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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

REPLY COMMENTS OF
MPOWER COMMUNICATIONS CORP.

Mpower Communications Corp. ("Mpower") submits these comments in response to the Commission's notices of proposed rulemaking[1] in the above-captioned proceedings concerning the need to revise the Commission's local competition rules with respect to line sharing where an incumbent local exchange carrier ("ILEC") has deployed fiber in the loop.[2]

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[1] *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147, 96-98, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912 (1999) ("*Line Sharing Order*"); Third Report and Order on Reconsideration and Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, and Fourth Report and Order on Reconsideration and Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 01-26 (January 19, 2001) ("*Line Sharing Recon. Order & FNPRM*").

[2] *Line Sharing Recon. Order & FNPRM* at ¶¶ 10-13.

Mpower strongly supports the initial comments of Qwest Communications International, Inc. ("Qwest") in this proceeding.[3] Qwest has foreseen a future that is good for both ILECs and CLECs and Mpower believes that this is the way the future should look. Qwest takes the following positions:

1) the Commission should take care to avoid erecting barriers to the deployment of fiber loop technology;[4]

2) encourage maximum deployment of broadband services;

3) recognize that significant competition from cable modems creates incentives for ILECs and CLECs to work together to maximize the competitiveness of DSL offerings; and

4) recognize that it would be a serious mistake, in today's marketplace, to allow a situation to develop whereby CLECs were unable to make efficient and cost-effective use of ILEC loops.[5]

Similarly, Mpower urges the Commission to use the following principles to resolve issues in this proceeding concerning fiber line sharing, and competitive access to next generation

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[3] Comments of Qwest Communications International, Inc. filed February 27, 2001. ("Qwest Comments"). *See also*, joint *ex parte* submission of Qwest and Mpower, CC Docket 98-147, March 5, 2001 (attached).

[4] Mpower strongly supports the rapid deployment by ILECs of new fiber loop technology for the provision of advanced services to all Americans. Mpower believes that the Commission and the Congress also support this goal. However, some legislative proposals introduced in the last Congress, such as the Tauzin Bill, HR 2420, contain provisions that would needlessly undermine, not further, that goal by precluding CLECs from obtaining UNE access for the provision of advanced services. This would severely limit CLECs' ability to bring new advanced services to the public.

[5] Qwest Comments at 2-3.

networks generally. In addition to being fully consistent with the Act, these principles support competition, and would encourage ILECs and CLECs to enter into mutually beneficial business relationships to provide new advanced services to the public.

CLECs Must Have End-to-End Loop Access. It is crucial to CLEC success to be able to serve its customers. This means CLECs must be able to obtain access to all deployed network loop architectures and to the advanced technologies deployed by ILECs. Quite simply, without unbundled end-to-end loop access from the central office to the customer, regardless of the intervening loop makeup, CLECs cannot serve their customers.

The Commission should assure that CLECs can obtain access to the entire path of the loop on the same basis the ILEC provides access to itself. Without access to the complete loop CLECs cannot provide a full range of competitive advanced services to the public and cannot even gain access to all of their potential customers. SBC is already offering end-to-end loop access as a "voluntary" offering in connection with Project Pronto showing that this is technically feasible.[6] The Commission in this proceeding should assure that end-to-end loop access is available as a UNE at forward looking prices.

In the context of "line sharing," the Commission has already recognized that access to UNE loops on an end-to-end basis is essential to CLECs where there is fiber in the loop. [7]

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[6] *In the Matter 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 Rules*, CC Docket No. 98-141, ASD File No. 99-49, Second Memorandum Opinion and Order, FCC 00-336 (Sept. 8, 2000).

[7] *Line Sharing Recon. Order & FNPRM, supra.*

Mpower fully endorses this conclusion and believes the Commission should clarify its position to include access to all deployed network architectures where there is fiber in the loop.

ILECs Should Retain Control Over Network Deployment Decisions But Should Consult With and Provide Full Advance Disclosure to CLECs. ILECs need to retain control over the choice of technology that is deployed and the timing of when it is deployed. Without this control, ILECs are unlikely to deploy advanced services. However, for CLECs to obtain meaningful access, CLECs need to participate on a collaborative basis in fundamental network planning decisions. Full disclosure of the network capabilities to be deployed needs to be made well in advance of deployment. Thus, the Commission should reserve to ILECs key network architecture deployment decisions but should require that ILECs sponsor collaborative network planning sessions and make timely and full disclosure of all network capabilities.

