From rd@cottonwood.com Mon Sep 14 14:11:47 1998
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Date: Mon, 14 Sep 1998 13:14:33 -0600
To: ecfs@fcc.gov
From: rd@cottonwood.com (Rick Dahlgren)
Subject: advanced deployment
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<PROCEEDING> 98-146
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<PHONE-NUMBER> 402-896-2303
<DESCRIPTION> Comments on Notice of Inquiry Regarding Deployment of Advanced Telecommunications
<NOTIFY> ecfs@fcc.gov
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Our firm creates film, video, and multimedia content that can be delivered over the air, on cable, and across the internet.

The country has enjoyed a dramatic shift in capacity for delivery of media from one of scarcity to one of abundance.

Problems with access for delivery of media are largely the result of a failed government policy adopted in trust with the dominant telecommunications providers.

Early in the Clinton/Gore Administration, the Vice President and the President suggested the construction of public wireline facilities to deliver the "information superhighway" to all Americans.

The baby bells and other dominant carriers bristled at the notion of a government funded deployment and counter proposed that they would meet the challenge.

Several, including U S West, our incumbent carrier, applied for and received authority to construct video dialtone facilities for the provision of "the information superhighway" to their customers.

Video dialtone was unique in that it was designed for public access under common carrier regulation through tariffed rates on a first come first served non-discriminatory basis.

U S West announced a technical and market trial for Omaha and applied for commercial deployment in five other cities. U S West also issued several billion dollars worth of bonds to build these new networks throughout their region.

U S West Communications failed to provide non-discriminatory access in Omaha, sought to and successfully monopolized their Omaha network and upon

passage of the 96 Telecommunications Act converted that network to a cable TV franchise called TeleChoice and a high speed internet data service called TeleChoice OnLine for delivery of data and cable TV to as many as 50,000 households in the Omaha area comprised of mostly white, upper middle class citizens at the exclusion of all other residents. TeleChoice OnLine is operating today as an unregulated data service with no tariff in place and no access to facility for competition.

U S West also withdrew its video dialtone applications for all other cities and used the capital it had raised through issuance of bonds to purchase Continental Cablevision, providing it with monopoly delivery of cable TV in all of Continental's markets, largely non-U S West markets.

Our firm is currently engaged, as it has been since 1994, in civil litigation against U S West and nearly all of its current and past subsidiaries for what happened in Omaha. We are not seeking assistance from the FCC in our action. We are, however, filing these comments so as to provide instructive criticism of the FCC in the hope that the commission can help solve the problems in the "last mile" choke hold that RBOCs and Title VI carriers are holding over the Vice President's and Congress' stated intent that advanced services be deployed to all Americans in a timely manner.

We are pleased to have the opportunity to comment on this important issue.

What we recommend and why:

The FCC must urge Congress to introduce and pass legislation that will empower and assist states, counties, and municipalities to construct and maintain their own "last mile" facilities to all Americans. We call it our "fiber to the dock" initiative. San Jose as well as a group of Marin County California multimedia developers are attempting to take initiatives to do just that. The reasoning is obvious. Monopoly gatekeeping of local loops.

Serious problems exist which can be addressed in the law.

Competition among long lines carriers is developing slowly. Consolidation concerns should warrant caution to ensure that as local loops open up that the gate to interstate/international carriage remain open and competitive.

Along with community/consumer empowerment through development of a public "last mile" infrastructure two other key requirements need to be met:

1) Addressability: Number portability does not functionally exist. Internet addressability is readily available to all. "A person's domain is his/her castle." In Omaha, our home is passed by two cable modem services but yet, we are unable to place a machine in our home that says "I am here" on the internet. We are forced, by the carriers' policy, to place media or receive e-mail at some network provider's server elsewhere in Omaha or some other city.

The law should make clear that any person or company on any network connected to the internet should be able to obtain and maintain a domain based address accessible through that network by anyone else on the internet.

2) Signal Parity: Using the telephone network as a model, parity of signal should be assured under the law. Two people engaged in a telephone conversation are able to both hear the other and speak to each other. Much of the deployment of high speed wireline advanced telecommunications (largely cable modem based) is designed around a scheme of providing information to consumers at a high data rate while severely limiting the data rate by which those same consumers can send information or make requests. With a telephone it would be as though the consumer can hear everything spoken from the other end but only every fourth or fifth word spoken by the consumer can be heard by the caller.

