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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Hon. Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW - Room 8-B201
Washington, DC 20554

Ex Parte
CC Docket Nos. 98-141/98-184.

Dear Chairman Powell:

In this letter, DSLnet Communications, LLC ("DSLnet") provides further information supporting its previous request¹ that the Commission immediately determine, in response to the recent decision of the United States Court of Appeals for the District Columbia Circuit in *Ascent v. FCC*,² that the separate advanced services affiliates of SBC and Verizon, or of any other incumbent local exchange carrier ("ILEC"), are, and have been since their establishment, subject to all of the obligations of Section 251(c) of the Act.

DSLnet has written to both SBC and SNET requesting that those companies immediately take steps to permit resale of advanced services pursuant to *Ascent v. FCC*. DSLnet has received responses from those companies that reveal that those companies intend to delay taking steps to comply with the resale and other obligations of Section 251(c) of the Act with respect to provision of advanced services. For example, these letters emphasize the accurate but irrelevant point that currently the parent companies do not provide any advanced services other than the wholesale services that they were permitted to provide under the *Project Pronto Order*.³ However, it is obvious that the focus and import of the court's decision is that the advanced services offerings of the affiliate are subject to Section 251(c)(4) obligations. It is the resale of those services about which DSLnet addressed its letter to SBC and SNET.

¹ Letter to Hon. Michael K. Powell from DSLnet Communications, Inc. and InfoHighway Communications Corporation, CC Docket Nos. 98-141 and 98, February 2, 2001.

² Association of Communications Enterprises v. FCC, Case No. 9-1441, slip op (D.C. Circuit January 9, 2001) ("*Ascent v. FCC*").

³ Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, CC Docket No. 98-141, *Second Memorandum Opinion and Order*, rel. Sept. 8, 2000 ("*Project Pronto Order*").

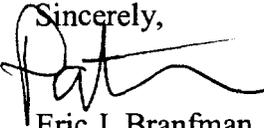
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In a similar vein, the letter from SNET makes the absurd and irrelevant point that the parent companies will not be providing any advanced services for some time after the court decision takes effect because, pursuant to the merger conditions, the separate advanced services affiliate condition does not expire until 9 months after the date that *Ascent v. FCC* is final and non-appealable.⁴ DSLnet respectfully suggests that the merger conditions do not supercede the requirements of the Act. Moreover, the separate affiliate merger conditions were vacated by that court decision. Therefore, the merger conditions cannot delay the immediate application of Section 251(c) obligations to the advanced services offered by SBC's and SNET's advanced services affiliates.

SBC's evasion of the central import of DSLnet's request is not an encouraging sign that SBC will promptly direct its affiliate to comply with its obligations under the Act. In addition, SBC's hyper-technical reliance on the fact that the court has not yet issued its mandate also shows that it intends to stall in complying with its resale obligations.

Accordingly, DSLnet renews its request that the Commission promptly direct all ILECs to permit resale pursuant to Section 251(c)(4) of the Act of advanced services offered by their advanced services affiliates.

The letters from SBC and SNET discussed above are attached.

Sincerely,

Eric J. Branfman
Patrick J. Donovan

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⁴ Merger Conditions, 12.c.