S. Hrg. 106–1069

LOCAL COMPETITION IN THE VOICE AND DATA MARKETPLACE

HEARING

BEFORE THE

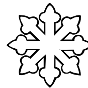
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

NOVEMBER 4, 1999

Printed for the use of the Committee on Commerce, Science, and Transportation



U.S. GOVERNMENT PRINTING OFFICE

75–224 FTP WASHINGTON : 2002

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

JOHN MCCAIN, Arizona, *Chairman*

TED STEVENS, Alaska
CONRAD BURNS, Montana
SLADE GORTON, Washington
TRENT LOTT, Mississippi
KAY BAILEY HUTCHISON, Texas
OLYMPIA J. SNOWE, Maine
JOHN ASHCROFT, Missouri
BILL FRIST, Tennessee
SPENCER ABRAHAM, Michigan
SAM BROWNBACK, Kansas

ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUYE, Hawaii
JOHN D. ROCKEFELLER IV, West Virginia
JOHN F. KERRY, Massachusetts
JOHN B. BREAUX, Louisiana
RICHARD H. BRYAN, Nevada
BYRON L. DORGAN, North Dakota
RON WYDEN, Oregon
MAX CLELAND, Georgia

MARK BUSE, *Staff Director*
MARTHA P. ALLBRIGHT, *General Counsel*
IVAN A. SCHLAGER, *Democratic Chief Counsel and Staff Director*
KEVIN D. KAYES, *Democratic General Counsel*

CONTENTS

Page
Hearing held November 4, 1999 1
Statement of Senator Ashcroft 22
Statement of Senator Breaux 66
Statement of Senator Brownback 8
Statement of Senator Burns 1
Statement of Senator Cleland 25
Statement of Senator Dorgan 7
Statement of Senator Gorton 6
Statement of Senator Hollings 3
Submittals for the record:
Communications Act of 1934, Section 271, Competitive Checklist 52
Additional materials pp. 54,57,61,71-75
Statement of Senator Rockefeller 4
Statement of Senator Stevens 4

WITNESSES

Holland, Royce J., Chairman and CEO, Allegiance Telecom, Inc 25
Prepared statement 28
Submittals for the record:
John Windhausen, Jr., President, letter dated June 23, 1999, and the testimony of US West CEO Sol Trujillo to Hon. John McCain and Hon. Ernest F. Hollings 83
Houser, Charles S., Chairman and CEO, TriVergent 37
Prepared statement 40
Neel, Roy, President and CEO, United States Telecom Association 10
Prepared statement 13
Pegg, Daniel O., Senior Vice President, Leap Wireless International, Inc 23
Prepared statement 23
Tidwell, Rick, Vice President, Birch Telecom 46
Prepared statement 47

APPENDIX

Sloan, Catherine R., letter dated November 15, 1999 and Chart on Long Distance Rates, to Hon. John McCain 89

LOCAL COMPETITION IN THE VOICE AND DATA MARKETPLACE

THURSDAY, NOVEMBER 4, 1999

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m. in room SR–253, Russell Senate Office Building, Hon. Conrad Burns presiding.

Staff members assigned to this hearing: Lauren Belvin, Republican senior counsel; Paula Ford, Democratic senior counsel; and Al Mottur, Democratic counsel.

OPENING STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Senator BURNS. I call the hearing to order, and good morning everybody, and thank you for coming this morning. The purpose of today's hearing is to learn more about the current progress of implementing the Telecommunications Act of 1996 as it pertains to local competition.

It is, of course, almost 4 years since Congress adopted that Act. While all of us on this committee would like to have seen faster progress made in the first 3 years, I doubt if any of us believe that it was going to happen overnight. The task of this committee is to ensure the transition to a fully competitive telecommunications marketplace as quickly as possible.

In a State like mine, a State where we have got quite a lot of dirt between light bulbs, we do not have any urban areas in our State, so we haven't seen much in the way of investment in wire line networks. However, we have seen an increase in consumer choice by local services, by wireless providers, and I look forward to the prospect of the local telephone competition through the AT&T and TCI cable systems in our State.

Since the Act passed, there has been significant activity in the telecommunications industry. Incoming local carriers have been forced to consider new ways of doing business. That might mean an erosion of their local market share in order to venture out into new business opportunities. Mergers and acquisitions have resulted in a new way of thinking for traditional telephone companies.

New technologies have allowed companies to think outside of the box in ways never contemplated before the 1996 Act. New entrants have been initially drawn to more profitable business markets. Federal and State court litigation over the Act has resulted in significant delays, though, that took time and injected some uncertainty in the process. Even while the lawyers were fighting, some

innovative new firms were beginning to take advantage of the opportunities made possible under the act.

The FCC issued the latest local competition report in August 1999 and it contains some encouraging information. The number of competitive local carriers increased from 94 so-called CLEC's in 1996 to 355 in 1998. Some of these competitive carriers resell the services of the incumbent local carriers under section 251 of the Act. Others are building their facilities, and the number of fiber miles deployed is staggering, 3.1 million fiber miles by 1998, up 72 percent from just a year before.

Still, though, the basic f Act remains that incumbent local exchange carriers continue to retain 96 percent of the local telephone market. Properly implementing the interconnection requirements of the Act is critical to ensuring not only a choice of local telephone providers but also a choice of broadband service providers. I look forward to the day when there is true broadband service in both directions, upstream and downstream.

I am heartened by the rapid pace of DSL deployment over the past year, which from where I sit looks to be almost entirely driven by competition. In fact, last March, GTE and the RBOC's announced that they would deploy the long-awaited ADSL technology to about 25 million lines by the end of this year.

By September, GTE and the RBOC's had accelerated their deployment projections to 45 million lines by the year's end. While I am still far from satisfied at the pace of broadband build-out, these numbers are, nonetheless, encouraging.

The FCC generally or recently gave GTE and the RBOC's some relief that they had argued that they needed to deploy broadband. I am referring to the FCC decision not to require them to make their advance equipment available to competitors as unbundled network elements to deliver high speed DSL service CLEC's and DLEC's, which have to do—has already been done by their own advanced equipment and connected to the incumbent's loop in colocated space.

This is a good example of the FCC employing the flexibility built into the 1996 Act to respond to the evolution of the market. In light of the FCC decision, we will be working for even more rapid GTE and RBOC deployment. It is clear that everyone should play by the same rule book. When that happens, competition does flourish, and consumers benefit from the new service.

In short, though, the pace of change may frustrate many. It is clear that the Act is indeed working to open up historically closed markets and provide an increased consumer choice. I am convinced that the Act has been critical to generating the explosion of the economic growth that we have seen recently in the overall economy. The task we face as policymakers is how best to unleash market forces to make sure that the intent of the Act is fulfilled without further delay, and I thank you for coming this morning and would yield to my good friend from South Carolina, Senator Hollings.

STATEMENT OF HON. ERNEST F. HOLLINGS, U.S. SENATOR FROM SOUTH CAROLINA

Senator HOLLINGS. I thank you, Mr. Chairman. The chairman has really keynoted our situation. Chairman Burns has just stated what we all know, that the Bell Companies control 96 percent, actually the stock market says 3.4, so it is really 96.6 percent of that last line going into the business of going into the home. And so to have a hearing, most respectfully, Mr. Chairman, on local competition, and not have the Bell Companies up here to tell us why they still squat on their monopolies, makes it difficult to get to the source of the problem perhaps they know out there that we really have got an unconstitutional situation.

That was one of their first pleas, that the Act—which they helped write—was unconstitutional. Then they tried to use subterfuge with respect to how they were opening up. Then they went before the locals and later all the way up to the Supreme Court, where it was made clear that no, they were not complying. Again most recently where we had hope where by I know that the distinguished chairman, I and others on this committee were looking with favor on Bell Atlantic's initiative there in the New York area, and yet we find the Justice Department has said already that there is not enough unbundling, and certainly that the FCC should not approve this application unless it is conditioned that there is sufficient unbundling.

Namely, we know at the national level in long distance that they have 50 million switches a year at least. That is almost a million a week. Now, you go into the New York market, Mr. Chairman, without a sufficient switch arrangement, what you have really visited upon the people themselves is gridlock and, of course, loss of life and total chaos and everything else of that kind, and so it is not a question of politically whether we like it or we do not like it or whatever. It is, we are on the spot.

We constantly hear the caterwauling all over the Congress that it is not adequate. The Act has got to be amended. We have got to get into data services, or namely long distance, because we did not contemplate technology, such nonsense as that. All we talked about for 4 years was technological advance.

To the credit of the competitive local exchange carriers they have been nibbling. They have got some 54 million in business, and my hat is off to them, and we have got some wonderful witnesses here coming with respect to that. But to have a hearing without the people controlling the monopoly to come and give their complaints openly to us, rather than around the corner, and trying to introduce side bills and takeovers and complain that the Act is a bad one, really complicates the ability to get to the bottom of this issue. I ask why don't they come up here and tell us about the local competition? The fact is that they are not here. They are not here.

So in reality, with respect to you and all the colleagues on the committee itself, this hearing is over. What we are going to hear about are the nibblers, the 3.4 percent, and we will give it a lot of adjectives and adverbs and gusto and everything else like that, like, ooh, we have got really local competition. You have adjourned the hearing in essence by way of fact, because we do not have—and were invited, I take it, Mr. Chairman.

Senator BURNS. They were.
Senator HOLLINGS. They refused?
Senator BURNS. They are not here.
Senator HOLLINGS. Thank you a lot.
Senator BURNS. Senator Stevens.

STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

Senator STEVENS. I will try to be brief and not take on my friend from South Carolina too much. I am pleased you are holding the hearing. I think you are right that the progress so far proves that the Act could work, should work.

Local competition has lagged. I am certain some local exchanges are making inroads in embracing competition, but some have used the powers they have to frustrate reform. I am pleased to hear— and I hope others have heard that Bell Atlantic is coming closer to meeting the checklist under section 271 of the Act, and with their help we could prove that that series of standards could work for everybody.

The path to competition really is through the Act, and I am hopeful that those who come before us will give us some idea of what we might be able to do to strengthen it, but we made no distinctions between voice and data in the 1996 Act. Some want to have the checklist apply only to voice-based telephony. That would make what we did into just a hollow vessel and meaningless.

I think data is really going to be the dominant player in this whole system, and if we are going to make a really, truly competitive situation on the local level, data and voice must be governed by the same rules.

So I look forward to working with you. Unfortunately, I cannot stay for the whole hearing, but I do thank you for holding it, and I am sorry, as my friend from South Carolina is, that some of those who could explain why this competition is not truly taking hold are not here.

Senator Burns: Thank you, Senator Stevens. You go back and sit next to the safe, would you? You are watching the money here these last 2 or 3 days.

[Laughter.]

Senator BURNS. Senator Rockefeller.

Senator STEVENS. If you would just give me a little more competition, that spectrum would be worth even more.

Senator BURNS. How many times have we got to sell it?

[Laughter.]

STATEMENT OF HON. JOHN D. ROCKEFELLER IV, U.S. SENATOR FROM WEST VIRGINIA.

Senator ROCKEFELLER. Mr. Chairman, I am going to make a statement. I have to go back to my office for about 20 minutes, then I will be back, which I know you will want to hear.

[Laughter.]

Senator BURNS. Silence is golden at this point.

[Laughter.]

Senator ROCKEFELLER. The first thing I want to say is, I have a tremendously deep sense of disappointment that we have not had

a hearing, in spite of many requests on my part and others, on the confirmation of Susan Ness. I just wanted to put that on the record.

She has served longer on the FCC than anybody else. She is extremely valuable and she will be there. When the Commerce Committee fails to have a hearing to renominate somebody, or to give her the chance to be renominated, it is not good in telecommunications, and all the things they have to do. It is particularly not good, in view of what we are discussing this morning and in view of fairness to individuals like Susan Ness it is not good.

So we need her expertise, we need her hard work, and she I think deserves to be a commissioner, and I regret the f Act that we did not have that chance for this year, and hope that we will do it the very first thing next year, or even in the waning days of this year.

Then I want to say the following. The purpose of the Act was to promote competition, and I was born in Manhattan, and my jurisdiction is McDowell County in West Virginia, one of the poorest counties in the Nation, and I think they should both be equal in terms of access to all forms of technology, and at affordable prices.

There are examples of increased competition, and that is good, and that includes the long distance market, wireless services, Internet backbone, electronic commerce sales. Internet and broadband services continue to be more accessible.

Importantly, competition in local phone service is beginning to appear. CLEC's already serve business customers across the country, and beginning the possibility for residential consumers. Now, therein lies my concern. Local rates for businesses are drastically lower, and let us hope that rates for residential users will also benefit from competition.

We have a very long way to go. Byron Dorgan and I would say that until this reaches rural America and residential users everywhere, we do not have a choice in North Dakota, in Montana, in South Carolina, any place. This has to improve. We cannot abandon the promise that all Americans will have comparable services. So far, the telecommunications industry is not meeting that requirement. The chairman said it will take time, but movement is very, very slow.

The broadband services are not yet available in most rural areas. That hurts West Virginia and other rural States. Most of America is rural. This has to change. I hope the FCC will closely monitor whether the same critical broadband services are available in all parts of the country equally.

It is important to note that the Act is working with respect to advanced services. Section 706 of the Act wisely requires the FCC to constantly monitor the availability of these services, and it gives the Commission the power to Act if necessary to encourage further deployment. I applaud Bill Kennard's recent commitments to opening a new proceeding on this issue.

We also have to ensure, and I digress a little bit here, but this is a point that I want to make very strongly. We have to make sure that consumers know what they are paying for, and that they can take advantage of competition because they have the knowledge with which to do that. Most residential consumers are enormously

confused by the telephone bills that they get. They do not understand how to find the best deal for them and their families. They are confronted with dozens of pages of information, confusing rate plans, and it includes charges, slamming, which they did not sign up for, which I would think would be fraud.

AT&T's recent attempt to increase their universal service line by 50 percent is a good example of why we need truth in billing legislation, which I have introduced. AT&T tried to justify this 50 percent increase, but their justifications come up very short. I will explain.

They claim that the recent Fifth Circuit ruling on the universal service funding base resulted in increased universal service contributions. That is what they said. But they fail to tell consumers in their bills or anywhere else that they will receive almost $400 million in access reduction almost simultaneously, or that this reduction is part of about a $5 billion in access reduction amount since 1996, reductions that they should pass through to residential consumers.

Too, they claim that last month's well-founded FCC decision to help carriers provide local service to rural States under the universal service program would also increase their universal service payments, they claim. But they wanted to bill consumers several months before they started paying the FCC.

Now, how does that work? Why is that legal? They would have been receiving money without paying it to the universal service fund. They would have been making interest on that money, gaining advantage from that money, from consumers, residential consumers. This is not acceptable. It is not acceptable.

They also argue they needed to increase charges to consumers because they cannot, as they said, collect on 8 percent of their customers' bills. I severely doubt that. If so, they are way out of sync with the rest of the long distance market.

They propose to have paying customers cover for their inability to collect 8 percent from their customers when States like New York say it is only around 2 percent of bills are uncollectible. Do customers know that this is occurring? Of course not. Of course they do not.

Luckily, the FCC stopped the AT&T dead in its tracks, and I commend Bill Kennard for that very good decision. These types of situations confuse consumers. They create great distress in Commerce Committee members like myself, and I think we have to work to reduce this confusion and if any of my colleagues want to sign up for my truth in billing legislation, we will do ex actly that.

I thank the chairman for allowing me to wander onto that subject, and I will be back shortly.

Senator BURNS. Thank you. Senator Gorton.

STATEMENT OF HON. SLADE GORTON, U.S. SENATOR FROM WASHINGTON

Senator GORTON. Well, Mr. Chairman, the divisions that became evident during the debate in leading up to the 1996 Act seem to remain here today. This is an interesting hearing. It is too bad it is not a little bit more extensive, but I think we are probably fairly close to seeing how the 1996 Act can, in fact, work, with the immi-

nence, I think, at least of one major Bell Operating Company meeting the requirements of the 1996 Act, and I think it may be wise to see how that works and to determine whether or not any changes are needed.

In any event, this is a controversial issue, because it is such an important issue, because so much is at stake both for many large companies and for many small companies attempting to make the field competitive, but even more for the people of the United States who are the customers of these companies and the beneficiaries of competition.

Senator BURNS. Senator Dorgan.

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

Senator DORGAN. Mr. Chairman, thank you very much. Let me add my voice to that of Senator Rockefeller, encouraging the committee to consider the confirmation of Susan Ness. She has been a particularly strong voice for rural America on the Commission, and this commission has a lot of challenges and a lot of difficulties trying to find its way through the fog, and they need predictability and certainty of membership. I would encourage the committee to proceed with that nomination.

First of all, I should say that last evening I had two telephone calls, one during dinner, trying to sell me long distance services, one of them attached to a credit card service, so there is some competition out there that is unabated, especially around dinner time, and especially in the long distance area. They are aggressive.

The hearing is about competition in local exchanges, and we know, I think all of us, that there is not the kind of competition that we want at this point. It has been slow coming. Those who have had monopoly positions have been very stubborn in resisting changes. I understand that. That is a behavior that obviously all of us could have predicted.

Has the Act worked as well as we would have hoped? No, I do not think so. The Act was billed as something that would foster competition. There is less competition than I would like to see, and there is substantially more concentration than one would have anticipated, but that ought not persuade anyone at this point to rush in to try to change the Act itself.

There are ways, it seems to me, to meet these challenges. The Senator from Alaska, and I think my colleague just indicated from Washington, that one of the Bell Systems might likely meet the checklist soon, perhaps another. You know, it seems to me that we ought to proceed down this road and do what we can to make certain that we make progress in opening these local exchanges to competition, and we also have the challenge, in addition to promoting more competition, of building out the advanced services, and that is very important.

What kind of model will we follow? Will we follow the model of electricity and telephone service, and requiring it to be service to all parts of this country? In order to do that, when the market system does not provide it, and it will not in many areas of the country, with respect to the build-out of advanced services, then we

have to have the assistance of the FCC following the Act, which attaches advanced services to universal service.

That attachment exists in law, in the Act, and what we really require at this point is a set of actions on behalf of the FCC that are bold, rather than timid. The FCC has to be bold in pursuing some of these policy objectives, and I might also say I suppose it is gratuitous to say that when this Act was passed, en acted, and the FCC first got a hold of it, they made some horrible mistakes in judgment, in my judgment, on how they began to construct universal service and some other issues, but they are trying very hard now with the new commission to reconstruct and redo some of that.

They need now to be bold in these areas, and I regret—I was asking Senator Hollings what word he used for the witnesses. What word was that again?

Senator HOLLINGS. Nibblers. You know, small fish, not the big ones.

Senator DORGAN. I think we should say that he would not mean that personally to any of you who are about to testify. That was a figure of speech.

Senator HOLLINGS. Well, I would say they made up for $54 million worth of business, and they are in there struggling, and more power to them.

Senator DORGAN. Well, we are happy you are all here. More power to all of you, and I agree with Senator Hollings that for the hearing to be productive it should have had the Bell Systems here, and should have had all the players at this table talking about what this market is and what is happening in the market, and why, because there are very serious questions about why there is so little competition in local exchanges.

Senator BURNS. Senator Brownback.

STATEMENT OF HON. SAM BROWNBACK, U.S. SENATOR FROM KANSAS

Senator BROWNBACK. Two points I would like to make. One is, I think competition is occurring in the local telephone service, and I have got some f actual numbers I want to put forward to back that up, and it is following a very logical progression along the market development. I think it will follow more as the market develops more.

Then a second point that I want to make quickly is, I think if we look on broadband services for advanced services, deregulating some of those will not hurt the broadband competition. I think it will actually expand services across the country, including into rural areas.

Now, let me just put forward some f acts. I think probably the chairman cited to some items here, but by the end of June facility-based CLEC's were in every State and in all but 18 of the United States, 193 local access and transportation areas. We were in virtually all of those.

The number of ILEC lines resold by competitors doubled from 1997 to 1998. That is a f Act. The number of loops used by CLEC's to provide service tripled over that same 1-year time period. In f Act, there are only four States in which loops are not used as an entrance strategy right now.

By the end of last year, CLEC's were reported to have operational colocation arrangements in switching centers serving almost half of all ILEC customer lines, representing a 67-percent increase over the number of such arrangements that existed at the end of 1997. That is a f Act, that that is the case.

In terms of the types of customers these switching centers serve an approximately 40 percent of ILEC residential lines, but 60 percent of ILEC business in Government lines. I think they are just following the marketplace that is most developed the earliest on.

Then we go on, there is other f actual basis that the competition is occurring. It is occurring logically. It is occurring as the market would develop. It is occurring where there is reward for that, and I think it will continue to occur as we let that market develop.

The second point I want to make is that I think we need to look at, in the broadband services—and I put forward a bill on this—some minor deregulation to actually increase the broadband services being available to all, and particularly to places like my State, Kansas, that has a lot of rural areas.

I think we need to look at that as a way of getting at more of these broadband services, and the notion that we should go back in and force more regulation or not provide the deregulatory atmosphere to encourage the investment to be able to get the capital into some of these expensive equipments and technology would be the wrong strategy to pursue, so I would hope we could actually provide some minor relief there, particularly in the broadband area, so we can get that out to rural customers as well, and I think that will be the most logical way it will happen so that they can get access to capital to develop those markets.

I know that is not in agreement with everybody on this committee, those comments, but the one is a set of f acts, and the other I believe is the way it will actually, logically develop.

Mr. Chairman, thanks for holding the hearing.

Senator BURNS. Thank you.

Senator HOLLINGS. Would the chairman yield just for a second?

Senator BURNS. You want some time for clarification here?

Senator HOLLINGS. Please.

Senator BURNS. OK.

Senator HOLLINGS. One, with respect to our overall chairman, he has committed to holding a hearing on Susan Ness at the beginning of next year. You and I, all of us have been very vitally interested in her reappointment and, as has been stated, she has done an outstanding job.

Second, when I talk about nibblers, let's look at the big fish. I will never forget MCI spent $800 million, and British Telecom said that is a waste of money. If you have got to resell something, or a product that is controlled by the amount of supply and the price itself, you cannot make money because if you are making money, then the original entity will start selling it itself.

So they lost $800 million. AT&T, the big fish, went after it, and they spent $3.2 billion. Now they have gone totally round, and into cable TV to try to get into the local market, bust in the back door, and they are even trying to stop them there, at the local city councils, saying that monopoly, monopoly, we ought to have access.

Let us get it clear. You and I, we built these taxpayer monopolies the seven Bell Companies. They came in and they said, it is a competitive thing. We want one-stop shopping. That is what the public wants, that is what we are going to provide, and everything else like that, and then they immediately went instead to the constitutionality of it and tried to go around and not comply and try to bust up the accounting system at the FCC.

They have had an onslaught from every particular direction with all kinds of bills and what-have-you, and attempts to do what, to hold onto their monopoly. More power to them, if we are going to let them do it. If I ran Bell South, I would do the same thing, because they are making one heck of a big profit, and they are a well-run company, so it is just the sort of breach of faith on behalf of the Bells who came in for 4 years saying they want to compete, compete, instead of combining.

Now, these cable lines, they are investor entities. They are not taxpayer monopolies. You and I, all of us paid in for these public monopolies, and we said we want to break up the monopolies. We wanted competition, and you are not going to get competition in the local market. You are going to cut some CLEC's, and they are nibbling, but with all of their 4 years of nibbling they have gotten less than 4 percent into the local market. That is my point, and we ought to find out, with these Bell Companies, where are they?

Senator BURNS. Well, I suspect we will probably find out. Do not wish for too much. You might get it.

The first panel, and I am looking forward to hearing their testimony, Roy Neel, president and CEO of United States Telecom Association, Dan Pegg of Leap Wireless, Royce Holland with Allegiance Telecom, Charles Houser with Trivergent, and Rick Tidwell, who is with Birch Telecom.

I am always reminded, you know, my folks when they had their 50th wedding anniversary we had more people drop by the house than we had chairs for, and my mother was hollering and says, we don't have enough chairs, and dad said, we've got enough chairs, we've got too damn much company.

[Laughter.]

That is the way an old farmer looks at things, you know, but Mr. Neel, thank you for coming this morning. We look forward to your statement.

STATEMENT OF ROY NEEL, PRESIDENT AND CEO, UNITED STATES TELECOM ASSOCIATION

Mr. NEEL. Thank you, Mr. Chairman, Senator Hollings. It is always a pleasure to come back in this room. I do not know whether the United States Telecom Association is a nibbler or a big fish, but I can tell you, I am here to represent all the local exchange companies, the Bell Companies, GTE, and about a thousand small companies. I don't really know where to start in taking exception with Senator Hollings in terms of the degree of openness in this market, because who are we going to believe?

The so-called new competitors have reached nearly 10,000 agreements with the local companies to offer local service. They go to Wall Street and tout their ability to compete, that they are well-financed, that they have the markets open.

You know, Senator Hollings, our good mutual friend John Windhausen, who is here with us today, testified here not long ago about what would represent a test for local competition. He has studied this and was one of the real driving forces behind the 1996 Act. He said that the realistic choice test is really more like a yellow pages test.

In other words, can a consumer open the yellow pages, find another local phone company willing and able to offer service, and then sign up with that carrier? When a consumer can do this, then the market would be considered open.

Well, I have the Charleston phone book here, where you and I both have homes. On the first page of the Charleston phone book is a listing for local service providers, and there are 15 of them here. Now, we called every one of them yesterday, and 13 of them will offer local residential service.

Now, these folks believe that the market is open, and they can get into the business, and this is repeated throughout the country. It is really important to look at what the real issue is here. When you say that the Bell Companies control 96.5 percent of the local market, that is really, really not the story. They may serve 96 percent of the local residential customers, but they have been losing massive revenues from the business market. They are also losing millions of local residential customers every month.

These are important statistics. In urban areas, the business markets are open and critically the data markets have been extremely competitive. In the first quarter of 1999 alone, a million CLEC access lines were installed. This goes on and on. As I said, nearly 10,000 certification, 5,500 signed agreements, nearly 3 million resold lines.

The Washington Post business section has had dozens of local service providers listed in the last few days. Facilities-based competitive local exchange companies are in all but 18 of the country's 193 local area markets. They are in every State. They believe the markets are open and they can do business. They go to Wall Street and they talk about how strong they are going to be. So who is telling the truth here.

I think it is absolutely critical that everyone on this panel represents rural markets, and everyone wants to get new enhanced services out to rural customers. Everyone says that is what they want to do.

Well, how are we going to do it? The so-called new competitive providers are not going to do it. They will tell Wall Street they are staying away from that market because they cannot make any money at it. They go into the business market. It is like the famous old bank robber said, when he was asked why he robbed banks and he said, that is because that is where the money is. Well, that is where they are going to go. Competitive providers are going to go into the urban market.

