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

In the Matter of	)	
	)	
Appropriate Framework for Broadband Access to the Internet over Wireline Facilities	)	CC Docket No. 02-33
	)	
Universal Service Obligations of Broadband Providers	)	
	)	
Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review - Review of Computer III and ONA Safeguards and Requirements	)	CC Dockets Nos. 95-20, 98-10

Comments of Socket Holdings Corporation

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Comments of Socket Holdings Corporation

Socket Holdings Corporation (ASocket@) files these comments on the February 15, 2002, *Notice of Proposed Rulemaking* (ANPRM@) in the above-captioned proceeding. Respectfully, Socket urges the Commission to maintain its current jurisdiction over broadband wireline Internet access, to maintain and strengthen its ONA and CEI requirements, and retain its current Universal Service Fund structure.

Introduction and Summary

Socket is a small business as defined in the SBA=s NAICS code[1] described in Paragraph 98 of the NPRM. Socket=s annual receipts are under $18 million dollars. Socket is privately held by four individuals, all of whom are involved with the operations of Socket on a day-to-day basis.

[1] 13 C.F.R. ' 121.201; NAICS Code 514191.

Socket offers both narrowband (dial-up) and broadband (DSL) Internet access accounts. Approximately 89 % of the accounts are dial-up and 2% are DSL. All DSL accounts are services bundled with telecommunications service purchased from the incumbent local exchange companies. Socket purchases DSL transport from ILECs (or their affiliates) and other data transport from ILECs and CLECs. Socket is not a CLEC, although a Socket subsidiary, Socket Telecom, LLC, is certificated as a CLEC and IXC in Missouri, but is not yet in operation.

Socket urges the Commission to re-think the tentative conclusions set forth in the NPRM. Those tentative conclusions will most certainly harm ISPs such as Socket, could severely limit consumer access to the Internet and could lead to the destruction of the ISP business model. The Commission should not allow ILECs to avoid the regulatory safeguards set forth in the Telecommunications Act of 1996 or in the *Computer Inquiries*. Finally, the Commission should not, at this time, alter the Universal Service Fund collection methodology.

Discussion

I. The Definition of Telecommunications Service Does Not Turn on Whether the Service Is Offered at Retail to End Users.

The Commission tentatively concludes that the transmission component of the end-user wireline Internet access service provided over the provider=s own facilities is telecommunications, but not a telecommunications service because it is not offered for a fee directly to the general public.[2] We note that a great many telecommunications services are not offered directly to the general public. Transport, switching, and access are all telecommunications services that are

[2] *See* Paragraph 25 of the NPRM.

purchased by a carrier from another carrier. End-user members of the general public never purchase these services.

The Commission=s proposed reading of the definition of Atelecommunications service@ includes only those telecommunications offered for a fee to the general public.[3] That reading renders null the remainder of the actual statutory definition of telecommunications service, which includes, in addition to sales directly to the general public, Aor to such classes of users as to be effectively available to the public, regardless of the facilities used.@[4] Perhaps the Commission is unaware that the DSL services in question are undoubtedly effectively available to the general public, who are the ultimate consumers of the bundled telecommunications and enhancements sold as an information service.

[3] *See* Paragraph 19 of the NPRM, in which the Commission asserts, AIf this offering is made directly to the public for a fee, then it is deemed a >telecommunications service.=@

[4] 47 U.S.C. ' 153 (46).

The Commission has stated the question presented in this NPRM very narrowly; it seeks to redefine the provision of broadband wireline telecommunications service as something other than a telecommunications service when bundled to create an information service and provided over the information service provider=s own facilities. It will be impossible to keep this artificial limitation viable. The Commission has already supported the conclusion that if an ILEC does not offer a broadband wireline service directly to the public, it is not required to resell it at a discount to other carriers.[5] Now it proposes to exclude such services from the definition of Atelecommunications services@ entirely, thereby removing any obligation to make it available to other carriers. Presumably, the next logical step will be to eliminate all services not offered directly to the general public, such as interoffice transport, from the definition of Atelecommunications services@ and no longer require that it be made available. If such transport does not fall under the definition of Atelecommunications services,@ then ILECs would not be required to even tariff it, and ISPs such as Socket would discontinue operations and the ILECs would have essentially monopoly control over access to the Internet.

