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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 28, 1998

HAND DELIVERY

Chairman William E. Kennard
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20036

Re: Commercial Internet eXchange Association
Ex Parte Presentation: Section 706 Advanced Services
CC Dkt. No.s 98-11, 98-26, 98-32, 98-78, 98-91, RM 9244

Dear Chairman Kennard:

The Commercial Internet eXchange Association ("CIX") appreciates that, as Section 706 of the Telecommunications Act of 1996 is implemented, the underlying principal of the Commission and the Administration is to encourage *competition at all levels* of the advanced services markets. The Internet Service Provider ("ISP") industry shares in that goal, and looks forward to the day when advanced telecommunications services, including xDSL, are provisioned to all Americans in a competitive environment with a multitude of service providers.

To accomplish this, the regulatory relief proposed for incumbent local exchange carriers ("ILECs") must be crafted in light of the competitive ISP industry, which includes thousands of independent ISPs currently serving the American public. Independent ISPs have provided the American public with an extraordinary level of consumer access to Internet services. The independent ISP industry has rolled-out service to the American public over the past few years at a rate so quickly that it is unrivaled by any other communications medium. In our view, the low price and diversity of today's Internet service is a result of the incredible competition that prevails in the Internet market. Many independent ISPs are ready and able to offer Internet services to customers who purchase xDSL services from an ILEC or a CLEC. However, the

potential for ILECs to impede competition between ILEC-affiliated ISPs and independent ISPs, or between ILECs and CLECs, will ultimately be paid for by the American public in the form of high prices and less diversity of Internet services. For several reasons, CIX strongly urges the Commission to initiate its Section 706 *Notice of Inquiry* process, and not to prejudge the issues through tentative conclusions or relief orders, even for an interim period. Issues of critical importance to the future of ISP competition, some of which are as outlined below, must be more adequately addressed by ILECs and other interested parties before the Commission embarks on Section 706 implementation.

ISP Choice -- CIX is quite concerned that customers will not be offered effective access to their ISP of choice. The customer perspective must be considered and addressed. Customers should be free to choose their own ISP; indeed, a competitive ISP market depends on it. Especially in markets where the in-region ILEC or its CLEC is the only provider of xDSL service, the ILEC "bottleneck" stands between the customer and the ISP. For example, the ADSL ordering process provides the ILEC with a unique position to steer such customers to its affiliated ISP, at the expense of customer choice and a competitive ISP market. While CLEC competition can one day serve customer choice, until such competition is firmly in place the ILECs have no incentives to encourage robust competition in the ISP industry.

CIX urges the Commission to consider ISP choice issues, and to promote ILEC provisioning of ADSL that does not bundle or direct customers to the affiliated ISP.

Transition to Telecommunications Competition -- CIX looks forward to the day when CLEC competition can supplant a regulated monopoly model. Competition is unlikely to develop, however, in the several market areas, including small ILEC central offices, offices where collocation and unbundling are unavailable, and in neighborhoods served by ILEC remote terminals ("RTs") using digital line carrier. In such markets, the ability of CLEC competitors to purchase DSLAM equipment is of little consequence: CLECs cannot compete because collocation space is unavailable or, with RTs, there is exist no collocation/interconnection arrangement. Thus, the CLECs have no presence in those markets and, as a consequence, the independent ISPs in the market operate at the whim of the unregulated monopolist.

These areas of the country that lack effective CLEC competition, and the ISPs that serve consumers in those areas, cannot be ignored in the rush to deploy advanced services; indeed, Section 706 directs that "all Americans" need access to these services offered in a competitive environment. Thus, CIX suggests that the Commission consider a number of regulatory safeguards to better ensure ISP competition. For example,

regardless of whether the ILEC or its affiliated CLEC offers the DSL service, it should be provided only on a tariffed basis to independent and the affiliated-ISPs, on equal terms and conditions. Further, equal access obligations and wholesale resale requirements should continue to apply to the ILEC's DSL service (or that of its affiliate).

