



ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Jonathan Askin
General Counsel

December 22, 2000

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

Re: ***Ex Parte* Letter of the
Association for Local Telecommunications Services**
Implementation of the Local Competition Provisions of the
Telecommunications Act of 1996, CC Docket No. 96-98

EELs – Industry Joint Meeting

Dear Secretary Salas:

Please include the attached *ex parte* letter, filed on behalf of the Association for Local Telecommunications Services, in the public file of the above-referenced proceeding.

If you have any questions, please contact Jonathan Askin at (202) 969-2587.

Sincerely,



Jonathan Askin

cc: Michelle Carey
Glenn Reynolds
Dorothy Attwood

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ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

Jonathan Askin
General Counsel

December 22, 2000

Jodie Donovan-May
Federal Communications Commission
Common Carrier Bureau
445 – 12th Street, S.W.
5th Floor
Washington, D.C. 20554

Re: **Written *Ex Parte* Statement of the
Association for Local Telecommunications Services**
Implementation of the Local Competition Provisions of the
Telecommunications Act of 1996, CC Docket No. 96-98

EELs – Industry Joint Meeting

Dear Ms. Donovan-May:

ALTS understands that the FCC is considering holding a joint meeting between ILEC and CLEC representatives in order to confront and resolve problems CLECs are experiencing in attempting to convert special access circuits to enhanced extended links (“EELs”). We applaud all such pro-competitive efforts you may take. In an effort to expedite and ensure a productive meeting, ALTS has assembled below a sampling of problems CLECs are experiencing in obtaining EELs. This list is by no means exhaustive, but is illustrative of the types of problems we hope the FCC might resolve.

Frankly, CLECs are becoming increasingly frustrated by ILEC intransigence in converting special access circuits to EELs. We had been led to believe that the ILECs, during the course of last year’s debates on EELs, had assured the FCC that the ILECs would readily convert EELs for CLECs, and only needed some restrictions to ensure that IXCs could not convert massive amounts of special access to EELs, causing immediate, dramatic reductions in ILEC special access revenue. The FCC bent over backwards to accommodate the ILECs concerns in large part because the ILECs promised that once safeguards were in place, they would readily convert access facilities. I think everyone agrees that the ILECs have not lived up to their promises to provide CLECs with timely and cost-effective EEL conversions.

It is critical to the success of competition that CLECs – be they providers of voice and/or data services -- have ready access to UNEs and UNE combination (where available) at forward-looking incremental cost pricing. The absurdity is that, while FCC



and state rules require ILECs to provision UNEs in a timely and cost-effective manner, CLECs typically order UNE equivalent services (e.g., T1 loops and transport) at tariffed rates, due to ILEC refusal to provision such facilities as UNEs. ILEC refusal to allow CLECs to obtain timely and cost-effective access to the incumbent networks (e.g., loops, loops + muxing, loops + transport), has, in fact, undermined competition. It is absolutely essential that the FCC send a clear signal to the industry that ILEC foot-dragging, gamesmanship and intransigence will no longer be tolerated.

Within the context of the EEL conversion process, it is essential that the FCC afford the CLECs the tools they need to obtain EELs in a timely and cost-effective manner. In order for CLECs to make effective use of EELs to deploy competitive services and technologies, the FCC must eliminate widespread delays and restrictions on EEL conversions. CLECs should only be charged the UNE rate for a facility 10 days after it delivers written notification to the ILEC of its desire to convert an access circuit to an EEL. This billing change should apply regardless of when the ILEC actually completes the conversion. ILECs must not be allowed to establish “pre-audit” or other criteria that is inconsistent with or more burdensome than the FCC’s determination that a letter self-certifying that a carrier meets the FCC’s “significantly local standard” is sufficient. The ILEC must not be allowed to be the arbiter of “significantly local” – that determination remains with the regulatory authority. Until such time as the regulatory authority concludes that the CLEC’s services do not satisfy the “significantly local” standard, the CLEC’s self-certification must prevail. Furthermore, the ILEC cannot conclude that a circuit fails the “significantly local” test simply because a CLEC’s customer is using an EEL for data applications. Finally, the FCC should mandate that no termination liability charges are to be assessed to CLECs converting circuits to UNE pricing. Otherwise, the ILECs will be unjustly rewarded for years of intransigence in offering EELs, thus forcing CLECs to accept long-term access circuits as the only available option.

