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November 10, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Unbundled Access to Network Elements
WC Docket No. 04-313 & CC Docket No. 01-338

Dear Ms. Dortch:

AT&T Corp. ("AT&T") submits this ex parte letter to rebut a number of recent Bell assertions concerning the data in the record on competitive deployment of high capacity loop and transport facilities.

1. Bell allegations that CLECs refused to provide data in state cases (*see* SBC at 17-18; Verizon at 43, 53-54, 58, 65-66)

Competitive carriers responded to all requests for loop and transport data reasonably related to issues responsive to inquiries in the state cases

- Competitive carriers responded to scores of relevant questions promulgated by PUCs, ILECs and other competitors (*see* QSI Analysis at 2-7; Ball Rebuttal Dec.[1] at 3-5).
- Competitive carriers only objected to ILEC questions seeking data outside the scope of the state case review (*e.g.*, data on OCn loop deployment – which cannot demonstrate the absence of impairment at the DS1 or <3 DS3 levels).
- Competitors also declined to admit to facts that did not exist – *e.g.*, connections between ILEC wire centers that did not exist; wholesaling where no such option was provided (*see,*

[1] Rebuttal Declaration of Gary J. Ball, submitted as an attachment to ex parte letter from CompTel/ASCENT, et al., to Marlene H. Dortch, dated November 2, 2004 ("Ball Rebuttal Dec.").

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e.g., AT&T at 43-47, Fea-Giovannucci Dec. ¶¶ 14-22; AT&T Reply at vii-ix, 57-60; Ball Rebuttal Dec. ¶¶12-13).

- Bell claims regarding "missing" data – even if true – make no attempt to show that such data would materially change the results or support any inference that there is substantial self-deployment or wholesaling of loops or transport at or below the capacity limits.
  - Bell "data" often identified non-telecommunications providers – including banks and retailers -- as potential trigger firms (Ball Rebuttal Dec. at 5-6).
  - Since all alternative providers of dedicated transport must be able to provide transport between ILEC offices, the ILECs will clearly be aware of all competitors that have collocated in their offices. Thus, there can be no material omissions of transport providers.

2. Bell claims that the state evidence showed the existence of facilities at or below the capacity limits (*see* SBC Alexander – Sparks Reply Declaration ¶¶ 20, 57)

The Bells acknowledge that competitors *did not deny* the existence of trivial exceptions to non-deployment at or below the capacity limits – nor did competitors decline to provide information on such exceptions, which was considered in QSI's Analysis and used by the state regulators that summarized the evidence from state impairment cases.

The Commission properly recognized the need for multiple instances of self-deployment and wholesaling to demonstrate non-impairment at or below the capacity limits in order to:

- Assure the general impairments it found at the capacity limits could actually be overcome (*TRO* nn.976 (multiple entrants needed to assure the entry was not the result of unique circumstances) & 978)
- Assure the feasibility of "multiple competitive supply" (*TRO* ¶ 405 (*citing USTA I*))
- Avoid mistaking an earlier uneconomic business decision for successful competitive entry
- Demonstrate a minimally effective wholesale market that could possibly overcome the effects of an ILEC price umbrella (*TRO* n.1275).

The facts collected in the states showed virtually no instances of multiple self-deployment at the customer buildings or on dedicated transport routes identified by the Bells at the capacity limits:

- *QSI Analysis* (alternative DS3 self-provided loops in only 130 buildings in 12 states; alternative DS3 wholesale loops in 49 buildings and DS1 wholesale loops in 36 buildings in 12 states; alternative self-deployed DS3 transport on only 55 routes in 14 states; wholesale transport on only 40 DS3 routes and 49 DS1 routes in 14 states)
- *MI ALJ Recommended Decision* (no transport self-deployment or wholesaling, no loop wholesaling; loop self-deployment trigger met at 3 buildings)
- *California PUC Staff Report* (DS3 self-provisioning loop trigger met at two buildings in SBC territory, 0 buildings in Verizon territory; loop wholesaling trigger not met at any building; no transport trigger met on any route) (California PUC Comments, PUC Staff Report at 9-10)

- NY DPS Comments (at 14) (alternative self-deployment or wholesaling of transport on less than 1% of possible intraLATA routes); *NYDPS Staff Report*, Attachments 4 and 6 (transport wholesaling available on < 0.3% of possible routes)

The Bells offer no evidence that would support a finding of any material errors in these analyses.

