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April 20, 2001

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S. W. -- Room TWB-204
Washington, D. C. 20554

EX PARTE OR LATE FILED

Re: *Ex Parte*, CC Docket No. 98-147, Deployment of Wireline Services Offering Advanced Telecommunications Capability; CC Docket No. 96-98, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996

Dear Ms. Roman Salas:

On Friday, April 20, 2001, the attached letter was delivered to William A. Kehoe III of the Common Carrier Bureau's Policy and Program Planning Division. In this letter, AT&T Corp. expands on its previous discussion of several points at issue in the above captioned proceedings concerning the D.C. Circuit's remand in *GTE Service Corp. v. FCC*, 205 F.3d 417 (D.C. Cir. 2000). Please include a copy of this submission in the record of the proceedings noted above.

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

Sincerely,

ATTACHMENT

cc: M. Carey
K. Cook
A. Goldberger
D. Johnson
W. Kehoe III
B. Olsen
G. Reynolds

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OFFICE OF THE SECRETARY

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April 20, 2001

Ex Parte Presentation

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W. – Room
Washington, D.C.

Re: Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 98-147 and 96-98

Dear Ms. Salas:

In this letter, AT&T Corp. ("AT&T") expands on its previous discussion of several points at issue in the above-captioned proceedings concerning the D.C. Circuit's remand in *GTE Service Corp.* v. *FCC*, 205 F.3d 417 (D.C. Cir. 2000). Specifically, AT&T addresses whether the Commission may require incumbent local exchange carriers ("LECs") to permit competitive LECs to collocate "multi-function" equipment and cross-connects pursuant to 47 U.S.C. §§ 251(c)(6) and 224.

Multi-Function Equipment. The Commission has ample authority to require incumbent LECs to permit physical collocation of "multi-function" equipment – *i.e.*, equipment that combines functions that are indisputably "necessary for interconnection or access to unbundled network elements" under § 251(c)(6) with other functions that, standing alone, might not satisfy the "necessary" test.

First, the D.C. Circuit did *not* hold that the statute precludes collocation of "multi-function" equipment. Rather, the Court took issue only with the unlimited breadth of the Commission's prior collocation order. Specifically, the Court found merely that "the literal terms of the Collocation Order seem to embrace *any and all* equipment that is otherwise necessary without regard to whether such equipment unnecessarily 'includes a switching functionality, provides enhanced service capabilities, or offers other functionalities'." *GTE Serv. Corp.*, 205 F.3d at 424 (emphasis added). The Court was concerned that the Collocation Order permitted the collocation of any integrated

equipment that "lowers costs and increases the services [CLECs] can offer their customers, which was precisely the "kind of rationale, based on presumed cost savings," that the Supreme Court rejected in *Iowa Utilities Board*. *Id.* (citing *AT&T Corp.* v. *Iowa Utils. Bd.*, 530 U.S. 366, 389-90 (1999)). The Court expressly left open the possibility that the Commission could re-adopt a narrower version of the multi-function equipment rule on remand with a "better explanation." *Id.*

The record developed on remand provides ample grounds for such a rule. To begin with, with respect to most "multi-function" equipment, each of the integrated functionalities independently satisfies the "necessary" test. For example, the most commonly cited example of "multi-function" equipment is the integration of transmission and multiplexing functions with packet switching functions. No party disputes that transmission and multiplexing functions are "necessary," and AT&T and others have made extensive showings that packet switch functions are also "necessary." *See, e.g.*, AT&T Comments at 27-30 & Culmone/Holmgren Declaration ¶¶ 31-36; AT&T Reply Comments at 30-33.

Even if that were not the case, the different functionalities of multi-function equipment are often not practicably severable. For example, as AT&T has previously shown, statistical multiplexing – which no one disputes is "necessary" under § 251(c)(6) – is of no practical use unless it is integrated with packet switching functionality in the same equipment. *E.g.*, AT&T Comments at 29. Therefore, an ILEC's refusal to permit collocation of equipment containing packet switching functionality would effectively deny CLECs the ability to collocate the indisputably "necessary" statistical multiplexing functionality. No incumbent LEC has disputed AT&T's factual showing on that point. Under those circumstances, even if packet switching functionality alone would not satisfy the "necessary" test, the multi-function equipment containing packet switching would. *Cf. GTE Serv. Corp.*, 205 F.3d at 424 (vacating FCC collocation rule only to the extent that it required collocation of multi-function equipment that "unnecessarily" includes a switching function).

