Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
Implementation of the	)	
Local Competition Provisions	)	CC Docket No. 96-98
Of the Telecommunications Act of 1996	)	
	)	
Joint Petition of BellSouth, SBC, and Verizon	)	
For Elimination of Mandatory Unbundling of	)	
High-Capacity Loops and Dedicated Transport	)	

COMMENTS OF ADVANCED TELCOM GROUP, INC.

Advanced TelCom Group, Inc. ("ATG") by its undersigned counsel, hereby submits these comments and two separate affidavits in response to the Commission's Public Notice requesting comment on the above-captioned petition filed by BellSouth, SBC and Verizon ("Joint Petitioners").[1]

Introduction.

ATG is a facilities-based integrated communications provider serving small to medium businesses in smaller towns and communities. ATG currently operates in eight states: Washington, Oregon, California, Nevada, Connecticut, New York, Maryland, and Virginia. ATG provides local exchange service in geographic areas located within eight of the top 150 Metropolitan Statistical Areas ("MSAs") listed in Appendix B of Joint Petitioners Petition. Within these eight MSAs ATG targets smaller businesses and communities for whom competition for local exchange service has either been minimal or

[1] *Pleading Cycle Established For Comments on Joint Petition of BellSouth, SBC and Verizon,* CC Docket No. 96-98, Public Notice, DA 01-911 (rel. Apr. 10,2001); *Common Carrier Bureau Grants Motion for Extension of Time for Filing Comments and Reply Comments on BOC Joint Motion Regarding Unbundled Network Elements,* CC Docket No. 96-98, Public Notice, DA 01-1041 (rel. Apr. 23, 2001).

non-existent. For example, ATG provides local exchange service in MSA no. 98 (Vallejo-Fairfield-Napa CA), MSA no. 115 (Santa Rosa, CA) and MSA no. 150 (Salem, OR), all of which Joint Petitioners correctly list as having no alternative to the incumbent's high capacity transport and loop facilities. Thus, these comments and the statements contained within the two attached affidavits address ATG's general inability to obtain high capacity transport and loop facilities from non-incumbent telecommunication carriers in the remaining five[2] of the top 150 MSAs in which ATG operates and in which Joint Petitioners have identified as having multiple alternative providers of high capacity transport and loop facilities.

The Petition is untimely.

As an initial matter, this Commission need not even reach a discussion as to whether Joint Petitioners Petition has any merit. The Petition is an untimely request for reconsideration of the UNE Remand Order, and, on that basis alone should be denied.

In November 1999 this Commission issued the UNE Remand Order[3] after extensive analysis of the telecommunications market. As a result of that analysis, the Commission rejected the arguments set forth by BellSouth, SBC, and Bell Atlantic and GTE (the latter two now called Verizon) and determined that high capacity transport and loop facilities would be included in the list of network elements that incumbents were obliged to unbundled. Moreover, at that time, the Commission stated that these rules would be in place for three years. Under this timeline, the Commission reasoned that competitors would have "reasonable certainty for a period of time that is sufficient time

[2] The five MSAs are: no. 5 (Washington, DC-MD-VA-WV), no. 18 (Baltimore, MD), no. 21 (Seattle-Bellevue-Everett, WA), no. 27 (Portland-Vancouver, OR-WA), and no. 145 (Stamford-Norwalk, CT).

to implement their plans."[4] Certainly, ATG entered four of the five MSAs identified above post UNE Remand Order and in reliance thereof. Since ATG was not able to build out its own fiber network due to various legal, regulatory, and financial obstacles, ATG understood that it was assured the ability to lease interoffice transport and high capacity loops from the incumbent in each market at TELRIC rates.[5] At a minimum, in this environment of constant change and severe capital constraints, the community of competitive local exchange carriers needs the continued certainty that it can rely on the orders issued by this Commission. The list of unbundled elements provided in the UNE Remand Order should remain in place for the full three years.

High Capacity transport and loop facilities are not widely available from non-incumbent providers in areas where ATG operates.

ATG would not be able to provide competing local exchange service in the geographic areas in which ATG operates if ATG were denied access to unbundled high capacity transport and loop facilities at TELRIC rates from the incumbent. Although ATG's general practice is to build or purchase its own fiber network, ATG has been unable to do so for various legal, regulatory, and financial reasons in the five MSAs referenced above.[6] As a result, in those five MSAs, ATG is completely dependent on being able to lease interoffice transport and high capacity loops to create its footprint.

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[3] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd. 3696 (1999) ("UNE Remand Order").
[4] UNE Remand Order, at ¶ 151.
[5] This is not to say that ATG has reaped the benefits of the UNE Remand Order these past 18 months. Indeed, in Nevada, ATG has only been able to complete its UNE Remand amendment to its interconnection agreement in April, 2001, 14 months after the UNE Remand Order, such was the protracted negotiating tactics of SBC Communications, Inc.
[6] Affidavit of Kimberly Norris, ¶ 2 ("NORRIS"); Affidavit of John Bowman, ¶ 2 ("BOWMAN").

