amount of space available in every remote terminal for collocation, regardless of whether there is likely to be any demand for that much space in any particular remote terminal, they must be required to divulge the information about the loop plant in their networks that is absolutely necessary for CLECs to determine whether it makes any economic sense to request collocation space to begin with. The Commission should not protect CLECs from improvident entry decisions. However, it should not tilt the playing field in the ILECs' favor by precluding CLECs from gaining access, not to "market research," but rather to technical network information that is essential for sound and economic entry planning by CLECs.

V. PROVISIONING INTERVALS

In its Comments (at 27-32), Sprint proposed that the Commission adopt standard provisioning intervals that would be of nationwide applicability and, in addition, proposed a detailed set of proposed provisioning intervals. Sprint acknowledged the difficulty of getting provisioning intervals exactly right: there is enough variability in real-world conditions that no single provisioning standard for a particular type of collocation is going to be perfect for all circumstances. There is thus a built-in tension between intervals that are designed to accommodate all reasonably foreseeable circumstances and thus may be far too generous on average, and intervals based on "best case" assumptions that will simply be impractical to achieve in many circumstances. In

this regard, Sprint pointed out that, no matter what provisioning intervals the Commission adopts, waivers would be needed to accommodate unusual circumstances such as more complex physical requirements or the need to process an unexpected surge in the volume of collocation requests.

Sprint believes that national standards are both important and appropriate. National standards simplify management oversight and planning for both ILECs and CLECs, and will avoid differences between states that may be wholly arbitrary.[10] The Commission should exercise its best judgment in adopting a reasonable set of provisioning standards that would have national applicability, leaving to the states the important task of processing the waivers that will inevitably be necessary, no matter what set of intervals this Commission adopts. In performing that function, the states can thereby serve as an important feedback loop to the Commission on the reasonableness of the national standards: if the states never receive any waiver requests, that may suggest the Commission is allowing too much time, whereas if a waiver request becomes the rule rather than the exception for a particular form of collocation, that may suggest more time should be built into the national standard.

There are only three aspects of the proposed provisioning intervals themselves that merit further comment. First, Sprint opposes any attempt to put the processing times for augment orders into a "one-size-fits-all" category.[11] The activities that can be involved on the ILEC's part in processing an augment order can range from the very simple to the highly complex, depending on precisely what types of additional facilities

[10] The factors that may require more or less time to provide collocation tend to be location-specific rather than ones that vary from one state to the next.
[11] *See*, *e.g.*, CoreComm, *et al*. at 33; Joint Commenters at 63; and Rhythms at 64.

the CLEC intends to place in the collocation space. Sprint proposed (at 29-30) four categories of augments, with different intervals for each, that range from 20 days (in the case of the types of orders that typically require minimal effort for the ILEC to undertake) up to 90 days for the most complex types of augment orders.

Second, Sprint shares the views of those ILECs who argue that more time must be allowed for preparing unconditioned space than for conditioned space, and Sprint has proposed 30 additional days for this purpose. As is clear from its comments, space preparation in some locations may well require much more than an additional 30 days, but that is not always going to be the case. A rule that is based on worst case assumptions, that would then allow ILECs more time than they need for many installations in unconditioned space, would ultimately be anti-competitive. Thus, while clearly some additional time should be allowed for space conditioning, Sprint urges the Commission to adopt a tighter timeframe than the 180 days SBC proposes (at 43) and deal with the truly exceptional circumstances through the waiver process.

Finally, although Sprint did not propose provisioning intervals for adjacent collocation as such,[12] Sprint wishes to address SBC's contention (at 47-49) that no maximum interval should be provided for adjacent collocation. SBC points (*id.*) to a number of complex conditions involved in building adjacent structures and argues that these conditions are too variable to warrant a standard interval. Sprint views the adjacent collocation construction as essentially the responsibility of the CLEC, not the ILEC. Rather, the ILEC's role (other than assisting in obtaining permits and ensuring

[12] Sprint did, however, propose a 15-day interval for ILEC provision of interconnection facilities to adjacent collocation sites (Comments at 30-32).

compliance with local zoning regulations) is to provide power and interconnection facilities to the CLEC's adjacent structure. As for electrical power, Sprint believes that in most cases, 60 days (from the date the CLEC notifies the ILEC that it is ready to proceed with construction) should suffice, and should be added to the rules as a standard provisioning interval. Where unusual circumstances exist that make it impractical to finish providing power within this timeframe, the ILEC can seek a waiver. And as for interconnection facilities, as discussed in the preceding footnote, 15 days from the CLEC's notification that it has completed its adjacent collocation space should suffice if the CLEC has previously given the ILEC timely notification of the types of facilities it will need.

