

ORIGINAL

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

RECEIVED

OCT - 8 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DOCKET FILE COPY ORIGINAL

In the Matter of

Inquiry Concerning the Deployment of
Advanced Telecommunications
Capability to All Americans in a Reasonable
And Timely Fashion, and Possible Steps
To Accelerate Such Deployment
Pursuant to Section 706 of the
Telecommunications Act of 1996

CC Docket No. 98-146

REPLY COMMENTS OF VERIO INC.

Verio Inc. ("Verio")¹ replies to comments filed pursuant to the Commission's Notice of Inquiry in this proceeding released August 7, 1998.²

The comments underscore the importance of access to higher bandwidth technologies, such as Digital Subscriber Line ("DSL") service, and the need to prevent discriminatory conduct by incumbent local exchange carriers ("ILECs") that impedes the ability of Internet service providers ("ISPs") to offer competitive Internet access services based on those technologies.³ As Verio and other commenters pointed out, ILECs have

¹ Verio was incorporated in March, 1996 to meet the growing needs of business customers for Internet access and related services. Through its phased acquisition and integration of existing, business-oriented ISPs in targeted geographic areas, Verio now offers turnkey business Internet solutions encompassing a wide range of Internet connectivity and enhanced Internet services throughout the United States.

² *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, FCC No. 98-187, Notice of Inquiry (rel. Aug. 7, 1998) ("NOI").

³ In addition to ILEC control of bottleneck facilities, the comments raise other issues that deserve the Commission's careful consideration. For example, some commenters have

(Footnote continues on following page.)

004

exploited their control over bottleneck “last mile” facilities (*i.e.*, the copper loop and electronics used to serve independent ISPs’ customers) by charging inflated rates for DSL services and network elements, bundling services unnecessarily, withdrawing tariffs for facilities used by competing ISPs, denying reciprocal compensation for calls placed to ISPs and delaying the provisioning of services required by competing providers of Internet access.⁴

In order to remedy these discriminatory practices faced by ISP competitors to ILEC Internet access services,⁵ a number of commenters have urged the Commission to impose various regulatory solutions. Those proposals include imposition of “equal access” requirements for ILECs’ DSL services, unbundling of the ILECs’ advanced services, separate affiliate requirements and open network regulations.⁶ These proposals deserve the Commission’s serious consideration. As a first step, however, the Commission can require, as Verio and other commenters have urged, ILECs to furnish clean, unbundled copper loops, suitable for DSL services, to requesting ISPs at cost-based rates upon

(Footnote continued from previous page)

recommended that the Commission not intervene in Internet peering arrangements at this time. *See, e.g.*, Comments of the Internet Service Providers’ Consortium at 15; Comments of SBC Communications, Inc. at 12; Comments of America Online, Inc. at 13. Verio agrees with this position, but urges the Commission to continue to monitor concentration of ownership of Internet backbone facilities and the possible use of peering arrangements and de-peering decisions for anticompetitive purposes. Concentrated control of backbone facilities, no less than bottleneck control of local exchange networks, may pose a threat to robust competition in Internet services.

⁴ *See e.g.*, Comments of The Coalition of Utah Independent Internet Service Providers at 7; Comments of the Commercial Internet Exchange Association at 13-20; Comments of Northpoint Communications, Inc. at 3-6; Comments of AT&T Corporation at 42-52.

⁵ *See e.g.*, Comments of Mindspring Enterprises, Inc. at 26-31; Comments of America Online, Inc. at 11-13; Comments of The Internet Service Providers’ Consortium at 4; Comments of the Retail Internet Service Providers at 10-15.

⁶ *See e.g.*, Comments of Mindspring Enterprises, Inc. at 26-31; Comments of Transwire Communications, Inc. at 12.

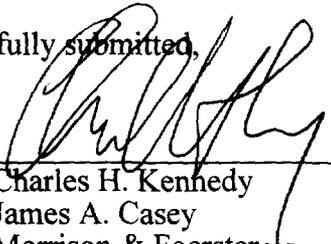
nondiscriminatory terms and conditions. The Commission should implement this requirement through its general rulemaking authority, rather than in reliance on section 251(c) of the Telecommunications Act of 1996. This approach properly would avoid classification of ISPs as telecommunications carriers for purposes of section 251(c) and at the same time permit ISPs access to ILEC facilities in a manner that will allow them to more effectively compete.⁷

At the same time, by mandating access to a local loop suitable for advanced services, the Commission would permit independent ISPs to assert greater control over the cost and quality of DSL services provided to their customers and will increase the number of facilities-based competitors in the advanced service marketplace. Accordingly, the Commission should find that ISPs, no less than competitive local exchange carriers ("CLECs"), are entitled to obtain access to local loops suitable for high-speed Internet access services.

Dated: October 8, 1998

Respectfully submitted,

By:



Charles H. Kennedy
James A. Casey
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1888
Telephone: (202) 887-1500

Counsel to Verio Inc.

⁷ Like Verio, the Internet Service Providers' Consortium, *see* Comments of Internet Service Providers' Consortium at 12, has suggested that the Commission's *Computer II* and *Computer III* rules may provide an appropriate model to ensure that ISPs have access to necessary ILEC services and network elements. *See Computer III Further Remand Proceedings*, 13 FCC Rcd 6040 (1998).

Certificate of Service

I, Kimberly E. Thomas, do hereby certify that the foregoing **REPLY COMMENTS OF Verio Inc.** were delivered, via hand delivery, on this 8th day of October, 1998, to the following:

Chairman William E. Kennard
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

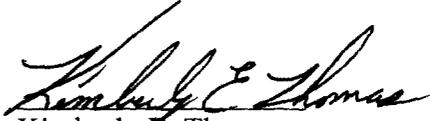
Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Commissioner Michael Powell
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Commissioner Gloria Tristani
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

John W. Berresford
Senior Antitrust Attorney
Industry Analysis Division
Common Carrier Bureau
Federal Communications Commission
2033 M Street, N.W., Room 500
Washington, D.C. 20554


Kimberly E. Thomas