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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)

CC Docket No. 96-98

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**COMMENTS OF
THE INFORMATION TECHNOLOGY INDUSTRY COUNCIL**

The Information Technology Industry Council ("ITI")¹ hereby submits these comments in response to the Commission's Notice of Proposed Rulemaking ("*Notice*") in the above-captioned proceeding addressing the interconnection and unbundling provisions of the Telecommunications Act of 1996 ("1996 Act").² ITI urges the Commission to

¹ ITI, formerly known as the Computer and Business Equipment Manufacturers Association ("CBEMA"), is a leading trade association of manufacturers and vendors of computer, computing devices, office equipment, and information services.

² Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (released April 19, 1996).

ensure that the interconnection and unbundling rules adopted in this proceeding will foster competition in the provision of a variety of communications services, including advanced services. The 1996 Act has as a primary goal establishing “a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans.”³ It is particularly important for the Commission to adopt rules that facilitate and stimulate competition to create maximum choice and flexibility for users. Nondiscriminatory interconnection to local exchange facilities by all parties is a critical factor in meeting this goal.

I. INTRODUCTION AND OVERVIEW

As the Commission itself noted, this rulemaking was designed to “devise a new national policy framework . . . which accommodates and accelerates technological change and innovation.”⁴ With respect to this objective, the Commission seeks comment upon the rules it proposes in order to implement Sections 251 and 252 of the 1996 Act. The Commission seeks further comment upon how it can develop rules that foster the goals of Section 706(a) of the 1996 Act which provides that the Commission “shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to

³ S. Conf. Rep. No. 104-230, 104th Cong. 2d Sess. 1 (1996).

⁴ *Notice* at ¶ 2.

all Americans . . . by utilizing, in a manner consistent with the public interest, . . . methods that remove barriers to infrastructure investment.” In light of these goals, ITI submits the following comments. In particular, ITI focuses upon the actions the Commission must undertake with respect to pricing, interconnection, collocation and unbundling necessary to ensure growth and competition in the delivery of services by new competitors that are eager to meet needs thus far unmet by the local exchange carriers (“LECs”). To achieve this, ITI urges the Commission to establish fair reasonable, uniform, national parameters governing collocation and the interconnection, unbundling and pricing of the local loop.

II. DISCUSSION

A. There Is a Significant Unmet Demand for the Provision of High Bandwidth Services

At present, there is a large, unfulfilled need for affordable, high bandwidth services. User needs are no longer satisfied by plain old telephone service (“POTS”). The explosive proliferation of reasonably priced computer hardware and software combined with the increasing commercial and societal reliance upon the Internet and other high bandwidth applications has created an enormous opportunity for new competitive providers to satisfy consumer demand for high bandwidth transmission services.⁵

⁵ For example, personal computer sales in the U.S. in 1995 alone were estimated to be 22.9 million, of which approximately 8 million were estimated to be sales to the home. More than one third of all homes in the U.S. already have one or more personal computers. More than 80% of all the computers sold to the home today are pre-equipped with POTS

Local exchange facilities and access remain the bottleneck. Until full competition emerges, equal, nondiscriminatory access must be permitted to avoid local access being used as a lever to disadvantage competitive service providers. In order to facilitate some certainty in the marketplace with respect to local loop cost and allocation costs, and thereby encourage financial investment in this segment of the telecommunications market, the FCC should establish a baseline of fair and reasonable interconnection and unbundling terms and pricing policies during the course of this proceeding. ITI believes that the Commission's policies in this area are critical factors in allowing competitors to satisfy unmet demand. By using the implementation tools of Section 251 of the Act, the Commission may maximize the efficient use of existing and emerging distribution plant -- thereby satisfying the goals of Section 706(a) of the 1996 Act.

B. The FCC Should Establish National, Uniform Parameters Governing Interconnection, Unbundling, Collocation and Pricing

ITI strongly supports the FCC's tentative conclusion that it should establish uniform, nationwide parameters for the interconnection, unbundling, collocation and pricing of LEC service elements.⁶ ITI submits that a national scheme consisting of an inconsistent, unpredictable and potentially crippling patchwork of state rules regarding local competition.

modems; and about 17 million modems were sold in North America alone in 1995. Estimates of on-line and Internet users in the U.S. are in the neighborhood of 20 million users and growing.

⁶ See, e.g., Notice at ¶ 50, ¶ 119.

in particular, the interconnection, unbundling and provision of LEC transport elements, would inhibit potential new entrants, frustrate their ability to raise capital in the financial markets and would provide an enormous opportunity for incumbent LECs to inhibit or delay the interconnection efforts of new competitors -- thereby thwarting the purposes of the 1996 Act and frustrating the specific Congressional objective of facilitating the delivery of competitive services to all Americans.

