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Public Service Commission

April 3, 2002

VIA ELECTRONIC FILING

Honorable William F. Caton, Acting Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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

Dear Mr Caton:

Forwarded herewith are Comments of the Florida Public Service Commission in the above dockets with regard to the Appropriate Framework for Broadband Access to the Internet over Wireline Facilities.

Should you have additional questions, you may contact Greg Shafer at (850) 413-6958.

Sincerely,

/ s /

Cynthia B. Miller, Esquire
Office of Federal and Legislative Liaison

CBM:tf

cc: Qualex International
Janice Myles, Policy and Program Planning Division
Brad Ramsay, NARUC

**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)	CC Dockets Nos. 95-20, 98-10
)	

COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

The Florida Public Service Commission (FPSC) welcomes the opportunity to submit comments to the Federal Communications Commission (FCC) regarding its Notice of Proposed Rulemaking (NPRM) for broadband access to the Internet provided over domestic wireline facilities. The NPRM seeks comments on a number of issues including whether wireline broadband Internet access services are information services subject to regulation under Title I of the Act, and whether the Computer Inquiry network access requirements should be modified or eliminated. In addition, comment is sought on what regulatory framework should apply in the future if wireline broadband Internet access services are so classified and subject to Title I of the Act, the implications for non-discriminatory access and other core policy objectives, and whether to modify or eliminate existing access obligations on providers of self-provisioned wireline broadband Internet access services. Finally, comment is sought on whether important national security, network reliability and consumer protection obligations should apply to providers of wireline broadband Internet access services; how

to strike an appropriate balance of responsibilities between the FCC and the states with respect to broadband Internet access services; and whether facilities-based broadband Internet access providers should be required to contribute to support universal service.

Overview

The FPSC recognizes the significance and importance of the issues raised in the NPRM and believes it is remarkable that the FCC has coalesced the debate on these issues in such a way as to illustrate their interconnectedness. However, in so doing, the NPRM presents a formidable challenge, one which cannot be easily grasped and distilled in a few pages of comments. Nonetheless, the NPRM seeks comment on the most fundamental questions of the day relating to the evolution of the broadband and telecommunications markets and provides a forum for parties to address the question of where we go from here in this dynamic field. The FPSC comments will focus on the markets for both telecommunications and wireline broadband Internet access services and their interconnectedness, the potential impact on those markets of the tentative conclusions reached by the NPRM, and the need to remain vigilant and cautious in the regulatory approach to those markets. The FPSC also offers for consideration and discussion a proposed framework for addressing ILEC versus non-ILEC wireline provision of DSL. Finally, the FPSC offers comments on consumer protection issues and universal service implications.

The Market

The current telecommunications market is far more complicated today than it was when the Telecommunications Act of 1996 was enacted. At that time, local competition was little more than a vision and Internet usage was just beginning to become a desirable consumer commodity across

all segments of the population. There was a growing awareness that Internet access was an important if not critical element for education, economic efficiency, economic development and enhanced lifestyle. The Act recognized that competition for local telecommunications services, as well as availability of information services, was critical to providing consumer benefit through innovation, choice and reasonable prices. Certainly no one would argue that all of the objectives of the Act have been achieved, but progress has most assuredly been made. The number of telecommunications access lines served by competing carriers continues to grow albeit at sometimes disappointing rates. Perhaps most surprisingly, the number of consumers served by wireless communications providers has continued to grow explosively, at times supplanting traditional wireline service as the communications technology of choice.

It is a critical moment in the evolution of the wireline telecommunications market. The general contraction of the economy over the past 18 months, the tragic events of September 11, 2001, and the scandal involving the accounting practices of the Enron Corporation have all served to severely restrict the investor capital that once flowed freely to the telecommunications and information service sectors. While growth appears to be continuing in some segments of these markets, it has unquestionably been tempered by this series of events. The primary reason for this slowdown is uncertainty. Investors faced with uncertainty will take their dollars elsewhere where the risk/reward equation is more favorable. The number of non-ILEC players in the local telecommunications arena has been reduced as a result of these events. Now, in the wake of these circumstances the FCC has opened the door for a significant reframing of the rules, policies and principles upon which a fragile and volatile marketplace has emerged. The FCC has asked most,

if not all, of the pertinent practical and philosophical questions pertaining to the wireline broadband Internet market, but in so doing may cause another ripple of uncertainty in an already unsettled arena.