What follows below is a sampling of existing problems CLECs are reporting which we hope the FCC might readily resolve via a joint meeting on EELs. It is essential that these problems be remedied so that CLECs may use EELs as envisioned by the FCC and so that CLECs may compete on an equal footing with the ILECs.

Actel:

BellSouth has told Actel that DS3 and above special access circuits must be provisioned as such for no less than 4 months before being eligible for conversion to EELs.

ATG:

SBC requires two orders to convert a special access circuit to an EEL: one order to disconnect the special access circuit, and one to connect the UNE combo. This procedure



increases the possibility of customer outages, if the disconnect order goes through before the reconnect order.

Avista:

Avista serves Tier 3 and 4 markets in the Northwest. Avista cannot obtain EELs although it has heard promises from Qwest that it will make EELs available.

e.spire:

Qwest: Qwest requires a “pre-audit” in violation of the Commission’s orders, despite e.spire’s letter self-certifying that its circuits meet the Commission’s significantly local standard. The Commission’s *Supplemental Order Clarification* clearly states that “LECs must allow requesting carriers to self-certify that they are providing a significant amount of local exchange service over combination of unbundled network elements.” Moreover, Qwest looks to e.spire’s multiplexed DS3 in determining whether “significant amount of local exchange service” exists under tests laid out in the *Supplemental Order Clarification*. In that Order the Commission states “[w]hen a loop-transport combination includes multiplexing (e.g. DS1 multiplexed to DS3 level), each of the individual DS1 circuits must meet this criteria.” Regardless of this clear, plain and simple language, Qwest refuses to look at each individual DS1 circuit. Based on this misreading, they have rejected virtually all of the circuits e.spire requested to convert.

SWBT: e.spire filed a complaint in the Commission’s Accelerated Docket concerning SWBT’s illegal and anti-competitive ordering process for the conversion of existing special access circuits EELs. In contravention of the Commission’s *Supplemental Order Clarification*, SWBT insists on the submission of an ASR and LSR to convert a special access circuit. This two-step process not only violates the Commission’s clear requirement that only an ASR need be submitted, but may cause a disconnection in CLEC service since there is no coordination of ASR/LSR order. Even though e.spire has submitted circuit information and has engaged in months of negotiation with SWBT, e.spire has not been successful in converting any of its special access circuits to EELs.

BellSouth: BellSouth has been relatively cooperative compared to other carriers, although e.spire has yet to obtain EEL credits from BellSouth at this time. e.spire has committed to BellSouth that it has only sent “significantly local” qualifying circuits to BellSouth, but BellSouth, like Qwest, has second guessed and “pre-audited” e.spire’s selection of qualifying circuits. This position lacks any reasonable justification and creates yet another creative barrier to entry. Again, e.spire has had relative success in working through issues with BellSouth, and considers that it may be able to resolve these outstanding issues with BellSouth prior to seeking Commission intervention.



Electric Lightwave, Inc.:

EEL Definition

Qwest is incorrectly defining a special access DS1 channel termination (loop) that passes through a Qwest provided M1/3 multiplexer before terminating in an ELI collocate as an EEL subject to the "significantly local" certification process. Since this particular loop configuration has no transport between wire centers, it is not an EEL. This is an existing combination of UNEs which is eligible for conversion under ELI's existing interconnection agreement with Qwest. Qwest is inappropriately relying on the FCC's EEL use restrictions to avoid its obligations under its interconnection agreement with ELI.

Restrictions Placed on New EELs

Qwest requires that new EELs be certified under one of the FCC significantly local options, although Qwest has been obligated to provide EELs as a new combination, separate and apart from the EEL Clarification Order.

Commingling/Ratcheting

Qwest refuses to convert qualifying circuits to EELs in situations that result in EELs and special access circuits riding on the same transport facility or passing through the same multiplexer system. As a result, ELI is required to order an entirely new facility, either special access or unbundled transport, and go through the time consuming, expensive, and, in most cases, customer impacting process of rolling circuits. Being required to segregate circuits on facilities that carry only EELs and UNEs is terribly inefficient. So much so, that it effectively precludes conversions as an option.