Moreover, SBC's maps of lit buildings in Attachment B to the Alexander-Sparks Reply Declaration show even more clearly than ever, especially in downtown Chicago and San Francisco, that there are many significant business locations in which competitors have found facilities deployment is uneconomic, even on the same streets and the same blocks with locations where a competitor has deployed its own loop facilities. *See* AT&T at 69; Selwyn Dec. ¶¶ 47-49.

3. Bell claims that AT&T's provision of private line *services* is equivalent to the provision of wholesale unbundled loops (*see* SBC Alexander-Sparks Declaration ¶¶ 29-31, 51-52; Verizon at 48, 70, Walker Reply Declaration ¶ 22)

SBC's citations to the AT&T witness's testimony omit the AT&T witness's direct statement that AT&T does *not* wholesale high capacity loops. *See* Testimony of Jack Lynott (AT&T), Texas PUC Docket No. 28745, April 22, 2004, pp. 409-10 (attached).

AT&T does *not* wholesale UNE-like facilities that enable another carrier to access a customer loop at an AT&T network location – as required by the definition of a "loop." A loop is a functionality that only provides connections between a customer premise and an ILEC serving office, and is *not* an entire end-to-end service.

- This is consistent with the Bells' position that loops and transport are *separate* UNEs and must be assessed separately (*see, e.g.,* SBC at 62-82, 82-92; *see also Triennial Review Order* ¶ 575 (EEL is not a single element but a combination of elements subject to separate impairment analysis)).

Virtually all AT&T private line services sold to competitive carriers require the use of *leased ILEC facilities* and thus do not meet the requirement that a wholesaler must provide service over its own network facilities (or those it obtains under an IRU) (*TRO* ¶ 414 (requiring wholesalers to be unaffiliated with the ILEC); *see also* Ex parte letter from Jason Oxman, ALTS, dated November 8, 2004 ("ALTS ex parte") at 2, 6 (competitive wholesalers typically use UNEs as an integral part of their wholesale offers).

- The only exceptions are carriers that require *so much capacity* that they are willing to pay for AT&T to construct a new *dedicated entrance facility* between an AT&T network location to the other carrier's location; this is *not* "wholesaling" of DS1 or DS3 loop capacity at all, and certainly not a "widely available" offer, as is required for wholesaling (*TRO* ¶ 414).

4. Bell claims regarding competitors' ability to provide alternative transport (SBC Alexander-Sparks Reply Declaration ¶¶ 43-46; Verizon at 54-57; BellSouth Padgett Reply Declaration ¶ 22)

Competitive carriers do not deny that establishing connectivity between facilities based collocations is "possible" -- but the evidence is that competitors rarely do so because (a) there is insufficient demand at either retail or wholesale to merit the costs and (b) there are additional operational hurdles that make wholesaling too difficult (AT&T, Fea-Giovannucci Dec. ¶¶ 14-22; AT&T Reply at vii-ix & 58-59 (referencing other competitive carriers' comments); ALTS ex parte at 3, 6 (noting that many competitors did not include wholesaling in their business plans and are not operationally prepared to (and do not intend to) wholesale and that the Bell Report never identifies where alleged wholesaling is actually available).

- The lack of wholesale demand will continue at least unless and until the Commission eliminates the lock-up provisions and associated penalties in Bell special access tariffs (AT&T at 47, 156; AT&T Reply at viii-ix).

In all events, a carrier cannot establish a "transport route" at all unless it has previously established fiber-based collocations in *both* ILEC offices that define the route.

- The ILECs provide no data on the existence of such paired collocations, focusing only on the number of collocators in individual ILEC offices. The QSI Analysis (Table 10) shows only a minimal number of routes – out of hundreds of thousands of potential intraLATA routes – in 14 of the largest states where multiple providers have fiber-based collocations at both ends of a potential dedicated transport route.
- Even the existence of carriers that are collocated in both offices forming a route-pair does not demonstrate that (a) any carrier has created physical connectivity between those offices for its own use or (b) any carrier, even if connected, offers wholesale DS1 or DS3 transport. Indeed, the state data confirm such wholesaling is virtually non-existent (*see* Point 2 above).