Contrary to the claims of Joint Petitioners, ATG has not witnessed the existence of multiple alternative providers of high capacity transport and loop facilities. While ATG has a policy to use non-incumbent transport and loop facilities wherever possible[7], in the majority of instances, ATG must lease interoffice transport from the incumbent. In only three of the geographic areas within the five MSAs identified above has ATG been able to lease a **portion** of its interoffice transport needs from an alternative provider.[8]

Yet, even in these two instances the alternative provider's facilities have not been ubiquitous enough such that ATG could bypass the incumbent altogether. Instead, ATG leases a portion of its network from the alternative provider and fills out the majority of its footprint with interoffice transport facilities leased from the incumbent.

Furthermore, the existence of an alternative transport provider does not, without further assurance as to financial soundness and stability, present ATG with a choice to the incumbent. As a result of a previous bad experience and ensuing negative impact to ATG's reputation, ATG is extremely cautious when choosing an alternative transport provider. ATG was leasing high capacity transport circuits from GST when GST went bankrupt. ATG was given a very short period of time in which to transfer its circuits back to the incumbent. Moreover, during that period ATG could not guarantee the reliability of its network to its customers. In fact, GST's network reliability deteriorated, which negatively impacted ATG customers, and damaged ATG's reputation.[9] Thus, ATG, as a small competitor, seeking to establish a foothold in the marketplace, cannot afford to risk using an alternative provider unless ATG can be assured of the provider's

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[7] NORRIS, ¶ 4; BOWMAN ¶ 4.
[8] NORRIS, ¶6 (referring to Towson, MD); BOWMAN, ¶¶ 5 and 6 (referring to intercity Portland, OR and intercity Seattle, WA).
[9] BOWMAN, ¶ 8.

financial stability and continued viability. Indeed, ATG is even more cautious in today's markets where telecommunication companies continually show poor performance and the capital markets are extremely tight.

The need to lease interoffice transport from the incumbent exists even in those geographic areas where ATG has deployed its own fiber network. ATG's SONET rings are no match for the ubiquity of an incumbent's network anymore than are the facilities of alternative transport providers. If ATG is to compete, ATG must still augment its network by leasing interoffice transport from the incumbent to ensure that ATG's footprint serves a reasonable approximation of the entire community.[10]

Thus, for example, in Reno, Nevada ATG's SONET ring can be accessed by five of Nevada Bell's central offices. However, in order to compete with Nevada Bell, ATG must lease interoffice transport to connect to the other three central offices that complete Nevada Bell's points of interconnection within the Reno community. Customer demand requires ATG to have a footprint similar to Nevada Bell's. Without the ability to access the other three central offices within the Reno community, ATG's footprint would be substantially limited; concomitantly ATG's ability to compete would be equally impaired.

Upon entering a particular geographic market, ATG collocates in relevant central offices of the incumbent local exchange carrier. Except for the building in which ATG houses its own switch, ATG only rarely constructs facilities to customer premises.

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[10] A competitive local exchange carrier cannot operate like your local pizza joint and restrict delivery service to within a ten minute drive. In order to compete with the incumbent ATG must provide local phone service not just to the businesses on Main Street, but wherever small and medium-sized businesses are located within the incumbent's serving area. A dentist with three offices, or a real estate firm, or even the local bagel shop will not choose ATG for its telephone service unless ATG can provide service to all locations.

Rather, ATG leases DS-0 and DS-1 facilities to access ATG customers. In all eight MSAs identified above ATG has no alternative but the incumbent for the supply of high capacity loops to access end user customers.[11] While ATG understands that alternative providers provide access to approximately ten percent of the intercity buildings in Portland, OR and Seattle, WA, these are not the buildings in which the small to medium-sized customers, that ATG targets, are generally located.

In the rare instances, where ATG has had a customer located in a building to which an alternative provider has loop facilities, it has been ATG's experience that the alternative provider has no systems or processes set up to order and provision its facilities to ATG in a timely manner.[12] As a result, ATG has not wanted to use the alternative provider and run the risk of losing the customer back to the incumbent due to delays in provisioning. Thus, ATG has ordered and continues to order high capacity loops from the incumbent even in those instances where a potential ATG customer is located within a building that an alternative provider has accessed.

Conclusion

In the first instance, this Commission should deny the untimely request for reconsideration of the UNE Remand Order. Most importantly, this Commission must understand that without access to incumbent high capacity transport and loop facilities ATG would be unable to reach its target market, those small to medium business customers that are located in smaller towns and communities. As a result, ATG could not obtain the potential profit it seeks from serving such markets, ATG would not be an

[11] NORRIS, ¶ 3; BOWMAN, ¶ 3.
[12] BOWMAN, ¶ 9.

effective competitor to the incumbents, and the types of customers ATG targets would not have a choice of local exchange service providers.[13]

For the all the foregoing reasons, the Commission should deny the Petition as untimely and misdirected.

Respectfully submitted,

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[13] *See,* UNE Remand Order, *Statement of Commissioner Michael K. Powell, Dissenting in Part* (wherein Commissioner Powell identifies the importance of assessing whether a CLEC can become an effective competitor in a particular market or customer segment by looking at a "CLECs ability to target market and the relative profit potential of serving different types of customers.")