Disparity in send/receive data pathways places the consumer at a

disadvantage in communicating while providing the carrier/provider with an incentive to monopolize content provision. Parity of signal in send/receive data pathways would de-centralize the provision of content away from carriers allowing them to focus on what the 96 Act intended which is deployment of advanced services, not content.

We would not propose infringement of any carrier's court ordered right to provide content but merely to ensure that all customers be in a position to do so as well.

In Omaha, for instance, U S West's TeleChoice OnLine offering provided +/- 3,500 k/second speed to customers with 300-750k upstream signalling from customers. The entire local network was connected to the internet on a single T-1 connection. That bottleneck to the internet placed U S West in a position by which they could favor their own and partners' content by placing it on a server inside the network accessible by consumers at a much higher performance level than competitors content from the internet outside that network.

Addressability and signal parity would go a long way toward removing the incentive to bottleneck or monopolize content in a way that favors the "last mile" carrier.

Adoption of these two principles may also pre-empt schemes that imply future attempts to monopolize networks. The Justice Department's current investigation of Microsoft should indicate to the commission and to Congress the scale of the stakes in the provision of advanced telecommunications services.

Mr. Gates investment in cable providers as well as investments by Microsoft's co-founder Paul Allen demonstrates the importance of adoption of safeguards that prevent a dead end at the head end of these local high speed networks.

What do Gates and Allen know that the public does not?

Perhaps it is that enormous economic power lies in the hands of high speed last mile providers for the delivery of goods and services in the future.

Perhaps they also know that, under current law, they will be in a position to capture, monopolistically, a percentage of every purchase conducted on -line of products, homes, cars, insurance, stocks, electricity, gas and entertainment.

MSFDC and companies like CSG Systems, which may be the largest cable billing company in the country, are poised to deploy transaction systems that leverage cable carriers, telcos and enabling technology partners like Microsoft into every transaction conducted on-line over these networks.

The question the commission and Congress must ponder is, is this good for the American consumer?
We would vehemently argue that it is not.
We would vehemently argue that consumer empowerment cannot occur under a policy that allows and encourages monopoly trade-offs for implementation.

The administration, the FCC and Congress provided carriers the opportunity to perform in trust in 1993 and subsequently in the 96 Act. However, that trust has been broken by the corporations to which it was extended.

There is no access to facility, no competition, and little prospect for resolution in the near term.

Instead, vague language, "feel good" policy without enforcement and a "fish in a barrel" consumer position has flourished.

A truly public "last mile" strategy with full addressability and signal parity would place all wireline service providers on a level competitive field for the consumer dollar and truly empower the public with choice.

The FCC cannot afford to implement any more regulations that it cannot enforce. The Congress should find a way to pass laws that eliminate the need for enforcement. Local, county and state public "last mile" networks can be regulated locally with federal guidelines for federal matching funds or bonding status. Fiber optic cable to all homes, farms, ranches, and businesses is possible and necessary for a truly reliable terrestrial based wireline infrastructure that links consumers with schools, healthcare, government and businesses. We no more want U S West, COX Cable and Microsoft running our connection to the information age than we want to place them in charge of Interstate 80...and neither should the commission and Congress.

We would also like to say that with respect to wireless deployment that the FCC's allocation of digital spectrum to local incumbent television broadcasters has all but dashed any hope for wireless deployment of advanced telecommunications competitors to incumbent RBOCs and cable providers.

We would also strongly recommend that Congress and the commission implement a timetable and definitions that eliminates Title VI, placing cable companies under the same regimen as incumbent LECs.

We understand the complexity of such a strategy, particularly in light of potential infringement of local franchise authority and subsequent revenue streams, but the distinction between wireline Title II and Title VI has created an anticompetitive environment in which consumers are being raped by two separate monopolies in each market.

If the FCC and Congress were to adopt our approaches it could prove to provide consumers with complete unbundling of services while opening floodgates of opportunity for consumers, businesses and government.

Thank you.

Rick Dahlgren