Notice of Oral *Ex Parte* Presentation

November 15, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147; Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, CC Docket No. 02-33; and Appropriate Regulatory Treatment for Broadband Access to the Internet over Cable Facilities, CS Docket No. 02-52

Dear Ms. Dortch:

On Thursday, November 15, 2002, the following people, on behalf of the High Tech Broadband Coalition (HTBC), and the undersigned met with Matthew Brill of Commissioner Abernathy's office.

1. E. Van Cullens, President and CEO - Westell
2. Jim Hjartarson, President and CEO – Catena Networks
3. J. Michael Norris, President & CEO – NextLevel Communications
4. Gregory Jones, General Manager, DSL Business – Texas Instruments
5. Jerry Fiddler, Chairman and Co-Founder - Wind River Systems
6. Perry Kamel– Siemens Information & Communication Networks
7. George Brunt, General Counsel - Alcatel
8. Matt Flanigan, President - Telecommunications Industry Association
9. Veronica O'Connell - Consumer Electronics Association
10. Jeff Gwynne, Senior Vice President – Quantum Bridge Communications
11. Tom Huntington, Director – Quantum Bridge Communications
12. Grant Seiffert – Telecommunications Industry Association
13. Doug Cooper – Catena Networks.

In the course of the discussion, the HTBC representatives made several points that are set out in further detail in the HTBC pleadings filed in the above-referenced

Commission proceedings involving broadband deployment. Among other things, the HTBC representatives stated:

- The High Tech Broadband Coalition (HTBC) represents the leading trade associations (BSA, CEA, ITI, NAM, SIA, and TIA) of the computer, telecommunications equipment, semiconductor, consumer electronic, software and manufacturing sectors.
- HTBC is unique -- a coalition of trade associations representing over 15,000 companies that participate in the non carrier broadband "value chain."
- HTBC is committed to the achievement of rapid and ubiquitous deployment of fast interactive, content-rich and affordable broadband services.
- HTBC believes that the best way to reach universal adoption of broadband is strong facilities-based broadband competition among cable modem, wireline broadband (xDSL/fiber), satellite, fixed and wireless alternatives.
- The HTBC believes that the Commission should strive to achieve a minimal regulatory environment that encourages all companies to make the costly and economically risky investments in last mile broadband facilities necessary in order to realize the full benefits of the Internet.
- Specifically, HTBC believes that the Commission should refrain from imposing unbundling obligations on new, last mile broadband facilities, including fiber and DSL and successor electronics deployed on the customer side of the central office.
- On the other hand, competitive entrants should continue to have access to core copper loops and be able to collocate their equipment in ILEC central offices.
- DSL services already face substantial competition from the market-leading cable modem service and emerging satellite and wireless broadband services. The Commission should analyze the broadband market as a whole, rather than DSL services as an individual market.
- Minimizing these unbundling obligations will reward those who take the risk of investing and thereby promote facilities-based competition and deployment.
- A ruling this year on broadband unbundling reform should be the Commission's top priority –meaningful reform would boost not just the telcom service industry but also hardware and software manufacturers.
- This approach is consistent with the approach articulated by the Chairman and other Commissioners and set forth in the FCC's various broadband proceedings.
- HTBC endorses the classification of wireline and cable broadband services as "information services" subject only to minimal regulation.

Pursuant to Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, copies of the documents provided in this meeting and a copy of this submission are being provided to each member of the Commission staff present at the meeting. Please contact the undersigned at 202-715-3709 with any questions in connection with this filing.

Respectfully submitted,

/s/ Paul W. Kenefick

Paul W. Kenefick
Alcatel USA, Inc.

Attachments

cc: Matthew Brill

HIGH TECH BROADBAND COALITION

November 14, 2002

HTBC:

- HTBC represents the leading trade associations of the computer, telecommunications equipment, semiconductor, consumer electronic, software and manufacturing sectors. No carriers, or their associations, are members of the HTBC.
- HTBC is **unique** -- a coalition of trade associations representing over 15,000 companies that participate in the non-carrier broadband "value chain."
- HTBC believes that the best way to achieve widespread adoption of broadband is to embrace the sustainable inter-modal competition that has developed in the broadband market – a market that is distinct from the legacy voice market.

FCC MUST ACT NOW ON THE UNE PROCEEDING – REGULATORY RELIEF WILL SPUR DEPLOYMENT, SAVE JOBS AND REDUCE R&D CUTBACKS:

- An expeditious ruling on the UNE proceeding – particularly in regards to the issues surrounding broadband deployment – should be the FCC's top priority.
- ILEC investment in broadband has been hampered by the uncertain regulatory status of broadband networks.
- ILEC capital expenditures were down significantly in 2002 and the downward trend is expected to continue into 2003. ***[$113 billion in 2000, $93 billion in 2001, an estimated $53 billion in 2002, and further reductions announced for 2003.]***
- Without investment, ILECs' broadband services cannot effectively compete with cable modems, which currently enjoy a 2-1 majority in the broadband market.

