

# FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 51, 64, and 68

[CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-15, 98-78, 98-91; FCC 98-188]

## Deployment of Wireline Services Offering Advanced Telecommunications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** In the order we clarify that sections 251 and 252 apply to advanced telecommunications facilities and services offered by an incumbent local exchange carrier (LEC) and that the facilities and equipment used by incumbent LECs to provide advanced services are network elements and subject to section 251(c). We deny requests to forbear from application of sections 251(c) and/or 271, and we deny requests for large-scale changes in LATA boundaries. We have taken these steps to meet one of the fundamental goals to promote innovation and investment by all participants in the telecommunications marketplace.

**EFFECTIVE DATE:** September 23, 1998.

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**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order adopted August 6, 1998, and released August 7, 1998. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., N.W., Room 239, Washington, D.C. The complete text also may be obtained through the World Wide Web, at <http://www.fcc.gov/Bureaus/CommonCarrier/Orders/98188>, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th St., N.W., Washington, D.C. 20036.

## Synopsis of Order

### A. Applicability of Section 251(c) to Incumbent Local Exchange Carriers

#### 1. Introduction

1. In this section, we address several issues that ALTS raises in its petition for a declaratory ruling. First, as described in greater detail below, we grant the ALTS petition to the extent it asks the Commission to clarify that the obligations of sections 251 and 252 of the Act apply to advanced services and the facilities used to provide those services. We hold that, pursuant to the Act and our implementing orders, incumbent LECs are required to (1) provide interconnection for advanced services; and (2) provide access to unbundled network elements, including conditioned loops capable of transmitting high-speed digital signals, used by the incumbent LEC to provide advanced services. We also note that under the plain terms of the Act, incumbent LECs have an obligation to offer for resale, pursuant to section 251(c)(4), all advanced services that they generally provide to subscribers who are not telecommunications carriers. Finally, for the reasons discussed below, we conclude that incumbent LECs have an obligation under the statute and our implementing rules to offer collocation arrangements that reduce unnecessary costs and delays for competitors and that optimize the amount of space available for collocation.

#### 2. Statutory Classification of Advanced Services

2. Before turning to the specific declaratory rulings requested by ALTS, we first must address the regulatory classification of "advanced services." The specific obligations of the 1996 Act depend on application of the statutory categories established in the Act's definitions section. In particular, we consider whether advanced services constitute "telecommunications services," and, if so, what type of telecommunications service.

a. *Telecommunications services.* (1) Background. 3. The obligations imposed by sections 251 and 252 of the Act are triggered by the provision of a "telecommunications service." Thus, for example, section 251(a) requirements apply to each "telecommunications carrier," which is to say, each "provider of telecommunications services." Section 251(c)(3) obligates incumbent LECs to provide unbundled access to "network elements," which is to say, "facilit[ies] or equipment used in the provision of a telecommunications

service." The Act defines "telecommunications service" to mean "the offering of telecommunications for a fee directly to the public \* \* \*." It defines "telecommunications" to mean "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."

(2) Discussion. 4. We conclude that advanced services are telecommunications services. The Commission has repeatedly held that specific packet-switched services are "basic services," that is to say, pure transmission services. xDSL and packet switching are simply transmission technologies. To the extent that an advanced service does no more than transport information of the user's choosing between or among user-specified points, without change in the form or content of the information as sent and received, it is "telecommunications," as defined by the Act. Moreover, to the extent that such a service is offered for a fee directly to the public, it is a "telecommunications service."

5. Incumbent LECs have proposed, and are currently offering, a variety of services in which they use xDSL technology and packet switching to provide members of the public with a transparent, unenhanced, transmission path. Neither the petitioners, nor any commenter, disagree with our conclusion that a carrier offering such a service is offering a "telecommunications service." An end-user may utilize a telecommunications service together with an information service, as in the case of Internet access. In such a case, however, we treat the two services separately: the first service is a telecommunications service (e.g., the xDSL-enabled transmission path), and the second service is an information service, in this case Internet access.

