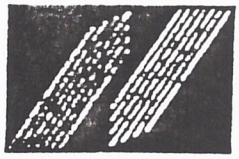

Network
Communications, Inc.

November 29, 1988

Mr. John Cimko
Chief, Tariff Division
Common Carrier Bureau
F.C.C.
1919 M. Street
Suite 518
Washington, D.C. 20554

Dear Mr. Cimko:

Thank you and your staff for taking the time to meet with me on my recent visit to Washington. It is very encouraging that you would be willing to meet with me and listen to my concerns.

Per your request, I have attempted to reiterate all of the comments I made in person and present the data in a more easily understandable format. I attempted to follow the format used by others in their comments.

All the totals in Attachment A were arrived at by using the LOTUS 1-2-3 program on our personal computer. I would be happy to send you this on a disk if you or your people would like to manipulate the data.

Please call if you should have any questions or need further information.

Sincerely,

F. Scott Yeager

F. Scott Yeager

FSY:rlw
Encls

9894 Bissonnet, Suite 310. Houston, Texas 77036 713/271-1225

November 29, 1988

RE: FCC Docket #88-136

Network Communications, Inc., (Network) submits the following comments concerning the uniform tariffing of DS3's in response to our recent meeting in Washington, D.C. These comments were prepared by F. Scott Yeager with no assistance from legal counsel and represent Network's opinion of the situation and understanding of the law.

BACKGROUND

Network is presently composed of two company founders, F. Scott Yeager and Larry Koonce. Network is not operational nor does it have any revenues as of this date. Ultimately, it plans to employ about 40 people.. It will utilize diversely routed fiber optic cable with redundant electronics and a computerized network monitor and control system to offer DS0, DS1 and DS3 services. This means Network will be the low cost provider if cross-subsidization by the LEC is not allowed by the regulatory bodies.

SUMMARY

The FCC should require the uniform tariffing of high capacity services (DS3's) and eliminate the ICB tarriffing of DS3's. These existing contracts are discriminatory in nature. It is questionable that all costs are being recovered. They appear to be predatory and, in Network's case, preemptive of competition. This is anti-competitive. It is Network's understanding that this is against the law.

These anti-competitive practices are observable by reviewing the existing ICB's for DS3's (45mbs) filed under Tariff 68 of the FCC by Southwestern Bell Telephone Company (SWB). According to SWB's comments to the FCC, there are about 250 of these contracts in existence. The data Network reviewed (Attachment A) covered 197 of these contracts and all numbers quoted by Network are based on 197 contracts, not 250. However, the dollars represented are significant enough to draw the conclusion that discriminatory and predatory pricing exists and tariffs should be put in place to protect the rate payers. In fact, if a uniform tariff were developed, additional funds would be available to keep the "Plain Old Telephone Service " (POTS) rate down. It appears that POTS is subsidizing these high capacity services. This kind of cross-subsidization is not allowed by law.

EXISTING DS3'S ARE DISCRIMINATORY, PREDATORY AND APPEAR TO BE CROSS-SUBSIDIZED BY POTS

No proof exists that all costs are being recovered. Network cannot obtain true cost information for analysis. It appears unlikely that costs are recovered since there are numerous instances of DS3's being priced at rates in the $100 to $200/month level within SWB's territory. In the same territory, the minimum DSO price is $170.39 for a 2.4 kbs circuit while the rate for a 56 kbs circuit if $276.28. Both are DSO's. The lowest monthly DS1 rate is $495/month in the 0 mileage band. There are 24 DSO's in a DS1 and 28 DS1's in a DS3. This means there are 672 DSO's in a DS3. Therefore, one DS3 is often selling for a price below the cost of one DS1 (which is 1/28th the capacity of a DS3) and below the cost of one 56 Kbs DSO circuit (which is 1/672 of

Assuming a reasonable rate is charged per DS3, then pricing would not be preemptive in nature and would therefore allow real competition to develop.

STUDY OF EXISTING ICB'S INDICATES ABUSE

The existing ICB arrangement should be reviewed to clearly understand that ICB's for DS3's are discriminatory and predatory in nature and appear to be cross-subsidized by the general body of rate payers.