The broadband landscape is currently characterized by several technologically different platforms: wireline broadband Internet access (predominantly xDSL service provided by traditional telephone infrastructure), wireless broadband Internet access (not yet widely subscribed to in the U.S.), cable modem broadband Internet access, and satellite broadband Internet access. These platforms all have different availability and performance characteristics and, hence are not perfect substitutes for one another. As a result, consumers in markets with only one provider per technology platform for broadband service may really be faced with no choice at all, depending on their specific needs.

According to the most recent Advanced Services Report, the FCC determined “that advanced telecommunications is being deployed to all Americans in a reasonable and timely manner.” It was also noted that the FCC is “encouraged that the advanced services market continues to grow, and that the availability of and subscribership to advanced telecommunications has increased significantly. We also conclude that although investment trends have slowed recently, investment in infrastructure for advanced telecommunications remains strong.”¹ While statistics seem to indicate a high level of availability and accessibility to at least one of these alternatives, the reality is that the services continue to be priced in such a way as to limit demand. According to the General

¹ In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable And Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996 CC Docket 98-146, Third Report, adopted February 6, 2002, released February 6, 2002; p. 2.

Accounting Office's February 2001 report on its survey of Internet users, only 12 percent of the respondents subscribed to broadband, while 52 percent of the respondents had access to broadband. In other words, it appears that demand and not supply is the primary impediment to the expansion of this market at the current time.

The lack of demand has been identified, but the reasons for that lack of demand have not been fully explored. More assessment is necessary on what types of content would be desirable for consumers in order to spur greater demand. The FPSC through its participation in the 706 Federal/State Joint Board has advocated that additional studies be conducted at the state level to determine whether take rates for broadband Internet access are impacted by factors other than price. In addition, it has also advocated identification of local economic development initiatives and public/private partnerships that have been effective in spurring broadband demand at the local level. We believe that collecting and disseminating this information and sharing success stories is an effective method to develop and provide services that will increase broadband demand under the existing regulatory framework. Prior to altering the existing regulatory framework, we believe the FCC should pursue further assessment of demand-side issues and solutions.

Another aspect of the current market is the trend toward combining telecommunications service, data transport, Internet access and information service as a package provided to consumers. Competitive (alternative) local exchange companies can not generally compete solely on the basis of local exchange service and survive in the long term. It is the very ability to combine local exchange service, data transport, long distance, new and innovative custom calling features and, in many cases, Internet access and information services that make alternative carriers attractive to

business and residential consumers alike. In particular, large business customers usually require data transport capability from their telecommunications provider and many alternative providers have made that service the cornerstone of their business plan. Thus, the local exchange markets and the broadband market is inextricably joined.² If wireline broadband Internet access service is designated as an “information service” and the component transmission path is considered “telecommunications” rather than a “telecommunications service,” under the current regulatory framework, wireline broadband Internet access service would be subject only to Title I regulation under the Act. As such, that access would not be subject to provisions of the Act which require unbundled access to competitors at rates based on the pricing methodology currently applied to Unbundled Network Elements (UNEs). Thus, access to the transmission path by telecommunications competitors is foreclosed. As a result, a significant number of those competitors may lose the ability to reasonably compete for the whole package of services that is typically demanded by many of today’s telephone consumers.

