Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
and	)	
	)	
Joint Petition of BellSouth, SBC, and Verizon for Elimination of Mandatory Unbundling of High-Capacity Loops and Dedicated Transport	)	CC Docket No. 98-147

COMMENTS OF IP COMMUNICATIONS CORPORATION ON THE JOINT ILEC PETITION TO ELIMINANTE EXISTING UNBUNDLING REQUIREMENTS

Howard Siegel
Vice President of Regulatory Policy
IP Communications Corporation
9430 Research Blvd, Suite 120
Austin, Texas 78759
512/418-0376
781/394-6428 (fax)
214/435-9029 (cell)
hsiegel@ip.net

June 5, 2001

TABLE OF CONTENTS

Page

INTRODUCTION AND SUMMARY 2

I. THE ILEC PETITION IS IMPROPER 2

II. UNBUNDLED DEDICATED TRANSPORT 2

III. HIGH CAPACITY LOOPS 5

IV. THE ILEC ARGUMENT TO ALLOW COMPETITION TO DIE FOR THE SAKE OF COMPETITION IS FUNDAMENTALLY FLAWED 6

V. HOW TO CURE THE HARM CAUSED BY THE ILEC PETITION 7

CONCLUSION 8

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters 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

COMMENTS OF IP COMMUNICATIONS CORPORATION ON FIFTH FURTHER NOTICE OF PROPOSED RULMAKINNG IN CC DOCKET NO. 96-98

The Federal Communications Commission's ("FCC" or the "Commission") revised public notice in CC Docket No. 96-98 ("*ILEC Petition Notice*" or "*Notice*") seeks comment regarding the incumbent local exchange company ("ILEC") petition to eliminate unbundling obligations relating to unbundled dedicated transport ("UDT") and high capacity loops ("HiCap loops") (collectively referred to as the "ILEC Petition"). On April 25, 2001, NewSouth Communications filed a motion to dismiss the ILEC Petition arguing that the petition is procedurally defective in that it violates the Commission's three-year quiet period and does not follow the Commission's rules governing requests for a repeal of existing rules. IP Communications Corporation ("IP") is a broadband Competitive Local Exchange Carrier ("CLEC") whose offerings are largely based on Digital Subscriber Line ("DSL") technology (collectively referred to as a "DLEC") that will be immediately affected by the ruling on the ILEC Petition.

INTRODUCTION AND SUMMARY

The ILEC Petition seeks to roll back critically important Commission rulings during what is ironically a most unsettled time in the industry. As will be demonstrated herein, CLECs, like IP, rely on the offerings attacked in the ILEC Petition, particularly UDT, and would be greatly impaired if ILECs were able to walk away from these obligations. Second, given the current market volatility, ILEC arguments at best overstate the degree of available and secure alternatives to the ILEC's unbundled network elements ("UNEs").

I. THE ILEC PETITION IS IMPROPER

Before addressing specific substantive issues, it is important to note that, consistent with the motion filed by NewSouth Communications, the ILEC Petition has been improperly filed in an attempt to short circuit the deliberate policy of the FCC to follow a three-year review process. As such, the petition should be dismissed outright.

II. UNBUNDLED DEDICATED TRANSPORT

A. The Context of Discussion in the ILEC Petition Misses the Necessity of UDT

The discussion in the ILEC Petition contains a number of important flaws. IP will discuss the two most important qualitative flaws: (1) ILECs fail to recognize the key role that UDT provides to CLECs attempting to interconnect their CLEC networks; and (2) ILECs fail to recognize how the financial strength of the transport provider affects the quality of the transport product purchased by CLECs, such as IP.

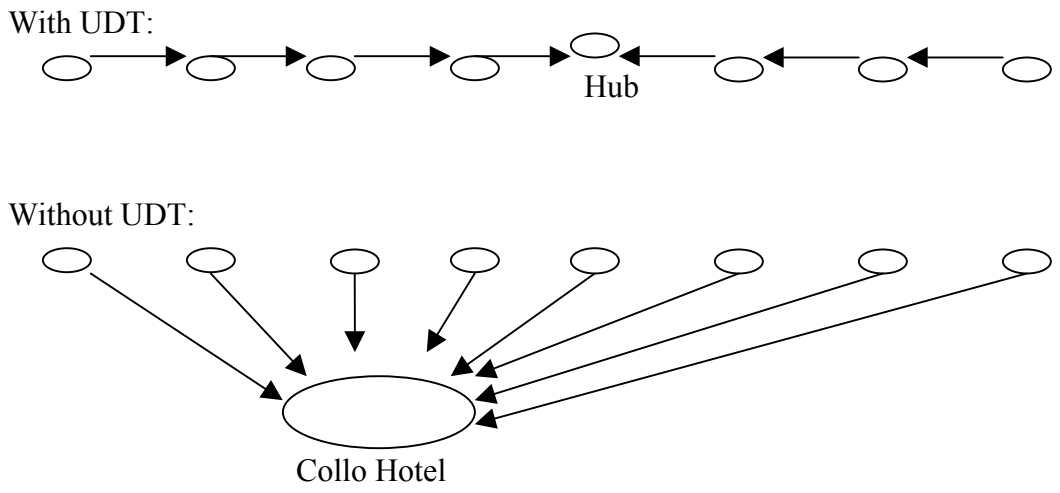
1. Critical Role Played by UDT

Consistent with the intent of the federal Telecommunication Act ("FTA"), in the states and ILEC territories in which IP operates, IP has pushed the envelope deploying its network into tier 1, 2, and 3 cities. To construct such a network, certain requirements are uncontroverted. First, IP requires collocation at the ILEC central office so it can access loops at those offices.