So how are you going to get those services out to rural markets? One of the impediments is the FCC's stubborn refusal to follow the law and deregulate these markets to let these companies get out and serve rural areas, and everyone else.

We have had a lot of attention to this current debate between the cable modem and the digital subscriber line service as a way to

really push out service into rural areas. Mr. Chairman, I would like to ask the members of the committee to look at simple chart we have here. There are about 15 or 20 issues or services or functions in this data market that are provided either through DSL service by local providers or by cable operators.

If you look at this chart, this gives you a sense of what is regulated and what is not. In every case, the local service provider providing DSL service has these components heavily regulated. The company providing the same service by cable modem has no regulation whatsoever.

Further complicating this is that the two main providers now of Internet interstate backbone services will serve more than 75 percent of this market. Now, that is a massive duopoly, so where is the competition here? The goal should be to let the local phone companies get out there and build these data services to the last mile to every consumer, whether they are in Missoula or some of your smallest towns, whether they are in Charleston or some of your smallest towns in South Carolina. That is the reality, and that is what they have to do.

You can go through example and example, there is competition out there. The business marketplace is extremely competitive, and the FCC is simply not following the law. You are going to hear anecdotes about abuses in the interconnection process, and about how companies cannot compete. But that is not what they are telling Wall Street. For every anecdote about a problem that a competitor is having interconnecting or getting lines provided, there are literally tens of thousands, if not millions of examples where those customers are transferred easily, quickly, and to the competitor's satisf action.

It is no secret a competitor is going to want to have the rules go their way. It used to be said MCI was really not a telecom company, it was a law firm with an antenna. Competitions are trying to get competitive advantage anywhere they can, and the point here is that you have got to be discriminating about these complaints.

We look at what has been done as opposed to the few examples where it is not working. The critical issue is how these companies are meeting their obligations under the 1996 Act, under section 251. Not a single enforcement proceedings has gone against any of the local exchange providers for failure to comply, Senator, with the Act, not a single one. If complaints have been made, they have been dismissed by the commission, or they do not exist, so that is a very critical f actor here as we go forward.

It is really important that the FCC get on with the process of deregulation, and not simply holding back one of the real engines of force in the local telecom economy, the local exchange providers. The FCC needs to let the local exchange companies get out and compete with the likes of this huge AT&T megalopoly that is coming together, and now this Worldcom-Sprint monster that is coming together. The way to really get competition out there is to let local exchange companies get out there and compete.

So I appreciate your time. We have asked that our statement be included in full in the record.

Senator BURNS. Your full statement will be included in the record.

[The prepared statement of Mr. Neel follows:]

PREPARED STATEMENT OF ROY NEEL, PRESIDENT AND CEO, UNITED STATES TELECOM ASSOCIATION

Thank you very much, Mr. Chairman, for giving me the opportunity to testify at this hearing. The hearing is timely and an important one. As the President and CEO of the United States Telecom Association, I am here on behalf of the over 1100 local telephone companies that we represent throughout the United States. Our members are at the front lines of local competition and the thrust of my testimony today will be that if you are a business in a large urban market you have many competitive opportunities. In contrast, if you are a residential customer in a rural market you will have very limited competitive options. We also expect that cable operators who are today providing telephone service in some markets will greatly expand that service to other markets.

Let me begin by quoting a recent remark made by the Chairman of the Federal Communications Commission, William E. Kennard with respect to local competition. Chairman Kennard made the following statement at a hearing before the House Commerce Committee's Subcommittee on Telecommunications, Trade and Consumer Protection on October 26, 1999.

> In the local phone sector, we are starting to see the fruits of our pro-competitive policies. There are now at least 20 publicly traded CLEC with a total market cap of 33 billion (dollars). That compares with only 6 CLECs with a market cap of $1.3 billion at the time of the passage of the 1996 Act. ***In the first quarter of 1999 alone, almost a million CLEC access lines were installed.*** (Emphasis Added)

The Local Market Is Open

As a starting point, let me share with you some summary information on the state of local competition that USTA provided to the House Commerce last December (1998):

Demonstrate Competitive activity with: LEC Total

PSC CLEC Certifications	9,762
Signed Agreements with Competitors	5,475
PSC Approved Agreements	2,881
Unbundled Loops	285,402
Resold Lines	2,849,469
Resold Business Lines	1,650,092
Resold Residential Lines	1,260,751
Resold Coin	35,226
Resold Private Lines/Data CKTs	78,756
Minutes of Use (MOUs) Exchanged (Since 1995)	307.1 Billion
Interconnection Trunks in Operation (Local Only)	1,801,977
Collocation Arrangement (activity).	
Physical	2,385
Virtual	2,220
Wire Centers with Collocation	4,956
Number of Lines in Offices with One or More Collocators	44,593,956
NXX Codes Assigned to CLECs	11,413
Total CLEC-Provided Local Exchange Service Lines	3,510,476

The above information was compiled by our local telephone companies and its shows that there are a lot of competitive entrants. This original research done by USTA has been validated by subsequent studies done by both us and others. I also intend to demonstrate to you that, as Chairman Kennard noted, the competitive situation has become much more competitive in just this last year of ***1999.***

In May of this year, USTA submitted to the FCC (CC Docket No. 96-98) a report prepared by Peter Huber and Evan Leo for the Bell operating companies and GTE entitled the ***UNE FACT REPORT.*** The report was done in contemplation of the UNE remand proceeding at the FCC so it emphasized network elements, such as switches which are a key component to facilities-based local competition. This exten-

sive research confirmed our earlier (December 1998) assessment regarding the state of local competition. This report showed, for instance, that 167 CLECs had deployed 724 switches in 320 cities as of March 1999. A chart showing the locations of the switches is attached to my testimony, and it graphically corroborates my earlier statement about where the competition is going. What leaps off the page of the attached chart is that competitors have business plans that target urban areas. In Washington, D.C. , for instance, 14 CLECs operate 23 switches in the Washington Metropolitan Statistical Area.

The ***UNE FACT REPORTS*** econdly looked at 3 categories of RBOC/GTE Wire Centers those with 40,000 lines or more, those with 30,000 lines or more and those with 20,000 lines or more (see attached charts). The research showed dispositively that wire centers with the greatest density have the greatest degree of competition, thus providing probative evidence that the CLEC business plans place their emphasis on business customers, as it is within the reach of these dense wire centers that the great preponderance of business locate. Drive around Washington today, for instance, and observe where the streets are being torn up to install fiber optic cable and this point will be made. As our ***UNE FACT REPORT*** further observes, there is more ***local*** competition three and a half years after passage of the 1996 Act than there was three and a half years after ***EXCUNET II*** opened up the ***long distance*** market to competition in 1978, by requiring AT&T to interconnect with long distance competitors.

In the advanced service market, the ***UNE FACT REPORT*** points out that the competitive situation is even more pronounced. ***CLECs already lead incumbent local exchange carriers (ILECs) in providing advanced services over ILEC loops.*** CLECs offer advanced services to over 5 million homes and ALTS, the CLEC trade association, predicts that number will quadruple in 1999, with data constituting 20 percent of CLEC revenue by 1999.

Our two studies on local competition have been confirmed by the ***Local Competition: August 1999*** report of the FCC's Common Carrier Bureau. This report indicates that by the end of June 1999, facilities-based CLECs were in every state and in all but 18 of the nations 193 LATAs. Furthermore, this report's assessment of where competition is developing corresponds precisely with our own analysis. The report says:

> One such assertion, made by virtually all analysts is that ***competition is emerging most rapidly in urban business districts. This observation meets with prior expectations, which are based on historical telephone cost and usage patterns.*** For example, a large body of literature describing the cost structure of the telephone network supports the conclusion that local ***telephone companies incur greater costs by serving rural customers than by serving urban customers. Furthermore, business customers, which are often concentrated in urban areas, have historically*** used the network more intensively than residential customers. Consequently, ***local telephone companies have historically collected a disproportionate share of their local telephone revenue from business customers.*** In concert, these f actors indicate that the high-volume, low-cost customers in urban business districts are more attr active to new entrants than either rural or residential customers. (Emphasis Added)

The business plans of CLECs reflect the economic realities of the marketplace. There is considerable profit to be made in serving business customers, but there is less in serving the overwhelming majority of residential customers. US West in its territory has, for instance, lost to competitors 70% of its high capacity traffic. For most residential customers in most states, local residential telephone service is still highly subsidized by a 50 year old system of implicit subsidies. Investors behind CLECs know this and well over 95% of all capital flowing to CLECs is targeted at business customers, even though these customers represent only 35% of the total U.S. telecommunications market. CLECs are also no longer small companies as their market capitalization in 1999 is larger than the United States airline industry.

The competition situation is changing and growing everyday. Just yesterday, for instance, Bell South announced that Network One will spend $500 million with Bell South's unbundled network element combinations or so-called UNE-P. This is the largest such deal reached to date in the telecommunications industry.

CRITICAL IMPEDIMENTS TO THE FURTHER DEVELOPMENT OF LOCAL TELEPHONE COMPETITION

1. lack of comprehensive universal service reform.

In March 1994, USTA submitted to this Committee its universal service amendments to Senator Hollings' bill, S. 1822. We had been, by this time in 1994, internally assessing and developing for 3 years our policy recommendations to preserve universal service in an era of local competition. USTA's evaluation concluded that the system of implicit subsidies could not survive in a competitive era; that subsidies need to be explicit; that all providers of telecommunications services needed to contribute to universal service preservation; and that local telephone rates had to be rebalanced. The USTA amendments proposed four basic universal service proposals for a competitive era:

1—eliminate ***implicit*** universal service subsidies
2—require ***all providers*** of telecommunications service to contribute to the preservation of universal service
3—establish ***explicit*** subsidies to provide adequate and sustainable support for universal service
4—authorize ILECs to ***rebalance*** their local telephone rates

During deliberations on the 1996 Act, several highly motivated Senators formed a coalition that became known as the ***"Farm Team"*** to protect telephone services, especially in rural areas. Senators, including Dorgan, Exon, Pressler, Rockefeller, Kerrey (Nebraska) and Stevens made this objective the centerpiece in the debate on legislation that ultimately became the 1996 Act. By August 1994, the ***"Farm Team"*** had embraced three of these four USTA principles. Elimination of implicit subsidies *was not adopted by the* ***"Farm Team," but rate rebalancing was. (See, Rural Area Amendments "Farm Team"*** Draft III — August 1, 1994.)

I am emphasizing the Senate and the *"Farm Team"* deliberations, because it was the Senate's universal service provisions that were adopted by the 1996 Act. The 1996 Act embraced three of the four USTA universal service principles or at least that is what we thought on February 8, 1996 when President Clinton signed the Telecommunications Act of 1996. The 1996 Act did quite clearly rejected our rate rebalancing proposal. Had it been adopted local competition in my judgment would be much further along, especially with respect to local residential competition. Most states are reluctant to rebalance rates, because rebalancing rates results in local residential telephone rate increases and local business telephone rate decreases. Some states, such as Nebraska have rebalanced rates and created a state universal telephone service fund, and it has proven successful. ***In our March 1994 submission to you, we emphasized how important rate rebalancing is and we said: "The universal service provisions of this legislation do not permit the adjustment of prices for telecommunications services, especially in light of the competition that it fosters."*** In other words, if you want local residential telephone competition to flourish you must rebalance local telephone rates.

The FCC was required by Section 254 of the 1996 Act to complete action on universal service reform by May 8, 1997. To date, the FCC has failed to do so. This failure in combination with the Congress' rejection of rate rebalancing in the 1996 the Act has perpetuated the economic distortions that existed at the time of the 1996 act's passage and that work against the competitive goals of the Act. I am talking here about the f Act that local residential service is supported by a vast array of implicit subsidies mechanisms which include: interstate access charges, vertical services (*e.g.,* call waiting and caller ID), local business service, intrastate toll services and urban to rural support. These subsidy pr actices which began in 1949 and which continue unabated today result in ILEC provision of residential service in many areas at below cost rates.

Without rate rebalancing and/or complete universal service reform, local residential service, except in low cost urban or similarly densely populated areas or provided by means of alternative technology or resale, will be uneconomical for competitors to provide. Consequently, there is a dearth of local residential competition, but there is significant local business telephone competition. As the Department of Justice observed in its recent Evaluation of Bell Atlantic's New York interLATA application, loops in Manhattan are 2000 times more dense than in upstate New York. Such density will economically support both competitive business and residential service, but low density in rural areas, for instance, will not.

The 1996 Act has, as we have seen, accelerated the trend towards competition in the provision of local telephone service. Competitors, however, are immediately drawn to the business customers of the ILEC, because the CLEC realizes that the

ILEC in most states is still required to price local telephone service to the business customer above cost in order to subsidize local telephone service. Quite obviously, this regulatory scheme is one that could exist in the monopoly telephone era, but not the competitive. Neither the states nor the FCC have eliminated implicit subsidies, which seemed to be one of the clarion calls of the 1996 Act, even if rate rebalancing was not.

2. Section 271 Relief.— A second critical impediment to local competition is the failure to date to authorize a single RBOC to provide interLATA telecommunications service in their regions. I doubt seriously if any of you who were on the Committee in 1995 and 1996 would have ever envisioned that statement being made at the end of 1999 — 3 years and 9 months after the 1996 act's signing. One of the principal goals of the 1996 Act was to get BOCs into the long distance market in order to enhance competition in that telecommunications market segment as well. The watchword during the consideration of the 1996 Act was ***simultaneity,*** meaning that BOCs should be authorized to provide long distance through Section 271 simultaneous with the opening up of the local market through Section 251. ***Simultaneity*** was abandoned within six months of the 1996 act's passage. Chairman Pressler, for instance, opined on the Senate floor during debate on S. 652 that the Competitive Checklist would be easy for BOCs to pass, because it was simply an amalgam of extant state regulatory requirements.

The 1996 act's requirements for RBOC entry were pretty straightforward. If a BOC had a facilities-based or predominantly facility-based competing provider of telephone exchange service to businesses and residences and if the RBOC met the 14-point checklist, the RBOC should be approved for long distance service if the FCC determined that entry was in the public interest. As Solomon Trujillo Chairman and CEO of US West testified before this Committee in April of this year, and reinforced in his letter of May 7, 1999 to Senators McCain and Hollings, the FCC has made this entry very much more complicated. In his letter, Mr. Trujillo pointed out that the 14-point statutory checklist has been, by US West's fully documented count, increased to a ***690-point checklist.*** Section 271(d)(4) of the 1996 Act prohibited the FCC from expanding the checklist. In 1999, to find out what requirements a BOC must meet for interLATA authority forget about the 1996 Act. The only place to find the state of the law at any one point is to look at all of the FCC orders and rules. As Mr. Trujillo pointed out, however, in his letter:

> Over the three years since passage of the Act, the FCC has conducted at least ten rule making proceedings creating Section 271 compliance obligations and has rejected each of the Section 271 applications filed by three different BOCs. ***A consistent pattern has emerged where each rulemaking and decision adds to or alters the compliance requirements, sometimes very significantly.*** (Emphasis Added)
>
> **The continually evolving nature of these requirements points up the difficulties** that BOCs face in their effort to obtain long distance relief within their regions. In performing the analysis necessary to identify these regulatory accretions to the statutory scheme en acted by the Congress, a number of regulatory approaches adopted by the FCC are so noteworthy that they require brief, separate discussion. (Emphasis Added)
>
> All told, the existing or proposed FCC requirements enumerated in the Study levy enormous operational, administrative and economic burdens on BOCs in their effort to gain Section 271 relief. ***The costs associated with meeting these requirements constitute a significant barrier to BOC entry into the interLATA market.*** Insofar as these requirements are extended to BOC provision of advanced data services, as proposed by the FCC, they could also delay, if not foreclose, rapid, wide-scale entry by BOC's into the broadband service market. (Emphasis Added)

Even the Department of Justice agrees that the compliance requirements for Section 271 have expanded. In its recent evaluation of Bell Atlantic's New York application, the Department of Justice refers to the ***"ever receding finish line for meeting the requirements for entry into the long distance market."***

Despite all of this, I am advised by the Bell operating companies that there are three very promising Section 271 applications in the pipeline: Bell Atlantic for New York; Bell South for Georgia; and SBC for Texas. These, I am advised, will even meet the 690-point checklist—if the goalpost is not moved even further. Bell Atlantic's application is currently before the FCC for its 90-day review, after having received the endorsement of the New York Public Service Commission following a lengthy and rigorous analysis by that state. The Department of Justice has even concluded that the FCC ***"... may be able to approve Bell Atlantic's application at the culmination of these proceedings."***

All three of these states (New York, Texas, Georgia) have facilities-based competition for both residential *and* business customers. An abbreviated snapshot of the competitive situation in these 3 states would be as described in the below chart:

STATE	NEW YORK	TEXAS	GEORGIA
CLEC Certifications	Over 500	294	138
Operational CLECs	100	162	61
CLEC. Provided Access Lines	1.3 million	1.3 million	305,000

Today, long distance carriers have a very real incentive to keep the BOCs out of the in-Region interLATA business as they will surely lose some of their long distance market share to the BOCs. Consequently, they are not significantly entering the local telephone market for residential customers. This business customer oriented business plan will end in a hurry once the BOCs are given in-Region interLATA authority. A good example of this occurred in Connecticut where SNET, prior to being acquired by SBC, was allowed to offer a package of local and long distance services. Both AT&T and MCI lowered their intrastate long distance rates and offered a bundled package of local and long distance services to compete with SNET.The failure to provide BOCs with interLATA relief is one of the most critical impediments to local competition. Once Section 271 relief is authorized, competitors will no longer purposely avoid serving residential subscribers. Today, if competitors provided wireline facilities-based services to both businesses and residences, this would unquestionably show that the local market is open, thus enabling BOCs to obtain Section 271 relief. Once BOCs are permitted to offer long distance, the long distance companies will find it necessary to enter the local market.

DEPLOYMENT OF ADVANCED SERVICES

The 1996 Act requires the FCC take steps in ensure rapid deployment of advanced telecommunications services as mandated in Section 706(b). There is no company that possesses market power in provision of advanced telecommunications service; hence, there is no reason for ILECs to be regulated differently than any other provider of advanced services. USTA agrees with AT&T CEO Michael Armstrong, who recently stated: “No company will invest billions of dollars to become a facilities-base broadband services provider if competitors who have not invested a penny of capital nor taken an ounce of risk can come along and get a free ride on the investments and risks of others.” All providers, CLECs, ILECs, and cable providers should receive the same regulatory treatment that is no regulation of advanced services regardless of who the provider is. Second, BOCs should be given immediate authority to provide interLATA data services in order to enhance the Internet backbone and provide high speed Internet access throughout the country. Many, even relatively large cities and some states, have no Internet Point of Presence (POP).

There is no reason, for instance, why DSL which is an interstate telecommunications service should be regulated differently from Cable Modem Service, a cable service, but it is! DSL is pervasively regulated as a telecommunications service, but cable modem service is virtually unregulated as a cable service. Chairman Kennard just last week testified at the earlier cited House hearing that these two services, cable modem provided by cable operators and DSL services provided by ILECs are functionally equivalent. Look, however, at the regulatory differences between these two functionally equivalent services:

DSL v. CABLE MODEM SERVICE

	ILECs	CABLE OPERATORS
	DSL SERVICE (AN INTERSTATE TELECOMMUNICATIONS SERVICE)	**CABLE MODEM SERVICE (A CABLE SERVICE)**
Common Carrier Duty	Every common carrier must furnish communications services upon request and establish physical connections §201(a)	***No Comparable Requirement***
Discrimination and Preferences	It shall be unlawful for any common carrier to make any unjust or unreasonable charges, practices or classification §202(a)	***No Comparable Requirement—*** Local franchise authority only regulates basic cable television rates and equipment; no rate regulation of cable modem service
Tariffs	Every common carrier must file with the FCC schedules showing all charges for services provided §203(b)	***No Comparable Requirement—*** Cable operator must file rates for basic tier and equipment with local franchise authority
Extension of Lines	No carrier shall construct a new line nor terminate an existing line without FCC approval §214(a)	***No Comparable Requirement—*** Local franchise authority negotiates build-out requirements with cable operator
Annual Reports	The FCC is authorized to require carriers to file annual reports	***No Comparable Requirement***
Depreciation	The FCC may prescribe depreciation charges §220(b)	***No Comparable Requirement***

	DSL Service (an interstate telecommunications service)	**Cable Modem Service (a cable service)**
Accounts	The FCC may prescribe the forms for any and all accounts and establish a uniform system of accounts §220(a)	***No Comparable Requirement***
Subscriber List Information	A telecommunications carrier shall provide subscriber list information available on an unbundled and nondiscriminatory basis §222(e)	***No Comparable Requirement***
Interconnection	Incumbent Local Exchange Carriers (ILECs) have a duty to interconnect with the facility and equipment of any requesting telecommunications carriers §251(c)(1)	***No Comparable Requirement***
Resale	ILEC must offer its telecommunications services at wholesale rates 251(c)(4)	***No Comparable Requirement—*** Leased access obligations — 10-15% based on channel capacity
Number Portability	Local exchange carriers (LECs) must provide number portability to the extent technically feasible §251(c)(2)	***No Comparable Requirement***
Dialing Parity	LEC must provide dialing parity to competing providers §251(b)(3)	***No Comparable Requirement***
Reciprocal Compensation	LECs have the duty to establish reciprocal compensation arrangements §251(b)(5)	***No Comparable Requirement***
Duty to Negotiate	ILECs have the duty to negotiate access to their networks with any requesting telecommunications carrier	***No Comparable Requirement***

	DSL SERVICE (AN INTERSTATE TELECOMMUNICATIONS SERVICE)	CABLE MODEM SERVICE (A CABLE SERVICE)
Unbundled Access	ILECs have the duty to provide any requesting telecommunications carrier with non-discriminatory access to network elements on an unbundled basis §251(c)(3)	***No Comparable Requirement***
Collocation	ILECs have a duty to provide physical collocation of equipment necessary for interconnection or unbundled access §251(c)(6)	***No Comparable Requirement***
Universal Service	All telecommunications carriers shall provide schools, libraries, and health care providers access to services at discounted rates §254(h)	***No Comparable Requirement***
InterLATA	No Bell operating company may provide interLATA DSL services without prior FCC approval and competitive checklist compliance §271	***No Comparable Requirement***
Separate Subsidiaries	InterLATA telecommunications and information services must be provided through a separate affiliate §272(a)(2)	***No Comparable Requirement***
Electronic Publishing	BOCs may provide electronic publishing only through a separate affiliate §274	***No Comparable Requirement***
Alarm Monitoring	BOCs cannot provide alarm monitoring until 2001	***No Comparable Requirement***
Computer III/ONA	BOC/GTE required to provide access and unbundling for ESPs (ISPs)	***No Comparable Requirement***

The Internet is changing the world in ways never contemplated. Data and high speed

The Internet is changing the world in ways never contemplated. Data and high speed access to the Internet are the important competitive matters of today and tomorrow and this is no David/Goliath story. ILECs have as their principal competitors in advanced services such companies as AT&T, which when its Media One merger is complete, will be not only one of the nation's largest long distance telephone carrier, but also the #1 cable television company. In the area of cable-based, high-speed Internet access, AT&T would own 78% of @Home (330,000 customers) as well as nearly 40% of Road Runner (75,000 subscribers) — bringing AT&T one step closer to offering a nationwide, all-in-one Internet, video and voice communications service. AT&T will have direct access to at least 60% of U.S. homes. Moreover, AT&T will also have significant chunks of:

—Three of the top four cable firms
—The two largest high-speed Internet companies, and
—A share of virtually every major cable TV network

CONCLUSION

To summarize, there is certainly competition for business subscribers. Residential competition has been frustrated by the failure of most states to rebalance local phone rates, and the failure of the FCC and most states to reform universal service to eliminate implicit universal service subsidies. Third, we need regulatory parity in the provision of advanced services — cable modem service and DSL service are functionally equivalent and neither should be regulated.

Map 1. CLEC Switches

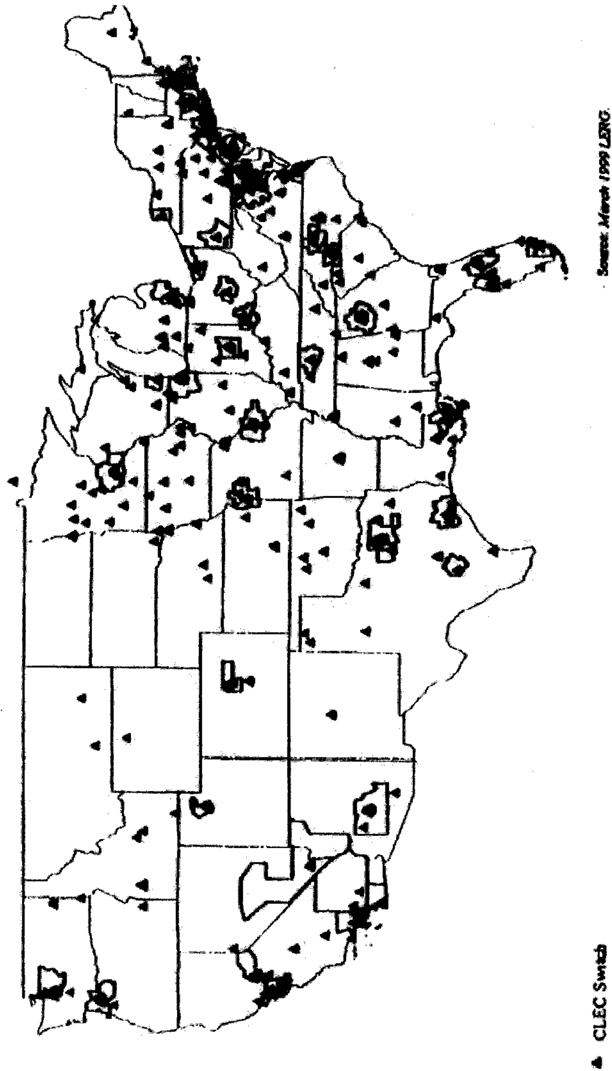


Table 4. CLEC Share of Business Lines
In RBOC/GTE Wire Centers with 40,000+ Lines and One or More Collocated CLECs

	A.			B.	C.		
	Estimates of Facilities-Based CLEC Lines			RBOC/GTE Bus. Lines in Wire Centers with 40,000+ Lines and 1 or More Collocated CLECs	Estimates of CLEC Share (A/(A+B))		
	1 Table 2. Col. D	2 Table 2 Col. E	3 Table 3. Col. F		1	2	3
Ameritech	312,302	746,812	323,112	4,156,948	7%	15%	7%
Bell Atlantic	739,617	1,558,637	927,659	5,411,364	12%	22%	15%
BellSouth	431,048	917,495	640,624	2,657,386	14%	26%	19%
GTE	156,593	335,685	279,398	909,893	14%	27%	23%
SBC	488,427	1,036,492	296,393	8,254,453	6%	11%	3%
US West	376,963	760,310	N/A	2,440,057	13%	24%	N/A

Table 5. CLEC Share of Business Lines
In RBOC/GTE Wire Centers with 30,000+ Lines and One or More Collocated CLECs

	A.			B.	C.		
	Estimates of Facilities-Based CLEC Lines			RBOC/GTE Bus. Lines in Wire Centers with 30,000+ Lines and 1 or More Collocated CLECs	Estimates of CLEC Share (A/(A+B))		
	1 Table 2. Col. D	2 Table 2 Col. E	3 Table 3. Col. F		1	2	3
Ameritech	312,302	746,812	323,112	4,730,235	6%	14%	6%
Bell Atlantic	739,617	1,558,637	927,659	6,029,247	11%	21%	13%
BellSouth	431,048	917,495	640,624	3,386,045	11%	21%	16%
GTE	156,593	335,685	279,398	1,346,841	11%	20%	18%
SBC	488,427	1,036,492	296,393	8,650,388	5%	11%	3%
US West	376,963	760,310	N/A	2,907,703	10%	19%	N/A

Table 6. CLEC Share of Business Lines
In RBOC/GTE Wire Centers with 20,000+ Lines and One or More Collocated CLECs

	A.			B.	C.		
	Estimates of Facilities-Based CLEC Lines			RBOC/GTE Bus. Lines in Wire Centers with 20,000+ Lines and 1 or More Collocated CLECs	Estimates of CLEC Share (A/(A+B))		
	1 Table 2. Col. D	2 Table 2 Col. E	3 Table 3. Col. F		1	2	3
Ameritech	312,302	746,812	323,112	5,315,461	6%	12%	6%
Bell Atlantic	739,617	1,558,637	927,659	6,454,705	10%	19%	13%
BellSouth	431,048	917,495	640,624	3,881,485	10%	19%	14%
GTE	156,593	335,685	279,398	1,641,869	9%	18%	15%
SBC	488,427	1,036,492	296,393	8,904,965	5%	10%	3%
US West	376,963	760,310	N/A	3,221,720	10%	19%	N/A

Chart-CLEC Share of Business Lines-RBOC-GTE Wire Centers Comparisons-STANDARD

Senator Ashcroft has joined us. Do you have a statement, or anything that you would like to say?