However, all this begs the question of what import the Commission places on the last clause in the definition of Atelecommunications service@ recounted above. Obviously, rules of statutory construction require that those words be construed as having some meaning and effect, but they are utterly ignored throughout the NPRM. How does the Commission reconcile that definition, and the

[5] *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Long Distance Pursuant to Section 271 of the Communications Act to Provide In-Region InterLATA Services in Arkansas and Missouri;* CC Docket No. 01-154,

general interconnection and unbundling requirements with its tentative conclusions? We believe the tentative conclusions are logically unsupportable.

II. The Results of this Inquiry Cannot Be Limited to DSL Services.

The Commission has gone to great lengths in the Notice to limit its discussion to wireline broadband services bundled with enhancements to create information services. As alluded to above, there is nothing in the Alogical@ processes the Commission has applied in the matter to support such a restriction. If the Commission=s conclusion that services not offered directly to the public is supportable, then the logical extension of that conclusion is that no service not offered directly to the general public can be a Atelecommunications service.@ Further, the fact that this inquiry is limited to providers who Ause@ their own facilities is incomprehensible. Those providers who have facilities are not having difficulty dealing with other carriers to provide service to end-users. Why on earth do such carriers need the additional insulation this NPRM provides, but to open a back door to circumvent the protections of the Telecommunications Act of 1996 and the *Computer Inquiries*? As one logical extension after another flows from the leap from logic embodied in this NPRM, resale and unbundling requirements will fall by the wayside and competition in the provision of information services and in telecommunications services will eventually die out. The barriers to entry will be too high, and the costs associated with providing Internet access services, even to dial-up customers, will be too high.

Memorandum Opinion and Order, 16 FCC Rcd 20719, 20759-60, paras. 81-82 (2001).

III. That Telecommunications Service Is a Component of an Information Service Does Not Depend on Which Entity Provides Underlying Carriage.

Telecommunications service is a component of Ainformation service,@ most notably Internet Access service. End users rely on either a narrowband or broadband connection, usually wireline, to reach the ISP of their choice, who enhances the service and creates an information service. Without the transmission component, from a POTS line to a T-1, Internet access doesn=t happen. In most cases, customers purchase part of the transmission component directly from their local phone company. That carrier sells transport from its switch to Socket=s nearest POP. Depending on the location, Socket may purchase more transport from either an ILEC, CLEC or IXC to carry the traffic to the nearest point at which the traffic can be transferred to the Internet backbone.

Due to the requirements of the *Computer Inquiries*, Socket is able to Aresell@ ILEC DSL service, including both the end-user loop and DSL transport, bundle it and offer it as a high-speed Internet access package. The customer could purchase a DSL service from an ILEC and use a different ISP to obtain Internet access, the same way that a POTS line user can choose whichever ISP it cares to use. A DSL customer would likely be paying for the ILEC=s provision of Internet access, but there is nothing inherent in the technology that requires the end-user to use that ILEC service.

For all these reasons, the attempted limitation of the effect of this NPRM to ILECs who provide broadband wireline Internet access in a single bundled offering is baffling. The ILEC is not the Auser@ of the underlying transmission connection, any more than if it provided the DSL directly

to the end-user and did not provide any Internet access. Again, once this leap from logic is made in this matter, logical extensions will require that any underlying transmission used for connection to the Internet be excluded from the definition of Atelecommunications services,@ a result that appears absurd on its face.

