

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

In the Matter 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
	)	

**BELLSOUTH OPPOSITION TO COMPTEL'S  
PETITION FOR RECONSIDERATION  
BELLSOUTH CORPORATION**

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**TABLE OF CONTENTS**

**I. INTRODUCTION AND SUMMARY..... 2**

**II. COMPTEL’S REQUESTS FOR RECONSIDERATION AND/OR CLARIFICATION3**

A. THE LOW-FREQUENCY PORTION OF THE LOOP IS NOT A UNE..... 4

B. THE LINE SPLITTING ORDER’S APPLICATION TO UNE-P AND STAND-ALONE UNES ..... 8

C. LOOP QUALIFICATION .....10

**III. CONCLUSION.....11**

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BellSouth Corporation, on behalf of its wholly owned affiliated companies<sup>1</sup> through undersigned counsel (“BellSouth”), and pursuant to Section 1.429(f) of the Commission’s Rules, 47 C.F.R. § 1.429(f), files its Opposition to the Petition for Reconsideration and Clarification (“Petition”) of the Competitive Telecommunications Association (“CompTel”) filed in the Commission’s *Line Splitting Order*.<sup>2</sup>

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<sup>1</sup> BellSouth Corporation is a publicly traded Georgia corporation that holds the stock of companies which offer local telephone service, provide advertising and publishing services, market and maintain stand-alone and fully integrated communications systems, and other network services world-wide. BellSouth participated in all aspects of the pleading cycle in this rulemaking proceeding.

<sup>2</sup> *In the Matter of 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 and 96-98, *Third Report and Order on Reconsideration in CC Docket No. 98-147*, *Fourth Report and Order on Reconsideration in CC Docket No. 96-98*, FCC 01-26, released January 19, 2001 (“*Line Splitting Order*”).

## I. INTRODUCTION AND SUMMARY

CompTel filed its Petition asking the Commission to “reconsider and/or clarify several aspects of the *Line [Splitting] Order*.”<sup>3</sup> The Commission, however, should reject each of these requests because none are appropriate for reconsideration pursuant to the Commission’s rules. First, CompTel asks the Commission to declare the “low frequency” portion of the local loop to be a network element that must be unbundled for competitive local exchange carrier (“CLEC”) use. This request must fail for a variety of reasons, most significantly because the Commission has never found the low frequency portion of the loop to be an unbundled network element (“UNE”).

Second, CompTel seeks clarification regarding the applicability of the *Line Sharing Order* to CLECs obtaining only the loop, while providing their own switching, as opposed to CLECs using a UNE platform (“UNE-P”) to provide services to the end-user. While incumbent local exchange carriers (“ILECs”) must allow CLECs that purchase only the loop the ability to provide both voice and data over that loop, by themselves or combined with another CLEC’s services, the *Line Splitting Order* contemplates line splitting over a UNE-P.<sup>4</sup> Because CLECs may offer bundled voice and data over a stand-alone loop, it is not necessary to extend the *Line Splitting Order* to stand-alone loops.

Third, CompTel asks the Commission to clarify that once an ILEC qualifies a loop for DSL service - provided by either the ILEC or a CLEC - the ILEC may not assess an additional qualification charge on carriers that subsequently wish to provide service over the previously

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<sup>3</sup> Petition at 2.

<sup>4</sup> When the CLEC purchases only the loop and provides its own switching, the ILEC must not be responsible for loop testing.

qualified loop. The Commission should summarily reject this request. Qualification of a loop by one CLEC for one service cannot deem that loop forever qualified for all future services that any CLEC may offer.

As demonstrated herein, these requests are either beyond the scope of this proceeding or offer no new factual or legal issues that would justify the requested change. Therefore, CompTel's requests fail to meet the Commission's requirements for reconsideration.

## **II. COMPTTEL'S REQUESTS FOR RECONSIDERATION AND/OR CLARIFICATION**

On December 9, 1999, the Commission issued its *Line Sharing Order*<sup>5</sup> in the Advanced Services docket. That *Order, inter alia*, required ILECs to provide CLECs access to the high-frequency portion of the loop when the ILEC is the provider of voice service to the end-user. The *Line Sharing Order* also addressed issues related to spectrum compatibility. Several entities filed petitions seeking reconsideration of particular parts of the *Line Sharing Order*. AT&T requested that the Commission reconsider its position that the ILEC must provide line sharing when it is no longer the voice provider. It asked the Commission to require ILECs to continue to line share with a CLEC when the CLEC obtains the voice customer through a UNE-P. In addressing the reconsideration issues, the Commission issued its *Line Splitting Order*. The *Line Splitting Order* denied AT&T's request for line sharing over a UNE-P and affirmed that line sharing applied only when the ILEC is the voice provider to the end-user. The *Line Splitting Order*, however, did determine that when a CLEC obtains the voice customer through a UNE-P, the CLEC has the right to split the line with another CLEC so that one CLEC can provide the

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<sup>5</sup> *In the Matters of 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 and 96-98, *Third Report and Order in*

voice while the other CLEC provides data service to the end-user. CompTel filed its Petition regarding the *Line Splitting Order*.