STATEMENT OF HON. JOHN ASHCROFT, U.S. SENATOR FROM MISSOURI

Senator BURNS. We thank you for your attendance.

Mr. Dan Pegg, senior vice president, Leap Wireless, San Diego, California. Welcome.

STATEMENT OF DANIEL O. PEGG, SENIOR VICE PRESIDENT, LEAP WIRELESS INTERNATIONAL, INC.

Mr. PEGG. Thank you, Mr. Chairman. I, too, have some remarks that I would request be made a part of the record.

Senator BURNS. Your full statement will be made a part of the record.

Mr. PEGG. Thank you. Leap Wireless International is a wireless service provider. We have international properties in Mexico and Chile, but what I am here today to talk about is our U.S. operating company, which is called Cricket. We have been in business for 1 year now. We are an independent publicly traded company, but we are different than the traditional wireless services that most of us are used to.

We offer our customers unlimited use for $29.95 a month. We do not have any contr acts. There are no hidden costs, and there are no credit checks. It is quite like your cable company. You give us $29.95 at the first of the month, call all you want, inbound, outbound, then at the end of the month we will ask you for another $29.95 if you want to continue the service. If you do not, that is fine, too.

We truly do, I think, fulfill the intent of the 1996 Act for those communities that we operate in. We take the freedom of wireless to the mass market within the local loop, but we do it, as I said, in a very different way.

The offer has been so compelling in our first market, Chattanooga, which we operate under a management agreement, that in just 6 short months we were able to achieve 4 percent penetration, which is quite high for any other type of wireless service.

In addition, market surveys would indicate that of all the new subscribers within that market to both cellular and PCS 62 percent are opting for this Cricket opportunity, because again, it is simple, it is trouble-free, you can talk all you want where you live, work, and play, and there are no contr acts or obligations.

Of the 62 percent new subscribers that came to Cricket, 61 percent had never used wireless before, which I think tells you that there is a pent-up demand there for this product at the right price and under the right conditions.

We currently have licenses for 50 markets -- excuse me, 50 licenses that comprise about 20 markets. We think that Cricket is bringing competition to the local loop by using technology in a unique way. We think it provides the customers with a very strong value at $29.95. We would certainly like to have more spectrum. We would just like to keep nibbling, Senator, because with more spectrum we could take this value to more people and with that, as Senator Burns says, silence is golden, so I will quiet down.

[The prepared statement of Mr. Pegg follows:]

PREPARED STATEMENT OF DANIEL O. PEGG, SENIOR VICE PRESIDENT, LEAP WIRELESS INTERNATIONAL, INC.

Mr. Chairman and members of the Committee, my name is Dan Pegg. I am Senior Vice President of Leap Wireless International and I appreciate the opportunity to be before you today.

Leap Wireless International, Inc. ("Leap") is a wireless carrier that deploys, owns and operates networks in domestic and international markets with strong growth potential. Through its operating companies, Leap has launched or is in the process

of launching all-digital wireless networks in Mexico, Chile, and the United States. We are dedicated to bringing the economic benefits of reliable, cost-effective and high-quality voice and data services to domestic and emerging markets. Leap was spun off from Qualcomm Incorporated as an independent company in September 1998. The company is listed on the Nasdaq National Market under the symbol LWIN and had approximately 80,000 shareholders and 18.2 million shares outstanding as of July 1, 1999.

Leap is working to expand the wireless world by providing need-based, value-priced, quality services to underserved market segments. Common synergies of Leap operating companies include high-quality, 100 percent digital voice systems, dedicated local management, innovative service offerings, strong marketing and distribution channels, and premium customer care.

In the United States, Leap's operating concept, is called Cricket Sm and that will be the focus of my remarks today. Cricket is designed to change the way wireless telephones are used by offering a unique service that meets the needs of the mass consumer market. Cricket's flat-rate service is designed to make wireless communications a simple, worry-free, and affordable alternative for local calling. For $29.95 per month our customers can use their Cricket phones as much as they wish. By offering a compelling value and customer-friendly product, Cricket is capturing a previously underserved market segment and achieving remarkable market penetration. In f Act, the vast majority of Cricket customers are completely new to wireless. Just as Southwest Airlines created a new value standard and expanded the market for airline travel, Cricket is seeking to change the way consumers think about and use wireless.

The Cricket service model was introduced in March 1999 in Chattanooga, Tennessee by Chase Telecommunications working together with Leap. The Cricket service lets customers make and receive all the calls they want within the local service area for one low, flat rate. While roaming is not available, full mobility exists within the local area in which people live, work and play. As of August 31, 1999, approximately 12,400 subscribers had chosen Cricket as their service provider, bringing Cricket's total penetration of the Chattanooga market to 4 percent of covered POPs after only two quarters of operation—a remarkable achievement for a wireless company.

In total, Leap has licenses or rights to acquire licenses to offer the Cricket service to approximately 24 million potential subscribers (1998 POPs). Leap will be launching Cricket in cities across middle America through the next 24 months. Through the introduction of Cricket, Leap believes that it will change not only the way telephones are used, but also provide a viable, affordable alternative to the current wireless service for consumers. Leap will achieve this goal because we are new and innovative, allowing us to take the full advantage of both technology and efficiency that comes with change. As an example, Leap believes that Cricket's customer acquisition costs will be significantly lower than those of a typical PCS company due to our simple and straightforward product. Cricket's planned simple billing, lower customer care cost, lower distribution cost, and lower bad debt cost from a pay-in-advance system are designed to re-shape the economic models of wireless and virtually all telephone service delivery.

Cricket brings wireless communications to the mass market in the same way Ford created affordable automobiles, Wal-Mart created an affordable retail shopping destination, or, as I mentioned, Southwest Airlines created affordable air travel. Cricket is striving to deliver on the promise of the 1996 Telecommunications Act, which was intended to create competition in the local loop and increase accessibility and affordability so that everyone can enjoy the benefits of improved communications. Our service isn't like traditional wireless service, because customers can call without worrying about paying by the minute. It's not like a home (landline) phone, because it works well beyond the range of home cordless phones.

Unlike many communications companies, Cricket differentiates itself by starting with the needs of the consumer, and using technology to deliver what they want and need. Every aspect of Cricket service is considered from the consumer point of view before it is fully developed. Many current newer communications alternatives are aimed at the business customers, along with most of the incumbents that compete both in the local loop and for communications services in general. Cricket does not target the business user or the current wireless user. Most of them have different needs, like roaming outside the local area (which Cricket does not offer), or the ability to connect to the office computer to check e-mail or access the Internet. Neither of these capabilities is a priority for Cricket's target, the non-wireless user who lives, works and plays in the local area.

The convenience of making and receiving phone calls away from the home provides many benefits to these people at costs close to landline is overwhelming given

the increasing demands on consumers time. Staying in touch with friends, family, business cont acts is still important, but there is less time available to do this. Wireless service allows people to use “down time”—time spent going from place to place, standing in line, running errands, as productive time, or communication time. The usefulness of a landline phone as a voice communication tool is diminishing. More and more often the landline telephone jack in the wall is being used for Internet access, e-mail, etc. and less for voice conversations. Being “tethered” to the home is becoming more of a constraint as lifestyles continue to become more active and on the move.

Research indicates that two main concerns are keeping interested non-users from going wireless:

First, they realize they will use a wireless phone frequently, and are afraid of what it will cost. That’s because available wireless services are “open-ended.” The total bill depends on minutes of use, regardless of whether a big bucket of minutes are included in a rate plan (large monthly fee) or whether additional minutes beyond the bucket amount are used. They would be afraid to give out their number because they pay by the minute for incoming calls, too. Moving towards wireless requires consumers to move out of the billing experience that they have become accustomed to with their fixed local loop service.

Second, they are confused by wireless offerings and don’t trust wireless providers, who sometimes have used sales tricks and gimmicks in the past to lure, then surprise, subscribers. They’ve heard the horror stories from wireless users. These include:

Poor voice quality
Phones for free (what’s the catch?)
Long term contr acts that require a stiff cancellation fee (that’s the catch!)
Confusing and complicated rate plans which cause anxiety about choosing the right one
Hidden charges, like landline interconnect, roaming, peak/off peak pricing, activation fees
Fine print
Poor customer service
Misleading advertising
Prepay offerings, which penalize credit-challenged people with high “per-minute” rates.

In contrast to these pitfalls, the Cricket offering has been so well received that in Chattanooga, 62% of all new PCS/Cellular additions have been Cricket. The Cricket service has achieved an amazing 4% penetration in less than six months. And, based on market research, 61% of Cricket subscribers use Cricket service as their primary service for personal calls. At $29.95 per month, with no hidden costs or credit checks, Cricket not only brings wireless telephony to the mass market—it brings true competition to the local loop.

Senator BURNS. Thank you. I must apologize to my friend from Georgia. He and Senator Ashcroft came about the same time. Senator Cleland, do you have a statement you want to make? How can we accommodate you?

STATEMENT OF HON. MAX CLELAND, U.S. SENATOR FROM GEORGIA

Senator CLELAND. Mr. Chairman, I am just here to listen and learn, but we thank our panelists for coming, and thank you for having the hearing. Thank you.

Senator BURNS. We have with us Royce Holland, chairman and CEO of Allegiance Telecom, Dallas, Texas. Thank you for coming this morning.

STATEMENT OF ROYCE J. HOLLAND, CHAIRMAN AND CEO, ALLEGIANCE TELECOM, INC.

Mr. HOLLAND. Thank you very much, Mr. Chairman, and Senator Hollings and members of the committee. In addition to being

chairman and CEO of Allegiance Telecom, which is a competitive local exchange carrier, I am also here representing the CLEC industry as a whole through my post as chairman of the ALTS organization, which is our industry trade group.

In f Act, the president of that trade group is one Mr. John Windhausen, who used to be a member of your staff, and he is doing a great job. You all trained him well.

Since ALTS does represent facilities-based carriers, I guess I am a spokesman for the nibblers today.

I really wanted to make four points today. First, we are for competition. We are not an RBOC. We are not a long distance carrier. We are for opening the local market to competition, and number 2, like a lot of you, we are sick and tired of seeing so many of the big fish competing in the halls of Congress, competing at the FCC, and clogging up the court dockets rather than getting out there and competing in the market.

I see the battles between the Bell Companies and the long distance carriers, the cable TV companies and the Bell Companies, and mainly what they are trying to do is avoid competition. They are trying to protect legacy markets and keep those from being open to competition. Well, in my opinion they ought to be complying with the Act and we ought to get the market opened.

I feel that the Telecom Act of 1996, which many of you gentlemen on the committee had a big hand in, and my good friend and fellow Texan, former Congressman Jack Fields, along with Congressman Markey, your counterparts in the House, developed, I think that is one of the most significant pieces of commercial legislation to come out of this town in 50 years, and it has really provided a foundation for America's continuing increasing competitiveness in the global economy.

The Telecom Act does not need fixing. The enforcement process is what needs fixing, and I would also say, a corollary to that is, do not treat these Bell Companies monolithically. They may all have been hatched along with AT&T in 1984, but you have got to reward the good behavior, and you have got to severely penalize the bad behavior. The message ought to be very clear, comply with the competitive checklist and you are in long distance. Compliance with the Act, though, is not optional. If you do not comply, we need self-executing penalties that will kick in and make you comply.

Now, in elaborating on this, we have heard a lot of statistics about whether the market is competitive, or the market is not competitive, and certainly Mr. Neel mentioned the yellow pages test. Well, merely offering competition does not get it done.

The key is, can you deliver in a quality manner competition, and I call it the 13-year-old kid test. My son David is 13 years old, and he plays ice hockey, and he can tell you if a goal is scored or not. Does it cross the line and go in the net, or does it not?

Likewise, he can tell you if there is true, effective local competition by a simple test. That simple test is, can you, as a customer, change your local carrier as seamlessly and easily as you can change your long distance carrier? Well, I will tell you today you cannot, though it is improving with some of the RBOC's, most notably Bell Atlantic in New York.

By and large it takes you 2 to 3 days to change your long distance carrier. 9 months ago it was taking 30 to 60 days on average to change your local carrier, with a 40 percent service-effecting outage rate at the time of cutover using the unbundled elements.

Allegiance Telecom serves 18 markets today. We are working with Bell Atlantic, Southwestern Bell, and PAC Bell on implementing the electronic bonding of OSS and putting in procedures to do this. Customer cutover intervals are down in some of these States, notably New York and Texas, to probably 10 to 15 days now, and our bad cut rate is down to 10 to 15 percent. That is still nowhere near where it needs to be.

Well, the key to fixing that is compliance with the competitive checklist. Really, I think the three keys to success are:

Number 1, we have got to force compliance with the checklist. It is not an option to obey the law or not. You know, I would love to have an option to pay my income tax or not. I do not have that option, and there are quick, self-executing penalties that hit me if I do try to choose that.

Number 2 is, when they comply, you have got to let them into long distance when they comply but not before, and you will see a lot of players out there in this industry objecting till hell freezes over about letting them in. I will tell you, the nibblers here, the CLEC group, we are willing to give the carrot when they do perform.

Number 3, do not let them bypass the Telecom Act. We have got to not treat them monolithically. A lot of these ruses like this thing, well, we have got to be in for data, we do not have to comply with the competitive checklist for data, that makes no sense at all. That is rewarding the bad players as well as the good.

Let me just give you an example of who I think is a bad player and who is a good, because I will start the trend and not treat them monolithically. Bell Atlantic in New York, we are supporting their 271 application, Allegiance Telecom is. They will get in. It is not a matter of if, it is when. It will be by the end of this year or early next year. We have worked with them since June of last year to make it a reality.

On the other side of the coin, U.S. West ought to be punished. I mean, our members in the ALTS Association have seen what we feel is one willful Act after another throughout their region not to comply with the checklist. So when it gets right down to it, I think Senator Hollings' bill, S. 1312, is moving in the right direction with self-executing penalties. We see howls of protest against it. I will tell you who is protesting the loudest are those that are most guilty. The guilty dog barks first.

Thank you very much for the oportunity to testify, and I am really looking forward to seeing the continued movement toward competition so that the Telecom Act will be a reality in the marketplace.

Senator BURNS. Thank you very much, Mr. Holland.

[The prepared statement of Mr. Holland follows:]

PREPARED STATEMENT OF ROYCE J. HOLLAND, CHAIRMAN AND CEO, ALLEGIANCE TELECOM, INC.

Good Morning, Chairman Burns, Senator Hollings, and Members of the Committee. I am pleased to testify this morning on the state of competition in the local telecommunications marketplace.

I am Chairman and CEO of Allegiance Telecom, a competitive local exchange carder (CLEC) that is headquartered in Dallas, Texas. Allegiance is a nationwide provider of competitive voice and data services in 16 markets across the country. Allegiance was formed in 1996, after passage of the Telecommunications Act of 1996. In f Act, Allegiance is one of over one hundred companies whose founding and growth is directly attributable to the passage of that landmark1996 Act.

I also appear before you today as the Chairman of the Association for Local Telecommunications Services, or ALTS. ALTS is the leading trade association representing the facilities-based CLECs, the competitors to the incumbent local telephone companies. ALTS does not represent any of the ″big three″ (soon to be big two) long distance companies, and ALTS also does not represent the Regional Bell Operating Companies (RBOCs). ALTS' membership includes only the CLECs that are deploying their own facilities (switches, fiber optic cables, wirelessantennas, etc.) to provide competitive local telecommunications service. ALTS' membership has grown substantially since passage of the 1996 Act, and now claims almost 200 members, 88 of whom are CLECs. I am also pleased to note that the President of ALTS is John Windhausen, who served for many years as a staff member to this Committee.

Mr. Chairman, I have a long history of experience in the local telecommunications industry. Prior to founding Allegiance Telecom, I founded MFS Communications, one of the first competitive providers of local service in the late 1980's and early 1990's. MFS first operated in the local market as a competitive access provider, or CAP. At the time, MFS was allowed to compete with the incumbent telecommunications companies in the provision of access services to long distance companies, but many states prohibited the provision of local exchange service to end user consumers in competition with the incumbent telecommunications company. MFS was purchased by WorldCom in 1996.

In short, I have been at the business of trying to break open the monopoly owned by the Bell Companies and GTE for many, many years, and I am happy to report that the we are making great progress in turning that former monopoly market into a competitive one. Most of the progress we have made over the last three and one-half years is directly attributable to the passage of the Telecommunications Act of 1996. Congress should be congratulated for its foresight in opening up the local telecommunications marketplace to competition. But, despite our progress, local competitors continue to encounter substantial roadblocks that impede the growth of local telephone competition. These roadblocks fall into three categories: (1) the failure of the local telephone companies to open their networks to competition; (2) excessive regulation and delays by municipal regulators; and (3) unwillingness of building owners to grant competitors the same rights of access to buildings that they have granted to the incumbent telephone companies. Because of these continuing impediments, consumers in many regions of the country are being denied the lower prices and advanced services that competitors are bringing to the marketplace. I will expound upon each of these types of difficulties later in my testimony.

But first, I would like to share with you some basic f acts about the progress we have made in making the local telecommunications marketplace more competitive since passage of the 1996 act:

- in 1996, there were approximately 15 companies competing for local telecommunications service; today there are over 200 companies earning revenue in the market, and there are several hundred more companies that have received state approval to offer competitive service;
- in 1996, the CLECs' market share was approximately one-half of one percent (0.5%); today, the CLECs take in approximately 6-7% of the local market revenues; CLECs have more than doubled their market share each of the three years since passage of the 1996 act;
- in 1996, CLECs had deployed approximately 60 switches; today, CLECs have deployed over 700 switches to provide competitive local exchange service;
- The CLECs that have gone public currently have a market capitalization of more than $54 billion. In other words, the 1996 Telecom Act has created more than $54 billion in new wealth for investors and the American economy.

There is no doubt that competition has brought significant price reductions. Competitive companies generally offer prices that are anywhere from 10 to 30% lower than the prices offered by the incumbent telephone companies.

Perhaps even more important, however, is that competition is brining advanced broadband services to American consumers more quickly than ever before. CLECs are leading the deployment of advanced broadband services. The introduction of broadband services by the CLECs has forced the incumbents to shelve outmoded technology and pricing regimes and replace two thousand dollar analog T-1 lines with hundred dollar digital subscriber lines -offering the same services at a fr action of the price. In other words, the growth of local telecommunications competition is transforming the local telecommunications marketplace from a sleepy, slow-growth, basic telephone business to an innovative, high-speed, entrepreneurial battleground. The emergence of innovative, competitive telecommunications companies has brought, not only price competition, but new options to consumers, services and technologies that Americans otherwise may not have seen- at least not for years to come. Now, where CLECs begin deploying new technologies, ILECs are forced to follow suit, offering similar services at comparable prices. (Unfortunately, where competition does not yet exist, monopolists are still free to overcharge or not deploy broadband services.) There is no doubt, that CLECs are leading the way in the rollout of new services.

Witness the following examples of innovations in the local telecommunications marketplace:

DIGITAL SUBSCRIBER LINE (DSL) SERVICES:

CLECs are leading the deployment of Digital Subscribe Line (DSL) technology. DSL, which stands for digital subscriber line, provides consumers with an always-on, high-speed connection to the internet using basic copper wire that already runs into every consumer's home or business. DSL provides high-speed data communications to provide connectivity on a wholesale basis to Internet Service Providers (ISPs) or on a retail basis to consumers. The so-called data competitive local exchange carders (Data CLECs) offer these high-speed local access services by leasing the copper lines of the telecommunications company and connecting those lines to their own equipment, called DSLAMs. They purchase ″conditioned″ (free of load coils and bridge taps) unbundled copper loops from incumbent local exchange carders (ILECs),collocate their own DSL equipment in the central office, and backhaul the traffic through leased transport. Some companies have plans to build their own backbone network in the future, but for the most part, these service providers are dependent on ILECs for the connection to the customer.

DSL technology provides several advantages over competing technologies. DSL offers a dedicated connection, increased security and guaranteed bandwidth. Service is consistent, irrespective of the number of users in a geographic location, unlike cable modems, where all residential subscribers on a coaxial connection contend for bandwidth. Also, DSL simultaneously supports multiple sessions, so that multiple PCs can be connected at the same tune. The connection is always on.

A study from Communications Industry Researchers Inc. of Charlottesville, Va., indicates that by 2003 there will be more than 31.7 million households in North America using data connections that feature transmission speeds of at least 1.5 Mbps, up from just 1.6 million households using such connections currently. CIR includes both DSL-modem and cable-modem deployments in its study, as well as wireless and satellite access technologies.

Allegiance is rapidly deploying these new digital technologies. In June of this year, Allegiance rolled out DSL services from 24 central offices in seven of our 16 markets nationwide. For small and medium- sized business customers, we are deploying what we believe to be the first commercial application of HDSL2, the new symmetric DSL standard that requires the use of only one unbundled loop to achieve T-1 capacity (1.544 Mbps). We plan to collocate our DSL equipment in 110 central offices by year-end. We believe that DSL is one of the best enabling technologies to hit the CLEC space in a number of years, especially for the medium and small business market. In addition to improving our gross margins, DSL should allow our customers to significantly upgrade their data transmission and Internet connections on a cost-effective basis.

As the DSL deployment progresses, Allegiance is accelerating the acquisition of local fiber networks to replace the leased bandwidth we have relied upon through the company's startup phase. For instance, earlier this year, Allegiance completed the deployment of high- capacity SONET networks in New York City and Dallas using fiber acquired from Metromedia Fiber Networks. Construction also has begun in Houston on a similar network using fiber acquired from Metromedia. The com-

pany is negotiating the acquisition of fiber in several additional markets. The Telecom Act knocked down the barriers, and now we're seeing all the forces that have driven the computer and software industries for the last 20 years moving into telecom.

Allegiance is not alone in deploying this high-speed technology. Perhaps the first three companies to identify the value of the DSL technology and announce nationwide rollout plans were Covad, NorthPoint and Rhythms NetConnections. Their reach extends to residential, as well as business customers. For instance, Covad just announced that it would extend its DSL services to 40% of residential consumers and 45% of business consumers by the end of the year 2000. Many of the companies that have traditionally provided voice services have jumped on the DSL bandwagon and have announced their own DSL offerings, including McLeodUSA,FirstWorld, and MGC, just to name a few.

In addition, newer companies are already entering the DSL market to serve smaller Tier 2 and Tier 3 cities. Companies such as New EdgeNetworks, @Link, HarvardNet, Network Access Solutions (NAS), BlueStar, and many others are rapidly deploying DSL service to smaller communities. These technologies are also being deployed in some rural areas as well, although progress in rural areas is slower because many of the rural telecommunications companies do nothave the same obligations or incentives to open their networks to competitors.

Because of the CLECs' rapid deployment of DSL services, all the RBOCs and GTE are now planning their own roll-out of these services. U S WEST and SBC currently appear to be the leading RBOC providers of DSL services. U S WEST has already deployed roughly 80,000 DSL lines (projected to be 100,000 by the end of the year. SBC has about 100,000 DSL lines (projected to be 200,000 by year end. Additionally, SBC just announced plans to deploy to invest some $6 billion dollars for broadband deployment over the next few years. The other Bell Companies and GTE have also announced similar plans.

In short, the passage of the 1996 Telecommunications Act, and the growth of competition for local telecommunications services, has dramatically increased the deployment of high-speed internet access to all consumers.

BROADBAND WIRELESS TECHNOLOGIES:

A number of companies are rapidly deploying fixed wireless services to small business and residential consumers in multi-tenant buildings. These companies, such as Teligent, WinStar, NEXTLINK, Advanced Radio Telecom, OpTel and others, beam high-speed communications from a central antenna to the rooftops of buildings in metropolitan areas. The company then connects the antenna with the inside wire in the building to reach the consumer. Fixed wireless service is similar to cellular telecommunications service, except its users stay in one place. Conventional wiring and telecommunications apparatus is used inside the building. But an antenna bolted to the building's roof transmits calls to a base station. The base stations ends the signals, via fiber link or wireless transmission, to a switch operation, where calls arerouted locally, to long-distance networks or to the Internet.