Second, IP must be able to economically and efficiently interconnect those very same collocations.

Although the ILEC Petition generically discusses the existence of some competition in the transport market, IP requires dedicate transport to specific locations. For example, IP's over 240 collocations in the state of Texas would lack function if they were not part of an interconnected network. Using UDT, IP is able to connect its collocations one-by-one until the network is completed. There has been no suggestion that adequate competition exists for a new provider coming in the market today to have sufficient supply from third parties to develop such an interconnected network. As such, competitors are properly utilizing the ILEC provisioned UDT to complete their underlying networks. Nothing could be more demonstrative of necessity and impairment – ***No network, No CLEC, No Competitive Choice to Consumers***.

Also, ILEC discussion of fiber at collocation hotels substantially misses the point. First, as alluded to above, collocation hotels are not ubiquitous. Second, even where one would exist, the dramatic inefficiency of requiring a CLEC like IP to route all its traffic to a collocation hotel would cause substantial harm. The diagram below provides a likely illustration:



- Collocations in the ILEC central office

It does not take a ruler, to understand that interconnecting central office collocations to a "hotel" can cause very substantial additional costs and inefficient use of fiber capacity, not to mention additional CLEC collocations. And, while the above illustration is certainly simplified, the graphical representation – that transport connectivity directly from central office to central office is necessary to efficiently and cost effectively utilize fiber capacity – is fully accurate. Also, it is important to realize that part of the simplification is the assumption that excess third-party fiber exists interconnecting these various locations and that the web of multiple third-party providers is not so overly complex that a substantial project like interconnecting 8 offices, let alone hundreds or thousands of offices, is not so great that the entire project would collapse from a contracting and operational perspective.

The bottom line is simple, aggregate numbers are in reality irrelevant. Fiber need is location specific, and ILECs generally have fiber deployed to interconnect central offices. IP's business plan, like those of other carriers, require fiber in particular locations for particular needs. Without UDT, IP's network like other CLECs would never have been constructed, or at best would have been substantially more costly while taking additional years to construct, and IP would not be serving customers within its service territory today.[1]

2. Quality of Transport Services Can Only be as Good as the Financial Strength of the Provider

The ILEC Petition ignores many of the current realities of the marketplace. It is not clear what percentage of the ILEC's alleged "capacity" comes from carriers that have filed for bankruptcy protection and/or are financially distressed. While a carrier like IP may be able to use third party offerings to handle small portions of its network, the large bulk of its network needs to be secure long term so IP can offer the quality of service that its customers demand. If the ILECs are able to deconstruct the very necessary UDT requirement, carriers like IP would be

[1] Although IP focuses on inter-ILEC office UDT in these comments because this example most clearly demonstrates the competitive need for UDT, it should be clear that IP's position and belief that UDT must be unbundled is not limited to that example.

put in a severe disadvantage vies-a-vie the ILECs thus guarantying that irreversible competition will not exist within any state in this country.

If anything, fully available UDT has not yet been made available to CLECs. ILECs place many restrictions on the use of UDT such as prohibiting the use of UDT if that UDT terminates at a facility that was purchased out of an access tariff. It seems quite appropriate for the FCC to assure that UDT requirements are fully enforced before it entertains any notion of lessening regulation. In other words, without full compliance a petitioner lacks "clean hands" that should be necessary to entertain such an industry-affecting petition.

B. ILECs Fail to Address How Their Proposal Would be Implemented

Also of critical note, even in the unusual circumstance that portions of the ILEC Petition would be granted, the ILECs fail to make recommendations as to implementation. For example, they are silent as to grandfathering existing circuits, a phase-out period, etc. If the ILECs had any intention of avoiding substantial industry disruption, they would have forthrightly addressed these necessary issues. Instead, commenters are left in the dark without an adequate opportunity to respond to the ILEC request.

III. HIGH CAPACITY LOOPS

Given the very early stages of implementation of the high capacity loop requirement, it is unclear how the ILECs can suggest that the requirement has effectively 'run its course'. This Commission issued a thoughtful decision based on a full record when it ordered the provision of high capacity loops. It did so in light of many of the arguments contained in the ILEC Petition. As with UDT, the existence of fiber in a generic manner is not the issue when a customer requests a high capacity service. Historically, except for the largest customers, competitors often could not cost justify new construction to serve a new customer. Of even greater concern, even when the carrier was willing to invest in that customer, the time that it would take to bring new

facilities to that customer would take longer than the customer would wait. The ILEC, on the other hand, contained excess capacity within that building. Even though the rates charged to the customer would far exceed a competitive price, the ILEC could use its localized monopoly to garner higher prices to the detriment of the consumer. Given this concern, the Commission rightly unbundled high capacity loops to help cure the localized monopoly issues. Nothing in the ILEC Petition addresses that concern. Instead, the ILECs speak in aggregate numbers glossing over the underlying issue supporting the requirement of unbundled high capacity loops.