**A. The Low-Frequency Portion of the Loop is Not a UNE**

In its Petition, CompTel first requests the Commission to “clarify and confirm that the ‘low-frequency’ portion of the local loop satisfies the Commissions’ definition of a subloop UNE, and that nothing in either the *Line Sharing Order* or *Line [Splitting] Order* precludes a competitor from purchasing the ‘low-frequency’ portion of the loop as a subloop UNE to provide voice service.”<sup>6</sup> The Commission must summarily reject this claim. Not only has the Commission never addressed the issue of whether the low-frequency portion of the loop is a network element that must be unbundled, any analysis into such an inquiry would clearly fail the necessary and impairment standard.

In the *Line Sharing Order* the Commission analyzed whether the high-frequency portion of the loop fit the definition of a network element as defined by the Telecommunications Act of 1996, and if so, did it survive the necessary and impairment standard established by the Commission in the *UNE Remand Order*.<sup>7</sup> After the development of an extensive record on these issues the Commission determined that the high-frequency portion of the loop met the definition of a network element and that CLECs would be impaired in offering advanced services if the

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*CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98*, 14 FCC Rcd 20912 (1999) (“*Line Sharing Order*”).

<sup>6</sup> Petition at 2.

<sup>7</sup> *Implementation of the Local Competition Provisions of the Telecommunications act of 1996*, CC Docket No. 96-98, *Third Report and Order*, 15 FCC Rcd 3696, (1999) (“*UNE Remand Order*”).

element was not unbundled.<sup>8</sup> This analysis was limited specifically to the high-frequency spectrum on the loop used to provide advanced services such as digital subscriber line (“xDSL”). Nowhere in this analysis did the Commission discuss the low-frequency portion of the loop as a network element. Indeed, the Commission specifically stated that “the issue of whether the voiceband [low-frequency] meets the definition of a network element that must be unbundled pursuant to sections 251(d)(2) and (c)(3) is not before the Commission in this proceeding.”<sup>9</sup> Moreover, the Commission has never analyzed whether the low-frequency portion of the loop meets the definition of a network element that must be unbundled in any other proceeding. That reason alone requires the Commission to deny CompTel’s request. Without an adequate record on the matter, the Commission cannot simply declare a new network element that must be unbundled. This would violate the Commission’s requirement to evaluate the UNE under the necessary and impairment standard established in section 251(d)(2) of the Telecommunications Act of 1996 (“1996 Act”).

A simple analysis of the low-frequency portion of the loop, however, quickly demonstrates that the low-frequency spectrum should not be required to be unbundled. The Supreme Court’s *Iowa Utilities Board* decision<sup>10</sup> and the Commission’s *UNE Remand Order* are absolutely clear that a pre-condition to compelled unbundling is a finding of impairment for the services at issue based on a careful analysis of network alternatives. As acknowledged in the *UNE Remand Order*, section 251(d)(2) sets the standard for unbundling network elements. Network elements may only be unbundled where they meet that section’s “necessary” or

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<sup>8</sup> *Line Sharing Order*, 14 FCC Rcd at 20926, ¶ 25 (“we conclude that access to the *high frequency spectrum of a local loop* meets the statutory definition of a network element”)(emphasis added).

<sup>9</sup> *Id.* at 20926, ¶ 26 n. 47.

“impair” requirements. The statutory impair standard requires consideration of whether a carrier’s ability to “provide the services it seeks to offer” would be impaired without access to a particular unbundled element.<sup>11</sup>

Thus, before unbundling the low frequency portion of the loop, the Commission *must* analyze impairment as it relates to the provision of voice services. In particular, this will require record evidence of whether the ability of CLECs to offer voice services would be impaired without access to the low-frequency portion of the loop at government set prices. The Commission must develop a record relevant to the ability of CLECs to offer voice services without unbundled access to the low-frequency spectrum. Of course, any record will without a doubt show that CLECs are not impaired in any way by not having access to the low-frequency portion of the loop. Indeed, the Commission has already performed a careful analysis of the elements necessary for a CLEC to provide voice services. Pursuant to this analysis, the Commission established the elements that ILECs must unbundle for the provision of voice services. CLECs can obtain the loop on an unbundled basis to connect to their own facilities to provide voice service or they can obtain a complete UNE-P, which requires no facilities on the CLEC’s part, to provide voice services to a customer. Accordingly, CLECs have many adequate alternatives to provide voice services and cannot possibly be impaired by not having access to the low-frequency spectrum on a loop.