This technology can deliver high-bandwidth services more efficiently and at lower cost than the dominant fiber-based carders. Unlike their fiber counterparts, wireless carders do not have to dig up streets to access buildings and can start services within a matter of days, not weeks. About two-thirds of the nation's 55 million business lines are in buildings where it's uneconomical to extend fiber optic lines, according to a recent Salomon Smith Barney report. That adds up to a potential $57 billion ″niche″ for wireless providers.

Teligent teams are working in 30 markets, including San Francisco, San Jose, Dallas, Houston, Austin, San Antonio, Chicago, Washington, D.C., New York, Orlando, Jacksonville, Miami, and Denver. The company plans to launch another 25 markets in 1999 and 34 markets in 2001. WinStar recently announced that it is offering data and Internet services in the top 60 U.S. markets, one year ahead of schedule. The company also announced plans to construct data centers in every WinStar central office across the country. WinStar operates one of the most widely available broadband networks in the country. Through its agreements with Metromedia Fiber and Williams Communications, WinStar has acquired more than 16,000 long-haul route miles of fiber and nearly 6,000 intra-city route miles of fiber that are already being delivered. In addition, the company has deployed more than 100 data switches across the nation. The combination of fixed wireless broadband technology and local and long haul fiber, allows WinStar to route traffic at a local level across the country, improving network efficiency, speed and quality of service.

ELECTRIC UTILITIES

The ability of electric utilities to use their infrastructure to provide telecommunications services also holds a great deal of promise. In the 1990's, electric utilities owned the third largest telecommunications system in the U.S.—created originally for internal use. By the mid 1990's, however, many utilities' fiber-based communications systems had been overbuilt, and in some cases only 2 percent of the fiber capacity was in use. Consequently, utilities began investigating the possibility of utilizing their facilities for commercial telecommunications services. By 1998, more than 40 electric and gas utilities were engaged in some form of telecommunications. While most of the utilities' telecom subsidiaries sell transmission capacity to other telecom carriers, several have become CLECs themselves, such as Conectiv communications and Electric Lightwave, while others have engaged in joint ventures with CLECs, such as Hyperion Telecommunications and PEPCO's partnership with RCN in the Washington, D.C. area.

RURAL TELECOMMUNICATIONS COMPANIES

Several independent incumbent local exchange carriers serving rural areas have also begun to establish their own CLECs to attack markets of their larger RBOC brethren. For instance, AllTel, an ILEC headquartered in Little Rock, Arkansas, has begun to provide CLEC services in other parts of the southeast. Several rural ILECs in North Dakota have formed a CLEC called IdeaOne to compete against US West. I expect these small ILECs will expand once the large ILECs complete the job of opening their markets to competition.

CABLE COMPANY AFFILIATES

Several cable companies have entered the local telephony market by targeting the residential customers that they already serve through their existing cable plant. The cable plant, which was designed for one-way transmission of video programming, must be upgraded at a substantial costs to carry two-way voice and data telephone services. Nevertheless, Cox Cable, MediaOne, Cablevision Lightpath, and Time Warner Telecom have made substantial progress in entering the local telephone marketplace since 1996.

Cox operates local telephone services in Orange County, CA, Omaha, Merieen, CT, San Diego and Phoenix and Hampton Roads, VA. Cox's prices average 10% lower than the incumbent for the consumers' first line, and 50% below the incumbent's price for the second telephone line. MediaOne offers Digital Telephone service to residential consumers in Atlanta, Los Angeles, Jacksonville and Pompano Beach, FL, Boston and Richmond, VA. Time Warner Telecom, by contrast, has focused its efforts on mid-size and large business customers, using its own fiber optic cable network in approximately 20 cities nationwide.

As the above summary indicates, the market for local telecommunications service is attr acting several kinds of new entrants and technologies. Nevertheless, several consumer organizations, the media, and some Members of Congress have expressed disappointment in the pace of local competition since passage of the 1996 Act. Of course, it should be expected that competition cannot begin overnight, and policymakers should understand that it takes time to raise capital, deploy networks, develop marketing plans, and serve customers.

Perhaps most important, however, is that competitors still face a number of significant roadblocks that make it exceptionally difficult to compete on even terms with the incumbent telecommunications company. Even in those areas that have attr acted the most intense interest among local telecommunications competitors, the CLECs still face a competitive disadvantage when it comes to competing with the Bell Companies and GTE. If Congress wants to help speed the growth of more local telecommunications competition, it should address the following three impediments to local telecommunications competition:

1. The ILECs' failure to open their networks to competition.

Three and one-half years after passage of the 1996 Telecom Act, **not a single ILEC has complied with Congress' directive to open its network to competitors.** CLECs continue to face enormous service provisioning difficulties when interconnecting with the incumbent. The Telecommunications Act correctly requires the ILECs to give the CLECs the same quality of service that it provides to itself. Only when this principle of nondiscrimination is enforced will the local market truly be able to compete on the same terms as the incumbent. To date, however, CLECs face a number of discriminatory pr actices by the ILECs, including the following:

A. ACCESS TO UNBUNDLED NETWORK ELEMENTS

The 1996 Telecom Act requires the ILECs to provide nondiscriminatory access to the piece parts of their networks to competitors at cost- based rates. The telephone companies agreed to open their network to competition as part of the bargain that would allow them to enter the long distance market. Further, this requirement that the ILECs provide unbundled network elements (UNEs) is essential to the development of facilities-based competition. Most competitors can purchase some of their own equipment (switches, fiber optic cables, wireless antennas, etc.) but they must interconnect their own equipment with the ILEC network in order to complete calls. These facilities-based CLECs must purchase, or lease, the piece parts of the network to supplement the components of the network that they cannot yet provide on their own.

To date, however, the ILECs have not made these components available to competitors on the same terms and conditions that they provide these components to themselves. In particular, the ILECs have consistently failed to provide nondiscriminatory access to unbundled local loops that connect the customer to the CLEC network equipment. The ILEC often fails to connect the customer properly, causing the consumer to lose service altogether. Often the ILEC does not provide the UNE on the proper date and time, causing delay and confusion on the part of the consumer. Further, the ILEC often does not provide directory listings of consumers who take service from a CLEC, a severe competitive disadvantage. In other cases, the ILEC fails to repair or maintain loops that are connected to the CLEC network.

Service provisioning difficulties are not limited to provisioning loops. The ILECs also have difficulty in providing high-capacity trunks on a timely and efficient manner, and they have often resisted allowing the CLECs to obtain collocation space in the ILEC central office. Even though the FCC issued an order earlier this year to require the ILECs to provide such collocation, in too many cases, the ILEC claims that there is no space available, or attempts to charge an outrageous sum of money (sometimes hundreds of thousands of dollars) to allow the CLEC equipment into the central office.

B. OPERATIONS SUPPORT SYSTEMS

In addition, several ILECs have had great difficulty in providing operations support systems (OSS). As the Department of Justice noted in its comments on the Bell Atlantic-New York application, too often the ILEC must rely upon manual procedures to process CLEC service orders. Manual procedures are simply more prone to error and delay than electronic procedures. The ILECs should move to an electronic bonding approach as soon as possible to ensure that service is provided efficiently. Allegiance has recently had some promising experiences with Bell Atlantic's OSS in New York and with SBC's OSS process in Texas. I believe our experience demonstrates that the ILEC can "get it right" if it puts its mind to it. I understand, however, that other CLECs have not had the same positive experience as Allegiance. I hope that the ILECs and CLECs can follow the example that Bell Atlantic and SBC have set with Allegiance so that the ordering process can operate in a smooth, seamless manner that is transparent to the customer. (Although the ILECs complain that OSS does not appear in the 1996 Telecom Act, that is not the case. OSS is the process by which the ILEC receives and fulfills orders to provide service to the CLEC. In other words, the ILEC must provide a transparent OSS in order to fulfill its obligation under the Act to provide "nondiscriminatory" service to CLECs.)

C. PERFORMANCE MEASURES AND SELF-EXECUTING PENALTIES

Finally, most of the ILECs have yet to establish adequate performance measures and to abide by such measures (including the enforcement of such measures through penalties/damages) The rationale behind the Commission's "self-executing remedy" requirement is to promote the rapid development of local exchange competition by preventing competitors from being driven out of business by being forced to litigate operational issues with the ILEC each time such issues arise. To operate properly, this "self-executing" remedy must have well- defined and properly implemented performance measures of ILEC pr actices in regard to relations with CLEC. There also must be swift resolution of problems with sufficiently severe penalties to deter further abuses. To date, while ILECs have implemented part of this requirement, they still fall short of establishing the self-executing commercial type relationships that ILECs have, for instance, with their own customers.

Much attention has been focused in the last few months on Bell Atlantic in New York and SBC in Texas. Bell Atlantic filed its application to enter the long distance

market in New York under section 271 last month; SBC is expected to be the next RBOC to file a long distance application before the end of this year. Without going into all the details of those efforts, I would like to note briefly that both Bell Atlantic and SBC have made significant improvements in opening their networks to competition. At the moment, however, neither Bell Atlantic nor SBC is currently ready to provide long distance service. ALTS and Allegiance have no objection to allowing the RBOCs into the long distance market after they have opened their local markets to competition. Bell Atlantic, however, is still encountering major difficulty in providing loops to CLECs at the same rate and quality as it provides these loops to itself. While Allegiance's experience may be better on this front than some other ALTS members, it is clear from the data submitted to the FCC that consumers are suffering unacceptable numbers of service cut-offs when they try to switch to a competitor. As for SBC, the major impediment to its application is that SBC has not implemented a fully transparent process for processing orders from CLECs for interconnection. The Texas Public Utilities Commission recently found that the independent, third-party tests of SBC's operations support systems (OSS) continues to find errors that hamper CLECs' performance. Allegiance and ALTS hope that these problems can be addressed as soon as possible, as these loop provisioning and OSS problems run to the heart of the CLECs' businesses. Once these problems are fixed, ALTS and Allegiance will be pleased to supportthese companies' applications under section 271.

2. Excessive regulation by municipal governments.

The members of ALTS have found that in many circumstances their ability to provide service in a timely, efficient and cost effective manner has been hampered by municipal ordinances (and, sometimes, state laws) that make it difficult, time consuming, and costly to use the municipal rights-of-way for the provisioning of facilities. Three years after the passage of theTelecommunications Act of 1996 and after many negotiations with numerous municipal governments, the members of ALTS find that the vast majority of municipalities are not managing their rights-of-way in an efficient, competitively neutral manner.

Rather, the members of ALTS have found that significant numbers of municipalities have been very wary of CLECs and/or have seen them as a potential new source of revenue. These attitudes have resulted in hundreds (and possibly thousands) of municipalities considering and often adopting regulations or ordinances that have had a chilling effect upon competition. In addition to exorbitant fees, some municipalities have imposed a broad range of regulations that are often duplicative of the state's regulatory role and encroach upon the states' role of regulating intrastate communications. Even though the carriers (including CLECs and ILECs) have sometimes prevailed upon the local governments not to adopt the more onerous provisions considered, significant resources have been expended by the entire industry simply attempting to hold back the flood of new ordinances.

In addition, of course, carriers often have not been successful in convincing the municipalities to en Act reasonable ordinances. In those cases, carders are left with three undesirable choices: agreeing to onerous terms (that often place them at a competitive disadvantage visa vis the incumbent) just to be able to provide service, engaging in expensive,protr acted litigation, or simply abandoning plans to provide service in the particular community.

States have an interest in ensuring that municipal regulation of the use of public rights-of way is relatively uniform, does not burden telecommunications carders, and does not duplicate the states' regulatory role. Therefore, there has been movement in some state legislatures in the past three years for the adoption of state statutes that would ensure that access to public rights-of way is administered in a reasonable, predictable and non-discriminatory manner. While there has been progress made in this area and a number of state statutes improve on the pre-existing status quo, far fewer than half the states have managed to pass legislation and there has not been uniformity in the statutes that have been passed. In addition, some state statutes that have been passed in the past several years have significant discriminatory provisions in them. And, in some states that have passed legislation limiting the ability of local governments to unreasonably manage their rights-of-way, cities have disregarded the legislation and passed ordinances that violate state law.

In addition to state legislatures, there have been some state public utility commissions that have taken actions to address the rights-of- way issues. For example, in California the PUC in Docket 98-10-058, when faced with complaints from carriers about excessive fees, held that while municipalities have an interest in managing local rights- of-way, the State has "an interest in removing barriers to open and competitive markets and in ensuring that there is recourse for actions which may violate state and federal laws regarding nondiscriminatory access and fair and rea-

sonable compensation." Therefore, the California PUC decided that it could intervene in disputes over municipal rights-of-way access "when a party seeking ROW access contends that local action impedes statewide goals, or when local agencies contend that a carrier's actions are frustrating local interests." Some state statutes specifically give the state regulatory commissions jurisdiction over rights-of-way issues, but others either deny the commission authority or are silent or ambiguous as to the commission's authority.

In addition to the time and effort expanded in negotiating with individual municipalities and working with state legislators, there have been several instances in which carriers have decided that their only recourse is to file suit against a municipality. These decisions are not made lightly; it is always preferable to work out differences in an amicable manner with the municipalities with whom the carder clearly needs to have a long-term relationship. Nonetheless, in a number of municipalities across the country carriers have felt that there is no alternative left to them and have filed suit against the municipality.

The members of ALTS understand that if they (or any other carrier) construct facilities in public rights-of-way they should repair the rights-of-way. Enforcement of the cities' right to insist that streets are returned to a state close to what it was prior to the construction is not at issue. In addition, the members of ALTS would not challenge a permitting fee that is administered in a nondiscriminatory manner and is directly related to the costs incurred to manage the public rights-of-way. No carrier, however, should be subject to different standards or requirements than other carriers, thus putting some carders at a significant competitive disadvantage vis-a-vis the other carriers. And no carrier should be subject to fees or requirements that are wholly unrelated to reasonable regulation of the public rights-of-way.

The members of ALTS who are spending significant resources and time negotiating with cities believe that this is one of the biggest bottlenecks preventing the rapid growth of facilities based competition. Although the FCC and the courts have several times articulated what they believe are the limits of the municipalities' police powers to manage the rights-of-way and some state legislatures have attempted to pass legislation that would make municipal regulations more consistent throughout a state, new ordinances are being proposed all the time. And, it appears that the drafters of the new ordinances are either unaware of the Commission and court precedent in this area or simply do not care what that precedent teaches.

3. Inability to obtain access to buildings.

Telecommunications carrier access to tenants in multi-tenant buildings is essential to the development of local competition. In order to provide facilities-based service to a tenant in a multi-tenant building, a local telecommunications carrier must install its facilities on or within the building, sometimes to the individual tenant's premises (such as their office or apartment). In some cases, the carrier's facilities extend only from the building owner's property line to the basement telephone equipment room. For example, the carrier's line extends from the curb, across the parking lot to the building. Although this distance may be very short, it is impenetrable without the building owner's consent—the operation of state property laws generally requires that a telecommunications carrier obtain the permission of the building owner prior to installing facilities within and on top of that owner's building.

However, building owners can and do exclude telecommunications carriers from buildings in many different ways. For example, absent a landlord-tenant lease to the contrary—which is very uncommon—the landlord can eliminate a tenant's choice in telecommunications carriers simply by refusing carrier access to the building. Other landlords impose such unreasonable conditions and demand such high rates for access that competitive telecommunications service in those buildings becomes an uneconomic enterprise. Consequently, landlords can perpetuate the monopoly local telephone environment—the bottleneck—that the 1996 Telecommunications Act sought to dismantle.

To give you an idea of the problems that ALTS members confront, I offer you a sampling of examples. This is by no means an exhaustive list of the problems that competitive carriers face, but it does provide some concrete understanding of the unreasonable barriers to competition that some landlords are erecting.

- The manager of one large Florida property has demanded from a CLEC a rooftop access fee of $1,000 per month and a $100 per month fee for each hook up in the building. The company estimates that this fee structure would cost it about $300,000 per year—just to service one building.
- The management company for another Florida building demands that a telecommunications carrier pay the management company $700 per customer for

access to the building, in addition to a sizable deposit, a separate monthly rooftop fee, and a substantial monthly fee for access to the building's risers which are the dedicated, horizontal and vertical spaces within a building that contain utility facilities. Taken together, these fees preclude the company from providing tenants in that building a choice of telecommunications carriers.

- In one Arizona building, a CLEC had pulled its fiber cable into the building, had access to the telephone closet and building risers, and had begun providing service to customers in the building with the landlord's permission. However, one of the CLEC's customers in that building recently requested expanded service from the CLEC, requiting an expansion of facilities. The building owner informed the CLEC that it could no longer have access to the telephone closet—that it was the property of the incumbent LEC. Moreover, the building owner informed the CLEC that the building was now under exclusive contr Act to another carder and that the CLEC would have to obtain permission from that carder to service the equipment that the CLEC had already installed in the building. As a result, the customer in the building is experiencing delays in receiving expanded service while the CLEC negotiates with the building owner and the "exclusive" telecommunications carrier for access. Moreover, the CLEC's relationship withthe customer is at risk and the CLEC's facilities that were installed in the building several years ago are in jeopardy of becoming stranded assets.
- One CLEC sought a building access agreement with a large property holding and management company with properties nationwide. This company required an agreement fee of $2,500 per building in addition to space rental of approximately $800 to $1,500 per month per building. Moreover, the company refused to negotiate an agreement for fewer than 50 buildings. Finally, as a condition of entering into the agreement, the company insisted that the CLEC agree to refrain from making any regulatory filings concerning the building access issue.
- Another large property owner and management company demanded $10,000 per month per building just for access rights to building risers.
- In an Arizona property, the incumbent and one competitive provider had installed facilities. Four additional CLECs requested access. The property owner demanded that the four new CLECs provide conduit, fiber connectivity between buildings, and dark fiber to the property owner free of charge -- approximately $200,000 of in-kind contributed facilities. The property owner also seeks to charge a $750 per month access fee for access to the property even though the access will not deprive the property owner of leasable space to tenants. This situation places the four new CLECs at a competitive disadvantage to the two providers already inside the building.
- A large number of building owners and managers do not want a second telecommunications carder in the building because of revenue sharing arrangements with the first carrier and many have entered into exclusive access contr acts with a single carder; indeed, one building management company told a CLEC not to solicit its tenants.
- In Washington state, the owner of a new building put the provision of telecommunications services to the tenants out to bid. The winning bidder would gain exclusive access to provide telecommunications service to the tenants in the building. The incumbent provider was able to outbid all other providers, offering to pay $10,000 every year to the building owner. The incumbent was thereby able to shut its competitors out of the building entirely.
- Management companies for many other buildings demand revenue sharing arrangements in exchange for access.
- Some owners of newly constructed buildings are installing "central distribution systems" ("CDS") in their buildings—an intra-building telecommunications network. Rather than allowing carders to install their own facilities all the way to the customer, the building owner requires the carders to utilize the CDS. However, some of these facilities are not advanced enough to carry adequately the traffic of more advanced carriers. Moreover, the building owners will not guarantee the reliability of these CDS intra-building networks. In addition, building owners often seek to charge excessive rates for use of a CDS that many carders would rather not use. Finally, some building owners are requiting telecommunications carriers to sign agreements that once a CDS system is installed, it must be used—forcing CLECs to promise to strand their installed investments within buildings. This creates a tremendous disincentive to serving customers in these buildings.

The tenants in these buildings often are without recourse and cannot obtain access to telecommunications options. Building owner interests sometimes say that the

market will take care of the problem -- that landlords have the incentive to keep their tenants happy and to allow them access to the telecommunications carders of their choice. They say that tenants will move out of the building if they are unhappy with their telecommunications options. These arguments are simply wrong.

The building access problem exists, suggesting that these “market incentives” are not working. Of course, in some instances, the market may provide competitive choices, but not until tenants are legally and financially able and willing to move their residence or business for the sake of competitive telecommunications choices. Tenants would be required to incur the substantial expense and inconvenience of breaking their leases and moving locations. Moreover, they may often confront higher leases, given the strength of the real estate markets and the economy generally. This is an unreasonable pre-condition to the enjoyment of the competition envisioned by the 1996 Telecommunications Act. In f Act, may of these tenants—particularly individuals and small and medium-sized businesses (those who have the least power when dealing with landlords)—have never had the opportunity to experience the benefits of telecommunications competition. This is largely a theoretical phenomenon to them. The notion that these tenants would break a lease and incur all of the other identified expenses for this unknown benefit is unrealistic.

The 1996 Telecommunications Act represents a laudable effort to open local telephone markets to competition. A good deal of work went into the construction of the statute to eliminate barriers to competitive entry. However, to a large degree, the 1996 Telecommunications Act assumes that once the incumbent LEC-imposed barriers are removed,competition will be able to flourish. It does not contemplate that even *after* incumbent LEC barriers are dismantled, telecommunications carders may *still* be prevented from reaching and serving consumers. In short, the 1996 Telecommunications Act assumes that building access is available. Unfortunately, that assumption has proven incorrect. Building access remains a formidable barrier to the accomplishment of local competition.

Universal Service

In addition to these explicit barriers to competition, there are several other impediments that hamper the growth of local telecommunications competition.

For instance, neither the FCC nor the states have made universal service subsidies accessible to competitive providers of local telecommunications service. It is unfair and uneconomic for CLECs to compete with rural telecommunications companies that receive subsidies from the government that the CLECs cannot receive. Further, many rural telecommunications companies are under no obligation to open their networks to competition because of the extensive ″rural exemptions″ in the 1996 Telecommunications Act. ALTS believes that the rural exemption harms citizens of rural areas by making it less likely that competition, and high-speed communications will be delivered to rural consumers as soon as they are being deployed in urban areas. If Congress is concerned about the so-called “Digital Divide,” it should immediately open the rural telecommunications markets to competition as it opened the urban markets.

The Need for Enforcement

The most important role that Congress could take to spur the development of competition can be summarized in one word--enforcement. **In short, we do not need changes to the 1996 Telecommunications Act, we need enforcement of the existing Act.**

On this point, I must congratulate Senator Hollings for the introduction of his legislation, S. 1312. Senator Hollings' bill would require the RBOCs to complete opening their networks according to the 14-point competitive checklist or face severe penalties. The RBOCs would face penalties of $100,000 per day for every day after 2001, or would require divestiture of the RBOCs into wholesale and retail units if they fail to comply with the checklist by the 2003. While this legislation would certainly impose a drastic remedy, there are other efforts that the FCC could undertake under the current law, with the support of Congress, to spur local competition. These actions include the following:

a. Anti-backsliding measures.

ALTS submits that prior to the grant of Bell Atlantic's Application, the Commission must adopt mechanisms to ensure that Bell Atlantic does not backslide on its obligations pursuant to section 271 of the Act. As Allegiance Telecom indicated in

its *Petition for Expedited Rulemaking,*[1] a BOC's statutory obligation to provide each element of the competitive checklist continues even after a it has obtained in-region interLATA relief. However, as evidenced by the three year long process in New York, compliance with key procompetitive provisions of the Act has been slow in coming, and advances have largely resulted from pressure imposed by regulators and competitors. Therefore, ALTS submits that backsliding framework be in place prior to the grant of 271 authority to Bell Atlantic.

b. Fresh Look provisions.

In order to foster and ensure the development of an open, robust market for local telecommunications, the FCC should provide "flesh look" opportunities for consumers immediately upon the grant of any authority to enter the long distance market under section 271. This would eliminate the anti-competitive imp Act created by the termination penalties contained in an RBOC's tariffs and customer contr acts, terms that clearly discourage RBOC customers from purchasing the same or similar services from a CLEC. To facilitate the goals of open local markets and increased competition in such markets, customers should be allowed to re-examine existing service arrangements where circumstances have changed significantly, as when competitors enter a historically monopoly market. The FCC should allow customers with existing long term contr actual termination penalties the ability to "opt out" of those provisions where the contr acts were entered into prior to the RBOC's receipt of 271 authority. Such customers should be permitted to terminate their contr acts without the imposition of harsh (usually the full contr Act price) penalties, at least for a reasonable period of time following the grant of 271 approval. To the extent the FCC is unwilling to completely eliminate termination liabilities for an RBOC's customers, customers' termination penalties could be limited to a reasonable time period, e.g., six months.

Conclusion

Mr. Chairman, Allegiance and ALTS look forward to the day when the local telecommunications market is truly and"irreversibly" open to competition. ALTS' goal is that the CLECs should have 25% of the local telecommunications market by the 2003. I believe that this goal is readily attainable. Once the local market is truly competitive, with a variety of facilities deployed, then policymakers would be wise to deregulate the incumbent local telecommunications companies altogether, allow the RBOCs into the long distance market, and rely upon market forces to protect the interests of the consumer and the information economy.

Unfortunately, we are not yet at that point, and we have much work to do for that vision to become a reality. As mentioned at the beginning of my testimony, CLECs have only about 6% of the local telecommunications market today in revenues. The local telecommunications market cannot be considered competitive when the incumbent carders retain 94% of all the local telecommunications revenues. If local competition is truly to take hold and become entrenched, we must have your help in opening up that local market.

I suggest that policymakers use one simple metric to judge whether or not the local market is truly open: when it is as easy for consumers to switch local telecommunications companies as it is to switch long distance companies, then we will know that the market is truly and irreversibly open. Today, however, it takes consumers only three days to switch long distance companies, it can take 30 to 90 days to switch local companies. Until this competitive disparity is addressed, we cannot determine that the market is open. I urge you to encourage the FCC, the states, the courts, and everyone involved in the process to keep the pressure on and make the Telecommunications Act of 1996 a reality.

Thank you.

Senator BURNS. We have Charles Houser, chairman and CEO of Trivergent.

STATEMENT OF CHARLES S. HOUSER, CHAIRMAN AND CEO, TRIVERGENT

Mr. HOUSER. Thank you, Mr. Chairman, Senator Hollings, and members of the Committee. My name is Charlie Houser, and since 1982 I have been an investor, executive board member, and a CEO

[1] *See* Allegiance Petition.

of several telecommunications companies. I have served as chairman of the Telecommunications Resellers Association that represents 800 companies. I have been on the board of directors of CompTel, that represents over 400 competitive telephone companies. In short, you are looking at a guy with a lot of battle scars.

Today, I serve as chairman and CEO of Trivergent in Greenville, South Carolina. We are a privately held, integrated service communications provider serving small businesses and residential customers with a wide range of products that includes DSL, high-speed Internet, Web hosting and design, local services, and long distance.

We are attempting to build an 18-switch, ATM backbone, high speed voice and data network that will cover 26 Southeastern markets, many, in f Act most, in second and third-tier markets with capital expenditure budget of $350 million. We owe our very existence to the Telecom Act of 1996.

Now, over 20 years ago, obviously Federal policymakers ended AT&T's monopoly in the provision of long distance services, and under the watchful eye of Judge Green and the guidance of the FCC things worked. Prices dropped dramatically, new services came to market, over 800 new competitors came to market, and huge amounts of capital were spent on the latest technologies. For the life of me, I do not understand why we cannot open the local markets to competition in the same manner.

