

From the Desk
of
Ken Swinehart
625 Main Street
Alamosa, Colorado 81101

December 20th, 2004

To: Federal Communications Commission

RE: Opposition comments concerning **Docket No. 04-416, Docket No. 04-405 and Docket No. 04-29**

Dear Federal Communications Commission,

I voice my opposition to the petitions filed in the dockets referenced above. Granting such petitions would result in overturning the intent and purposes of the Telecommunications Act of 1996. The FCC does not have the force of Law to overturn the Act as it was made under the authority of Congress and signed into Law by the President.

If the petitions are granted, the FCC, a bureaucratic institution, delegated with limited and specific grants of authority by Congress, becomes more powerful than Congress and the Executive Branch. Whereby, a constitutional crisis would ensue and every United States Citizen would become beholden to unrestrained government bureaucratic organizations.

Under the Act Section 257 (b) states:

“NATIONAL POLICY- In carrying out subsection (a), the Commission shall seek to promote the policies and purposes of this Act favoring diversity of media voices, **vigorous economic competition**, technological advancement, and promotion of the public interest, convenience, and necessity”. (Emphasis Added).

If the FCC grants the applications it limits competition in the marketplace for Internet service, thereby abrogating “National Policy” as set forth by democratic institutions elected by the consent of the governed. Of course, some will argue that this applies only to telecommunications services and not to informational services, such as Internet services. However, a reading of the Section 257 (a) would show any such interpretation is frivolous as the Act pertains to both telecommunication services and information services. Section 257 (a) of the Act states:

“(a) ELIMINATION OF BARRIERS- Within 15 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall complete a proceeding for the purpose of **identifying and eliminating**, by regulations pursuant to its authority under this Act (other than this section), **market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and**

information services, or in the provision of parts or services to providers of telecommunications services and information services”. (Emphasis Added).

Granting the petitions would effectively create “market entry barriers” in informational services and limit competition in the marketplace, thereby doing the opposite of what Congress intended.

The FCC should actually start a new proceeding pursuant to Section 257 (a) and solicit comment on whether or not the large ILECs should split into two different entities. One entity controlling the copper infrastructure and central office buildings and the other entity owning the switches housed at the central offices. The first entity being a natural monopoly would sell access on a non-discriminatory basis to the copper plant and lease space at the central office to all providers of telecommunication and information services. The second entity owning the switch equipment would be required to lease copper plant and pay rent at the same rate as any other provider.

The people actually own the ILECs as the plant and equipment was paid for by the forced extractions from ratepayers over the course of many decades. As a matter of equity each ratepayer should be given stock in the new entity that owns and controls the copper plant and central office buildings. The company that owns the switch equipment would still be owned by existing ILEC stockholders. Any argument from ILEC stockholders that this is unfair and illegal treatment will be met with a more dominant and prevailing argument that this is the lesson to learn when a band of people use the force of government to create a monopoly, eliminate competition and force customers to pay high prices for substandard service.

In summation, granting these petitions would bring the FCC decision in direct violation of the Telecommunications Act of 1996. The FCC has no other course of action, but to deny the petitions and ensure that “National Policy” is enforced.

Respectfully Submitted,

Ken Swinehart