



February 5, 2003

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20054

Re: Triennial Review of the Commission's Unbundling Rules
CC Docket Nos. 96-98, 98-147, 01-338

Dear Chairman Powell:

The undersigned entrepreneurs and leaders of the Internet community strongly discourage the Commission from adopting rules rolling back local exchange carrier ("ILEC") unbundling duties. The distinction between legacy and last mile packet-based facilities asserted in the final draft of the rules creates more problems than it solves. It appears the ILEC's and their vendors (i.e. High Tech Broadband Coalition) want to circumvent Congressional opponents by getting the FCC to implement the Tauzin-Dingell Bill (HR 1542). Our opposition to the Tauzin-Dingell Bill in Congress and now similar provisions proposed by the FCC derives from our desire to escape ILEC monopolization of connectivity.

Connectivity represents a critical element of our lives and livelihood. Local access remains the last element of the telecom value chain under monopoly control. Telecom in the United States slowly moved from monopoly control toward competition over the last 100 years. Premise equipment, premise wiring, network equipment, voice and data inter-exchange transport, wireless, and networking all benefit from innovation driven competition. The ILEC controlled local loop remains a bottleneck, and local access remains the only sector of information technology where rising prices, stagnant infrastructure, and falling employment represent the norm.

The Commission appears motivated by speculation about ILEC incentive to invest based on a fundamentally flawed premise - ILEC costs exceed prices established for unbundled network elements. **ILEC costs cannot serve as the basis of policy.** One can find arguments supporting or contradicting the premise, but the incumbents made the notion of costs moot by destroying transparency. No one knows what it costs the ILEC's to deliver services. Customers don't know. The government doesn't know. The ILEC's don't know. There exist too many multifunction elements in the network to allocate costs, and the Bell companies lost control of their cost accounting. The Supreme Court acknowledged this fact in affirming the FCC's authority to apply the forward looking TELRIC pricing model.

US Supreme Court - *Verizon v. FCC* - No. 00-511 - See page 46 in the opinion:

"This challenge must be assessed against the background of utilities' customary preference for extended depreciation schedules in ratemaking (so as to preserve high rate bases), see n. 8, supra; we

have already noted the consequence of the utilities approach, that the "book" value or embedded costs of capital presented to traditional ratemaking bodies often bore little resemblance to the economic value of the capital. See FCC Releases Audit Reports on RBOC's Property Records, Report No. CC 99-3, 1999 WL 95044 (FCC, Feb 25, 1999)("[Book] costs may be overstated by approximately \$5 billion"); Huber et al. 116 (We now know that "[b]y the early 1980's, the Bell System had accumulated a vast library of accounting books that belonged alongside dime-store novels and other works of fiction... By 1987, it was widely estimated that the book value of telephone company investments exceeded market value by \$25 billion dollars").

The use of regulatory relief to obtain ILEC investment has never succeeded in overcoming the attraction of monopoly profits. The Bell companies enjoyed a wide spectrum of regulatory relief since divestiture, but the regulatory changes did not reduce a single telephone bill or motivate the creation of a single new service. The changes simply produced more profits for the Bell companies and increased the bonuses of executives. The threat of withholding investment represents both a bluff and extortion as a clear track record betrays the Bell companies. Ratepayers subsidized failed efforts to enter unregulated businesses, but the Bells never invested more than the bare minimum to maintain Plain Old Telephone Service. Consider that local access remains an analog technology unchanged in any fundamental way for 50 years. On the other hand, policies designed to lower the barriers to competition always produce results. Bell company investments in DSL were entirely motivated by the threat of competition. Consider also the quality of service competition that motivated the long distance companies to deploy digital technologies shortly after the breakup of AT&T.

The principles that underlie the antitrust laws provide a sound basis for policy in support of competition. Antitrust laws limit the ability of companies to succeed by injuring the value proposition of competitors. Success must depend on improving the value proposition offered end users. Antitrust laws address cheating in the business sphere precisely analogous to cheating other life endeavors, such as, sports, education, or elections. The antitrust laws don't get engaged until a company achieves a level of market power that yields an incentive to cheat. A market with several competitors already limits the utility of cheating. Individual companies likely won't have efficient means to make others suffer and diverting energies to injure one opponent risks creating a disadvantage relative to others. For a case in point, consider the extent of Bell company energies directed at handicapping non-ILEC's as opposed to their work on the value proposition offered end users.

The final draft proposals threaten the worst of all worlds – an unregulated monopoly. The Organization for Economic Cooperation and Development (OECD) ranks United States only 17th in utilization of communication services. The continued failure to address ILEC abuse of market power means the United States will continue to fall behind the rest of the world en route to the telecom future.

If you have any questions concerning this letter, please contact the undersigned.

Sincerely,

Signatures – linked at <http://www.pulver.com/reports/signers.html>

cc:

The Honorable Kathleen Q. Abernathy

The Honorable Michael J. Copps

The Honorable Kevin J. Martin

The Honorable Jonathan S. Adelstein