In determining whether the high-frequency portion of the loop meets the definition of a network element that should be unbundled, the Commission limited its analysis to a CLEC’s access to high-frequency spectrum for the purpose of providing xDSL services to a customer.

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<sup>10</sup> *AT&T v. Iowa Utilities Board*, 525 U.S. 366 (1999) (“*Iowa Utilities Board*”).

<sup>11</sup> *UNE Remand Order*, 15 FCC Rcd at 3745-3750, ¶¶ 101-116.

These services are provisioned over a copper loop and utilize the high-frequency portion of the spectrum while the customers' voice services continue to be provided over the low-frequency spectrum of the loop. Much of the impairment analysis was based on what the Commission deemed to be a lack of alternatives for the provision of xDSL services. The same lack of alternatives is not present in the voice market. With xDSL it was assumed that the customer had an initial loop into the premises that was used to provide voice services over which ILECs were able to also provision xDSL services. The Commission reasoned that without providing access to the high-frequency portion of that loop for the provision of xDSL, the CLECs only alternative facilities were either to self-provision a loop or purchase a separate loop from the ILEC. Thus, by unbundling the high-frequency portion of the loop the Commission gave CLECs the ability to provide xDSL services to end-user customers over access to facilities that were previously unavailable to the CLEC.<sup>12</sup> With the low-frequency spectrum for voice services, however, the opposite is not true. CLECs currently have access to the loop for voice services. This access was made available to CLECs in the *Local Interconnection Order* and in the *UNE Remand Order*. Seeking access to the low frequency portion of the loop as a UNE is not a matter of impairment in the provision of voice services, but is merely an attempt to obtain access to the loop at a lower cost.<sup>13</sup>

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<sup>12</sup> The CLECs could have obtained the entire loop to provide both voice and data services to end-users just as the ILECs do. The Commission determined, however, that CLECs, who only wanted to provide data services, would be impaired in their ability to provide data services if they had to make the investment necessary to provide voice services. A CLEC already providing voice services would not face the same impairment.

<sup>13</sup> CompTel's Petition states that "CLECs needing only a portion of the loop to provide services requested by a consumer are entitled to obtain such access without having to pay for the entire loop." Petition at 3 – 4. In the line sharing Order, the Commission did not allow ILECs to assign any loop cost to the high frequency portion of the loop. Thus, for spectrum unbundling purposes, the entire cost of the loop is associated with the lower spectrum, even if the Commission found the low frequency portion of the loop to be a UNE.

## B. The Line Splitting Order's Application to UNE-P and Stand-alone UNEs

CompTel next asks the Commission to clarify that the ILECs must allow CLECs to line split over a stand-alone loop<sup>14</sup> as well as a UNE-P loop arrangement. Specifically, CompTel asks the Commission to require ILECs to provide cross-connects between the voice CLEC and the data CLEC when the voice CLEC acquires a stand-alone loop. While the *Line Splitting Order* recognized that ILECs have an obligation to allow CLECs to provide both data and voice services over a single unbundled loop, line splitting that is contemplated in the *Line Splitting Order* is applicable to situations where the ILEC is providing the switching services to the CLEC through a UNE-P arrangement.<sup>15</sup> This is not to suggest that a CLEC that acquires a stand-alone loop cannot provide bundled voice and data services over the loop. Nor does it suggest that the CLEC cannot join with another CLEC to provide bundled voice and data services. When a CLEC purchases a stand-alone loop and provides its own switching, however, the ILEC provisions the loop directly from the frame to the CLEC in the CLEC's collocation space.<sup>16</sup> The CLEC is then free to provision the loop any way it pleases, including having another CLEC locate its splitter in the collocation space so that the loop may be split between the two CLECs.

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<sup>14</sup> A stand-alone loop is an arrangement where the CLEC provides its own switching and acquires only the unbundled loop from the ILEC to provide service to a customer.

<sup>15</sup> See *Line Splitting Order* ¶ 19 (“incumbent LECs have an obligation to permit competing carriers to engage in line splitting using the UNE-platform where the competing carrier purchases the entire loop and provides its own splitter”); *id.* ¶ 20 (“an incumbent LEC must perform central office work necessary to deliver unbundled loops and switching to a competing carrier’s physically or virtually collocated splitter”); *id.* ¶ 21 (“we strongly urge incumbent LECs and competing carriers to work to develop processes and systems to support competing carrier ordering and provisioning of unbundled loops and switching necessary for line splitting”),

<sup>16</sup> If the CLEC is providing its own switching it is necessary for the CLEC to have collocation space within the ILEC’s central office. This space is necessary for the CLEC to place equipment needed to interconnect the CLEC’s switch to the ILEC’s network. In a UNE-P situation the CLEC may or may not have collocation space, but such space is not necessary for CLEC-owned switching equipment.

