

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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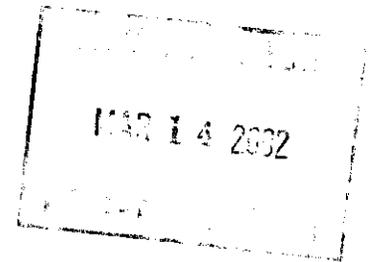
General Counsel

JANET HAND DEIXLER

Secretary

February 28, 2002

Honorable William F. Caton
Acting Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth Street, S.W.
Washington, DC 20554



Re: Comments of the New York State Public Service Commission on the Matter of Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunication Services; CC Docket No. 01-337

Dear Mr. Caton:

On December 20, 2001, the Federal Communications Commission (Commission) issued a Notice of Proposed Rulemaking that examines the regulatory treatment of incumbent local exchange carriers' (ILECs) provisioning of broadband services.¹ Specifically, the Commission seeks comments on what changes, if any, it should make in its traditional regulatory treatment of ILECs' broadband services and whether its regulations should be streamlined in light of the current market landscape.

The New York Public Service Commission (NYPSC) recognizes that the broadband industry is growing and that other platforms are developing. On the other hand, ILECs' still possess market power over the platform needed to provide telephone broadband services. As such, the Commission should move cautiously.

¹ For purposes of this proceeding, the Commission used the term "broadband telecommunication service" or "broadband service" "to describe a broad array of high-speed telecommunications services." In the Matter of Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, Notice of Proposed Rulemaking, CC Docket No. 01-337 at note 2 (issues December 20, 2001). While the Commission's rulemaking focuses on broadband services in general, the NYPSC offers comments on one aspect of broadband services, Digital Subscriber Line Services (DSL).

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Further, as the Commission is aware, the jurisdictional status of DSL services remains undecided. In February 1999, the Commission held that Internet-bound calls to information service providers (ISPs) are interstate in nature.² The Circuit Court for the District of Columbia vacated and remanded the Order to the Commission because the Commission had failed to provide an adequate explanation of why Internet-bound calls are interstate.³ Subsequently, in April 2001, the Commission issued a Remand Order holding that Internet-bound calls are interstate, using a different legal theory.⁴ The Circuit Court is reviewing the Commission's Remand Order and oral argument was heard on February 12, 2002.⁵ Until the jurisdictional question is resolved, it would be premature, and inefficient, for the Commission to adopt new rules regarding the tariffing of these services.

Respectfully submitted,



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² In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 14 FCC Rcd 3689 (1999).

³ Bell Atlantic Tel. Cos. vs. FCC, 206 F.3d 1 (D.C. Cir. 2000).

⁴ In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Order on Remand and Report and Order, CC Docket Nos. 96-98 and 99-68 (issued April 27, 2001).

⁵ Bell Atlantic, 206 F.3d 1 (D.C. Cir. 2000).