Now, as far as the status, I guess there is good news in that there are over 250 competitive local exchange companies in business today. True, they serve a little over 3 percent of the market today. We and other CLEC's are making progress in deploying advanced broadband technologies, but the bad news is, is that Bell South and the other RBOC's and ILEC's have fought the process tooth and nail. You know it, I know it, and everyone knows it.

In our case there are several reasons why the local markets still fall short of being competitive. We and our customers still encounter latent discriminatory and anticompetitive treatment from Bell South through delays and unethical and in some cases illegal t actics. They have hampered our efforts to compete.

Let me be clear on this one point. The most oppressive obstacle to local competition in our area is Bell South's refusal to really open their markets to competition, not just in word but in deed, and believe me, I have dozens of specific documented examples.

In our case in 1998 we started out to provide local and long distance services primarily to residential customers. We were one of the largest CLEC's in the country and, in f Act, enrolled over 100,000 customers to our service in a seven-State area, including every small hamlet that you can name.

The bad news is, is that we have virtually abandoned that market. We have abandoned our efforts for resale of local services to residential customers after investing and losing about $18 million. Now, for me, that is still a lot of money.

Look, the primary reason is, we do not have acceptable wholesale discounts, and we do not have support from Bell South, and we have discriminatory secondary charges that have cost us an extra $2 million. We did prove three things, though. One is, the customers want an alternative to Bell South. We also proved that we

could attr Act huge numbers of customers and provision those customers.

3. Bell South's reluctance to open and support its markets really prevented resale from being a viable plan of entry into the market.

Now, in addition to inadequate discounts in working with Bell South, let me list some specific things that have happened to us. We have discriminatory nonrecurring charges and fees, we have a failure to meet firm order confirmations, we have a totally inadequate and incomplete customer support system, we have disconnections and interruptions in service, we have severe, severe provisioning difficulties and delays, we have totally inadequate invoice dispute policies and procedures, and last but surely not least, we have illegal inter action by Bell South employees with our customers.

Let me be clear. The primary f actors, certainly not the only ones, in explaining why resale is not a viable option, but is a dismal failure, is a lack of wholesale discounts and discriminatory charges that we have to eat.

It is for these and other reasons we have reevaluated our marketing plan in favor of deploying our own network with the objective of moving our customers over to that network. Unfortunately, we still continue to experience the ex Act same problems with Bell South as we did before. Let me just give you one example.

Regarding the colocation process, under section 2.1 of our agreement, Bell South is obligated to respond to colocation space requests within 10 days of our request. Responses on our 162 requests have ranged from 19 to 86 working days, with an average time of 50 days. Now, these are the type issues that I think the committee should make a priority.

Now, as far as fostering competition, I think it is really only two things, and it is fairly simple.

1. Preserve the integrity of the Act. Despite the RBOC's failure to live up to the obligations now they have the goal to ask for regulatory relief. Any decision to give them regulatory relief from the terms and conditions of the Act could really delay competition even further. As long as they hold a monopoly over the loop and other facilities new market entrants continue to rely on the FCC and the other regulatory agencies for survival.

Now, second, support the FCC and its procompetitive efforts for the same competition to develop in the local sector we have had in the long distance area. We need the same framework and oversight. The continued need for regulatory oversight in the local market cannot be overstated. We have to have it. Give the FCC the resources and encourage them to enforce the rules.

Expand their legal authority to impose real, meaningful penalties for failing to live up to open up the local networks, and support their efforts to promote fair terms and their efforts to promote full implementation of the interconnection, colocation, unbundling, and resale provisions of the act.

In conclusion, national policy guidance has been and will be an essential element of the regulatory scheme designed to promote competition. That is unfortunate, but that is the case. Despite delay brought about by the reluctance of the ILEC's and the RBOC's to comply, the 1996 Act is beginning to produce benefits,

but if there are amendments to the Act, it is simply going to delay all of us getting competitive.

It is not complicated. We have the 1996 Act in place. Let us enforce it. We have a regulatory agency in place, the FCC, that can administer the Act. Let us support them.

Thank you.

[The prepared statement of Mr. Houser follows:]

PREPARED STATEMENT OF CHARLES S. HOUSER, CHAIRMAN AND CEO, TRIVERGENT

Good morning Mr. Chairman and members of the Committee. My name is Charlie Houser. Since 1982, I have been involved in the telecommunications industry as an entrepreneur, investor, executive, board member, and/or CEO of several successful telecommunications companies. I have served as Chairman of the Telecommunications Resellers Association, an organization that represents 800 companies involved in the resale of telecommunications services—a multi billion-dollar industry led by an estimated $13 billion long distance resale segment. I have also served on the board of directors of CompTel, an association representing over 300 competitive telecommunications companies. During this time I have been fortunate to see huge positive changes in the long distance market and the initial positive changes in the local services market.

Today, I serve as the Chairman and Chief Executive Officer of TriVergent Communications, Inc. ("TriVergent"). TriVergent is a privately held Integrated Communications Provider. TriVergent provides business and residential consumers with a wide range of communications products and services, including DSL, high-speed Internet, Web hosting and design, local exchange, long-distance, and data-integration products. The company is building an 18-switch ATM-backbone, high-speed data network that will cover 26 southeastern metropolitan areas, including many second and third tier markets. TriVergent, with a capital expenses budget of $350,000,000, owes its existence to the Telecommunications Act of 1996 ("1996 act" or " act") and is making huge economic investment and employing the efforts of hundreds of partners to bring about the changes to the local telecommunications landscape that Congress intended by the en actment of the 1996 Act.

A. INTRODUCTION

Thank you for the opportunity to discuss the challenges facing the development of local competition. To explain the position of TriVergent Communications further, let me provide the Committee with some additional background. I think we can all agree that, generally speaking, monopolies do not best serve the public interest. Monopolies do not adequately respond to or meet customer demand; they offer few service choices; they generally do not innovate; they do not price competitively; and they have a history of using their market power to squash new entrants. Over 20 years ago, federal policy makers ended AT&T's monopoly in the provision of long distance services and the manuf acturing of telecommunications equipment. Under the watchful eye of Judge Greene and the guidance of the FCC, the results speak for themselves: over 800 new competitors have entered the long distance market, prices have dropped dramatically, new services constantly come to market, and huge amounts of capital are being expended to upgrade plant with the latest technologies. For the life of me, I don't understand why the opening of the local markets to competition can't be handled in the same way.

The 1996 Act, which many of you worked hard to bring about, was designed to bring the same benefits of competition to the local telephone marketplace. The act's passage was supported equally by the RBOCs and other ILECs, the long distance companies, and by the new entrants into local markets, the competitive local exchange carriers ("CLEC")—companies like TriVergent.

The 1996 Act focused on turning a sector of the economy serviced by monopolies, the local telephone markets for voice, data, and video services, into a competitive market. Accordingly, the 1996 Act requires the RBOCs to open the local market to competition first, and *after the local market is opened, then—and only then—do they have the right to enter the long distance market.* At the time of the passage of the Act, Congress in its wisdom recognized that if the RBOCs were allowed into long distance first, they would have no incentive to open their local networks to competitors and the legislation would not achieve its purpose.

B. THE STATUS OF LOCAL TELECOMMUNICATIONS COMPETITION

Three and a half years after its passage, there is evidence of the development of competition envisioned by the Act. The good news is that well over one hundred and fifty CLECs have entered the local market since the passage of the Act. Many of these companies, like TriVergent, are rapidly building high-speed voice and data networks to serve residential and business customers. Collectively, CLECs have increased their market share each of the past two years, and now provide services to approximately 3% of the local services market. Furthermore, CLECs have already deployed approximately 20% of the fiber optic cable capacity available in the United States. The bad news is that the RBOCs and ILECs have fought the process tooth and nail and have prevented vibrant, open competition.

TriVergent and other CLECs offering local services are also making particular progress in deploying advanced, broadband technologies. Along with its local, long distance and internet service offerings, TriVergent will deploy advanced DSL service throughout the southeastern United States over the next two years. When combined with the efforts of other like-minded CLECs, over two-thirds of the nation's population will be able to take advantage of this remarkable service in the next two to three years.

The Act is beginning to work, but I repeat it is only beginning to work. CLECs are just beginning to establish a presence in the market and bring local service to business and residential customers for lower prices. Additionally, CLECs are bundling local service with other offerings including long distance, internet, and DSL services. Because of the threat of competition, RBOCs and ILECs are being forced to develop better products and offer these products for better prices. *Despite these gains, let me make certain that you understand that we are still a long way from the robustly competitive local telecom marketplace that Congress envisioned at the time of the Passage of the 1996 Act.* As I said earlier, after three years, CLECs serve only 3% of all the nation's local telephone service customers. As is apparent by this figure, while competition is growing, the market is far from a fully competitive model today.

There are several major reasons why the local telecommunications market still falls short of being fully competitive. CLECs and, more importantly, their customers, still encounter discriminatory and anti-competitive treatment from RBOCs and ILECs. RBOCs and ILECs, through delay tactics and other frustrating and, in some cases, illegal tactics, hamper efforts of CLECs to install their own facilities or interconnect these facilities with those of the RBOC or ILEC. *Let me be clear on this one point—the most oppressive obstacle to local telephone competition is the RBOCs' and ILECs' refusal to really open their markets to competition, not just in word, but in deed.* With adequate time I can site dozens of examples.

In an effort to add a face to this message, consider the story of TriVergent. We began offering local and long distance services as a reseller in April of 1998 under the name of State Communications. In order to prevent any undo confusion, I will refer to the company as TriVergent. TriVergent set out to provide local and long distance telecommunications service to residential and small business customers, primarily through resale, in Kentucky, Tennessee, Louisiana, Alabama, South Carolina, Mississippi and Georgia. We were one of the largest CLECs in the country (in terms of number of residential customers) and one of the few alternative telephone companies targeting primarily the residential market. By March of 1999, TriVergent had enrolled over 100,000 customers on its local and long distance service. It is important to note that over 90% of TriVergent' customer base were of the residential consumer flavor. Our projections had us enrolling an additional 150,000 customers over the course of 1999. The bad news is that we have virtually abandoned our efforts in resale of local services to residential and small business customers after investing over $18,000,000 to that effort.

During the eleven months from April of 1998 until March of 1999, we proved three things: (1) customers wanted an alternative to BellSouth; (2) TriVergent could attr Act and provision huge numbers of customers; and (3) that BellSouth' reluctance to open and support its markets prevented resale from being a viable alternative to facility deployment for successful entry into the local services market. *Unlike long distance, local resale as an entry strategy into the local services market is a dismal failure.* In addition to totally inadequate discounts, in working with BellSouth we encountered the following difficulties:

NONRECURRING CHARGES AND FEES[1]

FAILURE TO MEET FIRM ORDER CONFIRMATIONS[2]

DISCONNECTIONS AND INTERRUPTIONS IN SERVICE[3]

PROVISIONING DIFFICULTIES AND DELAYS[4]

INVOICE DISPUTES[5]

---

[1] NONRECURRING CHARGES AND FEES: Anytime a customer made a change to his/her account, BellSouth charged TriVergent a Secondary Service Charge. These charges were incurred when a customer added or deleted an ancillary service such as call waiting and in almost every situation in which a customer altered his/her account. This cost TriVergent literally millions of dollars and hampered its ability to make an acceptable gross margin.

The charges BellSouth imposed on TriVergent varied from state to state despite the f Act that all work performed by BellSouth to make the customer requested change was made in a single central office in Atlanta or Birmingham. The following list includes a breakdown of Secondary Service Charges on a state-by state basis:

Tennessee - $17.00
Louisiana - $13.94
Georgia - $9.72
SC - $4.51
Kentucky - $12.55
NC - $4.25
Florida - $7.87
Alabama - $6.80
Mississippi - $7.65

Additionally, if BellSouth' OSS interfaces are electronic and user friendly as described by BellSouth, why does BellSouth charge the CLECs these amounts to make a change that should only require a software load?

To date, TriVergent has paid over $2,000,000 in disputed Secondary Service charges that, generally speaking, BellSouth would and do waive for its own retail customers.

Monthly Minimum

When a customer signs up with TriVergent, we are forced to pay BellSouth a monthly minimum for all services ordered by that customer through TriVergent. The issues involved with these charges are more easily identified by way of the following example:

Customer A signs up with TriVergent on February 1, 1999. After a call from BellSouth, that customer makes a change back to BellSouth on February 15, 1999. Rather than bill TriVergent for the 15 days for which the customer was serviced through TriVergent, BellSouth bills TriVergent for a full month of service.

Realize that 95% of TriVergent' customers have been with BellSouth and are simply requesting a "change as is" order and all of these customers have already paid the initial one-month minimum. By making the change to TriVergent they are asked to pay an additional one-month minimum not by TriVergent, but by BellSouth. Additionally, when and if the customer switches back to BellSouth, they are asked to pay a third monthly minimum charge. By way of example, please review documents included in ATTACHMENT A.

[2] FAILURE TO MEET FIRM ORDER CONFIRMATIONS: BellSouth regularly ignored Firm Order Confirmations ("FOC") in provisioning orders for TriVergent customers. BellSouth's inability to complete the orders on time, if at all, severely crippled the company's ability to deliver quality customer service to our customers. Without this notification TriVergent had no record of order completion, requiring the Company to place a call to BellSouth after the due date. More importantly, the company lost the ability to complete the order on the due date and was forced to request a new, much later due date for the order, delaying provisioning for days. By way of example, please review documents included in ATTACHMENT B.

[3] DISCONNECTIONS AND INTERRUPTIONS IN SERVICE: Consumers that chose to switch to TriVergent and who, after signing up with TriVergent, cont acted BellSouth for one reason or another—to request a final bill, ask about credits, or pay final invoices—reported that they lost service before TriVergent had provisioned the order through BellSouth. By way of example, please review documents included in ATTACHMENT C.

[4] PROVISIONING DIFFICULTIES AND DELAYS: BellSouth commonly delayed - sometimes for days on end—in provisioning orders for TriVergent customers while BellSouth representatives cont acted those same individuals and promised that BellSouth would have the customer's service up and running as soon as possible. This type of discriminatory treatment significantly injured TriVergent's business. By way of example, please review documents included in ATTACHMENT D.

[5] INVOICE DISPUTES: The mechanisms in place for the resolution of disputes are inadequate. TriVergent issues a notice to BellSouth disputing specific charges included by BellSouth on the latest BellSouth invoice. In every instance it takes BellSouth months to issue a credit to TriVergent even though BellSouth has acknowledged the billing error when disputed. If TriVergent refuses to pay portions of its invoice, BellSouth threatens to stop provisioning TriVergent orders. Therefore, TriVergent is forced to pay out amounts that are not due to BellSouth and, in doing so, lose the ability to put these resources to better use for the Company while BellSouth hangs onto the funds for months until it issues a credit. BellSouth's failure to

ILLEGAL INTERACTION BY BELLSOUTH WITH TRIVERGENT CUSTOMERS[6]

However, if you don't remember anything else about my presentation, please realize this: The most important f actor in explaining why resale is not a viable option, but in f Act a dismal failure, as a means of entry into the local services market is the lack of an adequate wholesale discount and the refusal of the RBOCs to offer alternative pricing structures. That is, there remain consistent shortfalls between the wholesale discounts on local phone service and the minimum discounts needed to make local service resale a feasible long-term business.[7] *Again, resale of local phone service simply is not feasible as a stand-alone, long-term business strategy, especially for companies targeting residential customers. The proof is evident by the f Act that we don't know of a single company successfully deploying resale of local service as a viable business strategy.* The situation is insidious for two reasons. First, it nearly eliminates a key market entry channel for small business service providers. Unfortunately, we have witnessed several business failures in this arena. Second, it denies consumers the benefits of a healthy resale market—competition, innovation, and choice. Even when TriVergent approached BellSouth on numerous occasions to request more reasonable discounts in exchange for volume and term commitments, BellSouth would not work with TriVergent or respond to proposals.[8] The losers in this game are the residential and small business customers.

It is for these reasons that TriVergent has reevaluated its marketing plan in favor of deploying its own facilities with the objective of migrating its customers to these facilities. Unfortunately, we are experiencing similar problems interfacing with BellSouth. In short, the antics of the ILECs and RBOCs severely constrain the CLEC's ability to bring consumers the products, services, better prices, and choices that are being promised them. Further, the RBOCs' and ILECs' efforts to persistently and continually litigate against the policies of the Federal Communications Commission (FCC) and state regulators, rather than work fairly with new market entrants has severely hampered the development of competitors and the competitive process. The continuing failure by ILECs to provide nondiscriminatory access to

---

promptly credit TriVergent's account directly and negatively imp acts TriVergent's business plan and financials. By way of example, please review documents included in ATTACHMENT E.

[6] ILLEGAL INTERACTION BY BELLSOUTH WITH TRIVERGENT COMMUNICATIONS CUSTOMERS: Reports from TriVergent customers and TriVergent customer service representatives indicate that (1) BellSouth continues to engage in improper activity with regard to provisioning TriVergent's orders and (2) BellSouth operators and representatives continue to make erroneous and inflammatory statements to TriVergent customers. By way of example, please review documents included in ATTACHMENT F.

[7] The Telecommunications Resellers Association study consists of a state-by-state analysis of two different business strategies over a five-year startup period: one solely using resale and one employing the UNE-platform approach. While the models utilizing the UNE-platform consistently generated revenues and margins, this was not the case with resale. The report determined that not a single state-authorized wholesale discount was capable of producing positive cash flow after five years. The findings prompted TRA to go a step further with the study and determine on a state-by-state basis the minimum discounts required by resellers to reach the breakpoint after five years of utilizing local resale as a stand alone business. The results found consistently large gaps between state-approved wholesale discounts and those needed to break even.

[8] By way of example, please review documents included in ATTACHMENT G.

Space Availability Response Interval

BellSouth is required to provide a response to an application for collocation space within 10 business days as to whether space is available within a BellSouth central office premise. [Exhibit 2, Amendment to the Agreement between State Communications and BellSouth, Dated April 20, 1999, Page 4, Section 2.1, *Availability of Space,* Signed 7/28/99].

Below is a breakdown of BellSouth's average response interval per market:

Greenville - 37 days
Atlanta - 57-65 days
Greensboro - 37 days
Jacksonville - 49-69 days
Miami - 49-86 days
Charlotte - 19 days
Charleston - 37 days
Louisville - 40 days
Nashville - 35 days
Birmingham - 19 days
New Orleans - 42-49 days
Jackson - 30 days
Wilmington - 37 days

their networks and OSS functionalities stands as a major impediment of local service competition.

As a result, TriVergent and other CLECs continue to encounter obstacles when ordering loops, collocating in central offices[9], and achieving number portability necessary to allow consumers to switch seamlessly to a CLEC. For example, under the section 2.1 of our interconnection agreement with BellSouth, BellSouth is obligated to respond to collocation space requests within 10 days of receipt of the request. We have 162 applications on file with BellSouth. Responses to the applications have ranged from 19 to 86 days with the average response time being approximately 50 days. These are issues the Committee should make a priority. The Committee should remedy these problems so that we achieve a fully competitive environment.

C. KEY COMPONENTS FOR FOSTERING COMPETITION

1. PRESERVE THE INTEGRITY OF THE 1996 ACT

For many years prior to the passage of the 1996 Act, RBOCs and ILECs worked with Congress to pass the legislation like the '96 Act. The RBOCs and ILECs were proponents of the Act and accepted its provisions. Despite their failure to live up to their obligations under the 1996 Act and open their networks to competition, several of the RBOCs and ILECs now propose that they be granted exemptions from the act's market-opening requirements. The RBOCs and ILECs are now arguing that they must be deregulated in order to encourage broadband deployment. In reality, the RBOCs and ILECs don't want to meet their obligations under the Act but want the ability to tilt the playing field in their favor by lobbying for "Regulatory Relief".

The ILECs' and RBOCs' argument that without such relief they do not have sufficient incentives to deploy advanced broadband services is preposterous. Contrary to their claims, the pace of broadband deployment is accelerating faster than ever before because of the passage of the Act. Companies like TriVergent are deploying broadband data services throughout the United States. These competitors are meeting consumer's demands by offering consumers access to technologies that the RBOCs and ILECs have long ignored.The small but steady progress made by CLECs and other new market entrants has forced the RBOCs' and ILECs' hand. Only after competitors offered new services, the RBOCs and ILECs have been forced to offer new services to keep from losing customers. However, any decision to allow RBOCs Regulatory Relief regarding data services could crush competitive efforts in the data services arena and negatively imp Act competition in the local services arena, as well. As long as the ILECs and RBOCs hold a monopoly over the loop and other local network facilities used to carry voice, video and data calls, new market en-

---

[9] COLLOCATION: The following are some examples of situations TriVergent has run into in attempting to collocate with BellSouth and complete build out of its own facilities.

Application Cancellation

TriVergent submitted New Orleans collocation applications 6/17/99. BellSouth provided comprehensive responses, including price quotes on 8/17/99 and 8/25/99. TriVergent submitted Firm Orders 8/20/99 & 8/27/99. TriVergent notified BellSouth to cancel these applications 9/10/99 and requested a refund of any unused funds. TriVergent requested status of the cancellation and refund and was informed by Eddie Trant that no monies would be refunded. TriVergent escalated to the BellSouth Account Team 9/17/99 for resolution. BellSouth informed TriVergent 9/17/99 that the issue was under review. TriVergent requested resolution of this issue 9/24/99. TriVergent again requested BellSouth position 9/30/99. BellSouth responded to previous status inquiries 10/13/99 with the following "I feel nothing [sic]. It is like it has gone to the black hole of collo [sic]. Even Duane don't know [sic]."" Eddie Trant, Regional Collocation manager. BellSouth offered to refund prepayments 10/14/99 or allow TriVergent to proceed with applications when cancelled if additional application fees were provided. 10/29/99 TriVergent resubmitted applications with fees totaling $63,830.

Collocation Cage Construction Fees

BellSouth erroneously charged TriVergent for cage construction when it was clearly indicated on the collocation applications that TriVergent intended to construct its own cage. TriVergent requested a refund of these incorrect charges 9/13/99 totaling $ 326,250. Despite several requests to BellSouth for a response to our refund request none has been received to date.

Power Feed Fees

Despite having charged an average of $30,000 for power at collocation sites throughout Florida (38 collocation sites), BellSouth claims that TriVergent must provide its own power feeder cables from BellSouth' power distribution frame. Clearly BellSouth has included the provision of these services in the costs it has assessed TriVergent. TriVergent requested a clarification and/or refund of this incorrect assumption by BellSouth on 10/19/99 and has received no response other than they are looking into the issue.

trants must rely on pro-competitive legislation, regulation and the oversight of the FCC in order to survive. Allowing the ILEC or RBOC to exempt the parts of their networks from the unbundling requirements will destroy voice and data competition because competitors need collocation, access to the loop and other network facilities to provide competitive data services.

The balanced approach laid out by the Act has opened the door to hundreds of small businesses to compete in the local telecommunications marketplace. Three years of RBOC litigation and non-compliance with the Act is standing in the way of the growth of competition. Don't reward anti-competitive behavior with a change of the ground rules under which the ILECs and RBOCs must operate.

2. KEEP THE PRO-COMPETITIVE REGULATORY FRAMEWORK

The 1996 Act gives great impetus for investment in telecommunications facilities because it opens markets to competitors. In three years, the Act has produced tens of billions of dollars of new investment. Facilities-based CLECs are rapidly building new, sophisticated networks, and ILECs are upgrading their old ones. The beneficiaries of these facilities build-outs will be customers, who finally have suppliers who want to meet their demands, and equipment vendors, who are bringing out new products every day. So long as competition is allowed to develop and gain steam, this investment is sure to continue. However, the opposite is also true. Any legislative activity to alter the Act, especially to roll back pro-competitive rules, could freeze this investment activity. Deregulation the ILECs and RBOCs claim as an entitlement under the Act was to be a product of the local competition the statute was intended to engender. *The continued need for regulatory oversight of the local market cannot be overstated.* The burdens associated with such oversight flow directly from the ILECs' and RBOCs' failure to have met their statutory responsibilities more than three years following en actment of the 1996 Act.

3. SUPPORT THE FCC AND ITS PRO-COMPETITIVE EFFORTS

With the proper framework and oversight, competition in the long distance market has become a reality. For the same robust competition to develop in the local arena, the same framework and, more importantly, oversight mechanisms, must be in place. Give the FCC the resources to enforce its rules. Expand the FCC's legal authority to impose penalties on the ILECs and RBOCs for failing to open up their local networks and/or impede CLECs' progress. Urge the FCC to complete its universal service proceeding; without subsidies that are explicit and available to competitors, it will be virtually impossible to bring competition to rural areas. Support the FCC's efforts to promote reasonable rates and fair terms and conditions for collocation as excessive rates and unreasonable terms have become important barriers to competitive entry into data service markets. Support the FCC's efforts to promote full implementation of the interconnection, collocation, unbundling and resale provisions of the act.

Regulatory efforts should be focused on eliminating the many remaining obstacles to the competitive provision of local exchange service, such as inadequate discounts. As we all know, competition promotes innovation and the efficient deployment and use of telecommunications facilities, which generates increased research and development and positively imp acts the growth of the market for telecommunications services.

D. CONCLUSION

National policy guidance will be an essential element of any regulatory scheme designed to promote local services competition for the foreseeable future. By the passage of the 1996 Act, Congress "en acted...sweeping reforms" to "open local telecommunications markets to previously precluded competitors." After much delay brought about by the reluctance of the ILECs and RBOCs to comply with its terms, the 1996 Act is only beginning to produce significant benefits. While CLECs have driven the increasing availability of local exchange and advanced services, RBOC and ILEC obstructionist t actics in this regard are hampering CLEC efforts. Strict adherence to, support for and enforcement of the Act will foster the development of competition. Support for the FCC, the regulatory body charged with enforcement of the Act, will foster development of competition. We can then rely on competition to drive investment and innovation. If, however, there are amendments to the Act in the form of Regulatory Relief for ILECs and RBOCs, there could be a significant cost: capital could dry up and competition in the local exchange and advanced services arena might not develop. It's not complicated. We have the 1996 Telecommunications Act in place. Let's enforce it. We have a regulatory agency, the FCC, to administer the Act. Let's support them.

Senator BURNS. Thank you, Mr. Houser.

We have Mr. Tidwell, Rick Tidwell, vice president, Birch Telecom, Emporia, Kansas.

STATEMENT OF RICK TIDWELL, VICE PRESIDENT, BIRCH TELECOM

Mr. Tidwell: Thank you, Mr. Chairman. I would like to thank you for allowing me to speak this morning. Birch Telecom is a small but growing competitive local exchange provider with our headquarters in Kansas City, Missouri, and our operations center in Emporia, Kansas.