IV. THE ILEC ARGUMENT TO ALLOW COMPETITION TO DIE FOR THE SAKE OF COMPETITION IS FUNDAMENTALLY FLAWED

Beginning at page 29, the ILECs suggest a rather odd argument. They suggest that even if impairment is demonstrated, the FCC should still take away the previously ordered unbundled elements to "benefit" the development of facilities-based competition. This argument is fundamentally flawed.

First, by definition, the existence of an impairment finding demonstrates that competitors will be greatly harmed by the lack of unbundling. Competitors will not be able to compete with the ILECs on a level playing field causing further financial distress in the industry, bankruptcies, and the scaling back of service.

Under such circumstances, the ILEC-suggested "facilities-based" competition will not survive. How, one would ask, will third party fiber providers expand their business while their potential customers are withering on the vine? Who would invest in new fiber construction when all of the potential buyers have gone out of business or so retrenched that the customer's needs are minimal.

By analogy, the ILECs are suggesting that the telecommunications industry will be improved by dropping the equivalent of a nuclear bomb killing off all existing life, with the

exception of the ILECs, with the hope that enough genetic material will survive so life will once again can flourish some time in the future. In the meantime of course, the ILEC monopolies are strengthened and fattened ready to smite the newly evolved competitors.

Instead, the impairment analysis exists for a reason. When impairment is demonstrated, the facility must be unbundled not only for the individual competitor but also for the long-term health of the marketplace. Only with such unbundling can competition be instilled thereby allowing the natural development of companies that both provide telecommunications services to retail customers while also purchasing facilities and services on a wholesale level.

V. HOW TO CURE THE HARM CAUSED BY THE ILEC PETITION

Even with the rejection of the ILEC Petition, the ILECs win. They win by creating the uncertainty that their petition creates. They win by adding further concern and trepidation to an already insecure capital market. Just by filing such an egregious and high profile petition, the CLEC industry, as the ILEC's "valued" wholesale customers, are greatly harmed. The question to the FCC is how to correctly address this harm. And while such harm cannot be truly rectified, there are some moderate steps that the FCC can implement. One step offered by IP would be to restart the three-year clock for considering the removal of elements from the national 3-year list. The new three-year period would begin when the Commission decision in this docket is effective. Such a step is a reasonable, if not overly moderate, step in the right direction. First, by restarting the clock, the Commission will help restore confidence in the same manner that the ILEC Petition would have eroded it. Certainly, such a step in and of itself will not cure existing problems in the industry, but it would restore them to the same extent that the ILEC Petition would have harmed them. Second, by restarting the clock, the Commission will be assured that similar petitions will not be filed in the future. Instead, ILECs will be on notice that any attempt to bypass the three-year process will be counterproductive.

CONCLUSION

IP appreciates the opportunity to provide comment on the ILEC Petition. As has been explained throughout, the arguments provided by the ILECs not only attempt a broad-brush approach over the underlying competitive need for the continued unbundling of UDT and high capacity loops, they make legal arguments that cannot be sustained pursuant to a logical review. IP agrees with the arguments and discussion contained in the NewSouth Communications motion to dismiss while at the same time strongly noting that dismissal does not cure the harm caused by the ILEC Petition itself. At a minimum, the Commission should restart the three-year clock for reviewing the national list to help undue the current harm while at the same time assuring that similar petitions will not be filed.

Respectfully submitted,

IP COMMUNICATIONS CORPORATION

By_____

Howard Siegel
Vice President of Regulatory Policy
IP Communications Corporation
9430 Research Blvd, Suite 120
Austin, Texas 78759
512/418-0376

June 5, 2001

C:\My Documents\FCC (general)\IP comment onJoint ILEC Hi-Cap and UDT.doc)

STATE OF TEXAS)
)
COUNTY OF TRAVIS)

AFFIDAVIT OF HOWARAD SIEGEL
ON BEHALF OF IP COMMUNICATIONS CORPORATION

Before me, the undersigned authority, on this ____ day of June, 2001, personally appeared Howard Siegel, who, upon being duly sworn, states the following:

1. My name is Howard Siegel. I am over the age of 21, of sound mind, and am competent to testify as to the matters stated herein. I am the Vice President of Regulatory Policy for IP Communications Corporation ("IP"). I have personal knowledge of the facts contained herein.

2. The facts contained in these comments and related attachments are accurate. Moreover, I have personal knowledge as to this information through the due course of my duties in my capacity as IP's Vice President of Regulatory Policy.

Further Affiant sayeth not.

_____/s/_____
Howard Siegel

Sworn to and subscribed to before me this ____ day of June 2001, to certify which witness my hand and seal.

_____/s/_____
Notary Public in and for the State of Texas
My Commission expires:_____