In any event, single function equipment is increasingly unavailable. Indeed, the comments filed by the manufacturing companies demonstrate that advances in integration and processing capability are driving manufacturers to produce multi-function equipment. For example, as Cisco explained, "advances in computer processors and miniaturization have allowed manufacturers to design and build increasingly intelligent boxes that perform more functions but take up no more space and consume less power than did their less advanced predecessors." Cisco at 7.[1] Tachion has created a product "that combines switching, routing, transport, digital access cross connect systems, signaling, and service creation functionality in a single standard central office rack." Tachion Comments at 2; *see also* Supra Telcom at 14-15 ("the current state-of-the-art in class 5 switching is putting even more capabilities into Class 5 switching platforms,

[1] *See also* Nortel at 5 ("Single-function (interconnection only) products are unlikely to be physically smaller or consume less power than equipment that includes additional functionality . . . "); Qwest at 11 ("[T]here is no reason to conclude that newer equipment with multiple functions will require more space than older, single-function equipment . . .").

adding voice over, varying broadband transports, remote access, xDSL, ATM and even video services to the traditional class 5 platform, in far less space than the Lucent 5ESS takes").

Because single-use equipment is increasingly unavailable, the inability to collocate multi-function equipment would, as a practical matter, make interconnection and access to UNEs operationally infeasible. Indeed, Verizon effectively conceded this point when it argued that, if the Commission prohibits collocation of multi-function equipment, manufacturers would step into the void by designing and offering specially designed single-use equipment for CLECs. Verizon Comments at 6-7. Equipment manufacturers expressly refuted that claim. *See, e.g.,* Nortel Comments at 5 (prohibiting multi-function equipment would impose additional costs on manufacturers because it would "likely require increased research and development efforts because of the loss of potential economies of scope in order to design additional [single-use] products or product variants"); Cisco Comments at 10-11. And in all events, the Commission should not be in the business of creating, through arbitrary regulations, artificial demand for single function equipment that does not exist or speculating that such equipment would become available (at costs that would support sustainable entry) if collocation of multi-function equipment were prohibited.

Thus, the only open question is whether ILECs could, consistent with the Act, require CLECs to disable "non-necessary" functionalities within integrated equipment. The answer is plainly no. Forcing CLECs to disable integrated functions would be a blatantly unjust, unreasonable, and discriminatory term and condition of collocation, in violation of § 251(c)(6), for two principal reasons.

First, disabling functions within integrated equipment imposes unreasonable costs on CLECs. The different functions within multi-function equipment are seamlessly integrated within the circuitry of the equipment. A CLEC cannot disable particular functions simply by flipping an "off" switch; rather, the CLEC must literally design modifications to the equipment's software – a process that adds considerable cost and potentially degrades the performance of the equipment. *See, e.g.,* AT&T Comments at 24; Connectiv Comments at 8-9. Therefore, any condition that some functions must be disabled would be unjust and unreasonable under the statute, especially in light of the fact that multi-function equipment usually imposes no additional costs or space demands on the incumbent. See, e.g., Cisco at 7; Nortel at 5; Tachion at 2.

Second, such a condition would also be discriminatory. It is well settled that the statutory term "nondiscriminatory" means nondiscriminatory as between the incumbent and the CLEC. *See, e.g., Local Competition Order* ¶¶ 218 ("[w]e believe that the term 'nondiscriminatory,' *as used throughout section 251,* applies to the terms and conditions an incumbent LECs imposes on third parties as well as itself" (emphasis added)). Incumbent LECs do not disable such functions in their own networks, and therefore requiring CLECs to do so would be a discriminatory term and condition.

Thus, equipment meets the "necessary" test where CLECs could make use of an obviously "necessary" capability of a piece of multi-functional equipment only by

also using another capability that might not independently (*i.e.*, as a piece of stand alone equipment) appear "necessary for interconnection or access to network elements. This standard is reasonable, and not all-encompassing. Application of the standard would preclude collocation of a wide range of equipment, including DA functionality, number translation (e.g., 800# data base, LNP) functionality, LIDB data bases, Message rating equipment, OS functionality (i.e., mechanized collect calling, credit card, validation data bases, etc.), Network Access Servers for the public Internet, access authentication servers for public internet, CNAM data bases, Voice Mail Platforms, SS7 signal control points, and Announcement Adjuncts.

Cross-Connects. The Commission also has ample authority to require incumbent LECs to permit CLEC cross-connects within the central office, for several reasons.

First, the Court did not hold that the statute precluded any rule requiring incumbent LECs to permit cross-connects. Rather, the Court found that the cross-connect requirement illustrated a "problem" with the Commission's overly broad interpretation of the statutory term "necessary." Specifically, the Court concluded that the cross-connect requirement had no "apparent" basis in the statute, and that the Commission had not "even attempt[ed] to show that cross-connects are in any sense 'necessary for interconnection or access to unbundled network elements.'" *GTE Serv. Corp.*, 205 F.3d at 423. The Court faulted the Commission for being "almost cavalier in suggesting that cross-connects are efficient and therefore justified § 251(c)(6)." *Id.* In short, the Commission's previous order had justified the cross-connect requirement solely on grounds of efficiency, rather than explaining how it comported with the terms of the statute.