ELI proposed that in lieu of requiring separate facilities for EELs and special access that Qwest simply ratchet the special access transport facility bills to reflect the lower prices for the percentage of facilities being utilized for EELs. Qwest has refused this request even though ratcheting has been utilized in the access billing arena for some time.

Termination Liabilities

Another factor that carries significant weight in the EEL conversion equation is the assessment of termination liabilities for special access circuits currently under term discount plans. Qwest has refused to forgive or even adjust termination liabilities associated with converting existing special access circuits to UNEs. Qwest wants to extract huge termination liabilities from CLECs as if the CLECs were dropping Qwest's service altogether. That's clearly not the case. The CLECs will still be purchasing services from Qwest, just at a price that would allow the CLEC to compete.

The FCC should mandate that no termination liability charges are to be assessed to CLECs converting circuits to UNE pricing. Especially given that CLECs are just now getting access to the UNE pricing that they have been legally entitled to since February 1996, and even earlier in some states. Were it not for the continual resistance of the ILECs and their refusal to offer hi-capacity UNE loops and UNE combinations (at least

in those states that require combinations), most of the embedded base of CLEC special access circuits would be at UNE pricing.

Questionnaire and System Changes

Qwest requires ELI to complete a new questionnaire, for each state, to trigger Qwest internal processes for loading rates in its billing system even though all the rates are already in the interconnection agreement. This unnecessary step imposed by Qwest only causes further delay. Qwest received ELI's completed questionnaires on September 9, 2000 and has not yet completed the billing system updates for ELI.

Focal:

SBC insists upon an ASR disconnect in violation of the Supplemental Order Clarification, para. 30. SBC essentially requires carriers that request conversion of special access circuits to EELs to breakdown the ordering process into a fragmented and uncoordinated, step-by-step procedure that may leave customers without service. Initially, the carrier ordering conversion of special access circuits to EELs must identify all the circuits to be converted and must certify that its proposed use of the circuits conforms with the FCC's *Supplemental Clarification Order*. Next, a carrier must send a disconnect ASR to SBC *for each circuit*. Then, the carrier must send separately an ASR to order the loop UNE and an LSR to order transport. Purportedly, SBC is only able to make use of the first ASR to disconnect the tariffed special access service and cannot use the request to initiate internally the other steps necessary to complete a conversion.

The Commission should find that SBC's conversion process for EELs does not comport with the Commission's order and statutes. The *Supplemental Clarification Order* states that the "process by which special access circuits are converted to unbundled loop-transport combinations should be simple and accomplished without delay."¹ SBC processes are anything but simple, and have taken over ten months (and counting), and Focal still awaits completion of requested conversions. Multiple ASR/LSRs are an unnecessary barrier to competitor's authorized use of EELs and introduce additional choke points whereby the ordering and provision process can fail. Requiring CLECs to place orders for disconnection contravenes the *Supplemental Order Clarification*, which states that "the conversion should not require the special access circuit to be disconnected and re-connected because only the billing information or other administrative information associated with the circuit will change when a conversion is requested."² Moreover, SBC does not coordinate these multiple ASR/LSR orders, so it is possible that a disconnect order will get classified and performed as an actual "disconnect order," and a customer will lose service. As the Commission noted, an EEL conversion is not a change of the make up of the circuit; the path remains the same; there is no engineering change needed; the circuit is not being moved. Consequently, a single ASR should suffice to make the

¹ *Supplemental Clarification Order*, para. 30.

² *Id.*



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necessary changes, including billing. In addition, SBC only rarely provides a “firm order confirmation” for the conversion of EELs, which adds a great deal of uncertainty to the ordering/conversion process.

Intermedia:

Intermedia has encountered similar termination liability problems with BellSouth as those set forth above by Electric Lightwave. Intermedia has also noted that BellSouth has excessively long provisioning intervals for EEL.

Jato:

Qwest simply refuses to offer EELs to CLECs for any other use than local voice service. Qwest has maintained in the CO 271 proceeding that the FCC's EEL Orders make it clear that an EEL can *never* be used in substitution for a special access/private line arrangement. They refuse to acknowledge the IXC distinction written into the Clarification Order or the plain language of the Act. When pressed on these issues during a recent workshop, Qwest cut off discussion and declared it an impasse issue.

