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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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 No. 98-147

CC Docket No. 96-98

**REPLY COMMENTS OF AT&T CORP.
TO PETITIONS FOR RECONSIDERATION AND CLARIFICATION**

AT&T Corp. hereby replies to the responses to the petitions for reconsideration and clarification filed by BellSouth and the Competitive Telecommunications Association ("CompTel") filed by various parties regarding *Line Sharing Reconsideration Order* in the above-captioned proceeding.¹

I. THE COMMISSION SHOULD GRANT COMPTTEL'S REQUESTS FOR RECONSIDERATION AND CLARIFICATION

The comments overwhelmingly support CompTel's request for clarification that the ILECs' line splitting obligations should extend to all loop arrangements (UNE-P or UNE-L) over which line splitting is technically feasible.² The comments submitted by the competitive carriers

¹ *Deployment of Wireline Services Offering Advanced Telecommunications Capability: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 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 01-24 (rel. Jan. 19, 2001) ("*Line Sharing Reconsideration Order*"); see also *Line Sharing Reconsideration Order*, BellSouth Petition for Reconsideration, filed Mar. 8, 2001; *Line Sharing Reconsideration Order*, Petition for Reconsideration and Clarification of the Competitive Telecommunications Association, filed Mar. 8, 2001.

² See AT&T at 2; ASCENT at 4 ("no justification exists for allowing an incumbent LEC to impede the development of competition by refusing to facilitate line splitting in circumstances where a carrier desires to provide service utilizing stand-alone unbundled loops rather than the UNE platform and the arrangement is otherwise technically

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underscore the need for the Commission to clarify this obligation to avoid attempts by certain ILECs to use the *Line Sharing Reconsideration Order* as a means to argue that line splitting obligations extend only to CLECs “using the UNE-P” to provide voice and advanced services over a single line. *See, e.g.*, Covad at 1-2. To be sure, Verizon (at 3-4) seems to take just that stance. The other ILEC commenters, however, do not share Verizon’s stance, as SBC does not oppose the request and BellSouth effectively supports CompTel’s request.³ Indeed, no party puts forth any justification why line splitting arrangements should not be available for all loops. Nor could they. The language in the *Line Sharing Reconsideration Order* (at ¶ 18) clearly contemplates that the incumbent LEC has a current obligation “to provide competing carriers with the ability to engage in line splitting arrangements” over unbundled loops, without qualification. Accordingly, the Commission should clarify that the ILECs’ existing obligation to support line splitting applies to all loops for which such an arrangement is technically feasible.

Second, the Commission should ensure that, when an ILEC leases splitters to CLECs to enable them to implement line sharing, ILEC-owned splitters must be made available in the same manner for carriers seeking to establish line splitting arrangements.⁴ The Commission should reject SBC’s and BellSouth’s arguments to the contrary.

As AT&T has already explained, an ILEC’s refusal to lease splitters to CLECs to enable them to implement line splitting when it provides that same option to CLECs engaged in line

feasible”); Covad at 1-2 (“[t]he 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”); *see also* Z-Tel at 2.

³ BellSouth at 8-9 (“[w]hen a CLEC purchases a stand-alone loop ... [t]he 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 two CLECs”).

⁴ *See* AT&T at 2-3; Covad at 2-4.

sharing is discriminatory.⁵ Furthermore, contrary to SBC's assertions (at 8), mandating that ILECs provide splitters to CLECs in such circumstances would not "require new UNE combinations." The splitter is *not* a separate UNE, but is part of the loop element. Under existing unbundling obligations, ILECs must provide CLECs with all of the features, functions, and capabilities of the local loop, including electronics that are attached to the loop. 47 C.F.R. § 51.319(a)(1). The splitter is simply a passive electronic device that is attached to the loop to facilitate transmission functionality, the hallmark of the definition of the local loop.⁶

Third, Covad (at 4-6) states that the ILECs are attempting to evade their section 251(c)(3) unbundling requirements by claiming that their obligation to provide line sharing is limited to only residential (not business) customers and data (not voice) services. There is no technical or legal basis for such a conclusion, because the Commission's impairment test for local loops applies equally to all types of customers and any telecommunications services that can be offered by the means of that network element.⁷ The Commission must not allow ILECs to continue to circumvent the Commission's and the Act's market opening requirements. ILEC practices such as those described in Covad's comments have the effect of halting competition for voice and advanced services in their tracks. The Commission must take immediate action to clarify the ILECs' obligations and curb these unlawful practices.

