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December 4, 2002

Re: *Regulatory Review Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337; and *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, WC Docket No. 02-33

Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Powell:

Once again Bell South, Qwest, SBC Communications and Verizon appear to have selectively missed the intent of the Telecommunications Act of 1996. I see three fundamental flaws to their whole premise on why linesharing should be eliminated. But make no mistakes; the context of the Linesharing cannot be excluded from the need of a complete UNE implementation. Can UNE-P continue under its current form? No. But shall we throw out all the CLEC's with the move away from UNE-P? A sound UNE guideline will allow both the Bells and the CLEC competition to thrive in the years to come as Voice and Broadband merge as one. Do not be tempted to solve today's problems with quick legislation while sacrificing the future. You are at a time right now where the FCC commission cannot fail.

The Flaws in the Bell Analysis

First, the Bells for all intense of purposes will have us believe that "Broadband" was excluded from the Telecommunications Act of 1996. We must surmise that the 96 Act was only to pertain to Local and Long Distance voice and that broadband was exempt from the Telecommunication Act of 1996 and should not apply. What we are to believe is that those who passed the 1996 ACT; the 430 House representatives, the 100 senators, and President William Jefferson Clinton all failed to see the foresight of Broadband's use in the evolvement of Telecommunications. We must believe that the architects of the 96 Telecom Act; the Bells themselves, the CLEC's, the scholars, the suppliers, and the consumers; were all blind to the fact that broadband was the telecommunications of the future. If this is the case, one must forget February 8, 1996, the day of the signing of the Act, when we ushered in the advancement of the Internet and telecommunications. Statements from individuals like:

*Vice President Al Gore, stating "a historic event that will change forever the way every American lives, works, learns, and communicates."
Republican Jack Fields - "a watershed moment...the first day of the Information Age."
Democrat Edward Markey - "a blueprint for the Information Superhighway"*

What the Bells would like us believe is that the intent of the framers was strictly talking about Local and Long Distance Telecommunications. That broadband was really secondary to the goal

of bringing voice communications cheaply to the masses?

Secondly, what the Bells fail to remember is their access to Long Distance was accepted based on the need to adhere to all of the 271 provisions. Now that the Bells have access to Long Distance, there is a sudden amnesia to Section 271-D which lays out the enforcement rules once the initial 14 steps of 271-C were proved and granted. Section 271 allows for the Bells to enter the Long Distance market, but it under **NO TERMS** mandates that they keep their status unless they completely and unequivocally follow section C of 271 to retain their status. Section C is the minimum requirements they must maintain **after** the 271 local entrance is granted. Somehow when they read Section 271 they stopped at section C and failed to realize the rules that exist today now that their 271 Applications have been granted. It is the FCC's job to grant the acceptance, but also to enforce the ongoing rules that must be adhered to.

Lastly, did the framers of the Telecom Act utter the words, "Legacy Copper Systems"? Was their intent to provide competition available access to the past, or did they establish the Telecom Act for what was about to happen. The Telecom Act of 1996 was in fact the blueprint of things to come. That fiber optics was just in its infancy. But the intent of the act was to allow the coming era to be accessible for all companies, small and large. That 7 monopoly companies (now only 4) were not to be the sole benefactors of the advancement. It is absolutely absurd that the Bells request that Remote Terminals be off limits to competition. Not only did the Telecom Act of 1996 provide for this but also so did the FCC Review of 1999. It is completely unreasonable for the competition to try and duplicate the rollout to 30% of the nation. Have they once tried in good faith to work with the CLEC's to help pay for the rollout. Not once. This is not their intent. They do not want \$1 from the competition as their customer. All they want is for the competition to disappear. They ask this of you, but you must not fall into their fallacies.

Plans for the future

Now we must look at how Broadband is going to be proliferated in the US. As a consumer I see three things that must happen to make broadband a staple in everyone's home.

First, access to the Linesharing must continue. It is the only way to effectively roll out broadband to the masses. The United States ranks in the top 20th among the leading countries for broadband rollout. When you examine the leading countries like Japan, Korea and Canada you see that all have implemented ADSL (linesharing) broadband. There is no need to roll out secondary lines at the residential level for broadband. Anybody company that makes this case does not do this for their customers, but does it for their own profits.