Net2000:

Verizon refused several Net2000 requests to convert special access circuits to EELs. On March 23, 2000 and again on May 9, 2000, Net2000 requested that Verizon convert its special access circuits to EEL arrangements. In each request, Net2000 self-certified that the circuits to be converted were being used to provide a significant amount of local exchange service in compliance with the Commission's orders. For several months, Verizon refused to implement Net2000's request, based on its view that, despite the self-certification, Net2000 was not in compliance with the Commission's EEL requirements. Only after Net2000 filed a formal complaint did Verizon agree that some of Net2000's circuits could be converted.

Verizon continues to take the position that it is entitled to ignore the carrier's self-certification if, according to Verizon's interpretation of the Commission's requirements, the carrier is not in compliance with the Commission's requirements. This position amounts to a pre-conversion audit, which the Commission clearly prohibited.

In addition, Verizon refuses to allow Net2000 to aggregate EEL-eligible DS1s on a DS3 transport facility if the DS3 also carries ancillary traffic, even though Net2000 has not requested that the ancillary traffic be billed at EEL rates. As a result, Net2000 would be required to employ two separate interoffice networks, one for EEL-eligible traffic and a separate network for ancillary traffic. Verizon refuses to allow ratcheting of the special access charges to reflect the portion of the facility used for EEL purposes. Ratcheting is



a common practice used in special access and could easily be utilized to ensure that Verizon continues to receive special access rates for that portion of the facility that is not used for EEL purposes.

US Lec Corp.:

US Lec reports significant delays in converting special access circuits to EELs with BellSouth. For the past 6 months, BellSouth has consistently disregarded US Lec's requests for information/clarification regarding EELs. When information was finally provided, US Lec was informed that, as a facility based CLEC, it did not satisfy the collocation requirement. When US Lec provided its account team with information *from their documentation* stating that collocation was not required under all options, US Lec were informed that it would need to look at "non-switched combos" as an alternative.

Now, as US Lec moves towards beta testing the 'non-switched combo' option, US Lec has been informed that the "service levels and trouble ticket response times are significantly less than when we order through the special access tariff." The lack of information provided to both US Lec and its internal BellSouth account team has continued to delay even the research of UNE conversions.

WinStar:

WinStar has been attempting to order new EELs in New York and Pennsylvania and to order conversion of Special Access to EELs since around June 1, 2000.

New EELs: To date WinStar has placed 11 new EELs orders in NY (over a two month period from the beginning of June until the beginning of August, 2000) and only one order has been completed. The others were rejected for errors. The errors were never explained. After the 11th order, WinStar's provisioning group just gave up trying.

Conversion of Special Access to EELs: there are three separate situations:

1. WinStar has sent more than 50 EEL orders to Verizon, all of which were rejected, because the T1 I used was not configured to place an Unbundled order. In other words, it did not terminate on a "clean DS-3." See item 3 below for a description/explanation of a clean DS-3.
2. Beginning in June, WinStar began ordering Special Access on a month-to-month basis with the intention of converting these circuits to EELs. Approximately 160 month-to-month orders were placed across New York City, Philadelphia and Boston. Of all of these circuits, only one has been completed by Verizon.



3. Verizon is contending that they cannot convert a T-1 to an EEL unless it is muxed by a clean DS-3. In other words they contend that co-mingling means that nonconverted T-1s and converted T-1s (*i.e.*, EELs) cannot be mixed on the same DS-3. The “clean DS-3” requirement, forces CLECs to unbundle the already combined combinations of UNEs that the ILECs are forbidden from unbundling in the first place.

WinStar has not pursued EELs since late September, because Verizon has erected so many roadblocks and because it is so difficult and burdensome a process to undertake conversions to EEL or ordering of new EELs.

XO:

SBC. SBC treats each request for conversion as though it were a physical “connect” then “re-connect” rather than a simple billing change. Under this theory, SBC is attempting to charge XO for all the fees associated with establishing the circuit, even though there is no actual work required of SBC other a billing change. In addition, as mentioned by e.spire above, because SBC insists on treating the EEL conversion process as a two-step process, there is a greater possibility that XO's customers will have their service disrupted or disconnected.