We started doing business in resale in Southwestern Bell territory in Kansas in 1997. We have since grown into Missouri, and we are also now doing business in the State of Texas.

We began, as I said, doing business as a resale provider using Southwestern Bell telephone services. We expanded to switch-based services and now our switching systems are located in the St. Louis, Missouri, Metropolitan Area, the Kansas City Metropolitan Area, and Wichita Metropolitan Area, Kansas. Most recently, but we began serving customers using the unbundled network element platform, or UNE-P, as we call it in the business.

What I am here today to talk about is the primary concern of Birch Telecom, and that is our concern that as we are expanding our toehold into local competition in the Southwestern Bell territory, it appears that Southwestern Bell is failing to provide the adequate resources to its wholesale account provider teams and operations groups.

Birch is both a competitor of the Southwestern Bell and also a customer. We need Southwestern Bell's cooperation to get Southwestern Bell to open up their market and open up the bottled network of facilities that they have access to. Although Southwestern Bell was mandated in 1996 to cooperate with Birch, it has strong financial incentives to continue not to cooperate wherever possible.

As reflected in Senator Hollings' bill, S. 1312, Southwestern Bell has long paid lip service in opening up its markets to competition, but continues to resist providing the resources and meaningful cooperation required to make competition work.

A couple of examples that I can outline for you. We have numbers of customers that are losing dial tone upon conversion to Birch from Southwestern Bell. We have a number of customers that have lost their directory listings in the local telephone book or 411 upon conversion to Birch from Southwestern Bell. I do not have to tell you what it is like for a residential or a business subscriber to lose those types of services, and by the way, we do provide service in both the rural and metropolitan areas in all of our territory, and we provide service in a variety of ways to those customers.

We are at the point in Texas where we have had to file a complaint because of the operational issues and problems that are occurring, and we have a complaint in front of the Texas Public Utility Commission at this time. Southwestern Bell has agreed on paper to take steps to solve a lot of our problems, but we have yet to see the real resources being put forth to be able to make this work.

It does not appear that the operational people that we work with are causing all of the problem. There are some people in Southwestern Bell we work with directly that appear to be trying to get the job done, but from a corporate standpoint it certainly appears that the resources are simply not being devoted to providing services to CLEC's at this point in time.

Southwestern Bell, even when they have an ongoing relationship with the Texas PUC and are trying to get into the long distance business in Texas continue to stall every step of the way at providing us parity service, which I believe the 1996 Act required.

If, in fact, Southwestern Bell does not promptly match its promises with action and, most importantly, provide these greater resources necessary for competition, and absent any immediate commitment, we may well need Senator Hollings' bill, 1312, to provide relief so we can continue to move forward.

What we need is for Southwestern Bell to get into the long distance business, but to get in with an A on the 14-point checklist. Right now, I feel like they are trying to pass the class on the 14-point checklist with a D minus, and we cannot let that happen. If we cannot continue to get better at what we are doing and create a better working relationship with the incumbent telephone companies, competition very likely will not flourish, but in f Act we may be backsliding a couple of years from now, and we might truly have just one or two providers in an area, and I do not think that is what the 1996 Act ever was to provide for.

Thank you. I appreciate your time.

[The prepared statement of Mr. Tidwell follows:]

PREPARED STATEMENT OF RICK TIDWELL, VICE PRESIDENT, BIRCH TELECOM

Senator Burns and members of the Committee, I am Rick Tidwell, Vice President of Regulatory and Industry Relations for Birch Telecom, Inc, a small but growing competitive local exchange carrier with principal offices in Kansas City, Missouri and Emporia, Kansas. Birch is a member of the Competitive Telecommunications Association, also known as CompTel.

Thank you for inviting me to testify before the Committee today on the state of local competition in our nation. I will focus my remarks on issues influencing the development of competition in the states where Birch currently operates - Kansas, Missouri and Texas. All three states fall within Southwestern Bell's territory.

Before I turn to the specific issues affecting the development of local telecommunications competition and the availability of consumer choice in this region of the country, it may be helpful if I provide you with a brief description of Birch.

About Birch

Birch currently serves approximately 90,000 access lines. We employ 850 people, including 250 at our headquarters in Kansas City, and 250 employees in Emporia, Kansas where our customer service and call center is located.

In early 1997, Birch began operations in Kansas as a reseller of Southwestern Bell's local exchange services. Resale operations were later expanded to Missouri. In 1998 Birch began switch based operations in some Missouri markets. In 1999, Birch began service in Texas through the use of the unbundled network element platform ("UNE-P") service.

In Missouri, we operate switches in Kansas City and St. Louis. We have customers located throughout the state, including Carthage, Chillicothe, St. Joseph and Springfield. In Kansas, we have customers in every county of the state, and we have substantial operations in Dodge City, Emporia, Lawrence, Manhattan, Salina, Topeka and Wichita (where we also operate a switch). In Texas, we recently began operations in Austin, Beaumont, Corpus Christi, Dallas/Fort Worth, Houston, Lubbock, Tyler/Longview and Waco.

We offer a menu that includes local and long distance services, high-speed internet access services and customer premises equipment to residential and small and

mid-sized business customers. Forty percent of our customers are residential customers.

In addition to our voice-oriented circuit switches in Kansas City, St. Louis and Wichita that route local and long distance calls, we are deploying an ATM packet switching network. Packet switches initially are being installed in Kansas City, St. Louis, Wichita and Fort Worth. These data-oriented packet switches will be linked by high-speed ATM transport facilities.

We provide our services through our own switching equipment and, pursuant to provisions of the Telecommunications Act of 1996, through use of leased network facilities and resold services obtained primarily from Southwestern Bell.

Southwestern Bell is also our principal competitor. Although it has been a struggle, and although we still are a small company, we have grown into one of the larger competitive local exchange carriers ("CLECs") in the territory served by Southwestern Bell.

That's who we are today. Tomorrow, if we continue to work harder and smarter than Southwestern Bell and our other competitors, we expect to emerge as a major regional provider of telecommunications services to small and mid-sized businesses and residential customers. However, unless Southwestern Bell has the incentives to cooperate actively in complying fully with its duties under the 1996 Act, the development of competition and the benefits it brings to consumers will be seriously retarded.

Southwestern Bell's Duties And Incentives Under The 1996 act

The duties and incentives of Southwestern Bell and other incumbent carriers to open their local exchange markets to competition were set by the 1996 Act, a law which several of you on the Committee were instrumental in fashioning. Overall, Birch believes the Act established a reasonable balance between the interests of incumbent local exchange carriers and competitors, such as Birch, who want to enter local markets. Most importantly, the Act recognized that incumbent carriers have strong economic motives to maintain their de f acto control of essential bottleneck facilities, and that a combination of duties and incentives would be required to open the local exchange market.

Sections 251 and 252 of the Act set forth the duties of incumbents to open their markets to new entrants by mandating interconnection, access to unbundled network elements and resale on just, reasonable and nondiscriminatory terms. Access to such facilities and services is absolutely essential to CLECs such as Birch.

The incumbent Bell Companies' incentive is contained in Section 271 of the Act which allows a Bell Company into in-region long distance markets once it has opened its monopoly local markets to competition. Until recently, the Bell Companies did not appear to have been strongly incented by the prospect of offering long distance voice service. Perhaps that is because prices and profit margins for long distance voice traffic have been plummeting since the passage of the Act.

More recently, however, Bell Companies' behavior evidences somewhat stronger interest in entering the interLATA market. Birch believes that apparent stronger interest stems from the Bells' desire to enter the rapidly growing market for interLATA data services and their desire to become the complete provider of services for customers, including everything from local wireline and wireless service to broadband internet and data services.

Southwestern Bell's Incentives Under Its Proposed Merger with Ameritech

Another incentive for Southwestern Bell to open its local exchange market to competition stems from its proposed merger with Ameritech. The Federal Communications Commission ("FCC"), in approving the transfer of control of licenses triggered by the proposed merger, imposed a variety of conditions, including conditions designed to push Southwestern Bell toward opening its local markets.

These conditions, coupled with the performance standards and remedies that Southwestern Bell has agreed to in Section 271 proceedings in Texas, are encouraging steps. They lay out a plan that leads toward the opening of Southwestern Bell's local markets. However, to implement the plan, Southwestern Bell will have to dedicate adequate resources to correct the many deficiencies in its current methods of providing CLECs interconnection, UNE and resale services. Moreover, Southwestern Bell requires a fundamental change its mindset in its dealings with CLECs such as Birch.

Birch's Experience To Date With Southwestern Bell

Even with the duties and incentives the 1996 Act imposes on and offers to the Bell Companies to open their local exchange markets to competition, Birch's experi-

ence in dealing with Southwestern Bell has been frustrating. The following is a list of some of the Southwestern Bell t actics Birch has encountered.:

Unreasonable "UNE-P" charges: "UNE-P" allows a competitor to purchase a complete package of network elements combined to provide service to the competitor's customer. Even though Southwestern Bell has signed agreements in Texas and Missouri allowing UNE-P Birch cannot get Southwestern Bell to provide the service in Kansas without unreasonable recombination charges. Additionally in Texas, when converting existing service Birch must only pay the conversion charges. In Kansas and Missouri Southwestern Bell requires Birch to pay the non-recurring charges for new installation of the service even though all the facilities are in place and working. These charges are unecessary and unreasonable yet, in order to do business Birch has no choice but to pay them. This is especially disconcerting in the rural areas as there is little chance that a secondary network such as a cable TV sytem or fiber provider will enter the smaller markets due to the limited total market size. As a result, Ssouthwestern Bell will most likley remain the only provider of outside plant facilities for many of these markets for years to come.

Resale Restrictions: Southwestern Bell refuses to allow Birch to resell customer specific arrangements or contr Act arrangements at the standard resale discount. In f Act, Southwestern Bell even refuses to allow birch to assume the liability on those contr acts and resell them to Birch's customers with no reduction in the amounts payable to Southwestern Bell. Rather, Southwestern Bell takes the position that any attempt to convert the service covered by the contr Act requires the customer to pay large termination fees to Southwestern Bell. The only exception to this is Texas in which Southwestern Bell was ordered to allow assumption of existing contr acts.

Inadequate Operational Support Systems: These systems simply are inadequate and fail to provide competitors such as Birch the ability to provide their customers the same level of service as Southwestern Bell representatives are able to provide Southwestern Bell customer's using Southwestern Bell's internal systems, as required by the statute. One of the major issues in Texas in the Southwestern Bell 271 proceeding is the issue of OSS systems and their current "state of readiness" and scalability. In September, Birch filed a complaint in Texas regarding a number of OSS issues. In subsequent meetings and conference calls Birch has found that there are many flaws in Southwestern Bell's provisioning systems. One problem in particular is that of coordination of orders. When a CLEC places an order for the conversion of a service under UNE-P, Southwestern Bell's back-office systems actually generate 3 orders, a Disconnect order, a New order, and a Change order. Not all orders are generated by the same system and the orders do not appear to be coordinated in any way. As a result, many customers converting to Birch are experiencing loss of dialtone at conversion. To make matters worse, Southwestern Bell has not provided an expedited method for restoring service and consequently customers have lost dial-tone for days at a time.

Omitted Directory Listings: Since 1997 Birch has from time to time found customers that had listings in the Southwestern Bell telephone directory omitted after they converted to Birch. In late 1998, Southwestern Bell admitted that a problem had been found and reported that it had been fixed. Yet omissions still occur. This issue continues to haunt CLECs. Birch first reported the problem almost two years ago, and Southwestern Bell still has not completely eliminated the problem.

Premature Disconnection of Service: In several cases Southwestern Bell has disconnected the customer's Southwestern Bell service before the specified time for conversion of the customer service to Birch, leaving the customer without any telephone service. This has happened to business customers. The end result is that some customers are now afraid to move their service. This continues to occur for both our UNE-P and switch based customers and is related to inadequate OSS identified above.

Untimely and Inaccurate Billing: Southwestern Bell ignores due dates and deadlines. Over the last year Southwestern Bell has repeatedly failed to deliver timely and accurate billing information which Birch must have in order to bill our customers. Southwestern Bell's failure to provide the

billing records in the proper manner forced Birch to suspend its own billing, bringing Birch's cash flow to a halt. Yet, Southwestern Bell demands prompt payments.

There are many other examples of Southwestern Bell's deficiencies. Upon request, I will be glad to furnish the Committee a more detailed list of Birch's grievances. I will end this discussion by highlighting one of Southwestern Bell's most effective t actics for frustrating the development of competition—under-resourcing its CLEC account teams.

Inadequate CLEC Account Team Resources.

For years, interexchange carrier account teams have been assigned a technical representative to deal with the many operational issues that arise. We understand Southwestern Bell CLEC account teams have requested this technical support and yet Southwestern Bell management has not allocated the required resources. The results are unnecessary service disruptions and delays in providing services for companies like Birch, all of which serves to protect Southwestern Bell's monopoly market from competitive incursions. Southwestern Bell's Local Service Center (LSC) and Local Operations Center (LOC) also are understaffed. Here is a recent example. A few weeks ago, Birch personnel had three trouble reports to work with Southwestern Bell. Three separate Birch employees called Southwestern Bell's CAST center where Birch has been instructed to call. One of the calls was answered. The other two calls rolled into a recording advising the caller to stay on the line until someone answered. The call that was answered lasted 45 minutes. During this time the other calls were left on hold. Birch escalated the problem to Southwestern Bell's LOC management. The report back to Birch indicated that only one person was available at the time of the calls. I want to emphasize that this Southwestern Bell group is not a group dedicated to Birch but is used by many CLECs. Birch has no idea how many other trouble calls went unanswered during that time.

The Need for an "Attitude Adjustment."

In a meeting in May 1998, the Texas Public Utility Commission was char acterized as saying that Southwestern Bell needs an "attitude adjustment." At Birch we don't feel that Southwestern Bell has taken this advice to heart. It "talks the talk" but has yet to "walk the walk." Without a genuine change of attitude and a commitment of the necessary resources by Southwestern Bell, Birch and other CLECs will continue to be frustrated in their efforts to bring consumers choice in local telecommunications services in Southwestern Bell's territories.

Birch would welcome tangible evidence that Southwestern Bell has experienced such an adjustment without the need for further legislation. Absent such evidence, the types of penalties contemplated in Senator Hollings' Bill, S. 1312, may be necessary.

That concludes my testimony. Thank you for your time and attention to this important matter.

Senator BURNS. Thank you, Mr. Tidwell.

I have just got a couple of questions here. The RBOC's had to make some kind of investment to facilitate a switchover. I have asked some for those figures just recently, and they have not responded yet.

Mr. Neel, do you have any idea on what the cost has been to facilitate the switch for conversion?

Mr. NEEL. Well, Mr. Chairman, the number is into the multiple billions. US West informs me that it alone has spent $1.2 billion on its systems and operation network to facilitate local competition. SBC's numbers are even higher, and then it goes all through the system that way.

Let me make a point here that these companies, the Bell Operating Companies, have every incentive to comply with the checklist. These are the companies that want the relief from the FCC and the States and they are forced to do this.

Now, it is a voluntary proceeding if they want to get into the long distance business, but they have every incentive to comply with the checklist and enter the long distance market. They have

no incentive to minder these new competitors, frankly, for local residential service, because they want to get into a very important long distance and data markets.

These companies have an obligation to serve everyone in the country, everyone in each of your States. These competitors have no such obligation. They have an opportunity that is made possible by the Act and the thousands of interconnection agreements that have been signed. They have no regulation. They have no obligation to provide service to everyone, but the Bell Companies and the thousand other local companies do have that obligation. It is a very important consideration here.——

Senator BURNS. Now, let us take that one step further, then. How come we hear all the complaints that it is not happening? In other words, we have got a 60 to a 90-day complaint here. Where do the competitors go to file or to get relief if a conversion is not made?

Mr. NEEL. Mr. Chairman, there is a very clear procedure for doing that with State regulators and with the FCC, and as I pointed out earlier, the FCC has not held in favor of a single CLEC filing a complaint under the 251 requirements. Remember, the requirements under 271 are to get into the long distance business. It would be patently unfair to sanction these companies for not meeting the checklist requirements for long distance if they are not even filing an application. It does not make any sense, so do not confuse the checklist to get into the long distance business against the requirements in section 251.

On interconnection they are required to meet those rules under section 251 and the CLEC's aren't going to the FCC, or the FCC is turning them down in any complaints on meeting section 251 requirements, but on section 271, this is a voluntary proceeding to give them the benefit of entry into the long distance business, and that is an important consideration.

But in terms of anecdotal issues, I am sure there are hundreds of these all through the country, but there are millions of cases where these customers have been transferred and serviced smoothly. Every financial statement and every statement of Wall Street of all of these companies says ex actly that case, so it is working. It is working. It can always work better, but I would also submit that some of these CLEC's are not doing their part of it.

The local exchange companies are providing training assistance on things as simple as how to fill out these customer transfer forms, and one of the companies informs me that the vast majority of these delays are often related to the new provider failing to fill out the form correctly. It is a new business, so we understand that, and they should understand on the other side that there are going to be difficulties.

But it is a new Act. These are new procedures, but they are working, and they will continue to work, because the local companies, the Bell Companies have every incentive to comply with the Act, every incentive.

Senator BURNS. Mr. Houser, I know you want to make a comment. I saw that.

Mr. HOUSER. I sure do. I cannot sit still much longer. That response is just ex actly typical of what the RBOC's and ILEC's want

us to do. They want us to have to go to the PSC. We have to go to the FCC. We have to go to court to fight all of this. They know it is going to take forever for us to do that. Instead of complying with the orders, all they want to do is delay, delay, delay.

This is a perfect example right here. Sure, there is a procedure. Go to the FCC and complain, and how long will it take? We are talking about months and months and months, as with the PSC's and in the courts. All they have to do is go ahead and comply with the rules, and we can get on with business.

In the area of resale—I want you to think about this. In the area of resale, for the Bell Operating Company to change from a residential customer to our billing, it is all software. It can be done in a matter of minutes, but in f Act it takes days and weeks, and then half the time it is not correct.

So they just simply have not put the resources where it is needed to be put, and I said earlier that we attr acted 100,000 residential customers, but what I did not tell you is, we lost over half of them because the Bell Operating Companies would intercede. In the process of us getting the customer they would call the customer and say, gee, you know, if you changed to Trivergent you are probably going to lose dial tone, and sure enough, sometimes they did, and that is the ex Act type thing we have had to fight.

Senator BURNS. Senator Hollings.

Senator HOLLINGS. I take back the original observation that the hearing was over because we did not have the Bell companies here, with their chance to talk about local competition and be properly cross-examined. I take that back, because I am glad we have got Mr. Holland, Mr. Houser and Mr. Tidwell to testify so that Mr. Neel can hear it. He sounds like he never has heard this before.

Now, let me get right to some of these points here. No. 1, Section 271, the 14-point checklist, Mr. Chairman, I ask we include this in the record at this particular point.

Senator BURNS. Without objection.

[The information referred to follows:]

COMMUNICATIONS ACT OF 1934, SECT. 271

COMPETITIVE CHECKLIST.—Access or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers meets the requirements of this subparagraph if such access and interconnection includes each of the following:

(i) Interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).

(ii) Nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).

(iii) Nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of section 224.

(iv) Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.

(v) Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.

(vi) Local switching unbundled from transport, local loop transmission, or other services.

(vii) Nondiscriminatory access to—

(I) 911 and E911 services;

(II) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and

(III) operator call completion services.

(viii) White pages directory listings for customers of the other carrier's telephone exchange service.
(ix) Until the date by which telecommunications numbering administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules.
(x) Nondiscriminatory access to databases and associated signaling necessary for call routing and completion.
(xi) Until the date by which the Commission issues regulations pursuant to section 251 to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations.
(xii) Nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3).
(xiii) Reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2).
(xiv) Telecommunications services are available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).

Senator HOLLINGS. Now, this is a list of 14 things. And this Senator worked for 4 years with all the lawyers. This town has got 60,000 lawyers registered to pr actice in the District of Columbia. I think 59,000 are communications lawyers and I have met every one of them.

[Laughter.]

I have met every one of them. And they are expert and they know all the things, Mr. Houser, Mr. Holland and Mr. Tidwell, that you all rare talking about. And it is not too complicated, but it is complicated. So they had to hammer this out. They wrote this. Their lawyers wrote this, Mr. Neel. They wanted to comply, they said.

Let me read this to you. On March the 5th, Bell South said the Telecommunications Act now means that consumers—this is back in 1996—will have more choices. We are going full speed ahead. And within a year, we can offer long distance to our residential and business wiring customers. They are not doing it in 4 years. Do not give me no 15 people in the telephone book in Charleston.

They have not gotten a CLEC down to your house in Kiawah, and they will not have one down there because it will not pay. In fact, by gosh, the co-ops have got the telephone down there. I used to be their lawyer on Kiawah and Seabrook Islands. Because why? Because the Bell telephones, it did not pay.

Let me read this. On February the 8th, 1996, US West: The interLATA long distance potential is a tremendous business opportunity for US West. Customers have made it clear they want one-stop shopping. They went on to predict that US West would meet the 14-point checklist in a majority of its States within 12 to 18 months. They did not do that at all. They have not met any of it.

In fact, I have got the testimony in a book here, when they talk about we did not even consider—this is back in 1994—the contention is now, Mr. Chairman, that we did not consider data. Here is Mr. McCormick, Richard McCormick, of US West, quote: I want to touch briefly on US West's business plan. We have embarked on an aggressive program both within our 14-State region and outside to deploy broadband. We want to be the leader in providing inter active—that is, two-way—multimedia services, voice, data, video. We

see a tremendous potential for multimedia, and blah, blah, blah, right on down the line.

They were into data, they said, but let us put this one in the record, too.

[The information referred to follows:]

S. HRG. 103-599

HEARING ON S. 1822, THE COMMUNICATIONS ACT OF 1994

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

MARCH 17, 1994

PREPARED STATEMENT OF RICHARD D. MCCORMICK

Mr. Chairman, members of the Senate Commerce Committee, I'm Dick McCormick, Chairman and Chief Executive Officer of US WEST. I appreciate the opportunity to appear here today to testify on S. 1822.

By way of background, let me mention that I served in a variety of assignments in the Bell System prior to divestiture, including positions at both the operating telephone company level and at AT&T. I began my telecommunications career in 1961.

My understanding is I'm to confine my remarks to provisions of the bill that address the manuf acturing restriction of the Modification of Final Judgment. As you've heard in previous hearings and will probably hear in future proceedings, the Regional Bell Operating Companies have serious concerns about a number of provisions of S. 1822. But the manuf acturing section, on the whole, is something we enthusiastically support. I'm convinced that lifting the manuf acturing prohibition offers real opportunity for job growth, increased innovation and for enhancing this country's global competitiveness.

Unfortunately, we should have been able to exercise that opportunity three years ago. Thanks to your leadership, Senator Hollings, the Senate, in the 102nd Congress, overwhelmingly passed S. 173, legislation to permit Bell entry into manuf acturing. A companion measure in the House had 138 co-sponsors. But despite our best effort, even though we pushed the matter aggressively, the House refused to take up manuf acturing as a stand-alone issue. Because a federal court had lifted the MFJ restriction on Bell provision of information services, there was some sentiment in the House that the price for manuf acturing freedom should be that we give back some of our court-won freedom to offer information services. We were unable to resolve that matter before Congress adjourned.

So American consumers have been denied for another three years, 10 total, the benefits the half million RBOC employees could bring to communications design and development. The result has been fewer jobs, decreased innovation and needless frustration. Let me be specific.

After the break up of the Bell System, US WEST decided to build a world class research and development facility. Because we saw the communications business becoming increasingly competitive and because the communications needs of the sparsely-populated geography we serve tend to be different than the communications needs of customers in more densely-populated areas, we saw research and development as both a competitive advantage and as necessary to addressing the unique needs of our customers.

So we committed to building a state-of-the-art laboratory to house some 1,500 scientific and technical people, with plans to expand as demand warranted. But, as they say, "a funny thing happened" on the way to site selection. In December 1987, Judge Greene ruled that the manuf acturing restriction extended beyond metal-bending or fabrication to design and development as well.

In the wake of the Judge's decision, we went ahead with our plans, but those plans were scaled back significantly. Instead of employing 1,500 scientists, researchers, engineers, technical and support personnel, we employ 600. And instead of having free rein to use their imaginations—to think, to dream, to innovate—the work activity of those 600 people is very tightly restricted.

I think it's fair to say that in the early days of adjusting to Judge Greene's expanded definition of what constitutes manuf acturing, our people struggled mightily

to find that unknown line between what is and is not permissible under the MFJ. That's the needless frustration referred to. Whenever one of our people has a good idea, that individual must share that idea with a battery of attorneys who make their best judgment as to whether carrying that idea forward would violate the MFJ. As you might appreciate, scientific and technical people would rather spend their time with science and technology than with unknown legal issues. And so, regrettably, they find ways to work around the legal morass. They don't let their imaginations run as freely. They're not as creative. They're more disappointed than entrepreneurial.

And something is lost as a result. It would be interesting, but probably impossible to try to quantify how many new products and services, how many new ideas for doing something better, cheaper, faster, died on the innovation table, And to what end? What possible good is served by keeping in excess of 50 percent of the domestic communications capacity of this country on the design and development sideline?

I want to touch briefly on US WEST's business plan. We have embarked on an aggressive program—both within our 14-state region and outside—to deploy broadband. We want to be the leader in providing inter active—that is, two-way—multi-media services—voice, data, video. We see a tremendous potential for multimedia—in health care ,education, telecommuting and entertainment.

But we're largely sailing in uncharted waters. The set-box and video servers it will take to make multi-media a reality aren't available from "off the shelf." They're still in the laboratory where engineers are trying to get the bugs out of them. The restriction severely compromises our ability to engage in design discussions with manuf acturers. We can talk in generalities. We can say "no" to this and "yes" to that, but we can't talk in specifics. We cannot fully take advantage of our technical expertise, of our knowledge of our customers and of what they want and don't want. And so, instead of better, faster, cheaper, we do things adequately, slower and maybe a little more expensively. That's a prescription for the past, not the future. We cannot be leading edge if we're not free to follow through on our ideas.

Curiously, we are free to do this offshore, just not in this country. So opportunity will migrate to Europe and Asia where we are free to invest, innovate, design, develop and manuf acture. Yet under the current restriction, consumers in this country are denied the benefits of our experience elsewhere.

And we're denied a return on our intellectual property. If a US WEST scientist invents and patents a communications solution, the MFJ does not permit us to share in the royalties from that invention. At least not according to a recent court of appeals ruling.