The Commission Should Encourage Mutually Beneficial Relationships Between ILECs and CLECs Through Forbearance from Section 252(i) "Pick and Choose" Obligations. The required unbundling of all loops, including those where fiber and other advanced architectures are deployed, provides a foundation for CLECs to obtain access to their customers and to provide advanced services. Such unbundling represents a "safety net" for CLECs. With such a "safety net" in place, the Commission can encourage new types of wholesale arrangements which represent a "win-win-win" for ILECs, CLECs, and consumers.

Specifically, the Commission should exercise its authority under Section 10 of the Act to forbear from applying ILEC "pick and choose" obligations under Section 252(i) of the Act where ILEC/CLEC agreements depart from the minimum unbundling obligations of the Act ("ILEC/CLEC Agreements"). This would allow ILECs to enter into innovative agreements with

CLECs. Such agreements would provide CLECs with additional access to advanced network architectures and will lead to new service choices for consumers.

This forbearance will need to be carefully considered and crafted. CLECs would still be entitled to "opt into" an entire ILEC/CLEC Agreement that provides CLEC access to advanced network architectures, but third party CLECs would not be able to "pick and choose" particular portions of these optional agreements. This freedom of contract envisioned by Mpower would be an additional choice, not a replacement for, the current interconnection regime including its pick and choose obligation.

Under this approach, CLECs and ILECs would have the freedom to negotiate mutually beneficial agreements. At the same time, similarly-situated CLECs would continue to have access to advanced network architectures on a nondiscriminatory basis. In these circumstances, ILECs can begin to treat CLECs as valuable customers and not just as competitors or as a regulatory obligation. Most importantly, CLEC business can help ILECs fill their networks. Thus, a "win-win" for CLECs and ILECs.

CLECs will use the additional access to provide new competitive services to the public on an accelerated basis. As Qwest noted, ILECs and CLECs have strong incentives to work together to provision DSL service, especially in light of broadband competition from cable operators.[8] In fact, some ILECs and CLECs already recognize the mutual benefits of such a cooperative approach. Such an approach allows resources to be deployed toward filling ILEC networks and serving customers, rather than being diverted to litigation and confrontation.

According to BellSouth, its volume of wholesale provisioning of services to CLECs has "exploded."[9] The Commission should encourage and support this trend by forbearing from "pick and choose" for ILEC/CLEC Agreements. This would empower ILECs and CLECs to cooperate and find solutions rather than bring disputes to regulators.

For the foregoing reasons, the Commission should adopt the principles suggested by Mpower for resolution of issues concerning line sharing and CLEC access to any network architectures, regardless of the technology deployed.

Respectfully submitted,

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March 13, 2001

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8 Qwest Comments at 2.

9 *Better Connections, News and Information for our Competitive Local Exchange Carrier Customers*, Winter 2000, BellSouth, at. 3. *See also* Business Wire, BellSouth Commits to Wholesale Services Market Initiative, Feb. 19, 2001, *available at* http://news.excite.com/news/bw/010219/ga-bellsouth; Qwest Communications Announces Landmark Initiative to Open Local Communications Markets, September 19, 2000, http://qwest.com/about/media/pressroom/1,1720,328_archive,00.html.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Comments of MPOWER COMMUNICATIONS CORP have been served by hand delivery or first class mail to the persons on the attached list on this 13th day of March, 2001.

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Ex Parte

March 5, 2001

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: CC Docket Nos. 98-147 and 96-98, Ex Parte Communication

Dear Ms. Salas:

On Friday, March 2, 2001, Francis Coleman and Darrell Gentry of Mpower Communications, Inc., Patrick Donovan representing Mpower Communications, Inc., and Mary Retka and I of Qwest Communications International, met with the following Federal Communications Commission staff: Katherine Farroba, Brent Olson, Elizabeth Yockus, Aaron Goldberger, Kimberly Cook, Alexis Johns, Jessica Rosenworcel of the Common Carrier Bureau's (CCB) Policy and Program Planning Division, Rodney McDonald of the CCB's Network Services Division, and Paul Marrangoni and Jerome Stanshine of the Office of Engineering and Technology to discuss the above referenced dockets. Attached is a copy of a document which specifies the contents of our presentation.

In accordance with Section 1.1206(b)(2) of the Commission's Rules, an original and two copies of this letter are being filed with your office for inclusion in the public record.

Acknowledgment and date of receipt of this submission are requested. A duplicate of this letter is provided for this purpose. Please call if you have any questions.

