

BellSouth has also told the financial community that it has “one of the most technologically advanced networks in the world,” in which it has “invested over \$33 billion ... during the 1990s.”⁸⁰ BellSouth’s claims here that it will leave this investment on the table, and with it “total DSL revenue of approximately \$225 million this year and \$500 million in 2002” also ring hollow.⁸¹ The fortunes of both the local telephony and advance service markets for ILECs can be best summed up by the statements of BellSouth’s Mr. Ackerman:

“Yes, there is increasing competition. *It’s growing the whole pie.* Yes, there is rapid technological change. *It’s driving down costs and opening all sorts of new markets.* Yes, there are regulatory challenges. *They are unlikely to slow down the momentum of the marketplace.*”⁸²

Verizon separately claims that unbundling would have a chilling impact on network investment and on modernization of the loop because TELRIC pricing does not give the ILEC and opportunity to recover its cost and to earn a return commensurate with the risk of deploying new technology.⁸³ This argument is also wrong, because the Act and the Commission’s pricing principles already ensure that incumbent LECs receive a just and reasonable return on their investment.⁸⁴ Any such increased risk that Verizon might be able to demonstrate can be addressed in pricing proceedings before state commissions, for example by factoring any such higher risk into the forward-looking cost study used to set UNE loop prices.⁸⁵ However, because next-generation loop technology results in improved network efficiencies, the use of next-

⁸⁰ Ackerman Talk Notes at 7.

⁸¹ *Id.* at 15.

⁸² Duane Ackerman, *Take Another Look at BellSouth*, Remarks at Goldman Sachs 2000 Communicopia IX Conference, at 11 (Oct. 4, 2000) (“Ackerman Remarks”).

⁸³ Verizon at 6.

⁸⁴ 47 U.S.C. § 252(d)(1); 47 C.F.R. §§ 51.507; 51.509.

⁸⁵ If, however, the risk-adjusted cost of money is higher for DSL, the risk-adjusted cost of money should then be substantially lowered for traditional voice services.

generation loops may lead to a lower overall cost per-unit for NGDLC loops.⁸⁶ In all events, the regulatory costs associated with a requesting carrier's access to the ILECs' local loops are a fundamental part of the statutory framework established by the Act. Therefore, the Commission should reject any notion that ILEC investment in advanced services equipment would end if the Commission enforced the existing statutory unbundling obligations.

Finally, and critically for consumers, any reduction in the ILECs' loop unbundling obligations will almost surely shut down CLEC investment, especially DSL deployment. Indeed, contrary to the ILECs' claims, unbundling of next-generation loops will encourage, not discourage, CLEC investment. The ILECs claim that the Commission's enforcement of existing unbundling obligations will "discourage CLECs from investing in new advanced services facilities"⁸⁷ is simply wrong. CLECs cannot, as some ILECs suggest, simply choose to invest in deploying "similar facilities, ... just as BellSouth has done."⁸⁸ As noted in Section I above, this Commission has repeatedly rejected the notion that CLECs be forced into deploying their own facilities to engage in meaningful competition. A reversal of course at this stage of the game would nothing short of a major defeat to competition because there simply is no alternative to the ILECs' local loop. The fact remains that "without access to unbundled loops, competitors would need to invest immediately in duplicative facilities in order to compete for most customers, and that such investment and construction would likely delay, if not postpone, perhaps indefinitely, the benefits of telephone competition for consumers."⁸⁹

Moreover, a failure to enforce the existing loop unbundling obligations will serve only to severely slow, if not stop, CLEC investment in advanced telecommunications services. Without access to the entire next-generation local loop, CLECs cannot be assured of having access to all

⁸⁶ Indeed, "broadband networks are the future, [t]hey're becoming faster, more powerful and less expensive to operate." Ackerman Talk Notes at 4.

⁸⁷ SBC at 37; *see also* BellSouth at 19.

⁸⁸ BellSouth at 19; SBC at 4, 37-38.

