

June 20, 2001

The Honorable W.J. "Billy" Tauzin
Chairman
Committee on Energy and Commerce
Rayburn House Office Building
Washington, DC 20515

Dear Chairman Tauzin:

Thank you very much for your June 12th letter and the attached Committee Staff memo regarding debate on the Luther-Wilson Amendment to H.R. 1542, the Internet Freedom and Broadband Deployment Act of 2001. We want to thank you and your staff for taking the time to write all of the Committee members on this important matter; and for your willingness to clarify your position. We especially appreciate the detailed memo that adeptly explained the regulatory and technical landscape of the "line sharing" obligation.

We agree that confusion has been a dominant trait with regard to discussion about the Luther-Wilson Amendment; and we think your letter and memo did an excellent job in detailing the current regulatory framework. However, we still maintain that we fundamentally disagree on several technical points (as illustrated by the memo) and consequently, we are compelled to address those technical points.

First, we continue to respectfully submit that your definition of "line sharing" is overly formal, technical and narrow. To be sure, line sharing as originally conceived in the FCC's 1999 Line Sharing Order dealt exclusively with the high frequency portion of a copper loop as an unbundled network element ("UNE"). Even there, however, the Commission stated that the line sharing obligation should not be defined by the age or nature of the deployed technology. The *spirit and intent* of the line sharing obligation is, and always has been, to provide competitive local exchange carriers ("CLECs") access to an incumbent local exchange carrier's ("ILEC's") local loop in order to spare consumers of the extra, needless costs of leasing or building separate lines. Line sharing is clearly a "loop" obligation. As such, we must define line sharing in a manner that captures all types of loops – including those advanced loops that consist of fiber, remote terminals, and copper. Indeed, as you point out in your letter and memo, the Line Sharing Order is supplemented by the Line Sharing Reconsideration Order ("Recon Order"), whereby the Commission explicitly imposes the line sharing obligation on the "*entire loop, even where the incumbent has deployed fiber in the loop.*"

Second, in response to the argument above, Committee staff chiefly argues that the FCC has never imposed an end-to-end transmission requirement over an ILEC's entire loop despite the ostensibly clear language of the Recon Order. As we understand the memo, the basis for this argument is that Digital Subscriber Line Access Multiplexers ("DSLAMs") are not included in the list of UNEs. That is, because CLECs cannot

ordinarily lease remote terminals and DSLAMs, the FCC has not defined line sharing in a manner that encompasses the entire loop, whereby the ILEC must guarantee unimpeded data transmission from central office to remote terminal to customer premises. According to the memo, “[f]or the Commission to create such an obligation, the Commission would have to require, at a minimum, that a CLEC have access on an unbundled basis to... a DSLAM housed in an ILEC’s remote terminal... at all times.”

We fail to follow this logic. Under current law, as your memo points out, a CLEC has *mandatory* access to a remote terminal in one of two ways. It can either (1) collocate its own DSLAM in the ILEC’s remote terminal; or (2) actually lease the ILEC’s DSLAM itself if the CLEC cannot collocate (due to space). In this regard, the CLEC *has access to each and every portion of the loop in one way or another*: it can lease the fiber and the copper portions of the loop; it can either collocate in the remote terminal or lease the DSLAM itself; and it can do so on an unbundled basis. To be sure, the CLEC will collocate its own DSLAM in the ILEC’s remote terminal if there is sufficient space. However, we fail to understand how this collocation mandate somehow nullifies the notion that line sharing applies to the entire loop regardless of loop architecture. After all, a collocation obligation is functionally equivalent to a UNE obligation for DSLAMs, because both requirements ensure the unimpeded transmission of data from central office to remote terminal to customer premises. In other words: how does a collocation mandate substantively trump the Recon Order’s explicit language stating that “line sharing applies to the entire loop, even where the incumbent has deployed fiber in the loop”? In fact, the collocation requirement proves the exact opposite, *viz.*, the CLEC has access to sub-loops and remote terminals, and as a result, the ILEC must provide end-to-end transmission from central office to customer premises.