6. We note that, pursuant to the Commission's *Computer Inquiry* and *Open Network Architecture (ONA)* proceedings, BOCs are permitted to offer information services on either an integrated basis, i.e. through the regulated telephone company, or through a separate affiliate. The BOCs are obligated, however, to unbundle and make available to competing information service providers (ISPs): (1) the network services that underlie the BOCs' own information services (pursuant to the *Computer Inquiry* proceedings); and (2) additional network services that the BOCs do not use in their information service offerings (pursuant to *ONA*). We note

that BOCs offering information services to end users of their advanced service offerings, such as xDSL, are under a continuing obligation to offer competing ISPs nondiscriminatory access to the telecommunications services utilized by the BOC information services. In the NPRM, we seek comment on whether we should apply any similar safeguards if a BOC affiliate offers advanced services in conjunction with a BOC information service.

*b. Telephone exchange service or exchange access.* (1) Background. 7. Certain obligations under section 251 turn on whether the carrier is providing "telephone exchange service" or "exchange access." Pursuant to section 251(c)(2), an incumbent LEC must provide interconnection only "for the transmission and routing of telephone exchange service and exchange access." Section 251(b) applies to each "local exchange carrier"; section 153(26), in turn, defines "local exchange carrier" to include any person "engaged in the provision of telephone exchange service or exchange access."

8. Prior to 1996, the Communications Act defined "telephone exchange service" to include "service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange and which is covered by the exchange service charge." In the 1996 Act, Congress expanded that definition to include "comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service." The Act defines "exchange access" to mean "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services."

(2) Discussion. 9. We conclude that advanced services offered by incumbent LECs are either "telephone exchange service" or "exchange access." At this time, we do not decide whether, or to what extent, specific xDSL-based services offered by incumbent LECs are "telephone exchange service" as opposed to "exchange access." We note, however, that this question has been raised in other pending proceedings, and we will continue to address it on a case-by-case basis.

10. Nothing in the statutory language or legislative history limits these terms to the provision of voice, or conventional circuit-switched service.

Indeed, Congress in the 1996 Act expanded the scope of the "telephone exchange service" definition to include, for the first time, "comparable service" provided by a telecommunications carrier. The plain language of the statute thus refutes any attempt to tie these statutory definitions to a particular technology. Consequently, we reject US WEST's contention that those terms refer only to local circuit-switched voice telephone service or close substitutes, and the provision of access to such services.

11. We note that in a typical xDSL service architecture, the incumbent LEC uses a DSLAM to direct the end-user's data traffic into a packet-switched network, and across that packet-switched network to a terminating point selected by the end-user. Every end-user's traffic is routed onto the same packet-switched network, and there is no technical barrier to any end-user establishing a connection with any customer located on that network (or, indeed, on any network connected to that network). We see nothing in this service architecture mandating a conclusion that advanced services offered by incumbent LECs fall outside of the "telephone exchange service" or "exchange access" definitions set forth in the Act.

12. US WEST's reliance on the fact that the Commission in the *Local Competition Order*, 61 FR 45476, August 29, 1996, noted that CMRS carriers "provide local, two-way switched voice service," as part of the analysis leading to its conclusion that such carriers provide telephone exchange service, is misplaced. The Commission nowhere suggested that two-way voice service is a *necessary* component of telephone exchange service. It certainly did not suggest that two-way voice service is a *necessary* component of exchange access.

13. We also reject U S WEST's contention that it is not subject to section 251(c) for its provision of advanced services because such services are neither "telephone exchange services" nor "exchange access services." To the extent that it offers advanced services, U S WEST contends, it is not acting as a "local exchange carrier" or "incumbent local exchange carrier," and the obligations imposed by section 251(c) on incumbent local exchange carriers do not apply. Because we have determined that advanced services offered by incumbent LECs are telephone exchange service or exchange access, we need not and do not address the section 251(c) obligations of an incumbent local exchange carrier

offering services other than telephone exchange service or exchange access.

### 3. Interconnection

*a. Background.* 14. Section 251(a) of the Act requires all "telecommunications carriers" to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Section 251(c)(2) imposes interconnection obligations on incumbent LECs for purposes of transmitting and routing telephone exchange or exchange access traffic.

*b. Discussion.* 15. We agree with ALTS that the interconnection obligations of section 251 of the Act apply equally to facilities and equipment used to provide data transport functionality and voice functionality. Because advanced services that provide members of the public with a transparent, unenhanced transmission path are telecommunications services, all carriers offering such services are subject to the requirements of section 251(a), including the interconnection obligation set out in section 251(a)(1). In addition, because such services offered by an incumbent LEC are either "telephone exchange services" or "exchange access," the incumbent LEC is subject to the interconnection obligations of section 251(c). Thus, any telecommunications carrier in need of interconnection with an incumbent LEC network "for purposes of transmitting and routing telephone exchange traffic or exchange access traffic or both" is entitled to interconnection pursuant to section 251(c)(2) of the Act.