SWB states in their comment to the FCC (Docket 88-136) that they have about 250 ICB's in place. The study (See Attachment A & D)Network conducted covered 197 contracts where 1,130 DS3's are installed -- certainly a sufficient quantity to develop a tariff. The average rate for a DS3 varies from $256/month in Beaumont, Texas, to $21,873/month in FortSmith, Arkansas. However, in cities like Houston, Texas, where no competition exists at present, DS3 rates are as low as $117/month. How can a DS3 (672 DS0's) sell for less than a DS0 circuit and be well below a DS1 (24 DS0's) circuit unless it is being cross-subsidized? If costs are being recovered, then what cost methodology is being used? These inconsistencies demonstrate what we think are the flaws in the system and show how difficult ICB's are to administer. (It should be noted that Network is attempting to finalize financing and start competing on a limited basis in Houston. The average rate in Houston is $1,211/month/DS3, which is lower than most of the cities in the five states. This appears to be preemptive in nature.)

A close look at the enclosed printout (Attachment A) will indicate numerous examples similar to the one below. These are shown in the Houston section of the printout.

Customer	Service	Location From/Two	Rate/mo	Qnty DS3/s	*Monthly Rate/DS3
Electra	Capitol C.D.	to 806 Main	$5,800	3	$1,933
Electra	Capitol C.D.	to 806 Main	$1,750	3	$ 583
LDX Net	1000 Louisiana	to 806 Main	$1,050	9	$ 117

* The monthly rate per DS3 is arrived at by dividing the number of DS3's in the contract into the rate per month.

All are 0 mileage band. All are in downtown Houston. All would require a franchise from the City for the customer to build their own facilities (i.e., bottleneck). All are called competitors, not customers in the SWB filing with the FCC. All three prices are predatory and preemptive in nature from Network's perspective. No meaningful cost justification has been provided. In the LDX Net case, a DS3 is selling for less than a DS0. These discrepancies are difficult to rationalize. It appears that the marketing and sales department of SWB is allowed to set prices at any level. They don't really have competition but are attempting to preempt it or are so inexperienced at negotiating that they believe every threat a customer makes. SWB's intent is not the issue. The affect is that SWB is playing pricing games that are detrimental to the customer, the general body of rate payers and potential competition. These actions are what caused divestiture originally and could cause "Divestiture II" if they are not stopped.

A comment about salesmen in general may shed light on the inconsistencies in pricing. In a competitive environment, the sales department is always bringing orders to the management that can be obtained if they are allowed to lower the price. Some salesmen even go so far as to imply that the company could lose $1.00 per item but make it up on volume. The free market will take care of those companies because they will go bankrupt if management allows this to occur.

This is not the case if SWB is giving away services below real cost to customers in what it deems to be a competitive market since the rate payer will make up the difference if a loss occurs. It is difficult, if not impossible, to get at the true cost of providing DS0, DS1 and DS3 services via the LEC. It may be impossible to demonstrate that cross-subsidization is occurring with respect to DS3 ICB's. However, using the beer analogy, it is intuitive that a single beer (DS0) should not sell for less than a case of beer (DS1) or a truck load of beer (DS3=672 DS0's or 28 DS1's). This needs to be kept in mind when evaluating cost information provided by the LEC.

WHAT IS IMPACT TO THE LEC IF FORCED TO TARIFF DS3'S?

The tariffing Of DS3's could benefit the rate payers in several ways. An analysis has been made that shows the impact to the LEC (SWB Company) if DS3's were tariffed. It would be beneficial to all rate payers, including the IXC's or end users who presently use DS3's. This is shown in the attached summary sheet (Attachment D). The claim by the RBOC's that tariffing DS3's would have a negative impact on their revenue stream, is not demonstrable.

This is not what they submitted to the FCC. The FCC comments were discussed earlier. Surely if competition existed it would be possible to tell the same story to the FCC and PUC and the bypass monitor report should substantiate their claims.

