

**Before the
Federal Communications Commission
Washington, DC 20554**

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

**COMMENTS OF COVAD COMMUNICATIONS COMPANY ON
PETITION FOR RECONSIDERATION AND CLARIFICATION OF
THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION**

Covad Communications Company (Covad), by its attorney, hereby submits comments in support on the petition for reconsideration and clarification of the Competitive Telecommunications Association (CompTel) submitted in the above-referenced docket.

Covad supports all of the requests for relief set out in CompTel's petition. Covad submits these comments separately to emphasize certain aspects of CompTel's requests and to provide further support for the Commission to rely upon in reaching its conclusions.

Availability of Line Splitting

The Commission should clarify that competitive LECs using unbundled loops, as well as CLECs using the UNE Platform (UNE-P), may engage in line splitting arrangements with competitive DSL providers. The Commission left some ambiguity in its Line Splitting Reconsideration Order that must be cleared up immediately in order to

facilitate effective use of line splitting capabilities. Specifically, the Commission described line splitting in the Order by giving the following example:

For instance, if a competing carrier is providing voice service using the UNE-platform, it can order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport, to replace its existing UNE-platform arrangement with a configuration that allows provisioning of both data and voice services.¹

It is Covad's experience that incumbent LECs will seek to use this "example" to argue that the Commission intended its line splitting rules to apply only to UNE-P providers, and not to providers of service over stand-alone UNE loops. Because the Commission clearly intended its UNE-P example as just that – an example – it must clarify that line splitting capabilities are available to any requesting telecommunications carrier, regardless of how that carrier offers service. In particular, the Commission must clarify that line splitting extends to carriers using any combination of UNEs, including but not limited to UNE-P, EELs, UNE loops, and other configurations. The inquiry is not how the telecommunications carrier provides service – the issue is the obligation on incumbent LECs to facilitate interconnection.

The Commission must clarify that line-splitting obligations do not depend on who owns the splitter.

In the *Linesharing Order*, the Commission concluded that incumbent LECs "may maintain control over the loop and the splitter functionality if desired."² As a result of that statement, certain incumbent LECs have provide an ILEC-owned splitter option, while others have required competitive LECs to purchase the splitters for virtual

¹ *Line Splitting Clarification Order* at para. 19.

² *Id.*, ¶ 76.

collocation. Thus, in Covad's case, it owns the splitters in some BOC regions, and the BOC owns the splitter in other regions.

In describing the line-splitting obligation, the Commission explained that “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 that is part of a line splitting arrangement.”³ Because the Commission tied the line splitting obligation to the incumbent LECs’ general interconnection and UNE obligations, the question of where the splitter is located is irrelevant. Similarly, the question of who owns the splitter is irrelevant, but the Commission failed to make that clear in its Order.

In the *Line Splitting Order*, the Commission made a statement that suggests that an incumbent LECs’ line splitting obligations depend on whether the ILEC or the CLEC owns the splitter. Specifically, the Commission stated that in order to take advantage of line splitting, the requesting CLEC must “provide the splitter.” Covad’s assumption is that the Commission intended “provide” to mean “bring to the equation,” not “own.” Had the Commission intended “own,” it would have stated “own.”

This clarification would support the Commission’s clear overall purpose in finding that ILECs are “required to make all necessary network modifications to facilitate line-splitting.”⁴ Because line-splitting arises from the statutory interconnection and UNE –provisioning obligations on the incumbent LEC, it does not matter who “owns” the splitter. In situations where an incumbent LEC has voluntarily agreed to provide an ILEC-owned splitter option, pursuant to the Commission’s linesharing rules, it would be anathema to those rules to permit the incumbent LEC to then escape its line splitting

³ *Line Splitting Clarification Order* at para. 20.

⁴ *Id.*, ¶ 20.

obligations merely because of the CLEC's decision to accept the ILEC-owned splitter option. Indeed, such an interpretation would punish CLECs for entering into a voluntary agreement with incumbent LECs for splitter deployment.

Other issues

The Commission should also take the opportunity presented by this petition to bring an immediate end to certain practices of incumbent telephone companies related to linesharing deployment. Incumbent LECs are espousing two positions that threaten to limit the procompetitive benefits of linesharing. First, the phone companies are taking the position that linesharing is only available to residential customers, not business customers. Second, the phone companies are taking the position that linesharing UNEs can only be used for data services, not for voice services (such as VoDSL). Both of these positions are without basis in the Commission's rules, and the Commission must proactively clarify its rules as to these two issues to prevent future anticompetitive harm.

First, the Commission has never drawn any distinction among the types of customers that can be served via a linesharing UNE. The BOCs deploy only one "flavor" of DSL – ADSL – over lineshared loops, and they deploy such services typically to residential customers. The Commission made clear in the Linesharing Order, however, that the technology and marketing choices of the BOCs are irrelevant to their unbundling obligations. Indeed, the Commission made clear that competitive LECs are entitled to use "any transmission technology that is presumed acceptable for shared-line deployment with analog voice service according to the criteria already identified in the *Advanced Services First Report and Order and NPRM* and codified herein."⁵ The

⁵ *Linesharing Order* at para. 27.

Commission further stated that its linesharing rules would “level the competitive playing field and enable requesting carriers to accelerate the provision of voice-compatible xDSL-based services to residential and small business customers who, to date, have not had the same level of access to competitive broadband services as larger businesses.”⁶ The Commission could not have been clearer – competitive LECs can order linesharing UNEs to residential or business customers, and can deploy any voice-compatible flavor of DSL over those linesharing UNEs.

The Commission must now clarify that (1) incumbent LECs may not place any limitations whatsoever on the use of linesharing UNEs, except the limited technical exception for non-voiceband compatible DSL technologies. In other words, incumbent LECs may not refuse to provide linesharing UNEs based on, for example, a competitor’s decision to serve a business or residential customer, or what content is deployed of that UNE.

In the same vein, the Commission must clarify that competitive LECs are entitled to provide any type of content or service over a linesharing UNE, subject only to the technical limitation that the DSL flavor be voiceband-compatible. In other words, should Covad or any other competitive LEC seek to provide voice over DSL (VoDSL), or any other type of service, over a linesharing UNE, the incumbent LEC cannot limit such services or refuse to provide a UNE. As the Commission has repeatedly recognized, DSL is a telecommunications service, and carriers seeking to offer DSL are entitled to purchase UNEs pursuant to section 251(c)(3). One of those UNEs is linesharing, and carriers seeking to provide innovative services to consumers via linesharing UNEs – including, at some point in the future, the possible deployment of VoDSL – should not be

⁶ *Linesharing Order* at para. 35.

forced to face roadblocks to such deployment. As such, the Commission must clarify now that competitive LECs are entitled, pursuant to the Commission's rules, to offer value-added services, such as voice services, over linesharing UNEs.

Conclusion

Covad urges the Commission to grant CompTel's petition expeditiously, and to clarify the related issues set out above.

Respectfully submitted,

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