16. For purposes of determining the interconnection obligation of carriers, the Act does not draw a regulatory distinction between voice and data services. In particular, the Commission drew no such distinction in the *Local Competition Order*, when it required incumbent LECs to offer interconnection with competitors for the transmission and routing of telephone exchange and exchange access traffic. Thus, the interconnection obligations of incumbent LECs apply to packet-switched as well as circuit-switched services.

17. The ability of competitive LECs to interconnect with incumbent LEC data networks "will permit all carriers, including small entities and small incumbent LECs, to plan regional or national networks using the same interconnection points in similar networks nationwide." Our rules make it possible for competing telecommunications providers to offer seamless service to end-users by

interconnecting with incumbents' networks. We therefore grant the ALTS request that we declare that the interconnection obligations of sections 251(a) and 251(c)(2) apply to incumbents' packet-switched telecommunications networks and the telecommunications services offered over them.

18. We reject BellSouth's argument that Congress intended that section 251(c) not apply to new technology not yet deployed in 1996. Nothing in the statute or legislative history indicates that it was intended to apply only to existing technology. Moreover, Congress was well aware of the Internet and packet-switched services in 1996, and the statutory terms do not include any exemption for those services.

#### 4. Unbundled Network Elements

a. *Background.* 19. We next consider the unbundling obligations of section 251(c)(3). Section 251(c)(3) requires incumbent LECs to "provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory \* \* \*." Section 153(29) defines "network element" to include any "facility or equipment used in the provision of a telecommunications service" along with the "features, functions, and capabilities that are provided by means of such facility or equipment." The Commission noted in the *Local Competition Order*, however, that section 251(d)(2) gave it authority "to refrain from requiring incumbent LECs to provide all network elements for which it is technically feasible to provide access." In considering whether to refrain from requiring the unbundling of a particular network element, the Commission is to weigh the standards set out in section 251(d)(2), as well as any other standards the Commission considers consistent with the objectives of the 1996 Act.

20. So as to "promote efficient, rapid, and widespread new entry," the Commission identified a minimum list of seven network elements that incumbent LECs must make available to new entrants. The Commission did not identify DSLAMs or packet switches as network elements that incumbent LECs must unbundle. It emphasized, however, that its list was a minimum one, because an exhaustive list would not accommodate changes in technology or differing local conditions. Further, the Commission noted that it might

identify "additional, or perhaps different" unbundling requirements in the future.

b. *Discussion.* (1) *Loops.* 21. We grant the ALTS request for a declaratory ruling that incumbent LECs are required, pursuant to section 251(c)(3) of the Act, to provide unbundled loops capable of transporting high speed digital signals. ALTS asserts that competitive LECs are having extreme difficulty obtaining the digital loops needed to provide advanced services. We agree with ALTS that, if we are to promote the deployment of advanced telecommunications capability to all Americans, competitive LECs must be able to obtain access to incumbent LEC xDSL-capable loops on an unbundled and nondiscriminatory basis.

22. In the *Local Competition Order*, the Commission identified the local loop as a network element that incumbent LECs must unbundle "at any technically feasible point." It defined the local loop to include "two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL, and DS1-level signals." To the extent technically feasible, incumbent LECs must "take affirmative steps to condition existing loop facilities to enable requesting carriers to provide services not currently provided over such facilities." For example, if a carrier requests an unbundled loop for the provision of ADSL service, and specifies that it requires a loop free of loading coils, bridged taps, and other electronic impediments, the incumbent must condition the loop to those specifications, subject only to considerations of technical feasibility. The incumbent may not deny such a request on the ground that it does not itself offer advanced services over the loop, or that other advanced services that the competitive LEC does not intend to offer could be provided over the loop. As the Commission stated in the *Local Competition Order*, "section 251(c)(3) does not limit the types of telecommunications services that competitors may provide over unbundled elements to those offered by the incumbent LEC."