The manufacturing provisions of S. 1822 largely address those issues. As you did in 1991, Mr. Chairman, you've again demonstrated that the manuf acturing restriction can be set aside without harm to customers or competitors. There are adequate safeguards in the legislation to quiet any concern about anti-competitive behavior, while at the same time, sufficient flexibility to enable the RBOCs to use their expertise to the benefit of the economy, the marketplace and international competitiveness.

The seven Regional Bell Operating Companies support provisions in S. 1822 dealing with lifting the manuf acturing restriction.

Thank you, Senator Hollings, for your leadership on this issue and the opportunity to testify. I'd be glad to try to answer any questions members of the committee might have.

Senator HOLLINGS. The title of one is the Seattle Post Intelligence Reporter: Two sentences made public yesterday in a US West document that the company fought to keep secret for more than a year may cause MCI-Metro to reopen legal proceedings against US West. The sentences appear to show that US West, based in Denver, pursued a corporate policy of declining to reconfigure its equipment to allow use by competitive local carriers like MCI-Metro. The sentences read, quote:

At the time of this CPD's distribution, corporate policy dictates that we will not privately engineer for CLEC interconnections. However, the continued policy of actually honoring orders for CLEC interconnection will cause DTC port shortages in these offices.

These sentences are contained in confidential documents that served as evidence in the proceeding in 1997, by MCI-Metro

against US West, verifying, Mr. Houser, what you said about punishing them.

Now, let us get on to some of these other things that they want to talk about. Mr. Chairman, they say they are not making money. That there is really bothersome. The third quarter of this year, how much they have spent and everything else like that. Bell Atlantic profit in the third quarter of this year, just reported, rose 10 percent, to $1.2 billion. Bell South, in this third quarter, just reported profit rose 19 percent, to $972 million. SBC Communications, profit rose 22.5 percent, to $1.28 billion. US West, profit rose 11.1 percent, to $421 million. And they are paying the chairmen of these entities a million dollars a month. I ran for the wrong job.

[Laughter.]

Senator Hollings: I know the board members at Bell South. They are good friends. I think I can get their vote. Yes. Yes. This here little 130,000 or whatever this is, hah. Man, come on.

[Laughter.]

Senator HOLLINGS [continuing]. I tell you right now they are guaranteed a profit. Obligation, just feed the obligation to me. Talking about the rest of these folks here at the table do not have an obligation, give me some more of that obligation. You cannot lose. You have got a monopoly. You are guaranteed a profit. You have got a hearing and they will make it profitable for you.

Let me get on to some other parts of this thing here. Deregulate, yes. Mr. Neel now says to deregulate. Well, we have got a deregulation bill, S. 1312. That will deregulate you. That is where, by gosh, you have gotten your monopoly. And you said you wanted to compete.

We have put the record in here and everywhere else in the world. And you do not compete, you combine. You are buying up each other. We had seven; now you have only got four left. And they are trying to merge even more of them, with long distance and everything else to go around in from the 271 of the checklist that they wrote and said they wanted to comply with, knew it at the time and failed to comply.

And I am glad, Mr. Holland, that you have testified here and stated just ex actly what is going on. Because that is why I put in S. 1312. Just like the Dutch boy at the dike, you say they are trying to change the accounting system. They say, we never got into data, to try to get into long distance. They come from every direction around here. They come into town. They put on these puff pieces at the policy committees, and with the leadership in the back room and everything else of that kind. And communications is very complicated. And the next thing you know, I find out that we are getting the bum's rush.

And, right to the point, deregulate, what I would like to do is deregulate. Give them, by the year 2001, and then, thereafter, $100,000 a day if they do not comply with the checklist that they wrote themselves. That is what they said they wanted to do. And they refuse to do it. They squat on their monopolies, making these exorbitant profits, paying these million-dollars-a-month chairmen and everything else, and sending a very smart, attr active lawyer up here to give us these charts and 15—let me put that in the

record—let us get in the 15 people. We have got the full-time record right here from Merrill Lynch.

Mr. Chairman, this is dated September of this year. I ask consent to put this chart in here from Merrill Lynch.

Senator BURNS. Without objection.

[The information referred to follows:]

Merrill Lynch - REPORT Telecom Services — Local – 8 September 1999

Table 8: RBOC/ILEC Gross*** Local Telephone Revenue Loss to CLECs (Net of Acquired Lines

	Company	4Q97A	1Q98A	2Q98A	3Q98A	4Q98A	1Q99A	2Q99A
A	Allegiance	NM	3,000	11,000	25,900	47,700	81,100	122,300
B	CTE	13,000	23,211	29,169	35,869	41,869	52,303	60,777
C	e.spire	35,105	57,605	85,633	116,033	133,070	135,134	116,075
D	Electric Lightwave	34,322	41,270	54,490	62,657	75,000	99,006	121,516
E	Focal	9,300	17,500	24,357	33,168	52,011	70,572	106,749
F	Frontier	101,000	117,800	145,000	180,000	208,000	230,000	245,000
G	GST	28,853	44,846	71,846	102,285	136,433	170,744	206,472
H	Hyperion	25,000	36,000	50,000	69,000	106,668	144,647	191,265
I	ICG*	93,035	138,156	189,458	242,983	306,482	370,610	446,405
J	Intermedia*	81,349	108,987	150,100	181,898	217,584	246,742	277,675
K	ITC^Deltacom	NA	10,800	17,800	25,500	32,200	45,300	56,000
L	McLeod*	185,000	215,200	245,600	267,100	298,200	332,200	392,000
M	NEXTLINK*	50,131	71,023	101,076	132,296	172,371	222,902	282,210
N	RCN	28,114	44,920	60,480	78,950	95,890	100,219	104,456
O	Teligent	NM	NM	2,000	4,600	9,100	17,600	37,526
P	US LEC	49,229	75,536	102,762	152,018	199,578	246,440	302,682
Q	WinStar*	65,600	67,040	105,757	157,757	198,416	263,416	332,416
R	MCI WorldCom	530,000	635,000	745,000	861,000	982,000	1,107,000	1,251,000
S	Other	172,000	227,000	287,211	384,427	502,880	617,680	727,680
T sum (A:S)	Total CLEC	1,501,038	1,934,894	2,478,739	3,113,461	3,815,252	4,553,615	5,382,524
U	AT&T (Local)**	310,000	331,573	378,823	432,823	490,000	555,000	625,000
V	Sprint (Local)**	74,393	81,893	93,893	108,893	126,393	146,393	167,893
W (sum U:V)	Total LD	384,393	413,466	472,716	541,716	616,393	701,393	792,893
X (T+W)	Total Lines in Service	1,885,431	2,348,360	2,951,455	3,655,177	4,431,645	5,255,008	6,175,417
	Sequential Growth		462,929	603,095	703,722	776,468	823,363	920,409
Y our est.	Estimated US Access Lines	170,000,000	172,000,000	174,000,000	176,000,000	177,000,000	179,000,000	181,000,000
Z (X/Y)	Local Competitors' Share	1.1%	1.4%	1.7%	2.1%	2.5%	2.9%	3.4%
	Local Competitor Switched Revenue Share of US Local Market							
AA our est.	Monthly Local Switched Revenue Per Line	$63.68	$64.00	$64.32	$64.64	$64.96	$65.00	$65.00
BB (AA*X)	Estimated Switched Monthly Revenue ($ Millions)	120.1	150.3	189.8	236.3	287.9	341.6	401.4
CC (our est.)	Estimated Dedicated Monthly Revenue ($Millions)	100.9	111.9	122.6	132.1	142.6	153.3	164.0
DD (BB+CC)	Total Monthly Revenue ($Millions)	221.0	262.2	312.4	368.4	430.5	494.9	565.4
EE (DD*12)	Total Annualized Revenue ($Millions)	2,652.1	3,146.1	3,748.7	4,420.6	5,166.3	5,938.5	6,785.2
FF (our est.)	Estimated US Local Market	100,000	101,000	102,000	103,000	105,000	107,000	108,000
GG (EE/FF)	Share of Local Market at Quarter End	2.7%	3.1%	3.7%	4.3%	4.9%	5.55%	6.28%
HH	Incremental Share of Local Market Gained During Quarter		0.46%	0.56%	0.62%	0.63%	0.63%	0.73%

* Acquired lines excludes 1Q98: 111,600 from Intermedia's acquisition of Shared Tech, 1,811 from NEXTLINK's acquisition of Start Technologies, 24,000 from WinStar's acquisition of Goodnet & Pacnet; 4Q97: 8,000 from McLeod's acquisition of Consolidated & 48,000 from ICG's of CBG; and, 2Q98: 16,400 from Intermedia's acquisition of National Tel. Net of WinStar's long distance only "lines," approximately 20% of total reported in 2Q98.

** LD access line count based on 1997 switched revenues $100M AT&T, $100M MCI, $25M Sprint and $64 monthly revenue per line; and 1998 switched revenues $300M AT&T, $300M MCI, $75M Sprint and $65 monthly revenue per line.

***Before wholesale recovery

Source: Merrill Lynch Estimates

CLEC Market Share (lines)

Senator HOLLINGS. It is the local telephone revenue loss to CLEC's. It has got every CLEC, including AT&T and Sprint. Total lines and service, 161 million. The total estimated U.S. access lines, let me correct that, 161 million, and the total lines in service of the CLEC's is 6,175,417. The local competitor's share is 3.4 percent.

So you can run around with your telephone books and your 15 and the millions, how you are spending and everything else. You are not telling the people the millions that you are making and buying up down in Argentina, Mexico, all the countries, buying each other up around here, refusing to appear and sending a smart lawyer up here to cover for them. They ought to be ashamed of themselves. This is the record. This is the market. And these are the f acts.

I thank you, Mr. Chairman.

Senator BURNS. Thank you.

Senator Brownback.

Senator BROWNBACK. Thank you, Mr. Chairman.

Thank you to the panelists, too. I have found it a very interesting and informative panel. When you pass acts and then you get to hear how people see it being implemented—because I hear most of you saying you agree with the Act, you are having some questions on the implementation.

Mr. Tidwell, first, welcome to a fellow Kansan. I am delighted to have you here. Your service is doing quite well in Topeka, where I live. My next door neighbor is in Birch now. And I am going to go home and look at it. And I hope Cricket comes to Kansas soon. You may get Senator Ashcroft and I, both, at 29.95. That is an awfully good service.

Mr. Tidwell, your competition, at least in my community of Topeka, is doing quite well. You have got great billboard advertising, 100 percent of our customers fired Southwestern Bell. It is real effective. Where have you gone in the marketplace? You stated, I think, that you started in 1997. And I would just be curious, even in Topeka if you could, where have you gone for market penetration in that period of time that you have been in?

Mr. TIDWELL. Are you looking for numbers, percentages?

Senator BROWNBACK. Yes, please.

Mr. TIDWELL. I do not have those with me. I believe our markets in Kansas are some of our oldest markets, so they would be where some of our penetration is highest.

Senator BROWNBACK. When did you start there?

Mr. TIDWELL. We actually started providing local resale service in 1997, probably May 1997.

Senator BROWNBACK. Can you give me any estimates or any specifics on markets that you are in, that you have been in 2 years now?

Mr. TIDWELL. I did not bring that information with me that is city specific, but we do have, I think, approximately 40,000 to 45,000 lines up in Kansas as a whole. They are primarily in what we would refer to here as the secondary or third tier markets. Quite a bit of business. And it is all in resale right now, by the way, except for the Wichita metropolitan area. We have customers in Dodge City, Hayes, Salina, and a fairly good concentration in the Topeka area.

In the last 12 months, we have increased our market share in the Kansas City metropolitan area, in the Kansas and Missouri side both of course, and are starting to provide facility-based services there. But much of what we are doing in Kansas to this date is resale operations.

Senator BROWNBACK. Do you have a percentage of penetration in the Kansas City market that you could share with us?

Mr. TIDWELL. I do not. I believe we are still under 1.5 percent.

Senator BROWNBACK. And how long have you been in it?

Mr. TIDWELL. Approximately a year.

Senator BROWNBACK. When you started in these markets, you had projections for how far you would be how soon. Are you reaching those projections that you had established for your company?

Mr. TIDWELL. We are under resale. Resale proved to be the simplest way to get into this business, but it is not very——

Senator BROWNBACK. Just to go in and start advertising?

Mr. TIDWELL. Right.

Senator BROWNBACK. And then using the current——

Mr. TIDWELL. Resell the incumbents' telephone service, in effect. It is still Southwestern Bell service for reselling their service. We buy it at wholesale and sell it to our customers at a retail price.

Senator BROWNBACK. And that has proved to be the most effective way for you to penetrate into these markets initially?

Mr. TIDWELL. Really, in Kansas, that has been almost the only way. Our problem in Kansas with moving to the next step is that Southwestern Bell has been in active or very negative toward trying to provide— getting them to provide anything to us to make that next step. From a facility-based standpoint, we paid almost $250,000 to collocate in one central office in Wichita, Kansas. And with numbers that high, it is pretty hard for us to make a business case to go to a Salina or Topeka, or especially a Dodge City or an Emporia, and be able to afford to go in and collocate and provide true facility-based services.

Senator BROWNBACK. What do you think that number should have been in Wichita? I presume there was a negotiation that took place for you on that $250,000.

Mr. TIDWELL. What we are seeing in Texas—and maybe Mr. Holland can help me a little bit here—some of the collocation prices that we see in Texas I believe are in the $40,000 to $70,000 range. And we do not understand how there could be so much disparity between States. Because the equipment and the real estate we feel is somewhat the same, at least. So those numbers need to come down significantly, at least down under six figures.

Senator BROWNBACK. I want to get right into the specifics if I can. Because actually I am very encouraged that you all are here. I think this is a good process. I am encouraged with the competition I see at home when I go there. And I hope Godspeed. I hope you keep growing well and doing well. But as I hear you talk, particularly you, Mr. Tidwell, you are saying, OK, Southwestern Bell is trying to slip in just barely to passing.

I think the actual thing you said is they are not providing the resources that you think they need to, to allow others to get in to the field. Did I take your testimony correct? And if that is correct, what is it that they should be providing? Because apparently you are working OK with the guy right there next to you at the plant at Southwestern Bell, but you think, on up the system, there is some blockage.

Mr. TIDWELL. Well, what we are seeing is as we turn on more and more lines and as we grow and start to really, as we call it

sometimes, turn on the tap and start really sending larger numbers of orders to Southwestern Bell, they do not seem to be able to keep up with the number of orders. Orders are sitting. Orders are not being handled expediently.

And as we start to turn on the tap and as more CLEC's come on board, we are hearing from the Southwestern Bell line people that they simply do not have the staff, the manpower and the system resources to be able to process all the orders. We also have a situation -- when I read the report the other evening the report from the Department of Justice on Bell Atlantic, something that it made quite an issue of was the manual processes and intervention that are still required in the ordering process. And we are seeing the ex Act same thing with Southwestern Bell's territory.

I will have to give Bell a little bit of a break here. I am not sure anyone anticipated how involved some of this would be. But the other side of the coin is Southwestern Bell has clearly been told they are the ones that have to provide the resources to make this work. And these manual processes are causing significant delays to occur, were causing significant losses of dial tone of our customers when they convert. And they need to provide the resources to be able to process orders and maintain the service in parity with what they are doing at retail.

We have had cases where customers have lost dial tone. They have been very frustrated. And they have actually called the Southwestern Bell business office for the retail side, and Southwestern Bell has explained to the customer that if they would be willing to change back, they would get the dial tone back on for them that day. Yet it has taken us 24 to 36 hours more to get it done through the wholesale side because of supposedly system or manpower limitations.

Senator BROWNBACK. And I think that is clearly something that—and I am glad that is coming to the attention of people on the dial tone issue if that is occurring.

How many CLEC's are you competing against, or do you anticipate competing against in the markets you are going into?

Mr. TIDWELL. On a daily basis our main competitor is still Southwestern Bell. CLEC's that we compete against, we are seeing, in the State of Texas, there are probably a half a dozen that seem to be relatively active.

In Kansas, frankly, there are only two others that I know of that are very active at all, that are doing much of anything in Kansas.

Senator BROWNBACK. Thank you, Mr. Chairman.

And thank you for coming here and sharing with us both the specifics and also kind of the state of the dynamic capitalism that is happening in the marketplace. You are operating in a market that is quite dynamic, and I am glad it is moving forward. I hope we can fix some of the problems, but not, in the process, re-regulate a system that by some deregulation has allowed you to come into it.

Thank you, Mr. Chairman.

Senator HOLLINGS. Mr. Chairman, at this particular point, if the distinguished chairman would permit, the Austin Business Report, dated November the 2nd—today is just the 4th I think—whereby the Texas Public Utility Commission ordered sanctions in Sep-

tember against Southwestern Bell, amounting to $850,000. A Southwestern Bell official, in January, ordered a group of employees to immediately destroy certain records relevant to its hotly contested dispute with two competitors, whereas our colleague on the other side, Chairman Bliley, had tried to get the records and they said they did not have them. And now we find out they ordered the records be destroyed. That is the full report. Include that in the record, please.

[The information referred to follows:]

November 2, 1999,

AUSTIN AMERICAN-STATESMAN

RECORDS AT SBC ORDERED DESTROYED

A Southwestern Bell official in an e-mail message sent in January ordered a group of employees to immediately destroy certain records relevant to its hotly contested legal dispute with two competitors.

That message, first disclosed on Monday, helped persuade the Texas Public Utility Commission to order sanctions in September against Southwestern Bell amounting to almost $850,000.

The e-mail likely will be cited by critics as evidence that Southwestern Bell continues to resist opening its network to local competition, which under law it must do before it can get into the Texas long-distance market.

The e-mail was released Monday by the commission after Attorney General John Cornyn ruled it was not protected from disclosure. The Austin American-Statesman had filed an open records request for a copy.

Southwestern Bell said it decided not to contest Cornyn's decision in court. Spokesman Bill Maddox said the company decided to release the e-mail to demonstrate its "insignificance."

The company had earlier rebuffed U.S. Rep. Tom Bliley, R-Va., chairman of the U.S. House Commerce Committee, when he asked for copies of the e-mail, saying it raised questions about whether Southwestern Bell was negotiating with competitors in good faith.

Attorney Christopher Goodpastor of Covad Communications Inc., one of the companies involved in the dispute, said, "We think this e-mail shows a pervasive and fundamental disrespect for the proceedings before not only the Texas commission but also the Federal Communications Commission and the commissions of other states."

The subject of the e-mail was a new service from Southwestern Bell, Asymmetrical Digital Subscriber Line, which provides high-speed connections to the Internet using ordinary telephone lines. The company, which began selling ADSL in Texas this year, must also make it available to wholesale competitors under federal law.

In December, Covad and Rhythms NetConnections Inc., failing to get access to ADSL from Southwestern Bell, took their dispute to the PUC. On Jan. 6 they began the legal process of disclosing to each other relevant internal information.

The e-mail, sent Jan. 14 in reference to ″Midwest Retail ADSL,″ said in its entirety:

"This is an attorney/client privileged communication. Ensure that all documents, including 'Word', e-mail, and attachments that do not represent SBC's current retail plans are destroyed and/or deleted from the hard drive of your computer immediately."

Southwestern Bell agreed in September to pay about $850,000 in sanctions to Covad and Rhythms after PUC arbitrators ruled that Southwestern Bell had failed to produce numerous witnesses and documents as required.

Maddox said Southwestern Bell released the e-mail so that it won't be used by those opposed to the company selling long-distance service. The PUC could decide as soon as Thursday whether to recommend to the FCC that Southwestern Bell be allowed into the Texas long-distance market.

Senator BURNS. For the Senators involved up here, Senator Lott is wishing that all Senators go to the floor for the swearing in of the son of former Senator Chafee. Anyone that wants to do that. I think we ought to continue with the hearing here and finish this

hearing up without any kind of a break. Is that OK with the Senators?

Senator CLELAND. Mr. Chairman and members of the panel, hearing the back and forth here at the table and between the committee members and the table reminds me of an African proverb that when the elephants fight, the grass gets trampled. And I am feeling a lot like the grass this morning. And I am wondering if my citizens out in rural Georgia are feeling a little bit like the grass when the elephants are fighting, and if they are not getting trampled in the process. That is kind of my political questioning today.

Let me just say, Mr. Holland, for all of the ranting and raving by my dear colleague from the great State of South Carolina against Bell South, headquartered in Atlanta, you are indeed alive and well and competing against Bell South in Georgia; is that not correct?

Mr. HOLLAND. We are competing in Atlanta, yes, sir.

Senator CLELAND. That is ex actly my point. Where are you competing?

Mr. HOLLAND. We are competing throughout the greater Atlanta metro area.

Senator CLELAND. Where most of the businesses are located?

Mr. HOLLAND. That is correct.

Senator CLELAND. Are most of your clients and customers businesses as opposed to residences?

Mr. HOLLAND. The vast majority, like 99 percent-plus, are medium and small businesses. Our typical customer ranges from like five employees up to maybe 50 employees in an office.

Senator CLELAND. So more than 90 percent of your clientele that you are competing against Bell South on has to do with businesses, is that correct, as opposed to service of residences?

Mr. HOLLAND. actually, as I say, 99-plus percent. And it is medium and small businesses.

Senator CLELAND. Why did you decide to go after businesses, which pay more for telephone service, as opposed to residences, who pay less?

Mr. HOLLAND. The principal reason is, to play in the consumer market—and certainly we have some CLEC's, like RCM and 21st Century Group and others, and certainly all of the DSL providers, they are in the consumer market—the problem in the consumer market is if you do not have a brand name and a $500 million a year advertising budget, it is very hard to play there. In the medium and small business market, which, I will tell you, is a far more neglected market than the consumer market—I mean the Bell companies do not even call on medium and small businesses; they are order takers there—in that market, we do send out people door to door. And that is the only way we can compete.

I mean we are not going to get a lot of customers by running a few ads with a real shoestring-type budget. We cannot compete with Bell South in Atlanta if it comes down to a media war, because they have got the brand name. Frankly, we do not. We can beat them by going in and offering personalized service with people going in the door and doing it. And that is what we have done.

Where you see consumer competition today is typically where you have sales agents. RCN is a great example. They operate all up

and down the East Coast, as well as the California market. And they use the building owners, you know, the landlords, of multi-dwelling units as their agents. That is the way they overcome the lack of brand name and the lack of the advertising budget.

Certainly, we are going to see robust competition in the consumer market. It is ultimately going to be brought by the people with the brand names, AT&T, MCI-WorldComm, Sprint, in a big way. The CLEC's, though, where we can win is where we can offer the personalized service.

Now, the problem we have got and what we really need to be able to extend that competition to like rural Georgia—as an example, I am an investor in a company that is going into Lubbock, Texas, and Tyler, Texas, and certainly they ought to be able to go into a lot of areas in Georgia. If you can make it in Lubbock, I think you can make it anywhere.

Senator CLELAND. Well, we welcome you to Umadilla, Georgia, any time you want to come.

[Laughter.]

Senator CLELAND. I think that is part of the point here, Mr. Chairman. In some areas they call it cherry picking. You come into Atlanta, you pick off the best customers, where it is most advantageous to you. I do not blame you. If I was in your business, I would do the same thing. But there are other people in Georgia, too. Most of my State is rural. It is not Atlanta. It is not medium to small businesses. It is average people out there that want telephone service.

Do you feel, Mr. Holland, that you are actually prohibited in any way from competing in the residential market? Do you feel any restriction in competing there if you so chose?

Mr. HOLLAND. You can compete as a reseller in that market. But reselling is not competition. That is maybe a market entry strategy, but you lose money reselling, and you are not providing any differentiated service.

Senator CLELAND. So you are not into residential, as you say, consumer telephones placement, because it does not pay?

Mr. HOLLAND. No, it would pay if Bell South complied with the competitive checklist, where you could easily and seamlessly -- if you, as a residential customer, could change your local carrier within 3 business days, no one has to come to your home and do anything——

Senator CLELAND. But you are in the business market. Do those same obstacles apply to the business market? Are they putting up the same obstacles? You are in the business market and seem to be doing well.

Mr. HOLLAND. They put up the same obstacles everywhere. And competing does not necessarily mean doing as well as we should be. And the Bell South region is a classic example. Bell South, we still have to fax orders to them. We do not have electronic bonding. Every morning our people have to call up Bell South's regional service center in Birmingham, Alabama, and we have to reconcile what faxes were sent and what were received. I mean the completion rate is not up to Dan Marino's standards, I guarantee you, on getting those faxes.

Senator CLELAND. Maybe up to the Atlanta Falcon's quarterback.

[Laughter.]

Senator CLELAND. Let me just say, Mr. Houser, you attacked Bell South pretty heavily here, using terms "illegal" and "unethical." You are competing with Bell South in South Carolina; is that correct?

Mr. HOUSER. Yes, we compete with Bell South in seven States all over the States. And we have gotten our brains beat in by trying to compete for residential customers on a resale basis. It is not viable——

Senator CLELAND. Are most of your customers, like Mr. Holland, most of them businesses?

Mr. HOUSER. No, 95 percent of ours are residential and very, very small is business customers. About 90 percent are residential today.

Senator CLELAND. So you specialize in residential customers?

Mr. HOUSER. Well, I have been, but I cannot make it. I have lost $18 million fooling around with that. I cannot fight Bell South anymore. Let me just give you one example. Not to get off on a tangent, but let me just explain the economic side of it.

For a residential customer that spends $20 or $25 a month on a local line, if they want to change their service to say call waiting or call forwarding or whatever it might be, as a residential customer they will not charge you to change to that service, back or forth. As a CLEC, I have to pay a fee every time there is a change in that billing record. And the strange thing is, even though it is done either in Birmingham, Alabama, or Atlanta, Georgia, electronically, on a billing system, the charges range from $4 to $17.

Now, on a customer that is spending $25 a month and I am getting a 15 percent discount, that is $3.75.

Senator CLELAND. Is that illegal or unethical?

Mr. HOUSER. Oh, I definitely think it is unethical, absolutely. Because what they are saying is that they have got different costs by State when they know they have got one center that does it. How can it vary by State? That makes no sense. If I have a computer system, why would I charge $17 in Kentucky and $3 in Georgia?

The other thing is ex actly what was stated before, when we change a customer from Bell South to us, if in f Act the customer wants to change back to Bell South, because Bell South typically calls them and says, you know, we can give you better service if you will stay with us, or whatever, when they change back, and if it is in the middle of the month, we have to pay for a full month. Now, as a consumer, you would not have to do that.

Senator CLELAND. Do you have any plans to come into Georgia and offer residential service in rural areas?

Mr. HOUSER. We are in Georgia today. I would take residential customers anywhere there is a Bell South.

Senator CLELAND. Where in Georgia are you?