Secondly, access to all non-duplicatable facilities must be made available. Nowhere in Telecommunications Act of 1996 did the words "**Existing**" or "**Legacy systems**" dictate availability. Instead, the 96 Act was the blueprint for how telecom should advance from that point on. But now we see fiber based Remote Terminals have been used to circumvent the competition. National CLEC's like Covad Communications has access to 40% of homes in the United States through 1,800 legacy Central Offices. But the Bells have been implementing Remote Terminals to re-monopolize their control for Broadband. Now remote terminals feed an additional 30% of the United States. Plus they are overlapping the original Central office availability. Houses now have access to both Central Offices and Remote Terminals. The Bells are now using their Fiber based Remote Terminals to kill competition. They use this in marketing their Consumer DSL telling customers that copper based DSL is inferior to their Fiber RT DSL deployed further into the last mile. You know what, they are absolutely 100% correct. But did the framers of the ACT believe that the new technology would be to the detriment of competition. Were they unaware of the evolution, as more and more fiber would move deeper into the network? Eventually fiber will make its way to the home, but it should not be with the intent to exclude competition.

Finally, Strict enforcement must be a core competence of the FCC. Amnesia runs wild in this

industry. It seems that the Bells would rather pay small fines than adhere to the letter of the law. For them it is just the cost of doing business according to their terms and not the terms of the Telecom Act. Use the triennial review process to stiffen fines and hold everyone accountable for their actions.

Overview

Chairman and Commissioners, Broadband is in its infancy because the bells sat on the technology for decades. Do not accept their word that they, the Bells, will develop and **deploy** the next technological breakthroughs. Verizon has just stated to the Commission in these proceedings, that "*Over time, local companies will also be developing their own content, aimed primarily at competing with cable companies in highly concentrated markets for the delivery of video services.*" Supposedly the primary local companies, BellSouth, Qwest, Verizon, and SBC will suffice for the countries R&D needs to evolve the DSL telecommunications market. History has shown that they are unwilling to do this. Profits have always trumped the needs of the citizens of the United States. Only competition will force them to do what is right. Only in a competitive environment, will the future developments of Telecommunications flourish.

I urge the Commission to think of the future of Telecommunications when you complete your Triennial Review. Do not make your decisions for just the immediate needs. Your decisions in the coming month will decide whether competition cannot only exist in the next decade but through the company year. During the telecom boom, there was no way that all the companies that were around in the late 90's would make it to today. But the FCC should not deregulate out of business those companies that have made it so far. Within the next year Voice over DSL (VoDSL) will become mainstream. BellSouth is testing VoDSL in the residential markets in Georgia. Covad Communications is deploying VoDSL to small and medium businesses in the San Francisco market. Make no mistakes; everybody sees this as the telecommunications future. This is the future that the writers of the 96 Telecom act foresaw. This is the future that the Bells want you to deregulate. This is the inevitable evolution and migration of both Telephone and Broadband.

When President Clinton signed the Telecom Act of 1996, he did it on a digital tablet over the Internet. I would surmise that he was not worried whether it was over an Information Service or a Telecommunications service, or a combination of both? His intent was the same. At the same time Vice President Gore was interacting with grade school students in Washington DC over a Fiber Optics connection to their school. The promise was to advance these technologies to their schools and their home. The bells will have you believe that the very fiber-optic line Vice President Gore used should be exempt from the Telecom Act. The Bells are to have you believe that these kids were instead being promised a **legacy-based** future. In the coming years your actions will be judged from scholars and unfortunately jurisdiction as challenges continue. But as the Supreme Court has dictated in the past, sound reasoning to the Act is what is asked for from the FCC. No more, No less. It is time for the FCC to do what is right. This is your time to show the American public that the FCC is behind them and you have the wisdom and the power to support their cause.

I trust you welcome the challenge that is laid out before you.

Sincerely,

Jeffrey Bower
User of Broadband and the Internet

Cc:

Commissioner Abernathy
Commissioner Adelstein

Commissioner Martin
Commissioner Copps