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April 2, 2001

ORIGINAL

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW - Room TWB-204
Washington, DC 20554

Re: Ex Parte Communication: Petitions for Reconsideration and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98

Dear Ms. Salas,

Please include a copy of the attached letter in the record of the referenced proceeding.

Two copies of this Notice are being submitted for each referenced proceeding to the Secretary of the FCC in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

Robert W. Quinn, Jr./RKA

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March 30, 2001

Ms. Dorothy Attwood
Chief, Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Some carriers in this docket have argued that the Commission would affirmatively harm facilities-based carriers if it extended the availability of the unbundled network element platform ("UNE-P") beyond the current three-line limit for business customers in the top 50 MSAs. In addition, those carriers assert that making UNE-P more widely available for business customers would deter carriers from making infrastructure investments. Although these carriers speak of harm in the abstract, AT&T's experience as both a significant user of UNE-P and a facilities-based provider of local exchange service demonstrates that the availability of UNE-P does *not* harm facilities based carriers, nor does it deter carriers from making significant investments in local infrastructure. Indeed, for AT&T, UNE-P remains a critical intermediary step in implementing a facilities-based local entry strategy for business customers and the only rational mass-market product available for residential voice customers where AT&T does not own and operate cable facilities. Other carriers have vocally shared similar concerns as the ones expressed by AT&T in this proceeding and the Commission should be wary of adopting policies that will inherently determine winners and losers amongst carriers who have different strategies for entering local markets.

AT&T has made huge facilities investments in order to serve both the residential and business markets. AT&T is one of the nation's largest facilities-based CLECs, having deployed over 100 local switches in more than 50 different markets nationally.[1]

[1] Separate and apart from those switches, AT&T also utilizes 150 Class 4 long distance switches (which require a digital connection) to provide local services in most of those same markets plus an additional 40 other markets across the country. AT&T has not, however, been able to obtain access to unbundled network elements to provide local service using all of those facilities. Use restrictions imposed by ILECs

In addition, AT&T has invested tens of billions of dollars to acquire and upgrade cable facilities to enable it to begin rolling out telephony over those facilities to residential customers. Obviously, AT&T has a compelling interest in utilizing its own facilities whenever and wherever it can, which was the very reason it acquired cable systems and has made the facilities investments described above. The availability of UNE-P has not served as a disincentive to AT&T in making those significant infrastructure investments, nor is it likely to be a disincentive in the future. The reason for that is clear – the less a carrier must depend upon a competitor to provide service to its own customers, the more control a company can exert over its own costs, as well as product differentiation, service quality and other factors important to customers. Despite those investments, UNE-P remains a critical component of AT&T's ability to enter both the residential and small-to-medium sized business market.

When properly implemented, UNE-P provides AT&T and other CLECs the ability to acquire and provision service to mass-market volumes of residential and business end user customers because it enables AT&T to utilize processes roughly equivalent to the ones employed by the incumbent LECs. In business markets, AT&T is using UNE-P as a transitional mechanism (moving customers onto AT&T UNE-P service first and then migrating them to AT&T facilities in a manner intended to minimize service disruption). That step has proven necessary for two reasons.

The manual nature of the "hot cut" processes required to access the incumbent's loop infrastructure has resulted in unacceptably poor service quality during the provisioning process, including significant service outages, which cause higher costs, gated volumes, and customer dissatisfaction. In an effort to combat (or at least more effectively control) these service quality and economic impairments, AT&T has implemented processes designed to acquire business customers via UNE-P and then subsequently convert large volumes of those customers in a single central office from a UNE-P product to a UNE-loop product on a project basis. Consumer surveys and market research consistently show that one of the strongest impediments to switching carriers is the concern about service interruptions during the change to a competitive carrier's service. AT&T's own experience supports these findings. The use of UNE-P has allowed AT&T to avoid some of the performance problems associated with the hot cut process and provision service in a manner that is closer to the performance levels demanded by customers in the market place.

UNE-P also enables AT&T to acquire a sufficient concentration of business customers in a geographic area to justify the installation of new facilities, or augmenting of its existing switching capacity in areas that AT&T now serves. Consequently, AT&T has urged the Commission to continue to make UNE-P available to CLECs at TELRIC rates in order to address those issues.

As AT&T and many other competitive carriers have demonstrated, CLECs' ability to compete is impaired in the manner described above when they do not have

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have forced carriers like AT&T to resort to the use of special access service to provide local service to those customers.

access to UNE-P (including unbundled local switching (ULS)) to serve residential and business customers who obtain service through the use of analog loops. Carriers have shown that, given the operational and economic impairments described above, it generally does not become economical to utilize their own switching until the customer generates sufficient traffic volumes to justify the deployment of a digital facility, such as a DS1.[2] Carriers have placed evidence in the record in this proceeding that this cross-over point ranges from 16-20 lines for a customer at a single location. For example, AT&T's October 11, 2000 *ex parte* showed that the economic cross-over point was approximately 19 lines for a customer at a single location. Those analyses take into account (as all CLECs must) the additional costs that competitive carriers incur as a result of the manual processes currently in place, which result in unacceptably high breakage rates, irrespective of which carrier "caused" the customer to experience a service outage. Those analyses do not, however, take into account the economic damage suffered – by individual carriers and the industry in general -- when customers lose faith in the competitive process in general, either because of a poor customer service experience in the provisioning process or a significant delay in obtaining competitive service. The Commission should therefore not eliminate the availability of the only entry mechanism that enables competitive carriers to replicate the ILEC provisioning process during the critical first contact a CLEC has with a customer.