Furthermore, a CLEC is not restricted to obtaining access to an upgraded loop at the remote terminal. To the contrary, as the Commission held in the Recon Order, a CLEC “must have the option to access [a fiber-fed] loop at either [the remote terminal or the central office], not the one that the incumbent chooses as a result of network upgrades entirely under its own control.” Critically, the Commission held that “it would be inconsistent with the intent of the Line Sharing Order and the statutory goals behind sections 706 and 251 of the 1996 Act to permit increased deployment of fiber-based networks by incumbent LECs to unduly inhibit the provision of xDSL services.”

Third, with regard to the UNE Remand Order, Committee Staff does not mention that the Line Sharing Order is merely an extension of the UNE Remand Order. In fact, the Line Sharing Order was based upon the regulatory foundation set by the UNE Remand Order. We maintain that one simply cannot separate the two. For example, the UNE Remand Order defines a “loop” – as the transmission capability from the customer premises to the ILEC’s central office – and it specifies the processes, testing, and operation support systems that must be in place to access a loop. Consequently, we believe the collective line sharing orders are virtually meaningless without the UNE Remand Order.

Fourth, your letter and accompanying memo rightly points out that the FCC is currently deliberating on the technical feasibility of this regulatory structure. It is possible that the FCC will subsequently rule that line sharing over the entire loop on an unbundled basis may present certain technical difficulties. However, this is not a basis for opposition to our amendment. Because we recognize the complicated nature of this technology, the Luther-Wilson Amendment specifically and explicitly ensures that the Commission will continue to deliberate on this matter. If in course, the FCC decides to eliminate some of the obligations under its UNE Remand and Line Sharing Orders based on technical unfeasibility, nothing in the Luther-Wilson Amendment shackles the Commission from doing as such. That is precisely the purpose of our amendment: to preserve the status quo and concomitantly retain FCC authority to clarify that status quo.

Finally, Mr. Chairman, we want to emphasize that the explicit purpose of the Luther-Wilson Amendment, from the very beginning, was to preserve the UNE Remand Order and all of the Line Sharing Orders. We have never purported otherwise. As your memo skillfully lays out, these collective orders create an intricate web whereby CLECs have access to an ILEC's crucial network elements on an unbundled basis. We firmly believe that these collective orders are crucial in maintaining competition for traditional voice service, DSL service, or a combination of the two. Where we disagree is how these collective orders contribute to the concept of "line sharing" and to the promotion of telecommunications competition generally. Whatever our disagreements in this regard – which we believe to be largely semantic – we argue these collective orders are supremely worthy of preservation. As many of us stated during the Committee mark-up, we simply wish to enhance competition by preserving the status quo of those germane FCC orders already in effect.

It seems to us that the true crux of our disagreement is crystalized in the last paragraph of the Committee Staff's memo: "[I]mposing a line sharing requirement on hybrid fiber-copper transmission systems... would thwart investment in new technology and equipment, and set the precedent that certain carriers will forever have to allow their competitors to use their facilities, regardless of whether those facilities were deployed years ago or years from now, and of whether such facilities were being used for telephone service or a completely new service." We suspect this is the fuel that truly drives the engine of opposition against the Luther-Wilson Amendment. While we respectfully and firmly disagree with this economic and financial assessment, we do believe we should move away from technical and arcane arguments over the semantics of "line sharing" and towards fundamental notions of fairness and competition. We truly believe that the build-out occurring today, under the rules we wish to preserve, illustrates that this economic argument has little merit. If anything, we believe competition would be inhibited were CLECs constrained to use only the aged, all-copper loops that ILECs themselves evidently deem inadequate for their own purposes. But we will never be able to flesh out the pros and cons of such arguments if we continue to be bogged down in technical minutiae.

Thank you very much again for your letter and memo. We hope we can continue to have this lively and respectful dialogue on behalf of the American consumer. The

future of telecommunications is at stake, and we are glad our committee is playing a role in shaping the make up of that exciting future.

Sincerely,

Sincerely,

BILL LUTHER
Member of Congress

HEATHER WILSON
Member of Congress