We emphasize that the FPSC stops short of doomsday predictions regarding the potential impacts on local competition that may result from the tentative conclusions reached by the FCC regarding wireline broadband Internet access. However, it is undeniable that the tentative conclusions set forth in the NPRM, if adopted, will have an impact on that market. The telecommunications market in the state of New York, frequently held out as a model of how competition can work in the local telecommunications market, is largely dependent on resale, UNE, and UNE-P (UNE-Platform) provided by the ILEC. If the result of the FCC categorizing wireline

²This is a particularly thorny issue because no other broadband platform is required by law to make its infrastructure available to competitors in an effort to create additional competitors.

broadband Internet access services as information services is to make DSL-capable loops unavailable as UNEs, then this may be a serious blow to the ability of market participants using resold elements to compete for broadband customers, thus leaving carriers with their own last mile facilities as the primary competitive alternative. One is left to wonder what impact this would have on the status of local competition in markets like New York, Florida and others, that are largely based on resale or UNE provisioning.

It is instructive to consider the evolution of the long distance market. In the mid and late 1980's, after the divestiture of AT&T and the RBOCs, the long distance market was characterized by one dominant player, AT&T, a few fledgling facilities-based carriers (Sprint and MCI to name only two) and many resale players who specialized in buying the high volume toll services of the larger carriers and consolidating traffic from many individual consumers in order to pass along savings. The market has evolved and today it is comprised of three or four large facilities-based carriers none of which are characterized as dominant. Resellers continue to fill niches in the market, but in most cases have been absorbed by larger facilities-based carriers as they filled out their networks. Resale was an effective starting point for many carriers but ultimately became only a marginal platform for provision of long distance services. At no time did the Congress, the FCC nor state legislatures determine that facility-based competition was the only viable platform for long distance competition. More correctly, the market determined that outcome.

There are clear differences between the local telecommunications market, the broadband market, and the long distance market, but certainly some lessons learned are applicable across the board. The FPSC would strongly urge the FCC to exercise extreme caution regarding the tentative

conclusions raised in this NPRM and be mindful that an evolving and dynamic marketplace requires the freedom to seek its own equilibrium without regulatory bodies attempting to predetermine outcomes. Striking the appropriate balance between providing alternative providers the leverage to effectively compete against incumbents while providing incumbents sufficient incentives to innovate and explore new markets requires a patient and circumspect approach. Certainty and stability should be something that regulatory oversight seeks to provide.

The FPSC respectfully notes that Florida remains in the midst of various proceedings and initiatives designed to foster competition and facilitate broadband deployment, e.g., our 271 proceeding, arbitration proceedings, a comprehensive OSS test, UNE pricing dockets, and participation in the 706 Federal/State Joint Conference. In all of these arenas, the FPSC has endeavored to implement the letter and intent of the law and to do its utmost to provide the benefits of telecommunications and Internet technology to consumers by facilitating a vibrant competitive marketplace. **These efforts should be permitted to resolve themselves prior to substantially revising the regulatory framework.** In fact, while the dialogue of these issues is a necessary exercise, one might argue that the FCC need not do anything beyond dialogue at this time.

In addition, other intrastate initiatives are currently taking place. For example, Florida's private sector economic development organization, Enterprise Florida, Inc., in cooperation with state and local governments, is developing strategies to more expeditiously bring broadband Internet access service to rural areas in Florida. Also, in the recent session of the Florida legislature an initiative to expedite DSL deployment in Florida was proposed. It should be noted that the initiative was not passed due, in part, to the conclusion that broadband deployment in Florida was progressing

satisfactorily. In addition, the Florida Department of Education has worked closely with local school boards to ensure that Florida students receive their fair share of the Schools and Libraries Universal Service funding for Internet access. Thus, the states are actively seeking ways to further deployment of broadband technology and are in the best position to determine where markets are not providing the desirable results and initiate non-regulatory responses.

The FPSC believes it would be more appropriate to permit time for these efforts to bear fruit before altering the regulatory landscape in the manner outlined by the tentative conclusions of the NPRM. Again, we emphasize the impact on the marketplace that uncertainty brings to bear, and strongly advise a more deliberate approach to identifying market distortions for fine tuning rather than significantly changing the regulatory environment. To that end, the FPSC has recently established the Office of Market Monitoring and Strategic Analysis for the purpose of assessing markets and market trends and recommending solutions if market failures are detected.