Some of the difficulty this Commission has encountered when dealing with this issue is that the competitive realities often vary from state-to-state, and even from city-to-city within a state. Thus, it may be difficult to establish a bright line limit for the availability of ULS uniformly across all markets nationwide. However, the Commission must act cautiously, especially during the early phases of the competitive process lest its decision be more harmful than helpful to the ultimate statutory goals of full and open competitive markets. Therefore, until clear evidence exists that CLECs will not be impaired in their ability to compete on a national basis without TELRIC-based pricing of ULS -- evidence that does not exist today – the Commission should not exempt ILECs from their unbundling obligations for ULS, regardless of the number of loops that the CLEC employs for service to a particular customer at a premises.

Nevertheless, if the Commission is intent upon establishing a process whereby ILECs could, over time, remove switching as a network element subject to the Section 252 pricing provisions of the Act, it must be sure that such removal does not cause significant competitive injury. Therefore, any such removal should be allowed only through a process that ensures that ULS will not be withdrawn until *after* there is a clear demonstration that then-current market and regulatory conditions will prevent competitive injury. Such a process should obviously include significant review by and input from the state commission where such an action will affect the development of local competition within its jurisdiction.

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[2] When packet voice technology improves such that it becomes a widely accepted alternative to circuit switched voice, the use of DSL technology may permit a lower threshold. That technology has not, however, achieved that level of quality to date.

Moreover, as part of any such process, the ILEC must be required to establish that it has rectified the operational issues discussed above and to ensure that carriers with existing customers are afforded the ability to convert those customers to a facilities-based architecture without degradation in customer service. If such a showing is made, the Commission could permit states to recommend the removal of TELRIC-based pricing for unbundled switching, but only for a subset of business customers for which, within a given locality, a clear lack of impairment has been demonstrated to the state commission. Under this approach, the Commission could permit a state, after creating and duly consideratiing a factual record regarding CLEC impairment, to recommend appropriate relaxing of the unbundled switching pricing obligation to this Commission for business customers above a proscribed line size.[3]

As part of this partnering with the states, the Commission should set forth a number of basic considerations to assure that any time spent on considering modification to the ULS pricing obligation will be productive. First, the Commission should make clear, upon reconsideration, that on a national basis no relaxation of pricing obligations applies. Second, the Commission should make clear that, based on the record, no state recommendation to limit the availability of ULS for business customers will be entertained until 12 months after the effective date of its order here. Third, the Commission should provide a framework, based on the criteria below, to guide the states in their any considerations of these issues. Finally, the Commission should expressly provide that the performance expectations that must be met for withdrawal of ULS as an unbundled network element at cost-based prices are higher than those that generally apply in the review of an RBOC's request for long distance relief under section 271.

With the preceding in mind, AT&T respectfully suggests that the following is a reasonable approach for considering whether and to what extent a state may recommend that an ILEC be permitted to market-price ULS rather than provide it at cost-based rates according to the unbundling obligations of sections 251 and 252:

The ILEC must demonstrate that:

- currently and generally available technology provides an economically and operationally practical alternative to a CLEC's use of ULS as an Unbundled Network Element

- ILEC operational processes necessary to obtain UNEs from incumbents (including the provisioning of hot cuts, DS1 loop availability, Enhanced Extended Loop ("EEL") availability, number porting and collocation availability) are commercially reasonable, nondiscriminatory, capable of being provided in commercially

[3] AT&T does not believe that conditions over the near term would support any decision to remove ULS for customers with 12 or fewer lines and that any such recommendation should be subject to strict scrutiny by the Commission. Moreover, given the differing character of competition in the business and residential markets, the Commission should not cede any authority to the states with respect to the availability of ULS (and UNE-P) for residential customers.

competitive quantities and allow competitors to meet the expectations of the marketplace. In addition, such processes must be subject both to on-going performance monitoring and meaningful backsliding protection.

- Enhanced Extended Loops, DS1 UNE loops and at least DS1 and DS3 level UNE interoffice transport are practically available, at forward looking cost-based rates, throughout the area where the ULS availability will be limited.