23. The incumbent LECs' obligation to provide requesting carriers with fully functional conditioned loops extends to loops provisioned through remote concentration devices such as digital loop carriers (DLC). The Commission concluded in the *Local Competition Order* that it was "technically feasible" to unbundle loops that pass through an integrated DLC or similar remote concentration devices, and required

incumbent LECs to unbundle such loops for competitive LECs.

24. To the extent that a competitive LEC cannot obtain nondiscriminatory access to an xDSL-capable loop, or any other loop capabilities to which it is entitled by virtue of section 251(c)(3) and the *Local Competition Order*, the competitive LEC can pursue remedies before the Commission and the appropriate state commissions. We note that the Commission has recently adopted an expedited complaint process to resolve these types of competitive issues in an accelerated fashion.

25. Under our existing rules, incumbent LECs are also required to provide competing carriers with nondiscriminatory access to the operations support systems (OSS) functions for pre-ordering, ordering, and provisioning loops. If new entrants are to have a meaningful opportunity to compete, they must be able to determine during the pre-ordering process as quickly and efficiently as can the incumbent, whether or not a loop is capable of supporting xDSL-based services. An incumbent LEC does not meet the nondiscrimination requirement if it has the capability electronically to identify xDSL-capable loops, either on an individual basis or for an entire central office, while competing providers are relegated to a slower and more cumbersome process to obtain that information. In the NPRM below, we seek comment on whether we should adopt any additional rules to ensure that competing providers have nondiscriminatory access to the loop information they need to provide advanced services.

(2) *Other Network Elements.* 26. We further grant ALTS' petition to the extent that ALTS requests a declaratory ruling that advanced services are telecommunications services, and that the facilities and equipment used to provide advanced services are network elements subject to the obligations in section 251(c). Given our conclusion above that advanced services offered by incumbent LECs are telecommunications services, all equipment and facilities used in the provision of advanced services are "network elements" as defined by section 153(29).

27. We seek comment in the NPRM below on the specific unbundling obligations that would apply to the network elements used to provide advanced services. We note, for example, that the section 251(c)(3) unbundling requirement is subject to the question of technical feasibility. We seek comment in the NPRM on whether the Commission should weigh any

criteria under section 251(d)(2) other than those expressly listed in that provision to determine the extent to which network elements used to provide advanced services should be unbundled.

#### 5. Resale Obligations Under Section 251(c)(4)

(a) *Background.* 28. Section 251(c)(4) requires incumbent LECs to offer for resale at wholesale rates "any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." The Commission held in the *Local Competition Order* that this obligation extends to *all* telecommunications services, not merely voice services, that an incumbent LEC provides to subscribers who are not telecommunications carriers. The Commission concluded that an incumbent LEC must establish a wholesale rate for every retail service that: (1) meets the statutory definition of a "telecommunications service," and (2) is provided at retail to subscribers who are not telecommunications carriers. The Commission concluded, however, that exchange access services are generally offered to telecommunications carriers rather than retail subscribers, and thus were not subject to the provisions of section 251(c)(4).

(b) *Discussion.* 29. Given our determination above that advanced services offered by incumbent LECs are telecommunications services, by the plain terms of the Act, incumbent LECs have the obligation to offer for resale, pursuant to section 251(c)(4), all advanced services that they generally provide to subscribers who are not telecommunications carriers. The Commission in the *Local Competition Order* similarly emphasized that the resale obligation extends to all such telecommunications services, including advanced services.

30. To the extent that advanced services are local exchange services, they are subject to the resale provisions of section 251(c)(4). In the *Local Competition Order*, however, the Commission concluded that exchange access services are not subject to the provisions of section 251(c)(4) because "[t]he vast majority of purchasers of interstate access services are telecommunications carriers, not end users." To the extent that advanced services are exchange access services, we believe that advanced services are fundamentally different from the exchange access services that the Commission referenced in the *Local Competition Order* and concluded were not subject to section 251(c)(4). We

expect that advanced services will be offered predominantly to residential or business users or to Internet service providers. None of these purchasers are telecommunications carriers. We examine this issue further and propose specific requirements in the NPRM below.

#### 6. Collocation

a. *Background.* 31. In order to provide advanced services, new entrants may need to collocate equipment on the incumbent LEC's premises for interconnection and access to network elements. Congress recognized competing providers' need for collocation in section 251(c)(6) of the Act, which requires incumbent LECs to provide "for the physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations." In the *Local Competition Order*, the Commission implemented specific minimum requirements to implement the collocation requirements of section 251(c)(6). The Commission adopted rules for, among other things, space allocation and exhaustion, types of equipment that could be collocated, and LEC premises where parties could collocate equipment.

