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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of)
BROOKS FIBER COMMUNICATIONS)
OF OHIO, INC. for a Certificate of Public) Case No. 96- 349-TP-ACE
Convenience and Necessity to Provide Local)
Exchange and Dialtone Services and Non)
Switched Private Line Services)

In the Matter of the Application of NextLink)
Ohio, L.L.C. To Amend Its Certificate of)
Public Convenience and Necessity To Include) Case No. 96-1036-TP-ACE
Authority To Provide Local Exchange)
Telecommunications Services)

"FRESH LOOK" COMMENTS
BY
TELECOMMUNICATIONS RESELLERS ASSOCIATION

At a meeting of May 14, 1997 concerning "Fresh Look," the Attorney Examiner stated that interested persons would have the opportunity to submit questions and proposed responses concerning clarification of the "Fresh Look." The Public Utilities Commission of Ohio ("Commission") issued Local Competition Guidelines ("Guidelines") in Case No. 95-845-TP-COI and defined the "Fresh Look" provision in Section VI. J of the Guidelines (Entry on Rehearing, February 27, 1997).

Telecommunications Resellers Association ("TRA") hereby submits its comments about one of the questions posed by NextLink which is of particular interest to its members.

12) Which companies are eligible to offer "Fresh Look"? Are resellers also permitted to utilize the "Fresh Look" window?

TRA believes that the Commission has already effectively determined that all NECs, both facilities-based and non-facilities based, are eligible for the "Fresh

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Look" period. Resellers qualify for NEC status as set forth in Section I. A. 13 of the Guidelines which does not distinguish between facilities-based and non facilities-based carriers. Moreover, Section I. A. 11 defines a "LEC" as:

any facilities-based and non facilities-based, LECs and NECs which provide local services to consumers on a common carrier basis. . . .

Emphasis added. From these definitions it is clear that resellers, which are non facilities-based carriers, are encompassed within the term, "NECs". In turn, the "Fresh Look" provision, Section VI. J. 2 states that

each NEC shall notify the Commission as to the date when the first interconnection arrangement is operational . . .

Emphasis added.

From the inception of the Guidelines, resellers have complied with the requirement that their interconnection arrangements with ILECs receive Commission approval and thus there should be no dispute that as NECs, they are eligible for "Fresh Look".

As has been made clear at the meeting on May 14, 1997, the Commission is not planning to reconsider the policy decisions or other determinations that are already reflected in the "Fresh Look" provision of Section VI. J. Merely, the Commission is seeking to clarify, interpret or expand the "Fresh Look" determinations that it has already made. The Commission has effectively stated in Section VI. J. 3 that NECs are eligible for "Fresh Look", so this issue should not be in dispute.

The decision that non facilities-based carriers are NECs is supported by sound public policy issues and by the Telecommunications Act of 1996 ("Act").

The paramount consideration of a "Fresh Look" policy is benefit to the consumer, not the carriers. The Commission no doubt believed that the interest of consumers is the primary reason for implementing a "Fresh Look" provision applicable to all NECs, both facilities-based and non facilities-based. This is absolutely appropriate because a consumer who chooses a non facilities-based competitive local exchange carrier should have the same advantages available as a consumer who chooses a facilities-based carrier. Moreover, as a regulatory matter, the Commission measures competition in a given market by the number of facilities-based and non facilities-based competitors. Thus it would not have been consistent with promoting the policy of consumer choice to exclude customers who choose non facilities-based carriers from the "Fresh Look" opportunity.

The Act also supports the Commission's applying "Fresh Look" to all NECs. The plain language of Section 251(c)(4)(A) imposes on all ILECs the duty to offer for resale

any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.

Emphasis added. In the Local Competition Order¹ of the Federal Communications Commission ("FCC") the FCC found that Section 251(c)(4) requires that an ILEC establish a wholesale rate for each retail services that (i) meets the statutory definition of a "telecommunications service" and (ii) is

¹ *Implementation of the Local competition Provision of the Telecommunications Act of 1996*, First Report and Order, (1996) CC Docket No 96-98, 11 FCC Red 15499 , 15934, paragraph 871 (1996) ("Local Competition Order"

provided at retail to subscribers who are not "telecommunications carriers"².

Furthermore, the FCC broadly defined the telecommunications services subject to the resale provisions of Section 251(c)(4) to include "any retail services offered to customers³ and declined to "prescribe a minimum list of services subject to the resale requirement"⁴. Moreover, in the Local Competition Order the FCC expressly rejected the notion that an ILEC "contract [or] other customer-specific offering" is excepted from the resale obligations of Section 251(c)(4)⁵. To exempt long term contracts from the obligation to provide resale at wholesale rates, as the FCC correctly concluded, would

permit incumbent LECs to avoid the statutory resale obligation by shifting their customers to nonstandard offerings, thereby eviscerating the resale provisions of the 1996 Act⁶.

Thus Section 251(c)(4) of the Act and the express terms of the FCC's Local Competition Order impose a duty on the ILEC to make the services which are the subject of long terms contracts available for resale at the wholesale rate prescribed by the Ohio Commission.

Because many ILECs impose stringent liability provisions for early termination, without "Fresh Look" these termination provisions could be an absolute barrier to entry by resellers. Furthermore, the competitive goals of the

² *Id.* at, 15934, paragraph 871.

³ *Id.* at 15936, paragraph 877, emphasis added.

⁴ *Id.* at 15934, paragraph 872.

⁵ *Id.* at 15970, paragraph 948.

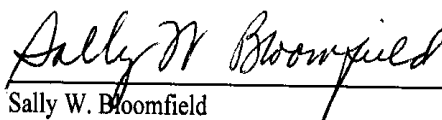
⁶ *Id.*

resale provisions of Section 251(c) (4) and the goals set forth in Ohio Revised Code Section 4927.02 [particularly paragraph (A)(4)] can only be achieved by applying "Fresh Look" to resellers.

Finally, in the special access context, the FCC has applied a similar "Fresh Look" policy to termination of special access contracts in order to extend the benefits of competition to access customers while compensating ILECs for the appropriate term of service. *See Expanded Interconnection and Reconsideration Order*, 8 FCC Rcd 7341 at paragraphs 38-41. Thus by analogy, it is appropriate for the "Fresh Look" provision to be applied to all NEC customers in the instance of local service long term contracts.

For all these reasons, TRA urges the Commission to continue to include all NECs, both facilities-based and non-facilities-based, as eligible for the "Fresh Look" window.

Respectfully submitted on behalf of
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Fresh Look* Comments of Telecommunications Resellers Association has been served upon the following parties listed below by hand delivery, fax or regular U.S. mail, postage prepaid, this 22nd day of May, 1997.

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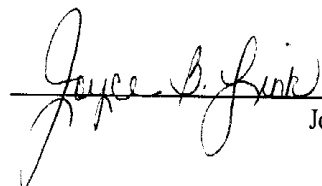
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