Wireline Broadband Investment and Deployment and the Regulatory Framework

As a result of the requirements and provisions of the Act under Sections 251, 252, 271 and 706, there is a tension for the ILEC in the deployment of broadband technology and services. This tension is created by the desire and requirement to deploy broadband services in a reasonable and timely manner and to provide these services to end users versus the requirement to make telecommunications services available to competitors on an unbundled basis. In short, the ILECs contend that they cannot reasonably be expected to invest in cutting edge technology when the return on that investment may accrue, in part, to competitors who may be permitted to purchase the underlying elements at rates substantially below retail prices. The issue is further complicated by

the often heard complaint that regulation varies greatly across broadband platforms and the wireline providers are disadvantaged in the broadband market by this disparity. Thus, there is a great deal of uncertainty for the ILEC when performing its cost/benefit analysis on technology and deployment. Since technology changes rapidly, risk and uncertainty are heightened by the inability to accurately assess potential return. Simply put, why invest in something only to be forced to concede significant portions of the return on that investment with others who do not share equally in the risk? When risk and uncertainty increase, investors look for other possible investment opportunities. This tension for the ILEC is a dilemma for regulators and policy makers as well, and the NPRM has quite correctly contemplated and sought comment on an alternative regulatory regime to address the provision of wireline broadband Internet access services by ILECs and the implications for unbundling. This aspect of the NPRM alone constitutes a fertile ground for debate and the FCC should avoid a rush to judgement and instead permit a thorough dialogue. At this time, the FPSC takes no position on any alternative regulatory regime but for consideration offers a suggested concept for further dialogue (see Alternative on page 12).

As noted previously, the FCC itself has concluded that broadband deployment is progressing in a “reasonable and timely manner.” In light of this conclusion, it seems premature to alter the regulatory and policy framework until a clear market failure has been identified. Instead, policy makers should focus on fine tuning adjustments on a case-by-case basis that will eliminate identified distortions, such as the ILEC broadband investment dilemma, while maintaining predictability in regulatory treatment. The FPSC further believes that such decisions and adjustments are more

properly the domain of the states since they are in a better position to assess local and regional markets.

Alternative

In the event that the FCC ultimately concludes that wireline broadband Internet access service is an information service with a telecommunications component and not subject to unbundling requirements, it may wish, at a minimum, to impose resale obligations on that service. This would permit competitive telecommunications carriers to provide such services in combination with their own offerings. This would alleviate ILEC concerns over the requirement to unbundle new iterations of technology and the dampening impact that might have on deployment. Competitive carriers would be able to resell those information services but would retain incentives to invest in their own facilities to provide new services since it would likely be more profitable to do so. We believe that the provisions of Title I of the Act could be broadly interpreted to support such an obligation.

Another option would be to permit and encourage joint ventures between the ILEC and competitors that would allow a sharing of costs as well as profits in provisioning of wireline broadband Internet access services.

Universal Service

The FPSC has consistently taken the position that the services eligible for Universal Service funding should not be expanded to include wireline broadband Internet access services and furthermore, should not, at this time, include broadband services. The logical extension of collecting contributions from broadband service providers, regardless of platform, is that at some future date

those providers would seek to receive funding for the purpose of addressing broadband deployment issues. For a host of reasons we will not reiterate here, the FPSC strongly opposes the notion of subjecting broadband Internet access service providers to Universal Service contributions. As noted earlier, Florida has already encouraged initiatives to deploy broadband infrastructure and we do not believe our consumers should be asked to contribute to fund similar infrastructure investment for consumers in other states. The FPSC believes public/private partnerships and economic incentives are a far better and more sustainable method to ensure broadband availability to under served markets than an elaborate and inflated subsidy mechanism.