32. ALTS asserts that excessive rates and unreasonably burdensome terms and conditions for collocation are blocking competitive entry into data service markets. As a result, ALTS requests that we initiate proceedings to help ensure implementation of section 251 and 252 of the Act with respect to deployment of advanced services. Among other requests, ALTS asks us to exercise our authority under section 251(c)(6) of the Act and establish additional rules governing collocation arrangements.

b. *Discussion.* 33. We conclude that the availability of cost efficient collocation arrangements is essential for the deployment of advanced services by facilities-based competing providers. Given incumbent LECs' statutory duty to provide physical collocation on just, reasonable, and nondiscriminatory rates, terms, and conditions, we believe that incumbent LECs have a statutory obligation to offer cost efficient and flexible collocation arrangements. In addition, we expect that incumbent LECs will fulfill their statutory collocation duty by taking steps to offer collocation arrangements that permit

new entrants to provide advanced services using equipment that the new entrant provides. Such steps include offering collocation to competing providers in a manner that reduces unnecessary costs and delays for the competing providers and that optimizes the amount of space available for collocation. We conclude that measures that optimize the available collocation space and that reduce costs and delays for competing providers are consistent with an incumbent LEC's obligation under both the statute and our rules. In addition, we agree with ALTS that we should build upon our current physical and virtual collocation requirements adopted in the *Expanded Interconnection* and *Local Competition* proceedings to ensure that our rules promote, to the greatest extent possible, the rapid deployment of advanced telecommunications capability to all Americans. We, therefore, propose specific additional physical and virtual collocation requirements in the NPRM below.

#### B. Forbearance and LATA Boundary Modifications

##### 1. Background

34. As discussed above, sections 251(c)(3) and (4) require incumbent LECs to provide nondiscriminatory access to unbundled network elements and to offer for resale, at wholesale rates, any telecommunications service the carrier provides at retail. Section 271(b)(1) provides that a BOC or BOC affiliate "may provide interLATA services originating in any of its in-region States" only "if the Commission approves the application of such company for such State under [section 271(d)(3)]." Under section 271(d)(3), the Commission may grant a BOC authorization to originate in-region, interLATA services only if it finds that the BOC has met the competitive checklist set forth in section 271(c)(2)(B) and other statutory requirements.

35. Section 706(a) of the 1996 Act instructs the Commission and each state commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans \* \* \* by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, *regulatory forbearance*, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment."

36. Section 10 of the Communications Act requires the Commission to forbear from applying any regulation or any

provision of the Communications Act to telecommunications carriers or telecommunications services, or classes thereof, if the Commission determines that certain conditions are satisfied. Section 10(d) specifies, however, that "[e]xcept as provided in section 251(f), the Commission may not forbear from applying the requirements of section 251(c) or 271 under [section 10(a)] until it determines that those requirements have been fully implemented."

37. In their petitions, Ameritech, U S WEST, Bell Atlantic, and SBC seek regulatory relief from the application of section 251 and/or section 271 through Commission forbearance from applying those sections or through LATA boundary changes. Recognizing that the Commission may not forbear from application of sections 251(c) and 271 under section 10(a) until the requirements in those sections have been fully implemented, petitioners seek forbearance pursuant to section 706(a). Petitioners contend that section 706(a) constitutes an independent grant of forbearance authority that encompasses the ability to forbear from sections 251(c) and 271. Ameritech, Bell Atlantic, and U S WEST seek regulatory relief not only to provide xDSL-based services to end users, but also to obtain freedom to become Internet backbone providers. Ameritech and U S WEST, notwithstanding their request here for LATA boundary changes, argue that this relief would not affect their compliance with section 271 for voice services.

## 2. Discussion

*a. Forbearance.* 38. After reviewing the language of section 706(a), its legislative history, the broader statutory scheme, and Congress' policy objectives, we agree with numerous commenters that section 706(a) does not constitute an independent grant of forbearance authority or of authority to employ other regulating methods. Rather, we conclude that section 706(a) directs the Commission to use the authority granted in other provisions, including the forbearance authority under section 10(a), to encourage the deployment of advanced services.