ITI shares the Commission's belief that national rules "can be expected to reduce the capital costs of, and attract investment in, new entrants by enhancing the ability of the investment community to assess an entrant's business plan"⁷ Uniform national rules will enable competitors to assess their worst-case financial cost scenarios. Furthermore, national rules and standards should significantly reduce regulatory burdens and other entry costs, thereby increasing the speed with which competitors may enter and deliver their services to market.

C. Local Loops Should Be Unbundled on Fair Terms at Reasonable Rates in Order to Promote the Provision of Services by Competitors

The Commission's interconnection policy has made available a wide choice of services for users, system integrators, and specialized suppliers. The policy has maximized the ability of third parties to mix and match carrier offerings with other equipment, services, and functions to meet market demands. By requiring that carriers unbundle local loops and,

⁷ Notice at ¶ 30.

wherever necessary, appropriately condition local loops to carry digital signals, the Commission will enable new market entrants to, at a reasonable cost, offer a variety of services such as ISDN, ADSL or HDSL. A competitor that wished to serve a customer could then simply obtain an unbundled digital-ready local loop from the LEC, add the necessary electronics, and provide the customer with the appropriate level of high-speed access.

In implementing this policy, the FCC must ensure that the LEC lease the “dry copper” pair at reasonable rates, no greater than that which it charges other competitors that utilize the loop for voice traffic. Similarly, because certain LEC equipment, such as load coils, can interfere with the provision of high bandwidth services, LECs should be required to remove this equipment at a reasonable nonrecurring charge⁸.

D. The Maximum Rates, Terms and Conditions for Interconnection, Collocation, and Other Services to High Bandwidth Service Competitors Must Be Just, Reasonable and Nondiscriminatory

Just as the rates, terms and conditions for unbundling must be just, reasonable and nondiscriminatory, so too must the terms for interconnection, collocation and other services. Specifically, ITI maintains that in order for competitors to be able to successfully compete in the provision of competitive services they must be permitted to install and maintain their equipment wherever feasible, including at the central office (“CO”), Digital Loop Carrier (“DLC”) or Remote Terminal. Accordingly, the LEC should be permitted to refuse

⁸ The charges should be reimbursed on a prorated basis to the competitor if the customer thereafter reverts to another carrier.

installation of this equipment only for the reasons specified in the 1996 Act. Further, Commission rules should require LECs to allow collocation of equipment within the LEC CO at a reasonable cost.

In addition, ITI maintains that for these competitors to provide their services, the FCC must mandate that the LECs cross-connect a competitor's high-bandwidth equipment (e.g. ADSL, HDSL modems) at a reasonable, nondiscriminatory cost and perform such service during a reasonable period of time. Similarly, the LECs should be required to test customer lines at an affordable price and should require that such testing be completed within a reasonable period of time. The line test should provide information requested by the new entrant such as the estimated loop length, presence of load coils in the loop and whether the line is served from a DLC or Remote Terminal. The availability of such testing at affordable prices and in reasonable time frames will be essential to the survival of any high bandwidth service competitor and should be required by the Commission. Finally, in cases where the DLC is fed by fiber from the CO, the LECs should be required to offer to provide fiber from the DLC to the CO at reasonable cost-based rates.

E. The Commission Should Require the LEC to Engage in Good Faith Negotiations and Cooperate With Competitors in Market Trials of High Bandwidth Services

In accordance with the spirit of Section 251(c)(1) of the Act, the Commission should require that all LECs engage in good faith negotiations with high bandwidth competitors -- many of whom will be small to medium sized companies formed to address specific but

important niche technology markets. ITI remains concerned that, because of the smaller size of these companies, they may be treated differently by the LECs. Accordingly, a clear statement of nondiscrimination from the Commission regarding this issue would be of great assurance to this segment of the industry.

Further, because these high bandwidth competitors will likely be in a position to rapidly move to market with new and innovative services, the Commission should ensure that LECs not impose onerous time, financial or other conditions (prejudicial nondisclosure agreements, bond or indemnity and warranty requirements, or lengthy dispute resolution processes) upon the use of the network to introduce new services. In this regard, the Commission should set national guidelines regarding what constitutes a good faith negotiation.⁹ Similarly, the Commission should ensure that, in the event a dispute arises between a competitor and a LEC, there is a speedy mechanism for the resolution of the issues at hand.

III. CONCLUSION

There is currently a significant unmet need for high bandwidth services. The Commission's interconnection policies have created competitive markets for equipment and services. Continuation of those policies will help ensure that competition develops and flourishes in the provision of local telecommunications and advanced services. By fostering

⁹ See, e.g. Notice at ¶ 47.

competition, the Commission will maximize the efficient use of existing and emerging facilities and satisfy the requirements of Section 706(a) of the 1996 Act -- to make available "advanced telecommunications capability to all Americans."

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Fiona Branton" with a stylized flourish at the end.

Fiona Branton
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