



March 19, 2004

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: CC Docket Nos. 01-338, 96-98, 98-147

Dear Ms Dortch:

Please find attached the Association for Local Telecommunications Services' ("ALTS'") *Opposition to Petition for Waiver* for submission in the above-referenced dockets. This Opposition is in response to BellSouth's *Petition for Waiver* filed on February 11, 2004.

Sincerely,

/s/

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

In the Matter of)	CC Docket No. 01-338
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers)))	
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

OPPOSITION TO PETITION FOR WAIVER

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Opposition to Petition for Waiver

As the leading national trade association representing the competitive local exchange carrier industry, ALTS submits this opposition to BellSouth's *Petition for Waiver* of the FCC's Enhanced Extended Link ("EEL") rules as set forth in the *Triennial Review Order*.¹

EELs, which are simply combinations of local loops and interoffice transport, with or without multiplexing, are critical to the development of facilities-based competition for local services. In the *Triennial Review Order*, the FCC adopted rules, which, while not perfectly pro-competitive, were intended to afford CLECs immediate access to EELs after eight years of ILEC circumvention of prior FCC rules requiring ILECs to provide unbundled, cost-based, access to local transmission facilities, including loop-transport combinations.

BellSouth's *Petition for Waiver* is just the latest effort in a continuing pattern by the Bell Companies to impermissibly stifle competition by rejecting their obligations to provide non-discriminatory access to local transmission facilities for as long as possible.

In the *Triennial Review Order*, the Commission concluded, once again, that ILECs are required to make EELs available to CLECs pursuant to Section 251(c) of the Communications Act. The FCC intent in every EEL-related proceeding was simply to ensure that CLECs could obtain EELs for legitimate CLEC purposes, while protecting ILECs from immediate and dramatic revenue reductions caused by massive conversion by IXCs of special access to EELs. No one disputes that the Commission imposed some

¹ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36, (rel. Aug. 21, 2003) ("*Triennial Review Order*").

limited architectural safeguards in order to prevent carriers from using the EEL as a means to avoid access charges and practicing long distance arbitrage. Specifically, the FCC determined that, if EELs were available without restriction, the largest interexchange carriers in the country could immediately take the special access circuits they currently purchase from ILECs for the transport and termination of their interexchange voice traffic and convert them to EELs priced at TELRIC, thereby circumventing the current access regime without allowing the market to adjust to such a dramatic regulatory change. ILECs, however, have sought to make considerably more of this narrow exception than is warranted and have parsed every word in every prior FCC EEL pronouncement, and it appears that BellSouth is doing so with regard to the *Triennial Review Order*, in an effort to thwart, twist, and circumvent the FCC's intent. In the process, the ILECs have turned a relatively clear intention and a simple process into a complicated task leading to unending delay and confusion.

ALTS believes avoiding instantaneous market shock is a laudable goal, but so is the need for clarity in both the EEL provisioning process and the special access to EEL conversion process so that CLECs can develop and carry out certain and viable business plans. Granting BellSouth's *Petition for Waiver* would only serve to unfairly reward the ILECs by allowing them any more time on top of the eight years they have already had, to overcharge CLECs. No one benefits from such ILEC additional delay, except the ILECs, who have already been rewarded for their aggressive and unwarranted stalling tactics. An unfortunate consequence of the process we have all endured with the multiple rewrites of the EEL provisioning rules may be that, once the EEL rules are implemented and understood, it might be too late – the transmission network elements that comprise

the EEL might not be subject to unbundling and the ILECs will never have had to provide unbundled, cost-based access to these essential, bottleneck facilities. If and when that comes to pass, the ILECs, at the price of competition and equity, will have bought themselves enough time, so that CLECs will never be able to fully avail themselves of the EEL rules, and all along will have had to pay higher-priced special access rates.

ALTS did not support the architectural safeguards adopted by the FCC, but was grateful that the FCC adopted rules that were, at least, intended to add clarify and promote immediate provisioning of EELs after eight years of ILEC delay. For years, many CLECs have attempted, in vain, to obtain EELs, either as new circuits or by converting existing special access circuits to EELs, to use for legitimate CLEC purposes and so that the CLEC did not have to collocate ubiquitously while developing a local footprint. Thus, although the Commission orders have been clearly stated, they have not been clearly implemented. Regrettably, an ILEC is, once again, attempting to cobble together another argument to find yet another loophole to thwart CLECs right to obtain EELs. BellSouth's *Petition for Waiver* is simply the latest in a long line of stalling tactics.

The FCC's EEL rules, combined with the FCC's impairment analysis and commingling rules, provide the proper course for the eventual migration from EELs to special access. The FCC determined that a CLEC, at this point, is impaired without unbundled access to DS-1 and DS-3 loops and transport. Until such time as a state determines that the CLEC is not impaired without unbundled access to either the loop or the transport on a particular route, the ILEC is obligated to combine those elements as an EEL. Upon a state determination that the CLEC would not be impaired without

unbundled access to the loop or transport portion of an EEL, the CLEC would no longer be entitled to the entire circuit at UNE-based rates. At that point, the CLEC would still be entitled to the combined loop and transport transmission, but at a rate that reflected a blended rate between the proportion of the facility that was UNE-eligible and the proportion that had to be purchased as special access. But until the ILEC can demonstrate to the satisfaction of a state fact-finder applying the FCC's loop and transport impairment analyses that the CLEC is not impaired without unbundled access to the ILEC loop and/or transport, the CLEC must be entitled to the EEL, where it has satisfied the FCC's EEL architectural safeguards. BellSouth, however, is attempting to thwart this process and buy more time during which it can overcharge the CLEC, and preclude the CLEC from providing a competitive service to potential end-user customers.

It is time for the Commission to say "enough already." BellSouth and the other ILECs have already managed to circumvent their EEL-provisioning obligations for 8 years, by mischaracterizing and misinterpreting FCC rules that would have ensured CLECs cost-based, unbundled access to local transmission facilities. *The Local Competition, First Report and Order*, compelled it. The *UNE Remand Order* compelled it. The *Triennial Review Order* compelled it. And still, because the ILECs control the facility, they have managed to deny CLECs access to EELs, in flagrant defiance of FCC rules. Every few years, the FCC rewrites the rule to cover the latest of ILEC-imagined loopholes. And soon thereafter, the ILECs find new but equally suspect readings of the new rules that allow them to ignore the EEL rules for a little while longer.

As the FCC has acknowledged, special access to EEL conversions are nothing more than a billing change, and BellSouth simply seems to be trying to preserve over-

priced special access that much longer, where the UNE, cost-based, rates should prevail. Furthermore, the FCC has found nationwide impairment for both loops and transport, and, until a state finds no impairment, the EEL must be provisioned. Once non-impairment is found, then the price converts to a blended rate, allowing for the commingling of the combined UNE loop with the special access transport.

It is essential that the ILECs not be allowed any more delay or any more opportunity to over-charge for EELs. The ILECs have enjoyed an eight-year free ride on overcharges. It is essential for the FCC to now require, without qualification or ambiguity, unbundled access to loop transport combinations, where the CLEC satisfies the architectural safeguards, until such time as proper application of the impairment analysis determines that the CLEC is no longer entitled to unbundled access to the transmission facility.

Respectfully Submitted,

/s/

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