On remand, the Commission should now explain that a cross-connect requirement does in fact comport with the statute, in several respects. First, cross-connects are unquestionably "necessary" for "access to unbundled network elements" in the context of line splitting. Line splitting involves two CLECs who share the same unbundled loop, one providing voice services and the other providing data services. The Commission has made clear that "access" to unbundled loops includes "permit[ting] competing carriers to engage in line splitting over the [unbundled loop] where the competing carrier purchases the entire loop and provides its own splitter." *Texas 271 Order* ¶ 325. Without the ability to establish cross-connects in the central office, CLECs would be forced to extend copper lines out of the central office and connect elsewhere. Such a practice would be prohibitively expensive, and would effectively eliminate the ability to offer data services over the loop. *See* AT&T Comments at 21-22; AT&T Reply Comments at 36-37. Thus, absent cross-connects in the central office, line splitting – and thus full "access to unbundled network elements" – would be infeasible.

CLEC-to-CLEC cross connects also are necessary to permit CLECs to choose a LEC other than the ILEC to provide transport services. Indeed, the Commission has previously found that, because CLECs "connect to the collocation space via high-capacity lines," "the most efficient means of [?] interconnecting with each other" may be cross-connection of "their respective collocation spaces on the LEC premises." *Local Competition Order*, 11 FCC Rcd at 15801, ¶ 592. If, however, CLECs were prohibited

from cross-connecting at ILEC central office facilities, they would be forced to enter into prohibitively expensive arrangements to "interconnect collocated facilities by routing transmission facilities outside of the LECs' premises." *Local Competition Order*, 11 FCC Rcd at 15801, ¶ 594. Indeed, one promising source of facilities-based competition is the potential for competitive LECs to compete with the incumbents by interconnecting with third-party facilites-based providers of fiber capacity, but incumbents typically refuse to permit such interconnection within the central office, effectively rendering such interconnection infeasible in most instances.

SBC's most recent *ex parte* stating that SBC will provide cross connections at access rates is irrelevant. See Letter from Jay Bennett (SBC) to Magalie Roman Salas, dated April 12, 2001. Section 251(c)(6) clearly obligates the incumbents to provide cross-connects at cost-based rates, and the incumbents' "offer" to provide cross-connects under the access regime cannot override that obligation. Moreover, provision of cross-connects under the access regime gives the ILEC full control over the terms and condition under which cross-connects will be provided. Even assuming that at the outset these terms and conditions were not onerous, the ILEC may change these terms and conditions at any time simply by modifying its access tariff. Provisioning cross-connects through access tariffs does not guarantee that they will be provided at cost-based rates because there is no TELRIC obligation imposed under the access service tariffs.

The Commission may also require incumbent LECs to permit cross-connects as a "just, reasonable and nondiscriminatory" term of collocation. Where, as here, the incumbent can easily accommodate cross-connects with virtually no disruption of the central office, it is clearly unreasonable for the incumbent to deny CLECs the ability to cross-connect in the central office as a term of collocation. Denying cross-connects would also be discriminatory, because otherwise only the incumbent would be able to connect to all other LECs within the central office. The Commission has recognized that the duty to permit collocation necessarily carries with it other ancillary rights that may entail occupation of the incumbent's property, such as an easement through the central office for CLEC workers to access their collocation cage. Cross-connects represent another such ancillary easement.[2]

In any event, Sections 251(b)(4) and 224 provide an independent basis for requiring incumbents to permit cross connects. The Commission has held that the plain language of Section 224(f)(1), which requires "non-discriminatory access to any pole, duct, conduit, or right-of-way owned or controlled" by a utility, "encompass[es] in-building facilities . . . that are owned or controlled by a utility." *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Ordering CC Docket No. 88-57, ¶ 80 (2000) (*"Building Access Order"*). The Commission has found that "'rights-of-way'

[2] As AT&T has previously explained, the statutory provision concerning just, reasonable, and nondiscriminatory terms and conditions defines the scope of the taking authorized by Congress no less that the provision concerning equipment necessary for interconnection and access to unbundled network elements. Letter from Teresa Marrero (AT&T) to Magalie Roman Salas (FCC), dated February 22, 2001.

within buildings means, at a minimum, *defined pathways* that are being used or have been specifically identified for use as part of a utility's transmission and distribution network." *Id.* ¶ 82 (emphasis added). To deploy a cross-connect, CLECs typically use well-defined and pre-existing cable racks, floor penetrations, and other "defined pathways" in the central office that are already part of the incumbent's "transmission and distribution network" and that easily fit within Section 224(f).

Sincerely,

Teresa Marrero