While this is technically line splitting, BellSouth does not view this arrangement as the type of line splitting contemplated by the *Line Splitting Order*.

In this arrangement, the CLEC is providing the switching features and functionalities. The ILEC will be unaware of what features and functionalities the CLEC is offering. Moreover, the ILEC will not have access to the loop for testing.<sup>17</sup> Accordingly, whether the Commission deems this arrangement to be line splitting or not, the ILEC should only be required to provide dedicated test points for loop testing purposes. As to CompTel's request that ILECs provide cross-connects between two CLECs in the CLECs' collocation space in a stand-alone loop arrangement, the Commission must adhere to the D.C. Circuit decision regarding ILECs' obligation for interconnection with CLECs.<sup>18</sup>

Finally, CompTel asks the Commission to find that if an ILEC has voluntarily offered to lease splitters to CLECs for line sharing the ILEC should be required to lease splitters to CLECs for line splitting. CompTel states that "any other result would sanction ILEC discrimination in favor of line sharing over line splitting." This request is nonsensical. First, line sharing is a completely different arrangement from line splitting. With line sharing the ILEC is providing a service to the end-user customer over the same facilities that the CLEC is providing its service. Thus, the ILEC, as a service provider over the loop, may very well desire to maintain control of splitter functionality in a line sharing arrangement. Line splitting, however, entails an arrangement where two CLECs are providing services to an end-user; the ILEC is not even in the picture. In such a situation, it would be illogical to anticipate that the ILEC would want to

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<sup>17</sup> See *BellSouth Petition for Reconsideration*, filed March 8, 2001, in CC Docket 98-147, footnote 3.

<sup>18</sup> See *GTE Services Corp. v. FCC*, 205 F.3d 416, 423-424 (D.C. Cir. 2000) (court held that Commission rule requiring cross-connects between CLEC equipment imposed an obligation upon the ILECs that had no apparent basis in the statute).

control the splitter functionality. Indeed, logic would dictate that the CLECs would demand that they, not the ILEC, should have control over this aspect of the service they provide.

Second, BellSouth is unsure why an ILEC's voluntary arrangement to provide splitters in line sharing should be mandated into the ILEC's obligation to provide splitters in line splitting, especially considering that the *Line Splitting Order* specifically states that line splitting is available "where the competing carrier purchases the entire loop and *provides its own splitter*."<sup>19</sup> CompTel offers no new facts or legal issues why the Commission should change its position. Accordingly, the request should be rejected.

### **C. Loop Qualification**

CompTel's final request is for the Commission to find that "once an ILEC qualifies a loop for DSL service – provided by either the ILEC or a CLEC – the ILEC may not assess additional qualification charges on carriers that subsequently wish to provide service over the previously qualified loop." It should be clarified that ILECs are obligated to provide the underlying loop qualification information to a CLEC so that the CLEC can determine for itself if the loop qualifies for the service(s) the CLEC wishes to sell to an end-user over that facility. Thus, the CLEC conducts the loop qualification, not the ILEC.<sup>20</sup> Additionally, it is commonly understood within the industry that the return of this information enables the CLEC to make a determination for itself as to which pieces of its own equipment it can place on that facility should it purchase that facility. Moreover, CLECs have the option of foregoing loop qualification if they choose to do so.

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<sup>19</sup> *Line Splitting Order* ¶ 19 (emphasis added).

<sup>20</sup> *UNE Remand Order*, 15 FCC Rcd at 3885-3886, ¶ 428.

BellSouth charges a fee each time the loop qualification database is queried, regardless of the facility being queried. This is because loop makeups change. Just because a loop is qualified for one particular service at one point in time does not mean it will forever remain the same. It should therefore not be the ILECs job to ensure that a CLEC will never have to qualify a loop again if it was qualified at one time during the past. Additionally, CLECs offer different services over loops. Thus, if a loop qualifies for a service provided by one CLEC that does not mean that it will qualify for every service provided by all CLECs. Once again, it should not be the ILECs job to ensure that a loop is qualified for all services that could ever be provided by any CLEC simply because the loop was qualified for one CLEC's services in the past.

### **III. CONCLUSION**

Based on the foregoing discussion, none of the issues raised in CompTel's petition provide a basis for the Commission to clarify or alter the *Line Splitting Order*. Accordingly, the Commission should deny CompTel's petition for reconsideration.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I do hereby certify that I have this 12<sup>th</sup> day of April 2001 served the parties listed below with a true and correct copy of the foregoing **BELLSOUTH OPPOSITION TO COMTEL'S PETITION FOR RECONSIDERATION** by electronic filing and/or by depositing the aforementioned pleading in the U.S. Mail with proper postage affixed addressed as follows:

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