⁵ See AT&T at 2-3. In addition, Covad correctly explains that it is irrelevant to the Commission's rules who owns the splitter or where it is located, because "line-splitting arises from the statutory interconnection and UNE-provisioning obligations on the incumbent LEC." Covad at 3.

⁶ For a detailed discussion of this analysis see *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *Second Further Notice of Proposed Rulemaking; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Fifth Notice of Proposed Rulemaking*, 15 FCC Rcd 17806, 17856 (2000), AT&T Comments, Attached Declaration of Joseph P. Riolo at ¶¶ 63-64 (filed Nov. 10, 2000); see also CC Docket Nos. 96-98, 98-147, AT&T *Ex Parte* Letter and Attachments 1-7 (filed June 7, 2001), which are incorporated by reference.

⁷ See *Line Sharing Reconsideration Order*, ¶ 18 (citing 47 C.F.R. §§ 51.307(c); 51.309(a)). See also *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Notice of Proposed Rulemaking, 15 FCC Rcd 3696 ¶ 51 ("[w]e conclude that the failure to provide access to a network element would 'impair' the ability of a requesting carrier to provide *the services it seeks to offer*") (1999) (emphasis added).

Fourth, there is no legitimate reason for an ILEC to require a CLEC to incur loop qualifications charges when that loop has already been qualified for the service that the CLEC wishes to provide.⁸ Both SBC and BellSouth claim that they do not require a loop qualification query. At the very least, the Commission should clarify that ILECs may not force CLECs to request that a particular loop be qualified, and that such an inquiry may be made solely at the CLECs discretion.

Fifth, AT&T demonstrated in its initial comments the fact that ILECs can -- and do -- foreclose voice competition by preventing CLECs from providing voice services to customers that already receive the ILEC's (or its affiliate's) DSL service by requiring the customer to either keep the ILEC voice service or lose his or her existing DSL service, is an anticompetitive harm that is exacerbated by some ILEC's practice of locking up customers to long-term DSL commitments. *See* AT&T at 4-5. To mitigate this concern, the Commission should confirm that the practice of some ILECs of discontinuing DSL service to customers seeking an alternative voice provider constitutes an unreasonable and discriminatory practice and an "unjust" and "unreasonable" penalty on consumer choice in violation of sections 251(c)(3), and 201(b), respectively.⁹ In addition, the Commission should also make clear that a CLEC must be able to provide its voice service over the same loop used to provide the ILEC advanced services, subject only to two considerations: (1) the requested configuration is technically feasible to provide; and (2) the CLEC agrees not to levy charges for the use of the high-frequency spectrum that exceeds what was previously applied by the ILEC.

⁸ *See* AT&T at 3; ASCENT 4-6 (as a result of the ILECs' multiple loop qualification charges, "two competitors would have been financially disadvantaged to the extent of the original qualification charge while at the same time, the incumbent LEC would not only have recovered its own cost of doing business but actually would have turned a profit"); *see also* Z-Tel at 2.

⁹ *See AT&T v. Iowa Utilities Board*, 119 S. Ct. 721, 729-731 (1999) (holding that section 201 applies to the implementation of the local competition provisions of the Act).

Finally, although there is no significant objection to BellSouth's Petition, the Commission should not overestimate the impact of such a clarification, as SBC has done (at 9-10). A wiring change will only be needed when the customer's advanced services provider changes or is forced to migrate from a leased ILEC-owned splitter to its own separately provided splitter. In all events, as ASCENT demonstrates, ILECs have an affirmative duty to work cooperatively with CLECs to avoid service disruption when migrating a customer from line sharing to line splitting.¹⁰ The Commission should make clear that it will under no circumstances "allow incumbent ILECs to use less than diligent efforts to minimize service disruptions to shared end users" whenever such a change is made (ASCENT at 9-10).

