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April 19, 2002

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CC Docket Nos. 01-338, 96-98, and 98-147

Dear Ms. Dortch:

On April 18, 2002, Charles Hoffman, President and Chief Executive Officer of Covad Communications Company, along with Dhruv Khanna, General Counsel and Executive Vice President, and Jason Oxman, Assistant General Counsel, met with Chairman Michael Powell and Kyle Dixon, Legal Advisor to Chairman Powell. They discussed Covad's presentation which is set out in the attached documents.

Respectfully submitted,

A handwritten signature in cursive script that reads "Florence M. Grasso".

Florence M. Grasso

cc: Kyle Dixon

Attachments

**Covad April 18, 2002 Meeting with FCC Chairman Michael Powell
Charles Hoffman, President and CEO
Dhruv Khanna, Executive Vice President and General Counsel**

1. Covad is facilities-based, having raised over \$2 billion to build a nationwide data network, and is the company best positioned to expand its broadband offerings.

- Only ILEC UNEs we use are the ubiquitous nationwide network of transmission facilities. Without access to that network, we would be unable to reach any end users.
- Nationwide network of over 1700 central offices (compared with 3200 DSL-enabled COs for *all four* BOCs) reaches nearly 45% of the nation's homes and businesses.

2. Covad fills a large and important service void not met by Cable Company and ILEC broadband services.

- Cable companies address only the residential market, not the business market.
- BOC DSL services do not address small/medium-sized businesses and home offices.
- Covad services offer wider variety of speeds, superior service quality, SLAs.

3. Covad makes innovative use of UNE transmission services.

- Linesharing – TeleSOHO product via linesharing gives small office/home office users affordable business-class DSL service that BOCs and cable companies do not offer.
- High-cap loops – Covad's TeleXtend T-1 product uses a 2-wire UNE copper loop, offering home offices and small businesses access to affordable T-1 speeds for the first time. BOC efforts to eliminate high-cap loops seek to limit T-1 competition.
- Interoffice transport. Hub and spoke of ILEC transport is the only network linking all ILEC COs in which Covad collocates. Competitive fiber links large office buildings, not COs to one another. In DC/Baltimore, for example, Covad has collocated equipment in 111 central offices that must be interconnected. The ILEC (Verizon) owns the only transmission network linking all 111 COs.

4. "New wires, new rules" idea is good in concept, but focus must be on pricing.

- Bottleneck facility is still a bottleneck no matter what service speed is offered over it.
- More than 30% of the nation's loops *today* have some fiber facilities in them. FCC's inquiry must be solely into *new* fiber, not old fiber. Limiting UNE access only to all-copper loops means that consumers with fiber in their loops can't get Covad service.
- BOC "broadband UNE" proposal and TELRIC "risk capital" modification should be explored, but service-specific UNE carve-outs must be rejected.
- Last mile cable facilities are not available to Covad, do not support technically superior DSL services for residential and home office users, and do not reach small/medium-sized businesses.



**Discussion with
Chairman Michael
Powell**

April 18, 2002

Charles Hoffman
President and CEO
Dhruv Khanna
Executive VP and General
Counsel



The statutory “impair” standard supports continued unbundling of ILEC transmission facilities

- Section 251(d)(2)(B) requires the Commission to consider whether “the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.”
- Transmission facilities are simply not available from third parties other than the ILECs.
- Broadband DSL services requires transmission facilities to access end users. CLECs therefore are impaired without access to the end user via ILEC transmission facilities.

Sound policy encourages use of existing ILEC transmission facilities

- Distinction between *transmission facilities* (regulated) and *retail services* (deregulated) ensures that widespread innovation in broadband occurs, but only if transmission facilities are available to access end users.
- FCC must unbundle the telecommunications transmission grid (loops and transport) so CLECs can efficiently haul traffic to their network facilities.
- Given decline in second line growth and death of numerous CLECs, there is a surplus of CO space and loop plant.
- All monies paid by CLECs to ILECs for CO rent and loops, including line-sharing, is incremental revenue (and helps fund network upgrades).
- Transmission facilities not used by CLECs are stranded capacity (upper frequencies of loops, stand alone loops, interoffice transport) and uneconomic to leave idle.
- Wall Street will not fund additional facilities build-out on a “build it and they will come” basis. CLECs must show profit first, and UNEs are needed until CLECs get there.

Federal Competition Policy Is Working

- The FCC should continue its longstanding policy of refusing to pick technology winners or losers. Fair competition leads to innovation:
 - Cable had to spend \$55 billion to upgrade to digital because FCC program access rules gave DBS a chance to compete against cable.
 - 1994 wireless rules broke the duopoly, sparking billions in investment.
 - 1992-96, RBOC network investment declined 2.4% annually. Post 1996, BOC DSL investment exploded, and CLEC investment continues.
- The FCC should recognize that the ILECs are facing competitive losses -- and that the ILECs want the FCC to pick *them* as winners and protect them from the genie of competition that came out of the bottle in 1996.
- Be wary of “incentive to invest” arguments: BOC DSL up 47% in 4Q 2002 alone.
 - Recognize that ILECs are concerned about making network investments because of the risk of further innovation over those networks, which would reduce the value of those upgrades. Fears of Schumpeter “creative destruction” stops ILECs from investing and innovating, not regulatory impediments.
- The Commission should free Bell retail broadband offerings from unnecessary regulation, but such forbearance must be offset by CLEC access to bottleneck ILEC transmission facilities.

Broadband Competition -- Past, Present and Future

- ILECs buried ADSL and SDSL technology for many years.
- Dial up ISDN at 128 Kbps with per minute charges and overpriced T-1s were the ILEC response to cable modems from 1994-96.
- Even after 1996, ILECs deployed ADSL generally later than Covad.
- Once DLECs seemed to be dead, ILECs raised ADSL prices to \$49 per month, despite continued cable modem sales.
- Covad plays a key role in dial-up, ISDN, T-1 service competition in both residential and business segments.
- Both residential and business segments are price elastic.
- Serving both segments is key to profitability (consumer for economies of scale and business for margins).
- ILEC and cable strategy of not focusing on business segment is vastly inferior, and leaves the business market (including home office users) to Covad.

Covad -- New Developments

- Modestly increasing the number of COs with Covad DSL.
- Long term debt (and thus huge interest payments) eliminated.
- Back office and self-install automation and other cost efficiency advantages allow wider service offerings than ILEC or cable.
- Over 40 of 50 markets Covad serves are recurring cash contributing (excluding overhead type costs).
- Line-sharing and consumer volumes are key to Covad's clear path to profitability, helping reduce the average per unit fixed network costs. Small businesses (SDSL and UNE T-1) bring margin and revenue to fund future network build-out.
- Bottom line -- Covad is poised to launch a much-needed broadband price-war to accelerate broadband uptake.