DAVIS WRIGHT TREMAINE

LAW OFFICES

2600 CENTURY SQUARE · 1501 FOURTH AVENUE · SEATTLE, WASHINGTON 98101-1688
(206) 622-3150

DANIEL M. WAGGONER

RECEIVED

MAY 20 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

May 20, 1996

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Docket 96-98: Dialing Parity, Number Administration, and Access to Rights of Way

Dear Sir:

Enclosed for filing on behalf of NEXTLINK Communications, L.L.C. are comments on dialing parity, number adminstration and access to rights of way in response to the Commission's Notice of Proposed Rulemaking released April 19, 1996. An original and 16 copies are included for distribution to the Commissioners.

We have delivered by hand today a copy of this letter and the comments in hard copy and on 3.5" WordPerfect 5.1 diskette to Janice Myles; three copies of the comments to Gloria Shambley; and a copy of the comments to the International Transcription Service.

Please date stamp and return to the messenger the copy of this cover letter.

Sincerely,

Daniel M. Waggoner/BLC

Daniel M. Waggoner

Counsel for NEXTLINK
Communications, L.L.C.

Enclosures

cc: Janice Myles
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554
(hard copy and diskette)

Gloria Shambley
Network Services Division
Federal Communications Commission
2000 M Street, N.W., Suite 210
Washington, D.C. 20554
(three hard copies)

No. of Copies rec'd 0+16
List ABCDE

International Transcription Services, Inc.
2100 M Street, N.W. Suite 140
Washington, D.C. 20037
(hard copy)

BW/tm

RECEIVED
MAY 20 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

In the Matter of:	)	
	)	Docket No. 96-98
IMPLEMENTATION OF THE LOCAL COMPETITION PROVISIONS IN THE TELECOMMUNICATIONS ACT OF 1996	)	

COMMENTS OF NEXTLINK, L.L.C.
ON DIALING PARITY/NUMBER ADMINISTRATION/ACCESS TO
RIGHTS OF WAY

NEXTLINK COMMUNICATIONS, L.L.C.
J. Scott Bonney
Vice President
Regulatory and External Affairs
155 108th Ave. NE
Bellevue, Washington 98004
(206) 519-8900

DAVIS WRIGHT TREMAINE
Daniel M. Waggoner
2600 Century Square
1501 Fourth Avenue
Seattle, Washington 98101-1688
(206) 622-3150
Its Attorneys

MAY 20, 1996

INTRODUCTION AND SUMMARY

NEXTLINK COMMUNICATIONS, L.L.C. ("NEXTLINK"), a privately financed provider of competitive local service, files these comments on dialing parity, number administration and access to rights-of-way as directed in the Notice of Proposed Rulemaking released April 19, 1996. As indicated in its Comments filed in this NPRM on May 16, NEXTLINK supports implementation of the Act through a strong and detailed rulemaking by this Commission. As to the issues addressed here, NEXTLINK summarizes its comments as follows:

1. The Commission should promulgate implementing rules for Section 251(b)(4) and related provisions of Section 703 of the Act to establish heavy burdens of proof for utilities seeking to deny or burden access to poles, ducts, conduits or rights-of-way.

2. The Commission should adopt rules for dialing parity and number administration based on a recognition of the market power of the incumbent LECs and should specify that dialing parity and nondiscriminatory access require (a) presubscription and (b) equal access for competitive carriers to telephone numbers, operator services, directory assistance and directory listings.

3. The Commission should interpret Section 251(b)(3) broadly to require dialing parity for all telecommunications services; local dialing parity should be accomplished through number portability.

With regard to these subjects, NEXTLINK devotes the majority of these Comments to the issue of access to rights-of-way both

because this issue is particularly important to the rapid development of facilities-based competition and because it is an issue that has previously received less attention from this Commission.

A. Access to Rights-of-Way.

NEXTLINK already has substantial experience that demonstrates the importance of nondiscriminatory access to poles, ducts, conduits and rights-of-way. Indeed, in the early stages of constructing a facilities-based network such as NEXTLINK's, working out the details and achieving access to the facilities of existing utilities can be both time-consuming and extraordinarily expensive.[1] Nor are these delays and costs experienced in a nondiscriminatory or competitively neutral manner. Existing utilities or incumbent telecommunications carriers already have in place cooperative and practical arrangements that minimize both their administrative and operating expenses.