5. Bell claims that its methodology for identifying competitor "lit" buildings is accurate (BellSouth Padgett Reply Declaration ¶ 35; Verizon Reply at 66)

- Bell claims regarding competitive loop deployment largely rely on information contained in the Telcordia Central On-Line Entry System ("CLONES") database that AT&T has shown to be significantly out-of-date. *Approximately thirty percent* of the total number of different AT&T customer location street addresses that were present in the CLONES database on January 1, 2004 are obsolete and are being deleted. AT&T at 72. Carriers generally do little to keep this information up to date because they have little need to do so and deleting these records involves laborious and expensive checks of internal systems. Beemon Dec. ¶ 5. BellSouth's affiant Padgett acknowledges, "carriers are not required to keep this information up to date."[2] BellSouth, Reply Affidavit of Shelley W. Padgett ("Padgett Aff."), ¶ 35.

[2] Verizon asserts that most CLECs do not have outdated information in CLONES because they began

- BellSouth contends that customer locations in the CLONES database that are obsolete nonetheless remain available for use. *Id.* However, the lateral fiber at a former CLEC end-user premises may be "stranded" and no longer provide a continuous transmission path to the CLEC switch. When a customer location is no longer in use and the network equipment is removed, the customer lateral fiber serving that location is sealed off from the backbone network, and the capacity formerly serving the customer location may be used to serve other customers. Without spare capacity in each segment of cable that is required to connect the lateral serving the former user's premises all the way to the CLEC switch, the spare lateral fiber cannot be reused without additional investment to provide the required capacity. Much greater additional investment would likely be required to connect the spare lateral fiber to another CLEC's switch.

Very truly yours,

/s/ David L. Lawson

David L. Lawson

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operations much more recently than AT&T. Verizon Reply at 66 n.86. Verizon overlooks that MCI, Sprint and other IXCs that have become CLECs have served enterprise customers since the 1980's and that CLECs that began operation in the 1990's have also experienced customer turnover. As Mr. Beemon explained, no carrier has any reason to remove outdated customer location information from CLONES other than to avoid the associated database expenses. Beemon Dec. ¶ 5.

Attachment 1

TRANSCRIPT OF PROCEEDINGS

BEFORE THE

PUBLIC UTILITY COMMISSION OF TEXAS

AUSTIN, TEXAS

IMPAIRMENT ANALYSIS OF ENTERPRISE	)	PUC DOCKET NO.
MARKET LOOP FACILITIES	)	28745

HEARING ON THE MERITS/OPEN MEETING

THURSDAY, APRIL 22, 2004

BE IT REMEMBERED THAT AT approximately 9:20 a.m., on Thursday, the 22nd day of April 2004, the above-entitled matter came on for hearing at the Offices of the Public Utility Commission of Texas, 1701 North Congress Avenue, William B. Travis State Office Building, Commissioners' Hearing Room, Austin, Texas 78701, before PAUL HUDSON, Chairman, and JULIE PARSLEY, Commissioner, with MIKE FIELD, Administrative Law Judge, presiding; and the following proceedings were reported by William C. Beardmore, Lou Ray and Evie Coder, Certified Shorthand Reporters of:

VOLUME 5 Pages 301 - 527

1 Q In certain of those locations on your chart -- you
2 indicated on your chart with no shading for those locations,
3 which would indicate that that customer location may have
4 met the trigger. Is that correct?
5 A (Dunbar) Yes, it is.
6 Q What do you think the Commission should do with
7 locations that are on your chart that happen to be SBC
8 central office locations?
9 A (Dunbar) Well, first of all, at the time that I
10 put my exhibit together, I did not realize they were central
11 offices. Once I found that there was one, what has become
12 Sprint Exhibit 10 is in fact an extract that I did of the
13 lettering that is a total listing of SBC switch locations in
14 Texas. That is, every location that's on there is an SBC
15 switch identified in Texas.
16 I took that list and matched it to the address
17 list, and I found that in fact more than what we discussed
18 this morning that for wholesale there are 16 of the
19 locations listed as central offices, and for
20 self-provisioning, 19 of those locations are central
21 offices.
22 In order to address what needs to be done, I
23 think first of all we need to look at what is the definition
24 of a loop, and found in 51.319 that is a transmission
25 facility between a distribution frame or its equivalent in

