

February 25, 2001

Magalie Roman Salas,
Secretary
Federal Communications Commission
TW-A325
445-12th St., S.W.
Washington, DC 20554

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

Dear Ms. Salas:

Enclosed is an *ex parte* letter filed in the above –captioned proceeding.

Regards,

Kathleen M. Marshall
Executive Director
Regulatory & Public Policy
Advanced TelCom, Inc.
200 S. Virginia St., Ste. 103
Reno, NV 89501

February 25, 2001

Mr. Bill Kehoe, Special Counsel
Common Carrier Bureau
Federal Communications Bureau
445 12th Street, S.W.
Washington, D.C. 20554

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

Dear Mr. Kehoe:

Advanced TelCom, Inc. (“ATG”) submits this *ex parte* letter in response to a general request from the Federal Communications Commission regarding the practical effect of adopting a broad interpretation of Section 251(c)(6) such that ‘necessary’ is “construed in a fashion that is consistent with the ordinary and fair meaning of the word, i.e., so as to limit ‘necessary’ to that which is required to achieve a desired goal.”¹ ATG is a facilities-based integrated communications provider headquartered in Santa Rosa, California, providing local and long distance voice, high speed Internet and other data services to customers in smaller cities and towns.

ATG understands that the ‘desired goal’ of Section 251(c)(6) and the Telecommunications Act of 1996 is to allow competitive carriers the ability to access the incumbent local exchange carriers’ networks either through interconnection or through the use of unbundled network elements in order to promote Congress’ objective of vibrant local competition. In both ATG’s initial comments, dated October 12, 2000, and in ATG’s reply comments, dated November 14, 2000, ATG reiterated its position that under Section 251(c)(6) of the Telecommunications Act “the FCC should permit the collocation of any competitor equipment that permits competitors to access unbundled network elements or interconnect with the incumbent, and that may include other functions involving the processing, switching, multiplexing, concentration, relaying, regeneration, recording, conversion, transmission, or other treatment of voice or data traffic.”² ATG then went further and, in the *Seefloth Declaration*, attached to ATG’s initial comments, ATG technical staff identified a number of types of equipment that ATG must collocate in order to interconnect with incumbents and access unbundled network elements.

In addition to satisfying the standard put forth by ATG, the types of equipment identified in the *Seefloth Declaration* also satisfy the standards espoused by numerous

¹ *GTE v. FCC*, 205 F.3d 416, 423 (2000).

² ATG’s Reply Comments, at. 6 (November 14, 2000).

commentators that link the definition of “necessary for interconnection and access to unbundled elements” to the Telecommunications Act’s primary objective of promoting competition.³ While ATG took the liberty in its initial comments of providing an illustrative list of equipment that ATG needs to collocate and that meets the standard required by Section 251(c)(6), ATG would be concerned if this Commission were to define a standard the meets Section 251(c)(6) by categorizing equipment.

ATG respectfully submits that any such approach by this Commission to provide a catalog of allowed and disallowed equipment is fraught with danger. The industry is far too dynamic to be captured by such a snapshot, and more likely than not, such a list would be outdated at the moment of publication. Furthermore, it is impossible to foresee every feature and function that competitors will use to interconnect or to access unbundled network elements or whether such features and functions will consequently have to be distributed to competitors’ collocation spaces or can be centrally controlled at competitors’ central offices’. This Commission would run a high risk of using the regulatory process to distort the development of an industry if this Commission chose to define what is necessary for collocation by listing equipment that would or would not meet the requisite standard. Finally, any such categorization could inevitably lead to abuse by incumbents if they chose to interpret such lists to apply to particular features housed within multifunction equipment and, thus, began requiring competitors to disengage such features before collocating a type of multifunction equipment.

Keeping these concerns in mind, it is obvious that even under the standards proposed by the various parties identified above, certain types of equipment in current form would be excludable under Section 251(c)(6). The following types of equipment would not meet such standards and it is the view of ATG technical staff that ATG would

^{3 3} See Comments of Cisco Systems, Inc. at 1 (“equipment should be deemed necessary when its function or functions effectuate interconnection or access to unbundled network elements”); Comments of CompTel at 2 (“in construing Section 251(c)(6), the Commission must recognize the correlation between amount of traffic exchanged between CLECs and ILECs through collocation arrangements . . . and Congress’ objective of vibrant competition”); Comments of Connectiv Communications, Inc. at 7 (“necessary for purposes of collocation means necessary for effective competition”); Comments of the General Services Administration at 4 (the Commission should prescribe “‘necessary’ conditions in a manner that will maximize the opportunities for more competition to develop”); Comments of the Joint Commenters at 11 (“ILECs must provide physical collocation of equipment as needed to further the pro-competitive purposes of the Act”); Comments of Telergy at 21 (“any commercially available equipment that enables interconnection or access to UNEs meets the ‘necessary’ test. The only practical test is to let the marketplace determine the equipment that enables interconnection or access to UNEs”); Comments of Rhythms Netconnections at 4 (“ILECs must permit physical collocation of equipment so long as it is ‘directly related to’ interconnection and access to unbundled network elements and an inability to collocate such equipment would interfere with a CLEC’s ability to compete effectively and efficiently”); Comments of Tachion Networks, Inc. at 5 (“equipment should be deemed ‘necessary for interconnection or access to unbundled network elements in any case where the CLEC would otherwise incur the costs of avoidable backhaul, because in such instances, the barrier to competition would be inevitably high”); and Comments of Telergy, Adelphia and Business Telecommunications at 10 (“the Commission has authority to adopt a standard for equipment necessary for collocation that provides CLECs a meaningful opportunity to compete”). It is worth noting that the commenters expressing the view that any Commission-adopted definition of “necessary” must be tied to the Act’s pro-competitive framework are not only CLECs, but also include the General Services Administration and equipment manufacturers.

not seek to collocate such equipment on a stand alone basis and in its current form: trouble ticket management equipment, order generation management equipment, fire suppression equipment, air conditioning and heating equipment, and centralized databases for directory assistance, local number portability, billing, customer records and inventory management.

Respectfully Submitted,

ADVANCED TELCOM GROUP, INC.

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