CONCLUSION

Network urges the FCC to tariff DS3's in a uniform manner similar to DS0 and DS1 rates using a fully allocated, system-wide average cost methodology. This should also apply to DS3-like services, such as dark fiber. It is questionable that dark fiber should be allowed at all.

In addition, Network requests that the FCC state openly that the bottleneck still exists and that alternate access providers should be encouraged to develop in all cities to alleviate the bottleneck. Once the LEC can prove competition exists and that they are no longer the dominant carrier, then pricing freedom could be allowed.

In Texas, the PUC examiners report on long-distance services recently indicated that AT&T is still the dominant carrier and has 65% of the long distance market (See Attachment E). This is five years after divestiture. The deregulation of AT&T was not recommended. Surely the pricing freedom allowed in existing ICB's is not needed to respond to "competition" that has not developed yet. Network is not in service yet. No other company like it exists in Texas. This industry is where long distance was just before MCI started service. MCI and Sprint combined are still not dominant carriers after all this time. It seems

reasonable to eliminate the potential for abuse that exists in the present ICB situation.

The RBOC's have created the myth that bypass is a problem. In reality, RBOC's are the biggest bypassers. They claim lost revenues, which they say will force the rates for POTS to increase. The facts are that SWB's revenues and earnings are up every year since 1984 . In Texas we have been told that they are above the allowed ceiling for Rate of Return, and they have yet to address the tax benefits they recently received. Network, and companies like it, only need part of the growth curve that the RBOC's are experiencing to survive. In addition, we play a critical role in the national telecommunications infrastructure that should be recognized.

POTS should not be subsidizing the ability of the LEC to eliminate or preempt competition. It is Network's opinion that elimination of ICB pricing for DS3's will be a step in the right direction in stopping the abuse that already exists.

Attachment D - Network Comm

SUMMARY INFORMATION AND ASSUMPTIONS

GENERAL INFORMATION:

DSO Family: - Voice grade/32 Kbs (Type DSO)
- 2.4 Kbs
- 4.8 Kbs
- 9.6 Kbs
- 19.2 Kbs
- 56 Kbs

up to 64 Kbs is a DSO

24 X DSO = 1/ea DS1 or 1.544 Mbs

Use $495/mo as rate for DS1 @ 0 mileage band.

28 DS1's = 1/ea DS3 or 45 Mbs

To estimate a rate for a DS3 (45 Mbs), use the same ratio as for DSO to DS1. Rule of Thumb says:

8 DSO's = 1/ea DS1 rate, so 1/ea DS3 should be 10 X $495 or $4,950/mo ea.

135 Mbs = 3 DS3's
405 Mbs = 9 DS3's
565 Mbs = 12 DS3's

AVERAGE DS3 RATE BY CITY:

City	Avg Rate/DS3/Mo
Austin	$2,200
Beaumont	256
Dallas	2,334
Fort Smith	21,983
Fort Worth	7,504
Houston	1,211
Kansas City	2,676
Little Rock	6,138
Longview	917
Midland	3,800
N. Little Rock	3,800
Oklahoma City	3,474
San Antonio	9,441
St. Louis	4,948
Tulsa	6,003
Waco	3,342
Wichita	2,900
Wichita Falls	16,750

Total Rev over 60 months using actual contracts in place:	$119,051,580
Total Rev over 60 months if tariff in use:	$339,708,600
$ left on table by SWB:	$220,657,020
$ subtracted for competition that does not go to C.O.:	$139,589,000
Total $ to SWB if competition was effective and existed to take all $139mm away from Bell:	$200,119,600
Actual present Rev:	$119,051,580
Minimum increase in revenues. (Actual increase is between $81mm & $220mm)	$ 81,068,020

% subject to competition: $\frac{(100) \times \$159,589,000}{339,708,600}$

= 41.1% of Total $ is subject to competition.

NOTE: The rate for 2, 3, 4, 5, 10, 20, etc, DSO's or DS1's is the quantity times the monthly rate. No quantity discount is offered. Why should Bell offer 3, 9 or 12 DS3's for less than the (Quantity X Monthly) rate for DS3's, but not do it for DSO's and DS1's? This is another form of discrimination and a way to make prices preemptive or predatory.