⁸⁹ *UNE Remand Order* ¶ 182.

of their customers' telecommunications signals. For this reason, the Commission recognized that "[w]ithout access to these loops, competitors would be at a significant disadvantage, and the incumbent LEC, rather than the marketplace, would dictate the pace of the deployment of advanced [telecommunications] services."⁹⁰ CLECs must be able to utilize the unbundled loop element to access their customers to provide any service of their choice. The inability to access the entire next-generation loop architecture based on the ILECs efforts to place service-based restrictions on it forecloses any competitive ability to construct market entry plans and, as a result, prevents the development in competition for all telecommunications services and further solidifies the ILECs' dominance in these services.

III. THE COMMISSION MUST RESOLVE NEXT-GENERATION LOOP ISSUES IN AN EXPEDITED MANNER

The ILECs' current next-generation loop deployment plans, coupled with the inability of CLECs to access these facilities (and the customers connected to them) warrant expedited review by this Commission. For instance, "95 percent of [BellSouth's] customers in [its] top 30 markets are within 12,000 feet of fiber,"⁹¹ and by the end of 2000 it expected that 70% of the households in its markets would be DSL-enabled.⁹² As for SBC, one of its "principal objectives for 2001" is to deploy "[n]eighborhood gateway, or remote terminals, [that] push the capabilities now housed in central offices closer to customers, remove current distance limitations for DSL and make virtually all customers in SBC's metropolitan-area markets eligible for DSL service."⁹³ As SBC has made clear in its comments, another of its "principal objections" is to ensure that its "neighborhood gateway" is open only to itself and its data affiliate.

⁹⁰ *Id.* ¶ 190 ("[u]nbundling basic loops, with their full capacity preserved, allows competitors to provide xDSL services").

⁹¹ Ackerman Remarks at 17.

⁹² *Id.* at 15.

⁹³ SBC 12/19 Investor Briefing at 3.

In addition, despite the Commission's efforts in the *UNE Remand and Line Sharing Orders*, which were explicitly designed to enhance advanced services competition, ILECs control approximately 90 percent of all residential DSL lines.⁹⁴ These numbers belie suggestions by SBC that, for CLECs, "the broadband market is booming."⁹⁵ To the contrary, the past year has seen a virtual collapse of the data CLEC industry.⁹⁶ SBC is correct, however, in stating that "it is axiomatic that this Commission's policies should be designed to benefit consumers, not competitors."⁹⁷ But SBC fails to mention that if the Commission declines to enforce existing unbundling obligations, it will be consumers who will be without a choice in seeking voice and high-speed data services over the same line -- because the ILEC will once again be a consumer's only choice. AT&T thus emphatically agrees with Sprint that with the "extensive and increasing deployment of DLCs, the competitive benefits of line sharing will be foreclosed unless there is an efficient and economical means of implementing the ILECs' line sharing obligations."⁹⁸

As it stands today, AT&T and other providers do not have the ability to deploy line splitting because of ILECs' failure to implement a nondiscriminatory solution.⁹⁹ Although the *Line Sharing Reconsideration Order* is a step in the right direction, the fact remains that

⁹⁴ See *TeleChoice DSL Deployment Projections*, at http://www.xdsl.com/content/resources/deployment_info.asp (last updated Feb. 13, 2001).

⁹⁵ SBC at 38.

⁹⁶ AT&T at 4 & n. 11 (noting that many data CLECs have gone bankrupt, while other have only lost 90 percent of their market value); Rhythms/Covad/WorldCom at 6 ("[u]nprecedented mergers, foreclosures and the constriction of capital markets have whittled away at competitors' ability to weather uncertainty or protracted litigation to enforce ILECs' statutory and regulatory obligations.... Bankruptcies have thinned the number of competitive DSL providers, hurting consumer choice significantly").

⁹⁷ SBC at 39.