Sincerely,

Robert B. McKenna by

Attachment

cc: Katherine Farroba
Elizabeth Yockus
Kimberly Cook
Jessica Rosenworcel
Paul Marrangoni
Brent Olson
Aaron Goldberger
Alexis Johns
Rodney McDonald
Jerome Stanshine

A Reasonable Interpretation of the Word "Necessary"

Physical collocation of equipment necessary for interconnection or access to unbundled network elements

Qwest position:

We view a piece of equipment as being 'necessary' for interconnection or access to network elements when that equipment is actually used for one or both of those purposes and collocation is necessary for the equipment to be used in a competitively meaningful fashion. In other words, the necessary part of the equation applies to the collocation of the equipment, not to the equipment itself.

Mpower position:

"Necessary" means "necessary for effective competition".
The Commission should view the 'necessary' standard of Section 252(c)(6) of the Act as coextensive with the ILEC's obligations to provide interconnection and access to UNEs on just and reasonable and nondiscriminatory terms and conditions under Sections 251(c)(2)-(3).

Basic agreement:

- "Necessary" in the Act is not a hollow word meaning nothing.
- "Necessary" in the Act really means "necessary" for carrying out the purposes of the Act.
- This includes the two components identified in Qwest's comments:
  - If this equipment is primarily used for interconnection or access to elements.
  - If collocation of this equipment is necessary for efficient competition.
- If equipment is "primarily" used for this purpose, there is no reason to prohibit ancillary uses as well.

Legal precedent:

Agency has broad discretion to define "necessary".

- The Supreme Court affirmed its longstanding line of cases that agencies have broad discretion to interpret their authorizing legislation. Whitman v. American Trucking Assn. *(Supreme Court, February 27, 2001)*
- "Necessary" can mean "a useful and appropriate way to accomplish goals". *National Railroad Passenger Corp. V Boston and Main Corp (Supreme Court 1992)*

Simplify the Collocation Process

Mpower and Qwest propose the following simplified collocation process:

- Establish a rebuttable presumption that the first 100 square feet of caged or cageless collocation space requested by a CLEC in a Central Office meet the requirements for collocation.

- For the first 100 square feet of caged or eight bays of cageless collocation in a standard lineup, CLECs will certify that the equipment placed in collocation space:
  1) is necessary for competitively meaningful interconnection or access to UNEs;
  2) is NEBs compliant for this application; and
  3) is compliant with ANSI T1.413 Annex E when used for line sharing/splitting.

- If a CLEC requires additional collocation space in a Central Office in which it already occupies space under the foregoing conditions, the equipment to be collocated must be on the ILEC's approved product list.

- ILECs will maintain the right to observe all collocation space to assure NEBs compliance.

Benefits to Regulators and the Public Interest:

- Addresses an issue that has plagued the industry.

- Unburdens the regulator by encouraging the industry to develop solutions to its own problems.

Benefits to ILECs:

- Protects against warehousing of valuable Central Office space.

- Screens out "abusive" installations of large equipment such as 5 ESS switches but allows for collocation of soft switches or routers.

Benefits to CLECs:

- Protects against warehousing of valuable Central Office space, reducing the possibility that one or two CLECs can "lock-up" an area.

- Streamlined collocation processes allow for quicker entry into the market, avoids delays associated with deploying new technologies.

Forbearance from Pick and Choose

Voluntary ILEC/CLEC Wholesale Arrangements Offer an Additional Access Option for CLECs that Should be Encouraged and Exempted from the Section 252(i) "Pick and Choose" Obligations.

- Mpower and Qwest recommend that the Commission exercise its authority under Section 10 of the Act to forbear from applying ILEC "pick and choose" obligations under Section 252(i) of the Act with respect to ILEC/CLEC agreements meeting certain standards.

- If ILECs are no longer wary of entering into innovative agreements with CLECs to encourage additional methods for providing CLEC access to advanced network architectures, CLEC access will be promoted.

- This limited forbearance would not in any respect affect CLECs' rights under Section 252(i) to opt into standard interconnection agreements as a whole or on a "pick and choose" basis.

- The freedom of contract approach envisioned by Mpower and Qwest would be a supplemental alternative to, not a replacement for, the current interconnection regime.

Copper Plant

Qwest does not have plans to remove our copper loop plant in our 14-state area for the foreseeable future.

- As a result of the tremendous growth in Qwest's service territory in the past several years, Qwest engineers have worked hard to make the most efficient use of existing plant.

- It has been Qwest's position that, when we place a growth job, providing fiber into an area, we leave the copper loops in and we have used spare copper loop facilities to continue to meet customer demand. We have made use of radio, copper, and fiber facilities to meet customer needs.

- Qwest does not currently require the removal or abandonment of the copper. In fact, it allows us the capability to provide a copper loop for customer requests that require such a loop.

- Qwest believes that retirement of copper loops being used as UNEs for the provision of competitive services might raise legal issues under the Telecommunications Act.