XO also has attempted to order up new circuits as EELs from SBC. SBC's position is that all new circuits must be ordered up as an access circuit and then converted to an EEL. XO's position is that our current interconnection amendment permits us to order up new circuits as EELs. SBC disagrees with this position and its provisioning group has refused to accept XO's orders. XO sent SBC a letter last week informing them that they are violating the interconnection agreements between our companies as well as violating FCC rules and that XO expects SBC to rectify this issue immediately. SBC has not yet responded to the letter.

Verizon. Verizon is claiming that no existing access circuits can be converted to EELs without the payment of full termination liability. Over the last few years, many access circuits were ordered by XO with lengthy terms because EELs were unavailable and only the long-term access circuits were available at competitive rates. The Commission should consider whether termination liability should be reduced or revoked on existing access circuits that would otherwise be eligible for conversion to EELs. If unresolved, the termination liability issue makes it cost prohibitive to convert most of XO's existing access circuits in Verizon's territory.

XO also has attempted to order up new circuits as EELs in the Verizon region. XO has been moderately successful in ordering up EELs in NY and Boston. The New Jersey and DC markets, however, are another story. There have been so many problems in NJ and DC that XO has stopped attempting to order EELs and is ordering up access circuits



again. XO is in the process of informing Verizon that XO will not accept the financial penalty associated with ordering up access circuits as a result of Verizon's inability to provision EELs and therefore, XO will pay Verizon only the EEL rate on access circuits that XO has had to order as a result of Verizon's inability to provision EELs.

BellSouth. In August, 2000 XO executed an EEL amendment for all of its interconnection agreements with BellSouth. As of late November, Bellsouth operations personnel kept rejecting XO requests to convert existing special access facilities to EEL arrangements by arguing that no such amendment existed.

XO recently requested that BellSouth match the provisioning intervals currently required on special access circuits (5-8 business days) for the same type of facilities provided by BellSouth on a UNE EEL basis (the current provisioning interval in BellSouth territory for UNE EEL facilities is 30 days). BellSouth denied the request by arguing that since state PUCs have "refrained from comparing UNE intervals to intervals for access services" they are under no such obligation. In addition, in all states but GA, Bell South only allows ordering of new EELs in MSA Density Zone 1 CO's. For MSA Density 2 CO's, the circuits must be ordered as access circuits and then, after one billing cycle, be converted to UNEs.

Qwest. In the Qwest region, XO has encountered many of the same restrictions and limitations regarding conversion of existing access circuits to EELs and ordering new EELs described above by Electric Lightwave, Inc.

Generic CLEC Complaint Against Qwest

Qwest is attempting to expand the scope of the FCC's Supplemental Orders concerning EELs, by including the following language in its interconnection agreement terms and conditions for dark fiber UNEs:

[CLEC] shall not use UDF [Unbundled Dark Fiber] as a substitute for special or switched access services, except to the extent [CLEC] provides 'a significant amount of local exchange traffic' to its end users over the UDF as set forth by the FCC.

This language is an attempt by Qwest to expand the FCC's temporary restriction on the use of UNE combinations as a substitute for special access circuits by similarly constraining a CLEC's use of EITHER a dark fiber loop or dark fiber interoffice transport. The FCC restriction was limited to conversions of existing special access lines to COMBINATIONS of transport and loop. Qwest should not be allowed to broaden that restriction by requiring CLECs to demonstrate significant local usage over, for instance, dark fiber that is ordered for interoffice transport. Further, since the FCC's restriction applies only to existing special access circuits that are subsequently converted to UNE combinations, Qwest



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should not attempt to similarly restrict the type of traffic routed over any new dark fiber UNEs ordered by a CLEC. By including the provision referenced above in its generic interconnection agreement amendment that is offered to CLECs who wish to obtain dark fiber, Qwest is attempting to improperly restrict CLECs' access to dark fiber.

The above-referenced EEL problems and suggestions for effective resolution of these problems are not intended to constitute an exhaustive list of CLEC problems and solutions. They are simply an effort to focus the dialogue, as the FCC engages ILECs and CLECs in its efforts to resolve existing and anticipated problems.

Please feel free to use these complaints as a partial guide in your efforts to resolve existing EEL conversion and provisioning problems. If you have any questions, please feel free to contact me at 1-202-969-2587.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Askin", written over a horizontal line.

Jonathan Askin, General Counsel
Association for Local Telecommunications Services

cc: Michelle Carey
Glenn Reynolds
Dorothy Attwood