

National Cable Television Association

July 1, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW - Room 222
Washington, D.C. 20554

Re: CC Docket No. 96-98

Dear Mr. Caton:

On June 28, 1996, Daniel Brenner, Neal Goldberg and David Nicoll of the National Cable Television Association, Inc. ("NCTA"), and Howard Symons, of Mintz, Levin, Cohn, Ferris, Glosvsky and Popeo, P.C., representing NCTA met with Richard Welch, Chief, Policy and Program Planning Division, Common Carrier Bureau to discuss NCTA's position on a number of issues in the above referenced docket. The presentation tracked NCTA's comments in that docket. A copy of the material provided to Mr. Welch is attached from inclusion in CC Docket No. 96-98.

If you have any questions, please contact the undersigned.

Sincerely,


Neal M. Goldberg

cc: Richard Welch

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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**NATIONAL CABLE TELEVISION ASSOCIATION
PRIORITIES IN CC DOCKET NO. 96-98**

1. *The FCC Can and Should Adopt Uniform National Standards*

The 1996 Act established a national policy framework to promote telecommunications competition. Minimum national standards will permit the construction and operation of regional networks that benefit consumers by their economies of scale and scope. Regulatory consistency will provide the climate necessary to promote investment in competitive facilities.

2. *The Statute Draws a Clear Distinction Between Incumbent Local Exchange Carriers and Competitive Local Exchange Carriers*

There is no need -- and it is contrary to the statute -- for the Commission or any State to impose wholesale resale, unbundling, and other incumbent local exchange carrier ("ILEC") requirements on competitive local exchange carriers ("CLECs"). The FCC should preclude State efforts to impose ILEC requirements on CLECs.

3. *Facilities-Based Competition Should not be Undermined by the Wholesale Discount for Resale Rates or the Rate for Repackaged Unbundled Elements*

The "avoided cost" standard for calculating the wholesale discount preserves the viability of resale, but stops short of mandating a deep discount that would deter facilities-based competition. It applies to all retail rates, but excludes only short-run incremental costs from those rates. At least until short-run incremental costs can be identified, the maximum allowable wholesale discount on any retail rate should be no more than 10 percent.

4. *In the Long-Term, Reciprocal Compensation for Call Transport and Termination Should be Based Solely on Total Service Long-Run Incremental Costs (TSLRIC) Without Any Loading of Joint and Common Costs*

TSLRIC without any overheads, common costs, legacy costs, or markups is the appropriate pricing standard for transport and termination. The Act mandates that these rates be based on the incremental cost to terminate an additional call originating on another carrier's network. Reciprocal compensation should apply to all traffic from the point of interconnection to the end user. All intraLATA traffic rated by a CLEC as local is entitled to transport and termination at TSLRIC, regardless of whether it would be rated as local by the ILEC.

5. *Bill and Keep Should be Adopted as an Interim Compensation Arrangement for Transport and Termination*

The Commission has the authority to adopt bill and keep as an interim solution for pricing reciprocal compensation. An interim solution is necessary because of the

procedural delays in developing cost studies to implement TSLRIC and because of the lack of full number portability. Bill and keep is an efficient means of compensation, especially when traffic is "in balance." At least with respect to competitors that serve residential and business customers generally, traffic will naturally be in balance regardless of the competitor's market share. Bill and keep is appropriate because both carriers derive benefit from the arrangement, and because the relevant economic costs to each carrier are close to zero. Bill and keep also avoids the transaction costs of measuring, auditing, and billing the exchange of traffic. For these reasons, bill and keep may also be the most equitable long term solution. Significantly, non-competing ILECs have employed bill and keep arrangements for most of this century.

6. *Interconnection Must Reflect the Co-Carrier Relationship Between Incumbents and New Entrants*

Interconnection must be at any "technically feasible point." At a minimum, interconnection should be permitted at access tandems, end offices, and any other technically feasible mid-span point. Any prior or existing interconnection arrangement offered by an incumbent LEC -- including arrangements between non-competing ILECs -- is technically feasible

7. *Performance Standards*

All interconnection agreements must be subject to clearly defined performance standards (e.g., service intervals) to discourage unreasonable and unsatisfactory delivery of services by competitive providers

8. *Enforcement Mechanisms*

Swift and sure enforcement mechanisms are necessary to ensure that carriers comply with Commission rules and standards. Where new entrants have no alternatives other than the ILEC for the provision of certain services, enforcement principles and penalties must be established to prevent unjust, unreasonable, and discriminatory practices. Complaint procedures should have short timetables and place the burden of proof on the incumbent to prove compliance. There should be substantial penalties for non-compliance, including reduced rates for services and facilities that have been delayed or degraded. States should be the initial enforcers with a right of appeal to the FCC if the state fails to act timely. The full range of fines and forfeitures should also be applied as needed.

9. *Standards for Good Faith Negotiations*

ILECs are required to negotiate interconnection agreements in good faith. Monopoly providers have utilized delay tactics and bad-faith negotiating strategies to thwart interconnection and obstruct competition. National guidelines on what constitutes

good faith (and bad faith) negotiations are necessary, with resolution of bad faith negotiation disputes left to the states. ILECs should not be permitted to use the "good faith" requirement imposed on requesting carriers to require CLECs to divulge proprietary service and marketing plans, financial data, and other confidential information.

10. *The FCC Should Establish a Minimum Set of Unbundled Network Elements That Can be Expanded in Response to CLEC Requests*

The initial minimum set of unbundled network elements should include: unbundled local loop transmission, trunk side local transport, and local switching; access to necessary ancillary services such as 911 and E911 services, directory assistance services, and operator services; and access to data bases and associated signalling necessary for call routing and completion. There is no need at this point for a laundry list of elements. If CLECs request additional elements, however, the burden should be on the ILEC to show that the request is not technically feasible.

11. *Pricing for Unbundled Network Elements Must Be Consistent with the Statute*

These charges should be set on the basis of total service long-run incremental cost, plus an additional amount for forward looking joint and common costs. There should be no allowance for embedded costs or implicit universal service subsidies. On an interim basis, the use of benchmarks or proxies for pricing unbundled network elements will permit swift implementation of the 1996 Act. Waiting for the development of detailed cost studies will seriously delay the introduction of competition.

12. *State Authority to Grant Suspensions and Modifications Must be Narrowly Construed*

States should not be permitted to administer the process for suspension and modification of ILEC obligations under section 251 in a manner that undermines the national policy framework intended by Congress. Incumbent carriers seeking suspensions or modifications bear a heavy burden of proof.

13. *Rural Exemptions Should Not Operate to Frustrate the Act's Pro-Competitive Objectives*

Congress intended to ensure the benefits of competition in rural areas as well as urban. Once a rural ILEC receives a bona fide request for interconnection, termination of the rural exemption is presumed to be appropriate except in certain limited circumstances. In any area in which a rural ILEC commences providing video programming to subscribers after the date of enactment, the ILEC is ineligible for the rural carrier exemption.

14. *The Commission Should Rule that Burdensome Certification Proceedings and Geographic Service Requirements Constitute Effective Barriers to Entry*

Certification proceedings should be concluded within a reasonably limited period of time, or be deemed an entry barrier. They should be paper proceedings, limited to a basic assessment of the financial, technical, and managerial qualifications of the applicant. New entrants should be permitted to obtain statewide authority to provide services and be free to self-designate the geographic service area they will serve. Any law or regulation imposing mandatory service areas should be deemed a barrier to entry.

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