The obstacles for a new entrant such as NEXTLINK, moreover, are not limited to inaccessibility or high rates. Indeed, the panoply of burdensome terms and conditions governing access ranges from one-sided insurance, liability and indemnification provisions to complete bars to maintenance or repair by

---

[1] NEXTLINK has been forced to offer utilities "revenue sharing" arrangements and pay absurdly high rates in situations where it needed either ubiquitous access in a city or a critical point-to-point arrangement. For a provider like NEXTLINK that relies on a fiber network, access to locations for facilities functions as a true bottleneck.

NEXTLINK's employees once access is provided.[2] In addition, NEXTLINK often is forced to deal with multiple utilities within a particular locality - all within a timeframe in which there are numerous other demands on NEXTLINK's resources while it seeks to build a competitive network.

NEXTLINK provides this information to illustrate the variety of ways in which current arrangements for access to right-of-way can be discriminatory. The Commission's rules should address these varied problems in a comprehensive manner that will ensure competitive carriers are treated equally with incumbent competitors or, indeed, utilities that have not yet entered the telecommunications market.

1. The Commission's Rules Should Guarantee Physical Access to Facilities Unless the Utilities Satisfies a Heavy Burden of Proof.

The first step, of course, is the ability to physically locate fiber or other telecommunications facilities within or upon the pole, duct, conduit or right-of-way. As an initial proposition, the Act unquestionably establishes a right of access and the Commission properly recognizes that this fundamental right is vital to the development of local competition. NPRM ¶ 220. Nor is this right of access a limited one. Instead, it

---

[2] This type of contract is at a polar extreme from the sort of arrangement that is appropriate for co-carriers or in a peer-to-peer relationship. Today, NEXTLINK has no choice but to accept such contracts because access is essential to construction of its network and because there is no existing remedy or avenue of relief.

broadly applies both to "owned or controlled" facilities and rights-of-way (emphasis added).[3]

In NEXTLINK's experience there are a variety of public and private properties to which this right of access applies. These include building entrances where utilities or incumbent carriers routinely have easements or other rights of entry, franchises over public property, utility property itself, and a variety of other kinds of private property where the utility or incumbent carrier may have easements or other rights-of-way. Access to each of these kinds of property, or the facilities located on or under them, will prove essential to competitive entry for the provision of local service. This Commission's rules, therefore, also should be explicit in defining a right of access to a broad range of properties.

The Commission, moreover, should interpret the limitation on access in Section 703(f)(2) narrowly in light of the procompetitive purposes of the Act. Thus, a utility seeking to deny access should bear a heavy burden of proof to demonstrate either that there is "insufficient capacity" or that there are "reasons of safety, reliability and generally applicable engineering purposes" that support the denial of access.

Applying this principle, of course, will be simplest where a utility merely claims that it is reserving space for its own purposes even though the space is not yet in use. As to that

---

[3] The inclusion of "controlled" facilities or right-of-way is an important feature of the Act that deserves separate recognition in the Commission's rules. It guarantees access, for instance, where a utility or incumbent carrier has a right of entry agreement, an easement or a governmental franchise.

species of claim, the Commission should find that a "reservation" for future use does not satisfy the Act. More difficult, however, are situations where the existing pole or conduit truly has been filled to capacity before the competitive carrier arrives. In such a situation the Commission should demand that other alternatives be considered within the existing rights-of-way. These might involve replacement of poles or conduit to provide more capacity and a sharing of those costs under the standards developed by the Commission pursuant to Section 703(h) and (i).[4] Finally, and most fundamentally, such an interpretation would help effectuate the nondiscrimination principle of Section 703(f).

2. The Commission Should Require Equality in Rates for Access.

NEXTLINK fully appreciates that the Commission will be undertaking a future rulemaking on rates under Section 703(e). However, NEXTLINK is already building facilities and thus requires access today. Furthermore, in some localities NEXTLINK is paying unreasonable and excessive rates for attachment or access. To address these problems, NEXTLINK urges the Commission to provide clear guidance on the application of the nondiscrimina-

---

[4] By separately addressing facilities such as poles, ducts and conduit as well as rights-of-way, the Act contemplates the possibility that, i.e., a pole or conduit may be filled, while there is still room in the right-of-way. This makes sense as a practical matter, comports with industry practice, which frequently requires rearrangement of facilities, and also is consistent with Congress' inclusion of 703(i), which addresses assignment of costs where rearrangement or replacement is required.

tion principle to rates for pole attachments and access in the near term.

As a general rule, the Act contemplates that the rates for attachments by cable television operators are an appropriate short term surrogate. Section 703(3). The most logical interpretation of these provisions, therefore, would be to require payment for all kinds of access, whether to poles, conduit or otherwise, at the rates currently paid by cable television operators.

