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April 30, 2003

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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

Dear Ms. Dortch:

Yesterday, Dee May, Scott Randolph, Dennis Weller, John Goodman and Ed Shakin of Verizon and Professor Dennis W. Carlton, University of Chicago and Hal S. Sider, Senior Economist and Senior Vice-President of Lexecon, Inc. held meetings with Simon Wilkie of the Office of Strategic Planning and Policy Analysis, Gail Cohen, Michelle Carey, Bill Kehoe, Harry Wingo, Michael Carowitz and Darryl Cooper of the Wireline Competition Bureau, and Barbara Esbin, Alison Greenwald, Eric Bash, Peter Corea, Peggy Greene, John Kiafer and John Norton of the Media Bureau to regarding the above proceeding. The document provided is attached. Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Ann D. Berkowitz".

Attachment

cc: M. Carey
G. Cohen
B. Kehoe
H. Wingo
M. Carowitz
D. Cooper
B. Esbin
J. Kiafer
E. Bash
P. Corea
S. Wilkie

Overview

- **We evaluate the economic rationale for “common carrier” regulation of broadband services provided by ILECs**
 - Regulations require ILECs to provide wholesale broadband transport services at tariffed, non-discriminatory rates
 - Cable modem firms are not subject to regulation
- **Analysis involves consideration of:**
 - **Market definition**
 - Identify products that are close substitutes in demand/supply
 - Apply *Merger Guidelines* framework
 - **Market power**
 - Virtually all firms exercise *some* market power
 - We ask whether firms have market power in the sense that elimination of regulation would result in higher prices
- **Conclusion:**
 - Elimination of common carrier regulation will benefit consumers

Broadband markets

- **Mass market broadband services include:**
 - ADSL
 - Cable modem services
 - Satellite / fixed wireless
 - New Technologies - Broadband Over Power Line (BPL)

- **Larger business broadband services include:**
 - Frame Relay
 - ATM
 - Gig E / Ethernet
 - New Technologies

Elimination of common carrier obligation promotes consumers welfare

- **Encourages more rapid deployment**
- **Encourages continued investment in emerging technology**
- **Allows the market to determine:**
 - Best course for technological development
 - Most efficient business arrangements
 - Content to satisfy consumer demand

Elimination of common carrier obligations would not be expected to result in higher prices for mass market broadband services

- Cable modem services account for 65 percent of mass market broadband services; ADSL accounts for 31 percent
- Cable modem services available to 84 percent of homes; ADSL available to 61 percent
- Satellite services widely available, new wireless technologies becoming available (wi-fi, 3G)
- “Broadband Over Powerline has the potential to provide consumers with a ubiquitous third broadband pipe to the home.” Chairman Powell, April 23, 2003
- Firms can readily expand capacity
- Independent ISPs buy less than 25 percent of Verizon-provided ADSL lines
- Therefore the elimination of common carrier rules would not be expected to affect average prices

It is a misconception that ILECs are monopoly suppliers of wholesale transport services to independent ISPs

- Broadband Internet services includes (i) broadband transport; (ii) ISP functions
- ILECs provide broadband transport to independent ISPs on a wholesale basis subject to common carrier regulations; cable firms have begun to do so on a private contract basis
- However, this does not imply that wholesale transport services provided to independent ISP is a market or that ILECs are “monopolists” in providing transport services to independent ISPs
 - Transport services provided by ILECs compete with those provided by cable modem firms and others, which must be included in market definition
 - Elimination of common carrier regulation would not be expected to result in higher prices even if ILECs bundled ISP and transport services

In the absence of regulation, efficiency considerations dictate the services to which ILECs offer wholesale transport to independent ISPs

- ILECs will have the incentive to enter into commercial arrangements with independent ISPs and other content providers that are efficient or offer unique content
- Provision of wholesale services to efficient ISPs would enable ILECs to provide broadband transport to customers that otherwise might be served by cable modem firms or other rivals

Elimination of common carrier obligations would not be expected to result in higher prices for larger business broadband services

- ILECs face competition from IXC's in the provision of frame relay and ATM services
- Competitors can readily expand capacity
- Customers are sophisticated