IV. Broadband Wireline Telecommunications Services Should Be Regulated under Title II Not Moved to Title I.

The attempt to change the regulation applied to a certain telecommunications service by moving it from the Commission=s primary jurisdiction to its ancillary jurisdiction is puzzling, as it seems an Aapples and oranges@ matter. The Commission is given certain jurisdiction by law, within which it has certain regulatory flexibility. In this matter, the Commission seems unable to reconcile the kind of deregulation it tentatively concludes is appropriate with the regulatory options available to it. As a result, it seeks to circumvent the law by removing the service from its Congressionally granted primary jurisdiction to its ancillary jurisdiction. While such a move would be astonishingly smooth, one questions whether the Commission has the authority to alter the authority, jurisdiction and regulatory requirements placed on it by Congress in such a way. Only Congress can alter the Commission=s jurisdiction. The courts have found that the Commission could not extend its jurisdiction without an express grant of authority from Congress,[6] it would seem inconsistent that the Commission could remove matters from it jurisdiction without such express authority.

[6] *Bell Atlantic Telephone Cos. v. FCC,* 24 F.3d 1441 (D.C. Cir. 1994).

V. The ONA/ CEI Requirements Should Not Be Done Away with but Should Be Retained and Strengthened.

As an ISP, Socket relies heavily on the access it has been granted under the *Computer Inquiries* open network architecture and comparably efficient interconnection requirements. While some services Socket purchases are purchased at tariffed rates, terms and conditions, there are sufficient safeguards contained in the ONA and CEI requirements that we are certain that removal of them would be extremely detrimental to Socket=s business. An example would be DSL transport, which can be purchased by an ISP at considerably more favorable rates than are available to CLECs. We attribute the difference to the ONA and CEI safeguards. Further, we have noted of late that the Commission appears to have little interest in enforcing those safeguards; it appears that the Commission did not wish to have such proceedings concurrent with this inquiry, which could be dispositive of any such proceedings. We believe the ONA and CEI safeguards have not outlived their usefulness. We are convinced that without them, the robust competition that exists in the ISP industry and the resulting widespread access to the Internet will wane. The Commission should retain the requirements and vigorously enforce them.

VI. Telecommunications Services Underlying Internet Access Service Already Contribute to the USF; Causing ISPs to Collect a USF Contribution Would Be Burdensome.

At the present time, DSL services that are used for access to the Internet are already included in interstate end user telecommunications revenues subject to the universal service contribution obligation. As an ISP, the rates Socket pays for such services, and for other telecommunications services that are subject to the contribution obligations reflect that. However, if the provision of DSL

services no longer constituted a Atelecommunications service,@ there would be a large reduction in the contribution amount. As noted above, Socket believes such a redefinition and consequential reduction are wholly inappropriate, Socket does not believe any changes to the present methodology are necessary.

If such a shortfall were to be created by redefinition, it seems inconsistent to make up the difference by assessing ISPs, who, after all, are selling information services, not telecommunications services.[7] For a small business such as Socket, identifying those services that are already subject to USF contribution and isolating them from other services so that only certain revenue was assessed, and figuring out how to pass on those costs to customers in markets where competition is brisk and margins are thin, would be extremely difficult.

Finally, to exempt from contribution only those Companies who provide broadband wireline Internet access services over their own transmission facilities would improperly discriminate against non-facilities-based companies and would not be competitively neutral.

Conclusion

For all these reasons, Socket respectfully urges the Commission to not adopt the tentative conclusions set forth in the NPRM. The Commission should not allow ILECs to avoid the regulatory safeguards set forth in the Telecommunications Act of 1996 or in the Computer Inquiries,

[7] Unlike an ILEC, Socket could not sell an underlying telecommunications service without bundling it into an information service, as it is not certificated to do so.

but should strengthen and enforce those safeguards. Finally, the Commission should not, at this time, alter the Universal Service Fund collection methodology.

Respectfully submitted,

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Dated: May 3, 2002