1 the incumbent LEC central office and the loop demarcation
2 point in an end-user customer premise.
3 In each of those central office locations I
4 believe it's going to be necessary to determine in fact if
5 there is such a thing as a demarcation point for an end
6 user. In most cases I don't believe there will be and,
7 therefore, they should in fact come off the list, not remain
8 on the list.
9 Q Thanks, Mr. Dunbar. With respect to the questions
10 that Mr. Livingston asked of you regarding Time Warner where
11 it appeared in one part of Time Warner's discovery responses
12 they indicated that they might have DS3 facilities at that
13 particular location but, then, in the other part I believe
14 you responded -- of that discovery response Time Warner
15 indicated that they did not have DS3 wholesale facilities.
16 Could you tell the Commission what they should do with these
17 Time Warner responses?
18 A (Dunbar) Well, I believe from the standpoint of as
19 Time Warner responded and as we have found and even Mr. Wood
20 discussed in terms of those areas that are questionable or
21 have conflicting information, somehow that conflicting
22 information needs to be resolved before that can stay on the
23 list as a location that is considered to be impaired.
24 I left them on the list when I did not know in
25 order to be conservative, but there are an awful lot of

1 locations that just -- on one piece of paper they say "yes"
2 and on the next piece of paper they say "no" or something
3 like that. Somehow that needs to be resolved with the
4 carrier.
5 Q And you indicated in your rebuttal testimony also
6 some comments about Time Warner and its information. Is
7 that right?
8 A (Dunbar) Yes. And, in fact, on Page 19 in my
9 first answer at the top of the page, I used as a reference
10 as one of those examples the "#N/A" symbol, which is an
11 error symbol for Microsoft Excel. Obviously something was
12 done in the spreadsheet that created an error that
13 information was not correctly identified. And I conclude
14 with that answer that Sprint believes the Commission should
15 not count the customer locations of this carrier's --
16 meaning the wholesale trigger -- until more information --
17 or consistent information is available.
18 MR. SCHIFMAN: Thanks. No further questions.
19 JUDGE FIELD: Thank you. AT&T?
20 MR. COWLISHAW: Yes, Your Honor.
21 REDIRECT EXAMINATION
22 BY MR. COWLISHAW:
23 Q Mr. Lynott, Mr. Metropoulos reviewed with you
24 several descriptions of AT&T services that were -- some of
25 them had been attached to Ms. Sparks' testimony somewhere

1 in -- I think in Exhibits 20, 23 and 24 that he put before
2 you. You recall those I'm sure.
3 A (Lynott) Yes, I do.
4 Q All right. And prior to testifying here today, you
5 were aware that AT&T had made the type of statements that
6 you discussed with Mr. Metropoulos?
7 A (Lynott) Yes, I was.
8 Q And, in fact, you've been aware for a long time
9 that AT&T provides some of the kinds of services that are
10 described in those exhibits. Correct?
11 A (Lynott) Yes, I do.
12 Q In your opinion, does anything in those exhibits
13 indicate that AT&T is in the business of providing wholesale
14 loops?
15 A (Lynott) Absolutely not.
16 Q All right. I'd like you to explain to the
17 Commission why you understand that AT&T is not providing
18 wholesale loops and to explain that in the context of the
19 documents that you discussed with Mr. Metropoulos.
20 A (Lynott) Well, first of all, AT&T does not
21 wholesale loops. AT&T wholesales services that are
22 point-to-point, point-to-multipoint. Some are customer
23 configurable, but, nonetheless, the DS1s and DS3
24 private-line-type services that AT&T sells, the nonswitch
25 type, are point-to-point, private line.

1 We don't differentiate between IBM,
2 Schlotzsky's or, like I said earlier, XO. We sell it as a
3 private line. I searched my databases and they're the same
4 service codes, USOC codes, circuit IDs. And unless I look
5 at the specific customer, I have no idea who that customer
6 is and what they're buying and what they're using it for,
7 other than they bought a DS3 out of this USOC or service
8 code.
9 If I look at the definition of a loop in the
10 FCC -- again, it's a continuous transmission path from an
11 ILEC wire center to a customer premise, including all
12 features, functions, multiplexors, obtronics, electronics,
13 et cetera, et cetera. Taking that same analogy and applying
14 it to AT&T's network, okay, then, like I said earlier, our
15 customer rings are -- our customer rings are completely
16 separate from our LSO rings.
17 So on that customer's -- there is simply an
18 on-net. We do not offer -- if I use the same analogy what
19 the FCC's definition was on an ILEC cross-connect to an MDF
20 and apply that to AT&T's LNSs network, we do not offer a
21 loop service from our wire center to a customer premise. We
22 just don't offer that type of service. Our services are
23 end-to-end, and what the customers use it for, we have no
24 idea. But we don't -- we do not wholesale loops.
25 Q Mr. Lynott, do you AT&T -- does AT&T to your

