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Before the  
Federal Communications Commission  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
	)	CC Docket No. 98-147
Deployment of Wireline Services Offering	)	
Advanced Telecommunications Capability	)	
	)	
And	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions of the	)	
Telecommunications Act of 1996	)	

**COMMENTS  
OF THE  
UNITED STATES TELECOM ASSOCIATION**

**INTRODUCTION**

The United States Telecom Association (“USTA”) hereby files its comments in response to the Commission’s *Third Further Notice of Proposed Rulemaking* in CC Docket No. 98-147, and *Sixth Further Notice of Proposed Rulemaking* in CC Docket No. 96-98, released January 19, 2001 (“FNPRM”).

The Commission’s proposals in the FNPRM (1) create disincentives for ILECs to invest and innovate, (2) further CLEC dependence on ILEC facilities thereby creating disincentives for CLECs to make investments in their own networks, (3) are protectionist in favor of competitors at the expense of market-based competition that would benefit consumers, and (4) are unnecessary.

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The Commission's proposals regarding line-sharing are contrary to the public interest and inconsistent with the Supreme Court's necessary and impair analysis under Section 251(d)(2) of the Act which the Court made clear limits any efforts by the Commission to impose upon ILECs unbundling obligations. Additional line sharing regulations are not required to promote competition for advanced telecommunications services and should not be mandated by the Commission.

If the proposed regulations in the FNPRM are adopted, the Commission will have created additional disincentives for incumbent local exchange carriers to invest in, and innovate, new technologies. Similarly, facilities-based competition would be placed at risk. Moreover, additional technological and operational difficulties would be created by Commission adoption of the proposed regulations in the FNPRM.

The advanced services market is competitive. Further line sharing regulations would hamper the ability of ILECs to compete against cable broadband service providers. Moreover, additional regulations would have a chilling affect on new carrier deployments by ILECs.

#### **I. ADDITIONAL LINE SHARING REGULATIONS ARE UNNECESSARY**

The Commission's orders have been appealed. It would be precipitous for the Commission to impose additional regulations for line sharing over ILEC fiber networks and remote terminals as suggested in the FNPRM, pending the outcome of litigation. The adoption of changes in the existing definition for shared transport is unnecessary. In addition, there is no basis for the Commission to adopt a UNE platform for data. Line

sharing and UNE platforms for data are unnecessary because the Commission has consistently determined that the advanced services broadband market is in fact competitive.

Competitors have access to cable providers and facilities-based CLECs among other alternatives to ILEC unbundling. Further line sharing regulations would hamper ILECs' ability to compete against cable broadband service providers who are not burdened with complying with complex regulations. Adoption of the proposals in the FNPRM would adversely impact new carrier deployments. Smaller and rural ILECs, with limited resources, are unlikely to invest financial resources to deploy new and innovative technologies and services in underserved markets given the ongoing requirement to provision line sharing over such facilities. Regulations impose costs. Compliance with unnecessary, overly broad, and complex regulations creates expenses. ILECs are not unlike businesses in other market segments. They are not in a position to invest limited financial resources in the deployment of network upgrades for advanced services, without the possibility of earning a market-driven return on that investment. Every market, and particularly those in underserved areas, is less likely to receive the benefits of advanced broadband services where the risk of loss is enhanced by Commission regulations.

## **II. TECHNICAL AND OPERATIONAL ISSUES**

The Commission must not underestimate the difficulties and costs that would be required to address line sharing over fiber optic networks and remote facilities. Further mandatory unbundling of ILEC network facilities used for advanced broadband services raises significant policy, technical and operational issues, stifles innovative uses of loop bandwidth, and produces no clear offsetting consumer benefits. These difficulties and

expenses should provide a clear message that a requirement to enable line sharing over ILEC network facilities as established in the Commission's orders, and the potential for more regulations as described in the FNPRM add yet another unnecessary layer of expense and complexity to the existing public switched network - a network very much in transition. Such complex and costly requirements are unsupportable and provide no clear benefit to consumers if implementation were technically and operationally feasible.

Remote terminal and fiber deployments vary among companies. There are different technological difficulties that arise from such deployments, including moving ILEC transport obligations to remote terminals. Reliance by the Commission on what a particular ILEC may be able to do regarding line sharing, as the standard for all ILECs, is unjustified.

## **CONCLUSION**

There are no reasons for mandating line sharing over ILEC fiber deployed facilities and remote terminals that are justified as a matter of sound public policy or are supportable under the legal standards set forth in Section 251(d)(2) of the Communications Act.<sup>1</sup> The technical difficulties and costs associated with ILECs providing unbundled access to their network facilities, fiber deployments and remote terminals can't be ignored. CLECs do not need line sharing to provide competitive voice and data services.<sup>2</sup> CLECs are making strategic, market-driven, business decisions to bypass ILEC networks to serve their customers. The operational and technical difficulties in implementing the Commission's

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<sup>1</sup> 47 U.S.C. § 251(d)(2).

<sup>2</sup> While USTA believes that neither the legal nor public policy case can be made for mandatory line sharing, USTA supports the right of any ILEC to voluntarily offer line sharing, having determined that such an offering is technically feasible without degrading other services and constitutes a viable wholesale business.

line sharing proposals are insurmountable. Regulations that impose an ongoing responsibility on ILECs to provide unbundled access to advanced services they deploy eliminates any first mover advantages inherent in the investment of limited technical and financial resources deployed to develop new technologies. Under regulations described in the FNPRM, competitors would need only to wait in the wings for ILECs to take the financial risks associated with deploying new technologies and gain unlimited access to ILEC network facilities at costs which preclude ILECs from receiving a market-driven profitable return on their investments. Such Commission policies stifle facilities-based competition (which in the current market is proving to be the most sustainable source of competition), impedes needed network upgrades and forestalls innovation, while limiting options for residential and business consumers.

Respectfully submitted,

**UNITED STATES TELECOM ASSOCIATION**

February 27, 2001



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