Data Interconnection -- It is critical to examine the ILEC offerings that connect the independent ISPs to the ILEC central offices, and how those arrangements will impact the costs and diversity of Internet services. Typically, an ISP can only serve ADSL customers if that ISP purchases a connection to the ILEC's regional or metropolitan ATM or frame relay network, which transports the customer traffic between the ILEC's DSLAM and the ISP. As a customer of these services, the ISP's offerings are directly impacted by the cost and efficiencies associated with these transport arrangements. Thus, if ILECs were willing to interconnect with other metropolitan-area data network providers (including CLECs) or to permit data competitive access providers to also aggregate ISP traffic, then the end-user ISP would have a number of competitive transport options, and could keep down the price of Internet service. As the Administration recently noted, the ISP should be able to "make its best deal for local transport services and be assured of reaching all potential subscribers in a market via interconnection with all DSL service providers in that market." Letter of Commerce Assistant Secretary Larry Irving to Chairman William E. Kennard, at 20 (July 17,1998) ("Irving Letter"). Moreover, lack of interconnection with the ILEC network means that ISPs must purchase additional and separate trunk lines to each data network in a given area just to serve customers in the market. CIX believes that this situation violates Section 251(c) interconnection obligations and, more importantly, it unnecessarily pushes up the costs of providing consumers with advanced Internet services.

CIX agrees with the Administration that this is an issue of serious concern. Irving Letter, at 18-19. Respectfully, CIX does not believe that the solution lies in ISP regulation, or the proposed streamlined certification of "ISP Carriers." Instead, ISPs are today end-users of telecommunications services and can continue to be unregulated end-users even as the data interconnection issue is resolved. A market-based data interconnection solution can emerge by clarifying that carriers, or those who choose to enter the carrier business, have interconnection rights vis-à-vis the ILEC local transport networks. Thus, if provided with data interconnection rights, CLECs could offer ISPs a host of viable and competitive transport service options from which ISPs, as customers, could choose. Further, modifications to the Commission's Expanded Interconnection rules would provide a market for data competitive access providers that could likewise

serve ISPs. In this way, the carriers could provide efficient and competitive local area transport to ISPs, and the unregulated ISP market could continue to flourish.

Deregulation by Separate Subsidiary -- Prior to the resolution of the significant policy issues surrounding Section 706 implementation, CIX does not support the interim deregulation of ILEC DSL services offered through a separate subsidiary. To grant relief before the Section 706 inquiry has developed would be premature and would unfairly prejudice the outcome of several broad policy issues, including: customer access to its ISP of choice; discrimination favoring the ILEC-affiliated ISP and/or CLEC to the detriment of competing providers; data interconnection; and enforcement measures. It can be expected that, with any form of separate subsidiary interim relief, the ILECs will quickly assert that regulatory changes -- otherwise in the public interest -- are impractical because of capital and equipment investments and customer expectations already made in the marketplace. CIX objects to interim actions that would preclude a full consideration of proposals that would serve the public interest objectives of competitive and efficient data services. Moreover, the ILECs will undoubtedly assert ambiguities in the parameters of separation or nondiscrimination, as discussed in Non-Accounting Safeguards Order, to the detriment of competing CLECs and ISPs during the period of an interim order. Finally, after-the-fact enforcement alone, without clear guidance on the rules of separation and nondiscrimination, could put CLEC and ISP competition in serious jeopardy.

We hope that this letter helps to better define the some of the ISP issues of concern as the Commission moves forward with the critically important and exciting implementation of Section 706. Please feel free to call on CIX should you or other members of the Commission wish to discuss these issues further. In accordance with the *ex parte* rules, copies of this letter will be filed with the Commission's Secretary's office for inclusion in each of the above-referenced dockets.

Sincerely,

Ronald L. Plesser
Mark J. O'Connor
Counsel for the Commercial Internet
eXchange Association

JMM/jmm

cc: Commissioner Susan Ness
Commissioner Harold Furchgott-Roth
Commissioner Michael Powell
Commissioner Gloria Tristani
John Nakahata
Thomas Power
James Casserly
Paul Misener
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Kyle Dixon
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