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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Wednesday, June 30, 1999

VIA FED EX

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th St. S.W.
Washington, DC 20554

Re: Ex Parte Presentation in CC Docket No. 98-147

Dear Ms. Salas:

On 28 July 1999, Thomas Koutsky, Covad's Vice President of Regulatory Affairs, and I met with the following members of the FCC staff: Dale Hatfield, Stagg Neuman, Doug Sicker, Pau Marrangoni and Vincent Paladini. Our presentation focused on line sharing as a special access service (see attached). Additionally, we briefly discussed operational issues relating to line sharing, remote terminals, and spectrum interference as detailed in Covad's filings in this docket.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(2) of the Commission's rules.

Sincerely,

James D. Earl

Attachment

No. of Copies rec'd 071
List A B C D E

The concept of "service" is not linked to facilities:

(20) INFORMATION SERVICE.--The term "information service" means the *offering of a capability* for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service. 47 U.S.C. 153 (20)

(46) TELECOMMUNICATIONS SERVICE.--The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, *regardless of the facilities used*. . 47 U.S.C. 153 (46)

"Special access service" is non-circuit switched access to networks.

"Special access is used in conjunction with private line service, WATS, 800 Service, and various high-volume business services, such as AT&T's Megacom and SDN services. It is not used in the provision of MTS [Message Telephone Service]." Expanded Interconnection Order, note 42.

DSL provided over POTS is an interstate special access service.

"GTE explains that its service "consists of the connection from the network interface device over an existing facility to a splitter, modem, and ADSL equipment combination in the serving wire center." The interstate special access data traffic is routed via a digital subscriber line access multiplexer, or DSLAM, to GTE's "connection point" or packet-switched network. The GTE ADSL wire center is connected with the GTE ADSL connection point using frame relay interface capabilities. ISPs connect their networks to the GTE ADSL connection point using frame relay services offered elsewhere in its tariff. The subscriber's use of GTE's local exchange plant for circuit switched intrastate and interstate voice and data calls is unaffected by the DSL service." GTE DSL Tariff Order, §8, footnotes omitted.

"We agree that GTE's DSL Solutions-ADSL service offering is an interstate service that is properly tariffed at the federal level." GTE DSL Tariff Order, §16

"We agree that GTE's ADSL service is a special access service, thus warranting federal regulation under the "ten percent" rule." GTE DSL Tariff Order, §25

There are striking similarities between the problem addressed by the Expanded Interconnection Order and the problem faced by data CLECs competing with ILEC DSL tariffs.

Expanded Interconnection Problem:

"The LECs' current special access tariffs make it economically infeasible for customers to combine their own or CAP facilities with portions of the LEC network to satisfy their special access needs." Expanded Interconnection Order, §4

"This tariff structure makes it economically infeasible for customers to use LEC facilities between their premises and a LEC central office, and CAP facilities between that LEC office and the IXC POP, for example. Customers either must use LEC facilities for the entire special access connection or bypass the LEC completely and use alternate facilities to obtain end-to-end connections between their premises and the IXC POP." Expanded Interconnection Order §5, footnotes omitted.

Line Sharing Problem (using analogous text):

The ILEC DSL tariff structure makes no provision for customers [residential end users] to use LEC facilities between their premises and a LEC central office [i.e., line sharing], and data CLEC facilities between that LEC office and the ISP POP [i.e. the CLEC upstream facilities and network to provide special access], for example. Customers [residential end users] either must use LEC facilities for the entire special access connection [by buying Internet access from the incumbent LEC ISP or from an ISP taking the existing ILEC DSL access service pursuant to current tariff] or bypass the LEC completely and use alternate facilities [the unbundled local loop and transport (either tariffed or unbundled)] between their premises and the ISP POP [which is "economically infeasible" in competition for residential DSL.].

The solution of the Expanded Interconnection Order was to require interconnection at Central Offices through ILEC interstate tariffs.

" 1. In this Order, we take a historic step in the process of opening the remaining preserves of monopoly telecommunications service to competition. The measures that we adopt today will promote increased competition in the interstate access market by requiring that the Tier 1 local exchange carriers (LECs) offer expanded interconnection to all interested parties, permitting competitors and high volume users to terminate their

own special access transmission facilities at LEC central offices. These LECs are required to offer physical collocation to all interconnectors that request it, though the parties remain free to negotiate satisfactory virtual collocation arrangements." Expanded Interconnection Order, §1.

"259. Discussion. We conclude that the Tier 1 LECs should be required to implement special access expanded interconnection as soon as possible. We require these LECs to file tariffs for expanded interconnection for DS1 and DS3 service within 120 days from the date of release of this Order without waiting for requests for interconnection. The tariffs are to be filed to be effective on 90 days notice. The tariffs are to make physical collocation generally available under uniform terms and conditions in all end offices and serving wire centers, as well as any subject remote nodes, although, as explained in more detail above, rates for items such as floor space, power, and environmental conditioning may vary by office." Expanded Interconnection Order, §259, footnotes omitted.

The Commission broke new ground by requiring tariffs to provide interconnection for interstate special access in the Expanded Interconnection Order.

Post 1996 Act, the solution to anti-competitive ILEC DSL tariffs is again to require tariff amendments to provide interconnection for interstate special access. (The line sharing solution also requires interconnection at central offices -- a targeted application of the general solution of the Expanded Interconnection Order.)

Now, however, the solution is statutorily required. Additionally, it is totally independent of the ILEC obligation to provide unbundled elements.

(c) ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS.--In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

(1) DUTY TO NEGOTIATE...

(2) INTERCONNECTION.--The duty to provide, for the facilities and equipment [*i.e., the network upstream of the CO and the collocated DSL related equipment used to provide special access*] of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--

(A) for the transmission and routing of telephone exchange service and exchange access [*Advanced services are either telephone exchange service or exchange access. Section 706 MMO & NPRM, FCC 98-188, Aug 1998.*];

(B) at any technically feasible point within the carrier's network [*Interconnection at the POTS splitter is unquestionably technically feasible.*];

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection [*Interconnection at the POTS splitter or MDF is equal interconnection.*]; and

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory [*Same charge as imputed cost of outside plant in tariff allocation is necessary to be "nondiscriminatory".*], in accordance with the terms and conditions of the agreement [*Since interconnection agreements are contracts of adhesion, they contain no provision for line sharing in order to connect the CLEC facilities used to provide special access to the local exchange carrier's network. No conflict with an ILEC DSL tariff appropriately modified.*] and the requirements of this section and section 252.

(3) UNBUNDLED ACCESS...

(4) RESALE...

(5) NOTICE OF CHANGES...

(6) COLLOCATION.--The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for *interconnection or access to unbundled network elements* at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.