VI. IMPACT OF NEW TECHNOLOGIES ON ACCESS TO LOOP AND TRANSPORT ELEMENTS

The two megaBOCs — SBC and Verizon — both argue conceptually against requiring the unbundling of new technology, claiming that such requirements are unnecessary to ensure competitive provision of services and that such requirements would simply deter ILECs from investing in the new technology to begin with.[13]

The Commission should not give any credence to these arguments. To a large extent, these megaBOCs are simply rehashing arguments considered and correctly rejected by the Commission more than two years ago. In acting on various petitions filed by the RBOCs for relief from the unbundling provisions of the statute for broadband services, the Commission held that[14]

[13] *See* SBC at 46; Verizon at 33.
[14] *Deployment of Wireline Services Offering Advanced Telecommunications Capability, et al.,* 13 FCC Rcd 24011, 24017 (1998).

> the pro-competitive provisions of the 1996 Act apply equally to advanced services and to circuit-switched voice services. Congress made clear that the 1996 Act is technologically neutral and is designed to ensure competition in all telecommunications markets. We therefore conclude that incumbent LECs are subject to section 251(c) in their provision of advanced services. Specifically, we find that incumbent LECs are subject to the interconnection obligations of sections 251(a) and 251(c)(2) with respect to both their circuit-switched and packet-switched networks. We also clarify that the facilities and equipment used by incumbent LECs to provide advanced services are network elements and subject to the obligations in section 251(c)(3).

The notion that new-technology loop elements need not be unbundled because they are not "necessary" within the meaning of 251(d)(2) (*see* SBC at 54) is simply wrong. The loop plant of the incumbent LECs remains the quintessential bottleneck facility. Competing providers of local services must have full access to the features and capabilities of this loop plant if they are able to have any opportunity to offer meaningful competition to ILECs for the full range of integrated voice and broadband services that consumers will demand.

In view of the difficulties, many of which have been discussed above, of utilizing sub-loop elements and collocation in remote terminals as a substitute for access to the features and capabilities of the loops at the central office, a failure to require ILECs, on an ongoing basis, to continue to unbundle their loop plant as their technology changes will simply harden the virtually complete monopoly they still retain. As AT&T put it (at 63):

> Incumbent LECs' introduction of next generation equipment does not alter their legal obligation to provide competitive LECs with technologically and economically feasible access to all the capabilities of their loop plant. The inadequacy of spare copper loops to provide a full competitive capability, the lack of space in RTs, the diseconomies of requiring competitive LECs to collocate remotely to serve small numbers of customers, the

> added efficiency resulting from the increased use of high-capacity fiber facilities between RTs and incumbent LECs COs, and the incumbents' ability to offer integrated bundles of POTs and advanced services capabilities, each individually support this conclusion. Collectively, they compel this result.

The RBOCs' threats not to deploy advanced technology if they are required to unbundle it are hollow indeed. The combination of consumer demand for more sophisticated telecommunications services and the development of technologically advanced equipment that enables the provision of such services more economically will drive the deployment of this technology regardless of whether the ILECs must make it available on an unbundled basis. Although the pricing standards for UNEs are currently in question, there is no reason to believe that, when the dust settles, the ILECs will not be able to recover all of the reasonable costs involved in sharing forward-looking technologies with their competitors. Moreover, the additional demand stimulus that might come from other carriers may make it economical for the ILECs to deploy this technology sooner than would otherwise be the case.

The RBOCs contend that the same factor that led the Commission to conclude that DSLAMs should not be unbundled as a network element and that packet switching need not be made generally available — namely, that there is already robust competition in the xDSL market — should guide the Commission's decision here. However, xDSL competition may be less robust than was previously thought to be the case. As AT&T points out (at 59), incumbent LECs are now capturing virtually all of the ADSL business, and the two leading examples of competing providers of packet switched-based services

on a competitive basis — NorthPoint and Covad — are either in the process of being acquired by or becoming strategically aligned with the megaBOCs.

In short, the Commission needs to ensure that incumbent LECs will continue to be required to unbundle the full range of loop capabilities and functionalities regardless of the technology they employ in the future, so long as it is technically feasible to do so.

Respectfully submitted,

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