1 knowledge offer such a service from an ILEC central office
2 to customer locations?
3 A (Lynott) No, we do not. The only -- the only
4 customers that we would serve out of a collocation would be
5 off our LSO rings. They would be off-net customers or, in
6 other words, leased facilities from the ILEC to get to our
7 customer with these facilities.
8 Q So if a customer -- or another carrier was leasing
9 an unbundled DS3 loop from Southwestern Bell today, and
10 Southwestern Bell was permitted to withdraw its offering of
11 unbundled DS3 loops from -- for that particular location,
12 would AT&T have a product to serve out of that SBC central
13 office where that carrier is collocated?
14 A (Lynott) No, we would not.
15 Q Mr. Minter, as the chief operating officer of a
16 company that had many collocations in Texas, did you have
17 the opportunity to investigate the adequacy of AT&T
18 private-line-type service and similar CLEC offerings as a
19 substitute for an unbundled network element high cap loop?
20 A (Minter) Yes. Like we talked about in the
21 transport case, we bought a lot of transport as well as
22 entrance facilities or DS3 or DS1-type of loops to
23 carriers -- to customer locations. And the main reason we
24 had to use SBC for almost everything we purchased was
25 because other carriers such as AT&T would not provide that

1 service into an ILEC collo -- and ILEC CO. They would
2 require us to collocate at a node of their own and provide a
3 connection to whatever location we wanted. So, therefore,
4 we couldn't buy transport and we couldn't buy loop as we're
5 currently talking about it.
6 MR. COWLISHAW: Those are all my questions.
7 JUDGE FIELD: Thank you.
8 MCI, any?
9 MR. SIFUENTES: No questions.
10 JUDGE FIELD: CLEC Coalition?
11 MR. MAGNESS: No questions.
12 JUDGE FIELD: Okay. That brings us to the
13 Commissioner questions and Staff clarifying questions.
14 Commissioners, again, if you want to go first, fine, or do
15 you want your Staff to?
16 CHAIRMAN HUDSON: Ms. Sparks, could we go
17 ahead and get you up here?
18 JUDGE FIELD: Yes, I'm sorry. Everybody that
19 has testified, please.
20 MR. METROPOULOS: Your Honor, is this an
21 opportunity for me to move into evidence SBC Exhibits 20, 23
22 and 24?
23 JUDGE FIELD: It is. Give me those again,
24 20 --
25 MR. METROPOULOS: 20, 23 and 24.

1 JUDGE FIELD: All right. Fine. Any
2 objections to SBC-20, 23 and 24?
3 MR. COWLISHAW: No objections.
4 JUDGE FIELD: Hearing none, they are admitted.
5 (SBC Exhibits 20, 23 & 24 admitted)
6 MR. METROPOULOS: Thank you, Your Honor.
7 CHAIRMAN HUDSON: Mark, John, Brian, come on
8 up, please.
9 MR. GLADNEY: Mark Gladney for the record. I
10 just have a couple of questions for Ms. Sparks.
11 PANELS 2-A and 2-B - WHOLESALE
12 PRESENTATION ON BEHALF OF
13 SBC TEXAS, AT&T, MCI,
14 SPRINT & CLEC COALITION
15 REBECCA L. SPARKS, GARY J. BALL, DON J. WOOD,
16 SEAN MINTER, JACK LYNOTT & JAMES D. DUNBAR, JR.
17 CLARIFYING EXAMINATION
18 BY THE COMMISSION:
19 Q (Gladney) Referring to RLS-2, that attachment --
20 if I heard you correctly -- refers to confirmed DS1 loops.
21 Correct?
22 A (Sparks) I'm sorry, Mr. Gladney, the shading -- we
23 tried to assist, and I'm afraid I've confused more than
24 assisted in doing this. But what I tried to do on RLS-2 is
25 shade for the Commission where -- the specific locations