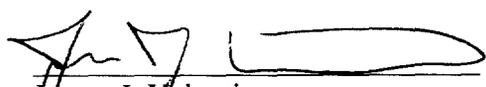
¹⁰ See *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, Memorandum Opinion and Order, FCC 01-130, ¶ 179 (rel. Apr. 16, 2001) ("where competitive LECs provide data service to existing end user customers and Verizon provides voice service to that customer there is no need to 'rearrange' network facilities to provide line-split services. Because no central office wiring changes are necessary in such a conversion from line sharing to line splitting, Verizon is required under our *Line Sharing Reconsideration Order* to develop a streamlined ordering processes for formerly line sharing competitive LECs to enable migrations between line sharing and line splitting that avoid voice and data service disruption and make use of the existing xDSL-capable loop").

CONCLUSION

For the foregoing reasons, and the reasons set forth in its initial comments, AT&T generally supports the Petition for Reconsideration and Clarification of CompTel and does not oppose BellSouth's Petition if it is granted in the limited manner and on the terms described by AT&T.

Respectfully submitted,

Mark C. Rosenblum
Stephen C. Garavito
Richard H. Rubin
AT&T CORP.
295 North Maple Avenue
Basking Ridge, NJ 07920
908.221.6630



James J. Valentino
Jonathan P. Cody*
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2608
202.434.7300

* Admitted in Massachusetts only. Practicing under the supervision of the members of Mintz Levin.

CERTIFICATE OF SERVICE

I, Jonathan P. Cody, hereby certify that on this 23rd day of April 2001, I caused true and correct copies of the foregoing Reply Comments of AT&T Corp. to Petitions for Reconsideration and Clarification to be hand-delivered to the following persons:

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

ITS
1231 20th Street, N.W.
Washington, D.C. 20036

Kyle Dixon, Legal Advisor
Office of Chairman Powell
Federal Communications Commission
445 12th Street, S.W., Room 8B201
Washington, D.C. 20554

Jordan Goldstein, Legal Advisor
Office of Commissioner Ness
Federal Communications Commission
445 12th Street, S.W., Room 8B-115
Washington, D.C. 20554

Samuel Feder, Legal Advisor
Office of Commissioner Furchtgott-Roth
Federal Communications Commission
445 12th Street, S.W., Room 8A-302
Washington, D.C. 20554

Sarah Whitesell, Legal Advisor
Office of Commissioner Tristani
Federal Communications Commission
445 12th Street, S.W., Room 8C-302
Washington, D.C. 20554

Dorothy Attwood, Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5C-450
Washington, D.C. 20554

Michelle Carey, Division Chief
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5C-122
Washington, D.C. 20554

Kathy Farroba, Deputy Chief
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5B-125
Washington, D.C. 20554

Brent Olson, Deputy Chief
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5-B145
Washington, D.C. 20554

Johanna Mikes
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5C-163
Washington, D.C. 20554

Judy Boley
Federal Communications Commission
Room 1-C804
445 12th Street, S.W.
Washington, D.C. 20554

Stephen L. Earnest (by mail)
BellSouth Corporation
Suite 4300
675 West Peachtree Street, N.E.
Atlanta, GA 30375

Jason Oxman (by mail)
Covad Communications Company
600 14th Street, N.W., Suite 750
Washington, D.C. 20005

John M. Goodman (by mail)
Attorney for the Verizon Telephone
Companies
1300 I Street, N.W.
Washington, D.C. 20005

Claudia J. Earls (by mail)
Z-Tel Communications, Inc.
601 S. Harbour Island Blvd., Suite 220
Tampa, FL 33602

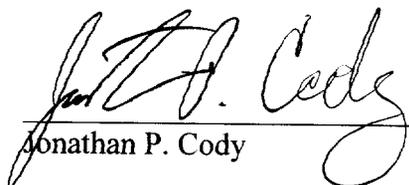
Jessica Rosenworcel
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5C-221
Washington, D.C. 20554

Janice Myles
Federal Communications Commission
Common Carrier Bureau
Policy & Programming Division
445 12th Street, S.W.
Washington, DC 20554

Robert J. Aamoth (by mail)
Attorney for The Competitive
Telecommunications Association
Kelley Drye & Warren LLP
1200 19th Street, NW, 5th Floor
Washington, D.C. 20036

Gary L. Phillips (by mail)
SBC Communications Inc.
1401 I Street, NW
Suite 1100
Washington, D.C. 20005

Charles C. Hunter (by mail)
Hunter Communications Law Group
1620 I Street, N.W., Suite 701
Washington, D.C. 20006


Jonathan P. Cody