39. To determine whether section 706(a) constitutes an independent grant of forbearance authority, we look first to the text of the statute. We recognize that the language of section 706 directs the Commission to encourage the deployment of advanced services "by utilizing \* \* \* regulatory forbearance \* \* \* ." It is not clear from the text of section 706(a), however, whether Congress intended that provision to constitute an independent grant of forbearance authority, or, alternatively,

a directive that the Commission use forbearance authority granted elsewhere, in encouraging the deployment of advanced services.

40. Because the language of section 706(a) does not make clear whether section 706(a) constitutes an independent grant of forbearance authority, we look to the broader statutory scheme, its legislative history, and the underlying policy objectives to resolve the ambiguity. We examine the structure of the 1996 Act as a whole. As the courts have recognized, "[t]he literal language of a provision taken out of context cannot provide conclusive proof of congressional intent, any more than a word can have meaning without context to illuminate its use." Rather, when we are "charged with understanding the relationship between two different provisions within the same statute, we must analyze the language of each to make sense of the whole."

41. As stated above, section 10(d) expressly forbids the Commission from forbearing from the requirements of sections 251(c) and 271 "until it determines that those requirements have been fully implemented." There is no language in section 10 that carves out an exclusion from this prohibition for actions taken pursuant to section 706.

42. If section 706(a) were an independent grant of authority, as the BOCs argue, then it would allow us to forbear from applying sections 251(c) and 271 regardless of whether either section were fully implemented. Sections 251(c) and 271 are cornerstones of the framework Congress established in the 1996 Act to open local markets to competition. The central importance of these provisions is reflected in the fact that they are the only two provisions that Congress carved out in limiting the Commission's otherwise broad forbearance authority under section 10. We find it unreasonable to conclude that Congress would have intended that section 706 allow the Commission to eviscerate those forbearance exclusions after having expressly singled out sections 251(c) and 271 for different treatment in section 10.

43. We are not persuaded by Bell Atlantic's argument that a conclusion that section 706(a) confers no independent authority would make that section redundant. On the contrary, we conclude that section 706(a) gives this Commission an affirmative obligation to encourage the deployment of advanced services, relying on our authority established elsewhere in the Act. Our actions and proposals in this Order and

NPRM make clear that this obligation has substance.

44. Furthermore, we find nothing in the legislative history of section 706 to indicate that Congress gave us independent authority in section 706(a) to forbear from provisions of the Act. Section 706 was adopted contemporaneously with the forbearance authority in section 10, with section 706 contained in section 304 of the Senate version of the Communications Act of 1996, and the forbearance authority that was later included in section 10 contained in section 303 of that bill. Thus, when enacting section 706, Congress was well aware of the explicit exclusions of our forbearance authority in section 10(d). Congress presumably would have stated explicitly that those exclusions would not apply to forbearance under section 706 had it so intended. We are not persuaded by Ameritech's argument that the statement in the Senate Commerce Committee's Report that section 706 is intended as a "fail-safe" indicates that Congress provided independent forbearance authority in section 706(a). The Senate Commerce Committee's Report makes clear that section 706 "ensures that advanced telecommunications capability is promptly deployed by requiring the [Commission] to initiate and complete regular inquiries," and then take immediate action if it determines that such capability is not being deployed to all Americans. The Report does not clarify, however, whether section 706 is an independent grant of regulatory authority or directs the Commission to use regulatory measures granted in other provisions of the Act.

45. Moreover, as a matter of policy, we believe that interpreting section 706, not as an independent grant of authority, but rather, as a direction to the Commission to use the forbearance authority granted elsewhere in the Act, will further Congress' objective of opening all telecommunications markets to competition, including the market for advanced services. As discussed above, because of the central importance of the requirements in sections 251(c) and 271 to opening local markets to competition, we consider these sections to be cornerstones of the framework Congress established in the 1996 Act. We find that this conclusion that section 706 does not provide the statutory authority to forbear from sections 251(c) and 271 will better promote Congress' objectives in the Act.

46. For the foregoing reasons, we conclude that, in light of the statutory language, the framework of the 1996 Act, its legislative history, and Congress'

policy objectives, the most logical statutory interpretation is that section 706 does not constitute an independent grant of authority. Rather, the better interpretation of section 706 is that it directs us to use, among other authority, our forbearance authority under section 10(a) to encourage the deployment of advanced services. Under section 10(d), we may not use that authority to forbear from applying the requirements of section 251(c) and 271 prior to their full implementation. Petitioners do not suggest that either section 251(c) or section 271 has been fully implemented, and we have no record on which to determine that either has been fully implemented. We, therefore, deny the BOC requests that we forbear from applying the requirements of sections 251(c) and 271. We seek comment in the NPRM below on whether there are avenues other than forbearance that might allow us to lessen the obligations of these sections in appropriate circumstances.

