DOCKET FILE COPY ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED
FEB 18 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Petition of US West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Seattle, Washington MSA	)	CC Dkt. No. 99-1
Petition of Bell Atlantic Telephone Companies for Forbearance from Regulation as Dominant Carriers in Delaware; Maryland; Massachusetts; New Hampshire; New Jersey; New York; Pennsylvania; Rhode Island; Washington, D.C.; Vermont; and Virginia	)	CC Dkt. No. 99-24

COMMENTS OF
NETWORK ACCESS SOLUTIONS, INC.[1]

While petitioners request rate deregulation for all of their interstate special access services in designated geographic areas, the FCC should not deregulate the special access services they provide by using xDSL technology. That technology permits an incumbent LEC to provide high bandwidth special access service using the LEC's existing copper loop plant. The LEC uses xDSL technology to provide service by attaching an xDSL modem to each end of the end user's loop and transporting traffic beyond the end user's serving wire center either by packet switched network or dedicated transport. Petitioners use xDSL technology to provide special access services for

[1] Network Access Solutions, Inc. ("NAS") uses xDSL technology to provide special access service in several mid-Atlantic states. The NAS offering, CuNet, provides an end user with a dedicated high speed connection to the Internet or to a corporate LAN.

various applications. For example, they use the technology to provide an end user with a direct connection to the POP of the user's preferred ISP.[2] They also sometimes use the technology to provide an end user with a direct connection to the POP of the user's preferred IXC.[3]

The doctrine of stare decisis bars the FCC from reducing regulation of any special access offering that petitioners provide via xDSL technology. That doctrine prohibits an administrative agency from reversing an earlier order absent new facts justifying reversal. The Commission has made clear that the market for special access service utilizing xDSL technology is separate from the market for similar service using other technologies since services utilizing xDSL technology are "advanced" within the meaning of Section 706 of the 1996 Act.[4] Employing this dichotomy, the FCC declined fewer than seven months ago to reduce regulation of special access services provided by an incumbent LEC via xDSL technology after finding a lack of substantial competition in the xDSL special access market. While petitioners offer evidence in their petitions designed to show that the market for special access service using other technologies is competitive, they do not purport to offer new evidence that the xDSL special access service market is competitive.

Moreover, SBC recently admitted that the xDSL special access market is not competitive. Like petitioners in these cases, SBC petitioned the Commission late last year to

---

[2] See, e.g., Bell Atlantic Tel. Cos., FCC 98-317, rel. Nov. 30, 1998.

[3] See, e.g., "PairGain Ships One Millionth DSL Unit," http://www.pairgain.com/ about/ news_ reviews/recentnews_9.html (news release announcing use of PairGain's DSL system by incumbent LECs to provide T1 service over one million loops).

[4] See, e.g., Deployment of Wireline Services Offering Advanced Telecommun. Capability, Notice of Prop. Rulemaking 13 Comm. Reg. (P&F) 1, 22-23, 30 (1998) (proposing to let incumbent LEC affiliates provide special access service utilizing xDSL technology, but not other technologies, free of price and tariff regulation).

deregulate all of its interstate special access services in certain geographic areas, including those provisioned with xDSL technology. In its Comments, NAS noted that any deregulation of special access service provisioned with xDSL technology would be inconsistent with the Commission's finding referred to above.[5] In its Reply, SBC agreed that it is appropriate to retain existing regulatory controls on special access services provisioned via xDSL technology.

Petitioners' failure to offer evidence that the xDSL special access market is competitive is not surprising since that market plainly is not yet competitive. Two years ago, no one provided special access service using xDSL technology in competition with incumbent LECs. Today, NAS is one of only a small number of companies that competes with incumbent LECs in that market, and substantially all of these competitors are start-ups. Moreover, none has any practical alternative than to rely on the incumbent LECs with whom they compete for the loops, OSS, and collocation services that are indispensable to their provision of xDSL special access service.

[5] NAS Comments at 2-4 (CC Dkt. No. 98-227, Jan. 13, 1999).

CONCLUSION

The Commission should make clear in ruling on these two petitions that interstate special access services provided by incumbent LECs using xDSL technology will remain subject to all existing regulatory controls.

Respectfully submitted

NETWORK ACCESS SOLUTIONS, INC.

By _____

Rodney L. Joyce
Shook, Hardy & Bacon L.L.P.
1850 K Street, N.W., Suite 900
Washington, D.C. 20006-2244
(202) 783-8400
Its Attorneys

February 18, 1999

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing "Comments of Network Access Solutions, Inc." has been delivered to each of the following:

By Hand

Chief
Competitive Pricing Division
Federal Communications Commission
Room 518 1919 M Street, N.W.
Washington, D.C. 20554

International Transcription Services
1231 20th Street, N.W.
Washington, D.C. 20036

By U.S. Mail

James T. Hannon
US West Communications, Inc.
1020 19th Street, N.W.
Suite 700
Washington, DC 20036

Edward Shakin
Bell Atlantic Network Services
1320 North Courthouse Road, 8th Floor
Arlington, VA 22201

Rodney L. Joyce

0016810.01