In considering the ILEC's application, a state's inquiry should include, but not be limited to the following:

**Impairment Considerations**

- Are the costs of identified alternatives economically viable?
- Is the alternative generally available to the industry, or will it be available to only a subset of carriers pursuing a particular market strategy or within only a limited geographic scope?
- Does the carrier have the opportunity to deliver service of equivalent quality and capabilities if the alternatives are relied upon?
- Is the time required to provide service based upon the alternative equivalent?
- If the alternatives are relied upon are there any adverse implications for network operations

**Sufficiency of ILEC Support**

- Is the ILEC providing all operational support necessary to permit the asserted alternative to be commercially viable?
- What are the sub-processes within these broader processes that may be important to analyze the effects on customers and that, if only measured in aggregate, could mask operational problems? Are such sub-processes separately monitored?
- What monitoring of these processes and sub-processes will be performed, and will the monitoring be conducted according to documented measurements that reflect general industry consensus?
- Are all aspects of timeliness, accuracy and completeness of the necessary ILEC support processes and sub-processes monitored? For example, do results display performance separately by loop types, distinguish between activities related to loops provided without LNP, loops provided with LNP, and standalone LNP activities, and as appropriate, disaggregate results by type of hot cut procedure? Has performance in at least the following areas been examined?

    - timeliness of FOCs
    - average completion interval
    - percentage completed within standard interval
    - percentage on-time coordinated customer conversions
    - percent of due dates missed
    - number of provisioning trouble reports before service order completion

- number (and percent) of trouble reports within 30 days
- percent of number ports that fail
- customer outage restoration

- Have results been gathered for a sufficient period of time to assure reliability of the performance measurement system and demonstrate consistency of the ILEC's performance?
- Have the data and results been independently verified?
- Do the results show the ILEC has consistently met or surpassed pre-established and industry accepted standards for performance? For example, are the following levels of performance routinely being met or exceeded?
  - 95% FOC on time
  - 95% Due Dates Met
  - 95% of provisioning activities occur without a trouble report
  - 95% customers outages restored in under 1 hour

- Is the volume of activity underlying the results consistent with a finding that the specific support process is commercially viable?
- Will the processes relied upon be able to accommodate a commercial volume of transactions?
- Do the performance results relied upon cover the entire geographic area for which relief is sought? If not, should the request be geographically narrowed?

**Backsliding Protection**

- Are backsliding provisions in place that focus upon the performance of the identified support processes?
- Could other aspects of conforming performance shield the ILEC from backsliding consequences if its performance in the specified area is not sufficient?

**Availability of ILEC Alternative Infrastructure**

- Are EELs available within the geographic area affected by the proposed ULS modification? Are EELS provided at forward-looking cost-based rates and are carriers in a position to make practical use of the option?
- Are DS1 loops provided in a commercially viable manner as a UNE throughout the geographic area for which relief is sought?
- Are DS1 and DS3 dedicated transport UNEs, including multiplexing options, currently and readily available to requesting?
- Is collocation availability likely to become a limiting factor in requesting carriers' ability to serve customers should ULS be limited

Upon receipt of an ILEC petition seeking limited relief that sets forth evidence on the aforementioned issues, a PUC must provide interested parties with a meaningful opportunity to respond to the ILEC's claim and conduct appropriate hearings to

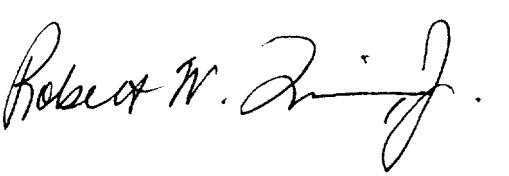
determine whether the ILEC has met its burden of proof. After notice and hearing, the state commission may make a finding as to whether the ILEC has met its burden to demonstrate that CLECs' ability to compete in defined geographic areas of that State would not be impaired in the absence of ULS as a UNE at cost-based rates when they seek to serve business customers with 13 or more 2-wire loops at a single location. If the state commission determines that the ILEC has met its burden, the state commission may file a recommendation that the ILEC be permitted to withdraw its offer of ULS at cost-based rates with the FCC. If the Commission does not commence a formal review of the state commission's recommendation within 90 days of the date of its filing, the recommendation will be deemed granted and the ILEC may withdraw its offer of ULS at cost-based rates within the specified geographic areas, and provide it at a "market" price, subject to the transitional mechanisms described below. If the FCC elects to undertake a formal review of the state's recommendation, then the ILEC may not withdraw its offer of ULS at cost-based rates until the FCC concludes its review and reaches a decision that will determine what actions the ILEC may take.

Transitional Requirements

An ILEC may not withdraw UNE pricing for ULS, except as provided above, unless it has demonstrated current and on-going compliance with each of the following, regardless of any change of law provisions existing in interconnection agreements:

- An ILEC may not withdraw UNE pricing for new CLEC customers for a period of 9 months after the effective date of a state's affirmative finding, the period of the FCC's review, or the expiration of a CLEC's existing ICA with the ILEC, whichever is longer.
- An ILEC may not withdraw UNE pricing for existing CLEC customers until 18 months after a state's affirmative finding, the period of the FCC's review, or the expiration of a CLEC's existing ICA with the ILEC, whichever is longer.
- Once a state has made the requisite findings to support the withdrawal of ULS at cost-based rates, an ILEC shall not be required to allow a CLEC to opt into cost-based ULS pricing provisions in any other carrier's interconnection agreement.

Best Regards,



cc: Chairman Powell
Commissioner Furchtgott-Roth
Commissioner Ness
Commissioner Tristani
K. Dixon
R. Beynon
J. Goldstein
S. Whitesell
G. Reynolds
M. Carey
J. Dygert
J. Peel
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