In the longer run, of course, this Commission will be developing rules to provide for just, reasonable and nondiscriminatory rates for all carriers. NEXTLINK looks forward to participating in those proceedings to bring to bear the perspective of a newer entrant that is seeking to bring facilities-based competition to the market.

3. The Commission Should Apply the Nondiscrimination Principle to other Terms and Conditions for Access.

As NEXTLINK has previously noted, the other terms and conditions of pole attachment or conduit access agreements may be extraordinarily burdensome. Because the utility with the existing ubiquitous network and rights-of-way exerts monopoly control over an essential facility for local service, the new competitive carrier has little choice but to comply with onerous terms and conditions. Through its rules, however, the Commission could appropriately address these other terms and conditions and require that they, too, be subject to the nondiscrimination principle.

Following the approach it suggested as to other nondiscrimination provisions in the Act, NEXTLINK urges the Commission to require nondiscriminatory application of the terms and conditions for access in contracts or other agreements with incumbent LECs or other utilities. Thus, a new, competitive entrant such as NEXTLINK should be able to obtain the same contractual or other relationship provided to an incumbent carrier or to a utility's affiliates. In order to make such a requirement workable, moreover, the Commission should require disclosure of such contracts or arrangements upon the request of the carrier seeking access.

B. Dialing Parity.

NEXTLINK strongly supports the Commission's tentative conclusion that the statutory duty of dialing parity applies to all types of telecommunication services. NPRM, ¶ 206. As this Commission properly notes, moreover, achievement of dialing parity for local service should be addressed primarily through the number portability requirements of Section 251(b)(2) and (e)(2). See also Section 271(c)(2)(B) (dialing parity requirements for Bell Operating Companies).

Both the specific statutory provisions, and the overall intent of the Act to ensure a nationwide policy for competitive telecommunications, support the Commission's tentative conclusion. From a consumer's perspective, and thus by necessity the perspective of the marketplace, there is no reason to distinguish interstate from intrastate or interLATA from intraLATA. Indeed, Congresses' pro-competitive goals can be accomplished most effi-

ciently and quickly through a system of dialing parity that is as simple and certain as possible for consumers and the industry.

Given the extensive history of presubscription for interLATA services, the Commission's tentative conclusion to apply presubscription as the preferred method for dialing parity makes great sense. NPRM, ¶ 207. Although NEXTLINK generally believes that the modified 2-PIC methodology is the best because it already had been proven in the marketplace, NEXTLINK believes the more critical goal is adoption of a uniform, nationwide standard. Otherwise, customers and carriers will suffer from the costs, inefficiencies and confusion of a multitude of potentially inconsistent methods. To that end, NEXTLINK urges the Commission to adopt rules for balloting and allocation of costs[5] based on its orders on interLATA presubscription. Those rules are reasonable and have already been defined through extensive marketplace experience.

C. Access to Numbering Resources.

Nondiscriminatory access to numbering resources, operator services, directory services, directory assistance and directory listings will be critical during the early stages of the development of local competition. Indeed, for carriers such as NEXTLINK that are developing competitive local service concurrently in a number of localities, quick and efficient access to these resources and services will be vital. Otherwise, consumers

---

[5] The allocation of costs to all carriers, including the incumbent local carrier, is consistent with the Commission's prior decision on presubscription. It is also appropriate under the direction of Section 251(e)(2) -- that costs should be borne on a competitively neutral basis.

considering a competitive choice will be forced to abandon service options that are an integral part of local service.

The Commission's interpretation of the Act in ¶ 217, requiring nondiscriminatory access to directory assistance and directory listings, thus is important in ensuring a seamless network of networks for consumers. The duty under Section 251(b)(3) also should include a requirement of resale of local directory assistance services to competitors - without that requirement, customers of competitors will not receive the same quality of access to directory assistance as is provided to customers of incumbent local carriers.

CONCLUSION

This Commission should pay particular attention in this phase of the rulemaking to the requirements for nondiscriminatory access to facilities and rights-of-way. While the other issues presented are important, the Commission can rely to a great extent on existing decisions or practices in addressing them. By contrast, this Commission has an opportunity to write on a clean slate when it addresses the essential issue of competitive carrier access to a bottleneck that could stall facilities-based competition.

DATED this 20th day of May, 1996.

NEXTLINK COMMUNICATIONS, L.L.C.
J. Scott Bonney, Vice President
Regulatory and External Affairs

DAVIS WRIGHT TREMAINE
Its Attorneys

By Daniel Waggoner/BSC
Daniel Waggoner