Customer Service Issues

The FPSC received over 300 DSL related complaints from end-users and ISPs in 2001. It is clear that consumers, particularly residential and small business consumers, view wireline broadband Internet access services provided by the local exchange companies as something akin to telephone service and believe that state public utility commissions are the appropriate venue for service complaint resolution. In the event that the FCC ultimately concludes that wireline broadband Internet access services are indeed “information services” it may behoove the FCC to establish a Bureau or Office of Broadband Consumer Affairs for the purpose of providing a central location for receiving broadband related complaints across all platforms and for the establishment of service quality standards, if necessary.

Reliability and Interoperability

The NPRM also seeks comment on reliability and interoperability standards for wireline broadband Internet access services. As noted previously, the FPSC received over 300 DSL related

complaints in 2001. A significant portion of those complaints dealt with outage times and reliability issues. The FPSC has a pending docket to address the need to tariff intrastate wireline broadband Internet access services provided by ILECs (xDSL). The primary impetus for that proceeding was to bring to the attention of the FPSC the growing number of service quality issues related to ILEC provided xDSL service. It would seem that the market is not yet sufficiently developed for broadband Internet access across all platforms to be self-regulating when it comes to service quality and reliability. Therefore, should the FCC ultimately adopt the tentative conclusions of this NPRM, the FPSC would strongly urge the adoption of industry reliability and interoperability standards to apply, at a minimum, to wireline broadband Internet access services provided by ILECs.

Conclusion

The FPSC agrees with the stated policy goals and principles of the NPRM. At the present time, the FPSC does not take a position on the tentative conclusions of the NPRM but has reservations about the implications of those conclusions for both the telecommunications and broadband Internet access service markets. As discussed previously, the competitive telecommunications market is still developing and many states are still carefully considering 271 applications. In addition, the states and the FCC continue to monitor progress in competitive markets and state legislatures, including Florida's, continue to seek ways to facilitate competition and hasten broadband development. Many of the issues before state public utility commissions are not broad policy matters but implementation matters best handled at the state level. Even some policy matters, such as the UNEs that should be made available, are best handled at the state level where local market assessments can be made and decisions can reflect those market assessments.

The broadband market is characterized by several different technology platforms that are not alike and provide consumers with different performance characteristics. Competition between these different platforms while becoming more widespread is far from sufficient to stimulate strong demand. Price is still an obstacle and speed alone does not seem to justify the expense for a vast majority of consumers. Consumers are less concerned about transmission media and more concerned about things such as price, convenience and reliability. We believe work remains to be done in identifying the reasons behind lagging broadband Internet access service demand before determining whether regulatory responses are necessary.

As we have noted, the telecommunications and broadband markets are increasingly linked. A number of telecommunications competitors have sought to establish a customer base by concentrating on the provision of wireline broadband Internet access and have, at least in part, relied on the availability of DSL capable loops from the ILECs. If the consequence of the tentative conclusions set forth in the NPRM is to prevent or severely restrict the ability of competitive telecommunications companies to use ILEC provided facilities to make wireline broadband Internet access service available, then the FPSC would not support those conclusions at this time. The basis for that opposition would be that the regulatory framework currently in place is actively sifting through a myriad of complex issues in an effort to address both telecommunications competition and broadband deployment. Simply by raising the issues addressed in this NPRM, the FCC may inadvertently add uncertainty to a fragile market. The competitive telecommunications market is not yet mature enough to begin limiting or restricting access to underlying components of the provision of wireline broadband Internet access. We believe that the market will ultimately decide

that outcome without making significant changes to the regulatory scheme. We believe that making modifications and adjustments to the existing framework that are market driven is a better course of action at this time. In this way, relaxation of or forbearance from unbundling requirements can proceed incrementally as markets evolve. Furthermore, we believe the states are in the best position to assess local and regional markets.

Respectfully submitted,

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Office of Federal & Legislative Liaison

DATED: April 3, 2002