- **Regulatory relief & certainty would spur broadband deployment and innovative services.**

HTBC PROPOSAL:

- The broadband market is distinct from the legacy voice market. The ILECs do not possess market power in the delivery of broadband services.
- The Commission should refrain from imposing Section 251 unbundling obligations on new last mile broadband facilities, including fiber and DSL and successor electronics deployed on the customer side of the central office.
- At the same time, the Commission must continue to require ILECs to provide unbundled access to the legacy copper facilities, which will allow CLECs to continue serving new and existing customers.
- The Commission should exercise the preemption authority granted by Congress in §§251 & 261 of the Act.
- The Commission should establish ILEC deployment benchmarks for broadband services.
- The Commission should monitor any consumer use or CPE restrictions imposed by wireline or cable modem providers in the broadband market.

Rationale:

- HTBC believes that new, last-mile wireline broadband facilities should not be subject to Section 251 unbundling requirements for three primary reasons:

1. Current-generation wireline broadband services, principally digital subscriber line ("xDSL") services, already face substantial competition from cable modem, emerging satellite, and wireless broadband services.
2. Minimizing Section 251 unbundling obligations on new broadband facilities will serve as a significant economic incentive for ILECs to increase investment in these access facilities.
3. Increased competition among multiple facilities-based platforms will benefit consumers with decreased prices, increased choice, and network diversity.

Information concerning the HTBC, including its filings with the Commission, is available at http://*www.thehtbc.com*.

HTBC's First Rule Modification:

47 C.F.R. § 51.319 (a):

§51.319 Specific unbundling requirements.

(a) *Local loop and subloop*. An incumbent LEC shall provide nondiscriminatory access, in accordance with §51.311 and Section 251(c)(3) of the Act, to the local loop and subloop, including inside wiring owned by the incumbent LEC, on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service, except that the incumbent LEC shall not be required to provide unbundled access to a broadband loop as defined below and dark fiber deployed in any part of the local loop. Where an incumbent LEC upgrades an existing DLC system, the incumbent LEC shall provide unbundled access to a non-packetized voice-grade equivalent channel for basic telephone service where such technical capability already existed. Where an incumbent LEC upgrades existing plant to a broadband loop, it shall not deprive a CLEC of access to an existing copper UNE loop without first obtaining Commission approval.

(1) *Local loop*. The local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises, including inside wire owned by the incumbent LEC. The local loop network element includes all features, functions, and capabilities of such transmission facility. Those features, functions, and capabilities include, but are not limited to ~~dark fiber~~ attached electronics and line conditioning. The local loop includes, but is not limited to, DS1, DS3, ~~fiber,~~ and other high capacity loops. ~~The requirements in this section relating to dark fiber are not effective until May 17, 2000.~~

(2) *Broadband loop.* The broadband loop is defined as any fiber-based facility deployed on the customer side of the central office that is used in whole or in part to transmit packetized information and the associated equipment attached thereto. Also included is any electronics attached to a copper loop that is used in conjunction with or facilitates packetized transmission over such loop.

Note: With the addition of (a)(2) "Broadband loops" "Subloop" must be renumbered to 51.319(a)(3) and "Network interface device" must be renumbered to 51.319(a)(4)

….

47 C.F.R. § 51.319 (c)(5)

(c) *Switching capability* …

(5) An incumbent LEC shall not be required to provide nondiscriminatory access to unbundled packet switching capability. ~~only where each of the following conditions are satisfied. The requirements in this section relating to packet switching are not effective until May 17, 2000.~~

~~(i) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (e.g., end office to remote terminal, pedestal or environmentally controlled vault);~~

~~(ii) There are no spare copper loops capable of supporting xDSL services the requesting carrier seeks to offer;~~

~~(iii) The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access mulltiplexer in the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by paragraph (b) of this section; and~~

~~(iv) The incumbent LEC has deployed packet switching capability for its own use.~~

HTBC's Second Rule Modification:

47 C.F.R. §51.319 (a)(2) [which must be renumbered to (a)(3), as indicated above]

(3) *Subloop.* The subloop network element is defined as any portion of the copper loop that is technically feasible to access at terminals in the incumbent LEC's outside plant, including inside wire. An accessible terminal is any point on the loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. Such points may include, but are not limited to, the pole or pedestal, the Serving Area Interface ("SAI"), the network interface device, the minimum point of entry, the single point of interconnection, the main distribution frame, the remote terminal, and the feeder/distribution interface. Further, upon a site-specific request, an incumbent LEC shall provide access to the copper subloop at a splice near the remote terminal. The incumbent LEC shall be compensated for the actual cost (without regard to § 51.505) of providing this access. ~~The requirements in this section relating to subloops and inside wire are not effective until May 17, 2000.~~