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ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

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John Windhausen, Jr.
President

December 15, 2000

EX PARTE

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

EX PARTE OR LATE FILED

Re: CC Docket No. 96-98

Dear Ms. Salas:

The Association for Local Telecommunications Services ("ALTS"), the leading national trade association representing facilities-based competitive local exchange carriers ("CLECs") understands that the FCC is currently considering revising its conclusion in the UNE Remand Order concerning access to unbundled local switching. In that order, the Commission determined that CLECs without access to unbundled local switching are not impaired in their ability to serve customers with four or more lines in density zone 1 in the top 50 metropolitan statistical areas ("MSAs") where the incumbent LEC provides nondiscriminatory access to the enhanced extended link, or "EEL."[1]

ALTS respectfully submits that the Commission's decision in that order is supported by the evidence in the record and is based on sound policy grounds. ALTS believes it is important for the FCC to foster facilities-based competition, and the current FCC rules accurately reflect the reality that competitive carriers are deploying switching facilities in the top 50 markets. The record is clear that new entrants can and do efficiently enter the local market in large MSAs to serve business customers of all sizes using self-provisioned switches. If the Commission were to impose unnecessary regulation on the wholesale switching market it would only distort market outcomes and it could discourage further switch deployment.

ALTS members have been attempting to bring facilities-based competition to local market sectors by deploying their own facilities to the fullest extent possible. Obviously, CLECs cannot replicate the ILEC network overnight. Therefore, CLECs must rely, to some extent (but hopefully to an increasingly smaller extent over time), on some of the piece-parts of the ILECs'

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1 Local Competition Provisions of the Telecommunications Act of 1996, UNE Remand Order, 15 FCC Rcd 3696, ¶ 278 (1999) ("UNE Remand Order").

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networks until it is economically viable to deploy additional facilities of their own. Facilities-based CLECs have endeavored to deploy, at a minimum, their own switches, and are, more and more, deploying their own transport and loop plant facilities. The FCC should do nothing to discourage such deployment.

In the UNE Remand Order, the Commission considered a number of factors in its examination of the supply of local switching from non-incumbent LEC sources. The FCC considered the number and location of competitive switches and the ability of competitive LECs to serve discrete market segments, such as residential customers, using self-provisioned or third-party switches.[2] The Commission found that "a significant number of competitive switches" had been deployed in the top 50 MSAs. Id. ¶ 281. Specifically, of the 700 competitive switches deployed as of March 1999, the Commission found that roughly 61% had been installed in the top 50 MSAs. Id. ¶ 280. Furthermore, the Commission found that 48 of the top 50 MSAs contained four or more competitive switches. Id.[3]

Based on these findings, the Commission held that incumbent LECs need not provide unbundled switching in the top 50 MSAs, subject to certain qualifications. Those qualifications were designed to ensure that this "exception" to the Commission's unbundling rules would be appropriately tailored. First, the Commission limited the exception to only the densest calling zones (zone 1) within the top 50 MSAs.[4] Second, to promote competition for the residential market, the Commission limited the exception to customers with four or more lines.[5] Finally, to qualify for the exception, the Commission required incumbent LECs to provide competitors nondiscriminatory access to the EEL.[6] The Commission reasoned that the EEL would allow competitive carriers to decrease their collocation costs and increase their efficiencies by transporting aggregated loops to their central switching facilities, thus eliminating an impairment that might otherwise result from the Commission's exception to the unbundled switching rules.[7]

The FCC ruling relieved ILECs of their obligation to provide unbundled local switching in at least some of the areas in which there is evidence that competitors are able to economically self-provision switches, thereby furthering one of the primary goals of the 1996 Act -- facilities-

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2 See UNE Remand Order ¶¶ 276-299.

3 Only two MSAs, Cincinnati and Las Vegas, had fewer than four competitive switches at that time. UNE Remand Order ¶ 280.

4 Id. ¶¶ 284-285.

5 Id. ¶¶ 290-298.

6 Id. ¶¶ 288-289.

7 Id. ¶ 288.

based competition. At the same time, it encouraged new investment by facilities-based competitors, thus sending efficient entry signals to the marketplace and allowing for increased innovation. Nor did the Commission's ruling harm residential competition, as incumbent LECs must continue to provide access to unbundled switching for "virtually all residential customers."[8]

The record submitted in this proceeding demonstrates that the Commission made the correct decision last year. Verizon has submitted evidence in this proceeding that the number of competitive switches has increased by 80% in its East territory since the Commission released the UNE Remand Order.[9] Similarly, according to SBC, in comparison to the 700 competitive switches that had been deployed as of March 1999, "CLECs now have deployed in excess of 1100 switches nationwide (a 50% increase from one year ago),"[10] and "for the past 2 years, they have been deploying circuit switches at a rate of a switch a day."[11] Allegiance, Lightpath, TWTC, and XO currently market and provide local service using self-provisioned switches to customers in 26, 3, 14, and 32 of the top 50 MSAs, respectively.[12] Indeed, Allegiance specifically targets the small-to-medium business market, focusing on customers with 4 to 24 lines. Cbeyond plans to target small business customers with 5 to 25 lines. Cbeyond, in large part, has relied on its ability to target small business customers with 5 to 25 lines, using the EELs it expected to obtain from those ILECs choosing not to provide UNE-P. The Commission should affirm its decision of last year that ILECs do not need to make unbundled switching available in density zone one of the top 50 MSAs to customers with four or more lines where the ILEC provides nondiscriminatory access to the EEL.

A better use of valuable Commission resources would be to ensure that the other wholesale inputs are available on terms and conditions that allow switch-based entry to expand beyond the most densely populated areas. It is critical that the ILECs abide by the FCC requirements to provision necessary network elements, such as loops and transport, to the extent that CLECs cannot readily replicate and deploy these elements on their own. In addition, as

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8 Id. ¶ 293.

9 See Letter from W. Scott Randolph, Director - Regulatory Matters, Verizon, to Magalie R. Salas, Secretary, FCC, Attachment at 2 (filed Sept. 27, 2000).

10 Compare Letter from Gary L. Phillips, General Attorney, SBC, to Magalie R. Salas, Secretary, FCC, Attachment at 2 (filed May 19, 2000), with UNE Remand Order ¶ 280.

11 Letter from Gary L. Phillips, General Attorney, SBC, to Magalie R. Salas, Secretary, FCC, at 3 (filed June 13, 2000).

12 Further, by year end 2001, Allegiance plans to enter 10 more of the top 50 MSAs using its own switches, and XO plans to have entered all 50 of the top 50 MSAs using its own switches. Cbeyond also plans to enter 25 of the top 50 MSAs using its own switches beginning early 2001. Clearly, there is no impediment to serving the small-to-medium business market without access to unbundled switching.

provided for under the Commission's rules, collocation must be available on a reasonable basis and ILECs must provision the EEL in a manner that allows CLECs to compete. In this way, CLECs can, over time, assemble more and more of the components necessary to deploy their own stand-alone networks, and cease to rely on the ILEC network. Through these efforts, the competitive alternatives for services, technologies and providers will continue to increase.

Pursuant to Section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1), one copy of this letter is being filed for inclusion in the above-referenced proceeding.

Sincerely,

John Windhausen, Jr.

John Windhausen, Jr.
President
ALTS

cc: Jon Reel
Michelle Carey
Jodie Donovan-May
Glen Reynolds
Dorothy Attwood