47. Ameritech also requests forbearance pursuant to section 706 from application of section 272's requirements if we grant its request to forbear from applying section 271's requirements. Because we deny that request for section 271 forbearance, we also deny Ameritech's request for section 272 forbearance.

48. In addition, SBC requests forbearance, under section 10: (1) from the dominant treatment of ADSL service to the extent that treatment results in the imposition of tariff filing requirements and other obligations under the Act and under parts 61 and 69 of the Commission's rules; and (2) from the obligations of section 252(i). Section 10(a) requires us to forbear from the application of a statutory provision or regulation if we determine that specific criteria are met. We conclude, on the record before us, that SBC has not demonstrated that the relief it requests pursuant to section 10 meets these criteria. In particular, to the extent that advanced services are offered by an incumbent LEC, we find, on the record before us, that it is consistent with the public interest to subject such

incumbents to full incumbent LEC regulation. We therefore deny SBC's requests for forbearance under section 10. We note, however, that, in the NPRM below, we address the regulatory status of an advanced services affiliate that competes without any unfair advantages derived from its affiliation with the incumbent. In particular, we tentatively conclude below that such an affiliate, to the extent it provides interstate exchange access services, should, under existing Commission precedent, be presumed to be nondominant and should not be required to file tariffs for its provision of any interstate services that are exchange access.

*b. LATA Boundary Modifications.* 49. As an alternative to forbearance from enforcing section 271, Ameritech, Bell Atlantic and U S WEST request that the Commission permit them to change LATA boundaries pursuant to section 3(25) of the Communications Act in order to create a large-scale "LATA" for packet-switched services. We decline to grant petitioners' requests for large-scale changes in LATA boundaries.

50. Although section 3(25)(B) of the Act permits a BOC to modify LATA boundaries upon Commission approval, we conclude that petitioners' requests for large-scale changes in LATA boundaries amount to more than requests for "modified" LATAs as that term is used in section 3(25)(B). In *MCI v. AT&T*, the Supreme Court held that the Commission's authority to "modify" portions of the Communications Act means "moderate change" and not "basic and fundamental changes in the scheme created by [the section at issue]" We conclude that such large-scale changes in LATA boundaries for packet-switched services as proposed by petitioners would effectively eliminate LATA boundaries for such services.

51. Such far-reaching and unprecedented relief could effectively eviscerate section 271 and circumvent the procompetitive incentives for opening the local market to competition that Congress sought to achieve in enacting section 271 of the Act. We conclude, therefore, that the requests for

large-scale changes in LATA boundaries, such as Ameritech's request for a global, "data LATA," are functionally no different than petitioners' requests that we forbear from applying section 271 to their provision of these services. It would exalt form over substance if we were to grant the requested large-scale changes in LATA boundaries. In the NPRM below, we seek comment on whether the Commission should, in certain circumstances, modify LATA boundaries to provide targeted relief.

### C. Ordering Clauses

52. Accordingly, it is ordered that, pursuant to sections 1-4, 10, 201, 202, 251-254, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 160, 201, 202, 251-254, 271, and 303(r), the order is hereby adopted. The requirements adopted in this Order shall become effective September 23, 1998.

53. *It is further ordered that*, pursuant to sections 1-4, 10, 201, 202, 251-254, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 160, 201, 202, 251-254, 271, 272, and 303(r), the Petitions filed by ALTS, Ameritech, SBC, U S WEST, and Bell Atlantic are granted to the extent described herein and otherwise denied.

54. *It is further ordered that*, pursuant to sections 1-4, 10, 201, 202, 251-254, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 160, 201, 202, 251-254, 271, and 303(r), the Petition filed by the Alliance for Public Technology is granted to the extent described herein.

### List of Subjects in 47 CFR Parts 51, 64, and 68

Communications common carriers, Communications equipment, Local exchange carrier, Telecommunications, Telephone.

Federal Communications Commission.

**Magalie Roman Salas,**  
Secretary.

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