⁹⁸ Sprint at 3; see also Rhythms/Covad/WorldCom at 3 ("as DLCs becomes an integral part of the ILECs' deployment of DSL service to consumers, the fiber connection has been exploited as a means to deny CLECs the ability to access the unbundled network elements necessary to provide DSL service").

⁹⁹ See AT&T at 4-5; InfoHighway Communications at 2 ("Verizon intends to continue its policy of not permitting provision by a CLEC of voice and DSL service over the same line"); Rhythms/Covad/WorldCom at 4 ("ILECs are using the excuse of deployment of fiber to delay or deny competitors the ability to provide the variety and service distinctions that are the key characteristic of a competitive environment").

customers who presently use DSL service provided by an ILEC are precluded from switching their voice service to a CLEC. The result is that ILECs are bringing on DSL customers at a blinding pace, while CLECs are once again left in the dust. SBC's "daily net gain in DSL subscribers has averaged in the 3,500 to 4,000 range, ... with the possibility of accelerating that pace in the second half of the year."¹⁰⁰ Verizon expects to more than double its current DSL subscribers by year-end.¹⁰¹ BellSouth has seen a "dramatic ... ramp-up in DSL customers, confirming [its] ability and commitment to keep transforming [its] infrastructure to digital broadband."¹⁰² These figures demonstrate why the Commission must act with urgency before next-generation loop architecture is widely deployed and CLECs are further shut out.¹⁰³

In addition, state PUC activity in this area, although often well intentioned, underscores the need for the Commission to act definitively with regard to next-generation loop architecture unbundling issues. Clear federal rules and clarifications on the unbundling of the loop element are needed. Although a few state commissions, such as New York, have taken the initiative to tackle issues surrounding next-generation loop architecture, a large majority of other state commissions have not yet addressed next-generation loop architecture issues. Without the expedited establishment of a uniform national baseline for access to ILECs' loops employing next-generation technology, CLECs will be forced to contend with a crazy-quilt of state-by-state regulation or private negotiations between parties of grossly disproportionate bargaining power.¹⁰⁴ The only beneficiaries of such an arrangement are incumbent LECs, who have an

¹⁰⁰ SBC 12/19 Investor Briefing at 3.

¹⁰¹ Seidenberg Presentation at 11.

¹⁰² Ackerman Talk Notes at 10 ("[w]e boosted our installation rate from nearly 300 per business day in the first quarter of 2000, to more than 1,000 per business day at the end of the third quarter").

¹⁰³ Under no circumstance should the Commission decline to move further in this proceeding "pending the outcome of litigation" over the Commission's line sharing regulations. USTA at 2. The Commission should not be caught up in this, or USTA's discussion of purported "technical and operational issues" (USTA at 3-4), as they are merely standard ILEC stall tactics.

¹⁰⁴ The Supreme Court has already made clear its view that national unbundling rules "administered by 50 independent state agencies is surpassing strange." *Iowa Utils. Bd. v. Federal Comm'n Commission*, 119 S.Ct. 721, 730, n.6 (1999).

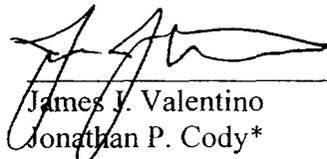
interest in making competitive entry as complicated and as expensive as possible for both competitors and regulators. Furthermore, clear federal rules will reduce the likelihood that ILEC attempts to hold some states hostage, as SBC has done in Illinois, are successful. The Commission should thus act quickly so that competition for both voice and xDSL services can move forward.

CONCLUSION

For the reasons set forth herein, as well as those set forth in AT&T's initial comments, the Commission should expeditiously conclude that its present unbundling rules require ILECs to provide CLECs with access to the entire loop, including all of the attached electronics used to support the provision of transmission functionality of any technically feasible telecommunications service a CLEC seeks to offer, and adopt rules in accordance with AT&T's recommendations to ensure that consumers will have effective choice among service providers.

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