Mr. HOUSER. All over the State. We did massive advertising in seven States, and we took customers anywhere that they were.

Senator CLELAND. So you have some residential customers in rural Georgia?

Mr. HOUSER. Absolutely. Absolutely.

Senator CLELAND. Mr. Pegg, is wireless the wave of the future? Is that one of the ways competition can be improved?

Mr. PEGG. I certainly think it is one of the ways. It is gaining more and more strength daily, as the technology improves. I think the response to our offering in Chattanooga has been extraordinary, 4 percent. And that says there is not perhaps enough competition, because people gravitate to unlimited usage at $29.95.

Senator CLELAND. Mr. Neel, what is your evaluation of the two applications that maybe have the best chance of being approved by the FCC for the access by the regional Bell companies to go into long distance, the Bell Atlantic application and the Bell South application? What is your estimation of both of those applications the way they stand right now?

Mr. NEEL. Well, Senator, the Bell Atlantic application is at the Commission. And they are under a deadline to Act on that before the end of the year. Our best estimation is that they have met the checklist, they have done a fantastic job. The Justice Department, in its report, gives them very high marks, despite the f Act that the Justice Department acknowledges that the goal line keeps moving, that the Commission and even the States know that they keep moving that goal line back. I mean the Citadel would never win a football game if they had to play under these rules.

So they are doing their job, and that application may be approved. We are hopeful that that will be approved and it could set a mark. Bell South is reported to be moving an application along in Georgia. It has not yet been presented to the FCC, but we are hopeful that will move. Texas, and SBC, as well. They are having to jump through hundreds of hoops.

The CEO of US West, in communication with this committee, pointed out and documented it very carefully that we do not have a 14-point checklist anymore, we have about a 650-point checklist. Despite that, Bell Atlantic is meeting that in New York. And we suspect that the other companies, as they move those applications to the FCC, they will be good and solid ones.

So it is a very important question and it will make a big difference in this market. And I would also point out that your question about rural service and the very CLEC's willingness to go into rural areas is a very critical one as it relates to universal service.

One reason that these companies are not that interested in ordinary, plain old telephone service for ordinary customers that do not buy a lot of enhanced services is that that service is heavily subsidized. What the customer pays is only a fr action of what it costs that company to deliver that service. So it is a major issue here.

With business, it is totally different. You can go in and you can undercut the local company, whether it is cherry picking or whatever it is, you can do that and you can make a lot of money. And, in fact, the earnings of the major Bell companies pale in comparison to what these CLEC's are making—a 150 percent increase and so on, Sprint and so on, on and on and on. So the earnings of those companies is not really an issue here.

And the issue of whether these new companies are willing to serve rural customers and residential customers everywhere should be a major concern of this committee. Thank you, Senator.

Senator CLELAND. Mr. Neel, one more question, if I may, Mr. Chairman.

Under the rules of universal service, are the regional Bells obligated to provide that service?

Mr. NEEL. Absolutely. And they have been doing it for 100 years. And they do it for prices well below cost, and they provide great value in rural areas and everywhere. If you live in a rural area, if you live in Lumber City, where my grandparents once lived, they have got to sell you telephone service at about the same price they are selling in an urban area. And if you want it, they have got to give it to you.

Cable does not have that requirement. No one else has that. And certainly the competitive local exchange companies do not have that obligation. It is a universal service obligation. It is the backbone of this industry. And it will be continued. So the answer to that is, absolutely.

Senator CLELAND. Thank you very much, Mr. Chairman.

Senator BURNS. Senator Breaux.

STATEMENT OF HON. JOHN B. BREAUX, U.S. SENATOR FROM LOUISIANA

Senator BREAUX. Thank you very much, Mr. Chairman. I thank the witnesses. I apologize that I was at another hearing and I did not get to hear your presentations, but I would like to ask just a couple of questions.

I think, back in 1996, we were trying to sort of set the ground rules or the rules and regulations for what was supposed to be the Superbowl of telecommunications competition. And I think probably we made a mistake in adopting the rules. I do not think we hired enough referees. Because it really has been an absolute sight to behold as to what has happened since we passed that act.

I doubt very many of us who were here then would have thought that, in 1999, as we moved toward the 21st century here, that we would still have a situation where we still do not have any of the people we are trying to move into long distance yet in—not one. I kind of thought then that basically what we were trying to do is to come up and said, all right, you can get in mine when I can get in yours. When you let us into long distance, we are going to let you into local service.

And today, after all these years, we have seen litigation and lawsuits and everybody has been part of them and everybody has been hiring more lawyers than we could possibly count to litigate these applications and to file suit on everything that we could possibly sue on—and that is everybody—yet it seems to me that the Act really has not done what I certainly was hoping that it would be able to do. And that is to let everybody compete.

Mr. Neel, maybe you could address this. How many of the regional Bell operating companies are now into long distance?

Mr. NEEL. None, Senator.

Senator BREAUX. My staff briefing memo says that they are now over 150 competitive local exchange carriers that are now in the local service market, competing. Is that the number you all have?

Mr. NEEL. That is about right. And they are in all 50 States and they have signed 5,000 agreements with the local company to share customers and provide those services.

Senator BREAUX. The staff briefing says that that represents over $40 billion of new investment in local competition. And it also says that that amount has doubled every year since the passage of the 1996 Act. It seems to me that half of what we were trying to do has been done. There is one heck of a lot more competition in the local market.

Every one of these gentleman here are out there trying and fighting to make a buck in the local market. So we have got over $40 billion invested in local competition, over 150 competitive local exchange carriers now in the market that were not there before, and yet not a single Bell company that we were trying to allow to go into long distance when people came into the local market, not one of them has gotten there.

Mr. NEEL. Senator, that is right. And it is even more dramatic than that. When the Act was passed, the first thing the FCC did, under Chairman Hundt, was allow CLECs, to get into the business, with great deals, with deep discounts for resale, where you do not have to build any facilities. You and I could go take out an ad in the newspaper and buy a computer and we can be in the resale business.

Senator BREAUX. How could they get in the market under the rules existing at that time? Were they not prohibited from doing so?

Mr. NEEL. What happened is the rules required the local companies, under Section 251, to open up their markets, provide these facilities, interconnection and so on and so forth. So that basically put them in the business.

Senator BREAUX. How could we make the argument, as some would, that the local market is not open when all of these companies are in the local market?

Mr. NEEL. We do not make that argument. We believe that local market is wide open. But my point is that the FCC, the first thing it did was blow open the local market. It dragged its feet on ensuring universal service. We still do not have a firm plan in place. It has done absolutely nothing to open up the long distance market for voice, although that is important, but also for these high-speed data services, to allow local phone companies to build this information superhighway into every part of the country. They have done nothing to advance that.

And on cable, we have probably less competition now than we had 4 years ago. The big MSO carriers are more powerful now than they were then.

Senator BREAUX. Why have not your companies just gone ahead and provided data service? Did we prohibit that in the act?

Mr. NEEL. It is prevented by regulation, not by the Act. It is not prevented in the Act. It is prevented by regulation at the FCC that chooses to interpret the 271 restrictions as a ban on data. There was nothing mentioned in that Act. It was a switched voice network law. It made virtually no mention of the Internet and virtually no mention of data. But yet they have done nothing to deregulate the data market to allow that competition to exist.

And, again, I point to this chart over here. On one side you have 1,000 local phone companies whose hands are tied, particularly the Bell companies. On the right side you have got AT&T/MediaOne,

this monster company that is going to pass more than half of the homes in this country. They have no regulation. They can do it, but nobody else can get into that business.

So it is a very critical thing. Because of the cobweb of regulation, the local companies cannot provide that data service now or in the near future, until the FCC relaxes these rules.

Senator BREAUX. I have maybe just one other question. You said something about moving the goal posts, and you quoted one of the companies—I am not sure which one—about there was a 14-point checklist that we fought over and tried to come up with something that made sense, and you said the 14 has increased or multiplied to—what is your argument on that?

Mr. NEEL. Well, the chairman of US West provided this committee a very detailed documentation of all of the new requirements to meet the 271 rules.

The Justice Department itself, as I said, has even acknowledged that that goalpost keeps moving. So how are you going to expect these companies to meet an elusive requirement under those conditions?

Senator BREAUX. I just go back to the point that I made initially. I thought that really the purpose of the Act was to try and set up a level playing field that said, all right, come get in mine when I get in yours. And it seems like half of that is being done, but the second half is not being done. And that is a real disappointment.

Thank you, Mr. Chairman.

Senator BURNS. Mr. Pegg, you say you are offering this $29.95 per month unlimited service. Do you find that your customers are taking your service and supplanting their wired lines as being their primary line?

Mr. PEGG. We do not have a long enough history to see them turning off their wire line. But they are using it as their primary means of personal communication, yes.

Senator BURNS. We just passed the E–911. How does that affect you?

Mr. PEGG. We are obligated to provide it, and we do.

Senator BURNS. Just listening to this conversation, I just love to get these fights started at the table and we just sit here and listen and we learn a lot more, I will tell you that. And you were talking about referees, I have got 20 years of refereeing football, so we do not have to go very far to look for a fight. I am going to write a book one of these days on that.

Mr. Houser, if you could change one thing in 271, one thing, what would you change? What would you recommend? Now, you all get ready to answer this, because I am going to ask every one of you. I thought I would let him lead off.

Mr. HOUSER. I think I am going to let my friend from Texas go start, because that is an important question.

[Laughter.]

Senator BURNS. Because we, as policymakers, have listened to this debate at that table, and if there is one thing that we have to mull over, what would you change in order to facilitate competition?

Mr. HOLLAND. You want me to go then?

Senator BURNS. Yes, he handed the ball off to you.

Mr. HOLLAND. OK. What I would do is we see huge barriers today to expanding competition by municipalities and by building owners, frankly, who throw up huge barriers to the competitive local exchange carriers to try to get into buildings, to get access to right-of-way under the same parity conditions as the incumbent. And the Act certainly helped in that regard, but it did not go near far enough.

I really congratulate Senator Stevens and Senator Hollings for a bill they recently introduced, where the Federal Government would set a good example for everyone else by allowing equal access to all Federal buildings in the country by competitors. That is probably the biggest shortcoming.

The only other one would be is—I know, as Mr. Neel pointed out a while ago, there seems to be confusion over whether the checklist is voluntary of mandatory. He says it is voluntary. That is the problem. Maybe the Act should have been drafted to where it said if you do not do this by X date, you are going to pay $100,000 a day, maybe a million a day, or something. The enforcement process is the problem. It is not the Act itself. It is a great act.

Senator BURNS. Mr. Tidwell.

Mr. TIDWELL. I would have to echo Mr. Holland's statements. I think enforcement is the key. Provide some key for ongoing enforcement of the Act and the 14-point checklist. The Act itself is working. I do not think any of us here at the table today have any grandiose plans to deliberately try to keep any of the Bell operating companies out of business. I think we all know that they are going to get into the long distance business.

But we have got to have some incentive, on a long-term, ongoing basis, to keep them playing on an even and fair way with us as competitors, to get the markets truly open once the checklist is passed and the telephone company, or the Bell operating company, is allowed into the interLATA market in a specific area.

I think maybe there was an assumption that irreversible competition has hit. I do not think that is going to be the case. There have to be incentives to continue to move forward and get better. And if there is backsliding, provide specific disincentives for that backslide.

Senator BURNS. Mr. Neel.

Mr. NEEL. Well, Mr. Chairman, there is a reason you had a 14-point checklist. You wanted to create an incentive for these companies to do certain things before they could get into the long distance market. It is voluntary under 271. There are severe penalties at the FCC's disposal if these companies do not meet their 251 local competition obligations, as envisioned in the act.

So, I think if anything has to be done to Section 271, it is to send the commissioners a strong message that you do not want the goalposts to move any further. You set the rules in 1996. You want them to follow what the Congress set forward and not to simply keep adding to those requirements.

Senator BURNS. Mr. Pegg, would you like to comment on that? Or being that Mr. Houser has now had time to collect his thoughts, any comments on that?

Mr. HOUSER. Let me just say this. I agree that I think enforcement is a key. But let me back up for just a minute, because I think there is a key point here.

There has been a lot of talk today about the RBOC's being able to get into long distance and it is not fair that they have to open their markets and so forth. The RBOC's have been able to get into long distance since 1996. Not one has taken the opportunity. All they had to do is go outside their territory, like we have all had to do, and to open up for business. Not one has done it. They have had plenty of opportunity to get into long distance. They do not want any part of that fight.

But I do think that the key thing is enforcement. Let me just give you another little example of the type of things that you probably will not read about. And some of these may sound funny, but, believe me, they are not funny when you are trying to compete. In the area of collocations, as you know, the Bell operating companies have to give us collocation space when we are putting in our facilities. Well, in many cases, the responses were coming back that we simply do not have the space.

Well, fortunately, the FCC said, look, you are going to have the right to go and inspect in a central office whether there is actually space or not. Two examples.

One example, we went into a central office in Atlanta and, sure enough, the first floor was full, the second floor was full, and we finally got up on the third floor. The third floor was just about empty. They said, well, this space is not available. And we said, well, why not? They said, well, we are going to put a museum up here. Again, it sounds funny, but it was not funny when we were trying to get that space.

A second thing. We went into a central office where there was very little space. And finally we got into a room that was empty. We said, why is this space not available? They said, well, because it only has 8-foot ceilings. We said, none of our technicians are 8 feet tall, so we will take the space. But that is the type of thing that we are talking about.

The RBOC's need to follow the spirit of the law, right? They know what they are doing and we know what they are doing. The sad part of it is there is good people in Bell South and in every RBOC. But the management of these companies are not putting the resources where it is needed and they are not enforcing what is required. And they are not taking the initiative to make sure that they live up to the letter of the law.

Senator BURNS. It sounds like us trying to do business with Canada, in Montana, on the border up there. You do not know what barriers are.

[Laughter.]

Senator BURNS [continuing]. Senator Hollings.

Senator HOLLINGS. Thank you, Mr. Chairman.

Let me clarify the approach of my distinguished friend here from Louisiana, because he says it seems like half have been able to get into the local, but the local have not been permitted into the long distance. Absolutely false.

We wrote the Act. I know it better than any. And getting right to the point, and Mr. Houser, touched on it, the local folks were al-

lowed to get into long distance without any goalposts or anything else like that outside of where they had a monopoly. Now, we all sat around this same rostrum up here and tables where you are seated and we said, now we want to make sure there is competition, and we do not want to extend the monopoly. And they said, oh, do not worry about that, we are going to get into it with one-stop service.

I do not know that the Senator from Louisiana was here, but that is why I put in the statements from US West, Bell South, Ameritech, all of them. I have got the documents in my file that I would like to include in the record at this time. They wrote the goalposts. And they have not been moved. They use that lawyer's talk. They went all the way to the Supreme Court about the goalposts being posts. They have not been moved at all. You can tell from the witnesses here at the table today that they just do not want to comply with what they wrote.

[Documents submitted for the record by Senator Hollings follow:]

BELLSOUTH NEWS RELEASE

BELLSOUTH TO QUICKLY SEEK CLEARANCE TO OFFER CUSTOMERS LONG DISTANCE IN TOTAL TELECOM PACKAGE

February 1, 1996

Contact: Bill McCloskey

WASHINGTON—Congress today approved Bell entry into the long-distance business, and BellSouth said it is expending every effort to begin offering its customers the quality choice and absolute convenience of a full-service telecommunications company.

"We are making the last preparations in anticipation of President Clinton's signing the bill, and we are moving aggressively to meet all checklist requirements so our customers can benefit from this law as soon as possible", said John L. Clendenin, Chairman and CEO of BellSouth. This legislation requires a checklist of steps leading to a fully competitive marketplace.

In addition, the legislation, which was given final approval by the House and Senate today, fully opens the video market to BellSouth, allowing the company to compete on equal terms and conditions with existing cable TV companies. This new law allows BellSouth to market its cellular and local services together and via the manufacturing relief, lets BellSouth participate in the research, development and design of telecommunications equipment to better meet our customers needs.

The Telecommunications Act of 1996, which President Clinton has pledged to sign, is an attic-to-basement rewrite of the communications law which opens up many competitive choices for customers and new growth-market opportunities for BellSouth.

"It gives us the opportunity to provide all our communications services through all of our sales channels to all of our customers," Clendenin said. "It allows us to grow by providing what our customers have asked for—the convenient availability of a range of communications services from a company they rely on, BellSouth."

"BellSouth intends to aggressively compete for our customers' long-distance business, and we have been working actively for months to meet the requirements of the new law so we can make all communications services available through one-stop shopping in the very near future," Clendenin said.

Clendenin also announced that BellSouth is establishing BellSouth Long Distance as a subsidiary to handle the company's entry into that business and that William F. Reddersen, currently senior vice president-broadband, will head the long distance effort. Reddersen's new title is group president-long distance and video services. "Bill has more than 18 years experience in long distance," said Clendenin. "He has proven himself as an excellent marketer who is focused on the customer and deliv-

ers what they want, when they want it. He's the ideal person to lead our long distance and video efforts."

"For our cellular customers, our networks are ready, our systems are ready and our marketing plans are in place," Reddersen said. "Well begin selectively offering quality, cellular long-distance service to our customers in a matter of days after the President signs the bill."

"We plan to aggressively market our services wherever we serve customers, including our new Personal Communications Service (PCS) wireless customers in the Carolinas and eastern Tennessee when we inaugurate that service at mid-year," he continued.

In anticipation of this legislation, BellSouth has been aggressively pursuing changes in the regulatory environment. "In eight of our nine BellSouth states, we have price regulation and related regulatory structures in place which facilitates our entry into long distance. In addition, we are well along in negotiations of interconnection agreements with other service providers, especially in our largest states of Florida and Georgia. We believe this will allow us to demonstrate to the Federal Communications Commission at an early date that we have met the bills checklist requirements for entry," Reddersen said. "We intend to aggressively meet all of the law requirements so we can serve our customers."

"We have always been a leader in providing quality services--including short-haul long distance--and we intend to extend that into these new long-distance and video markets," Reddersen pledged.

BellSouth is on schedule to begin its video trial in Chamblee, Georgia, near Atlanta and is proceeding with franchise-approved video efforts in Vestavia Hills, Ala.; World Golf Village, Fla.; and Daniel Island, S.C. Passage of legislation will speed up the process by eliminating some of the regulatory hurdles BellSouth had faced.

BellSouth is a $17.9 billion communications services company. It provides telecommunications, wireless communications, directory advertising and publishing, and information services to more than 25 million customers in 17 countries worldwide.

AMERITECH RELEASE

Feb. 01, 1996
Contact: David A. Pacholczyk

AMERITECH APPLAUDS PASSAGE OF SWEEPING TELECOM LEGISLATION

ATTRIBUTE STATEMENT TO RICHARD C. NOTEBAERT, CHAIRMAN AND CEO

CHICAGO—Consumers are the big winners today. The real and open competition this bill promotes will bring customers more choices, competitive prices and better quality services. In one day, this industry has gone from 1934 to the year 2000 and beyond. We're excited about a future in which customers will have real choice and competition will abound.

With the bill expected to help create millions of new jobs within ten years, it's good news for American workers, too.

But this has been a long, arduous task, and we applaud members of Congress for their perseverance and courage. We believe this bill will rank as one of the most important and far-reaching pieces of federal legislation passed this decade.

It offers a comprehensive communications policy, solidly grounded on the principles of the competitive marketplace. It's truly a framework for the information age. We look forward to the Pesident signing the bill so that we can get on with creating jobs and competition in the upper midwest.

For background on the Telecommunications Bill, check the Alliance for Competitive Communications web site.

Ameritech, one of the world's largest communications companies, helps more than 13 million customers keep in touch. The company provides a wide array of local phone, data and video services in Illinois, Indiana, Michigan, Ohio and Wisconsin.

Ameritech is creating dozens of new information, entertainment and interactive services for homes, businesses and governments around the world.

One of the world's leading cellular companies, Ameritech serves more than 1.7 million cellular and 750,000 paging customers, and holds cellular interests in China, Norway and Poland. Ameritech owns interests in telephone companies in New Zealand and Hungary and in business directories in Germany and other countries. Nearly 1 million investors hold Ameritech (NYSE: AIT) shares.

VERIZON RELEASE

February 8, 1996

NYNEX Contact: Media Relations

NYNEX CEO PRAISES TELECOMMUNICATIONS ACT OF 1996

NEW YORK, NY—Ivan Seidenberg, NYNEX chairman and chief executive officer, said after President Clinton signed the Telecommunications Act of 1996:

The President and Congress have done their job—now it's time for us to do ours.

This new law promises communications users more choice, lower prices and better service, and NYNEX is committed to delivering them.

The legislation is complex, but the outcome will be simplicity. NYNEX will offer one-stop shopping for a full array of communications services—local, long distance, wireline, wireless, video entertainment and information services—and customers will be able to package what they want, the way they want it.

NYNEX is moving aggressively to meet all requirements that will enable us to offer this full spectrum of communications to our current customers and to new customers, across the nation and around the globe.

NYNEX is a global communications and media company that provides a full range of services in the northeastern United States and high-growth markets around the world, including the United Kingdom, Thailand, Gibraltar, Greece, Indonesia, the Philippines, Poland, Slovakia and the Czech Republic.

The Corporation is a leader in the telecommunications, wireless communications, cable television, directory publishing and entertainment and information services.

U S WEST RELEASE

February 8, 1996

Contact: Bob Kelley, Dave Banks

U S WEST MOVES QUICKLY FOLLOWING PASSAGE OF TELECOMMUNICATIONS LEGISLATION

—COLEMAN HEADS NEW U S WEST LONG DISTANCE BUSINESS—

DENVER—As President Clinton signed the sweeping telecommunications reform bill into law today, U S WEST moved quickly to compete for customers' long distance business.

Richard K. Coleman, Jr., formerly a leading executive with Frontier Communications International, has been hired by U S WEST Communications to head the company's entry into the $70 billion-a-year national inter-LATA long distance market.

As president of the newly-formed long distance business, Coleman will be in charge of long distance service and marketing.

"We intend to be in the inter-LATA long distance business as soon as we can meet the checklist requirements of the new legislation," said Coleman. "Customers are anxious to receive the benefits of this new law as soon as possible."

Coleman has extensive experience in telecommunications and with long distance companies. At Frontier Communications International of Rochester, N.Y., the fifth largest long distance company in the country, he was vice president of operations and network planning. He has also held executive positions with Sprint Communications Corporation, United Telephone, and Centex Telemanagement.

"The inter-LATA long distance potential is a tremendous business opportunity for U S WEST," said Coleman. "Customers have made it clear they want one-stop shopping for both their local and long distance service. We are preparing to give them exactly what they've been asking for."

Coleman estimates that U S WEST will be able to reach a reasonable resolution on the bill's checklist requirements in the majority of its states within 12-18 months. He expects to capture 15-20% of the inter-LATA long distance market within five years of entry.

Although U S WEST's highest priority is to provide long distance services to its existing customers, the company is exploring a full range of service options and developing targeted solutions to deliver on the one-stop shopping promise that customers have long been asking for.

Industry analysts have noted that the cost of entry for the regional Bells from a capital standpoint is very low. They point out that the RBOCs have high brand recognition and are already well-positioned with the customer base in their operating regions.

According to industry figures, the national inter-LATA long distance market is between $65 and $70 billion a year. About ten percent of that market is in the region served by U S WEST.

U S WEST Communications provides telecommunications services to more than 25 million customers in 14 western and midwestern states. The company is one of two major groups that make up U S WEST. U S WEST is in the connections business, helping customers share information, entertainment and communications services in local markets worldwide. U S WEST's other major group, U S WEST Media Group, is involved in domestic and international cable and wireless networks, directory publishing and interactive multimedia services.

For 1994, U S WEST reported revenues of nearly $11 billion. The company has 61,000 employees.

THE ORANGE COUNTY REGISTER

February 9, 1996

By Liza McDonald, Bloomberg Business News

STAKES ARE HUGE AS SCRAMBLE TO GAIN MARKET SHARE GEARS UP; OUTLOOK: INVESTORS WILL HAVE TO SORT THROUGH A FRENZY OF DEAL MAKING OVER THE NEXT FEW WEEKS.

Telecommunications companies wasted no time touting plans to enter one another's markets after President Clinton signed into law the most sweeping industry reform in 62 years.

"The gloves are off and we are now free to take on the monopolies head-on," said Nate Davis, chief operating officer for MCI Communications Corp.'s local phone unit.

As the ink on the new law was drying, MCI said it would become the first U.S. long-distance company to offer local phone service in Boston.

Not to be outdone, AT&T Corp. said it would start making moves into the $ 90 billion local phone market in all 50 states by March 1. "We're ready to play, we're ready to win, and we don't intend to lose any time doing it," Chairman Robert Allen said.

And the largest local telephone company, GTE Corp., announced that it had a contract with WorldCom Inc., the fourth-largest long distance company, to resell long-distance service under the GTE name.

While the jockeying created a frenzy among telecommunications companies, investors weren't quite so euphoric.

"Who knows if they (telecom companies) will do it correctly?" said Scott Vergin, portfolio manager at Lutheran Brotherhood in Minneapolis. "The concern, as an investor, is all the spending they are going to do."

Investors will have to sort through a frenzy of deal making over the next few weeks. Communications companies will be trying to fill gaps in their service with alliances or acquisitions.

Wall Street analysts say small long-distance companies and so-called competitive-access providers, which let businesses bypass local carriers when connecting to long distance, are in great positions to make deals or even be acquired.

US West Inc., one of the seven local Bells, made its first overture into the $ 70 billion long-distance market by naming the head of its long-distance unit. Pacific Telesis Group said it plans to be in the long-distance market in 10 to 12 months.

Some companies decided to forgo the bill-signing festivities in Washington.

"While (Bell Atlantic Chairman) Ray Smith, Robert Allen, and other industry bigwigs were toasting the bill, we've been sitting in a war room in San Antonio planning our next offense," said Brian Posnanski, spokesman for **SBC** Communications Inc.

SBC said it will immediately begin offering long-distance service to its cellular phone customers. "It's not a time to celebrate, it's a time to get down to business," he said.

At stake is the $ 200 billion phone and cable TV market. Not since before AT&T was broken up in 1984, creating the Baby Bells, has there been such a frenzy to stake a claim in the telecommunications market.

And not everybody's going to be a winner. "There will have to be some sort of shake-out, because not everybody can get rich at everybody else's game just because the restrictions have been lifted," said Albert Lin, an analyst at Cowen & Co.

Consumer advocates, meanwhile, wondered what's in it for phone customers. They said the telecommunications overhaul may mean a rash of mergers that may lead to higher prices.

But Vice President Al Gore said: "Over time, we'll all see prices come down significantly."

THE NEW YORK TIMES

February 9, 1996

By Edmund L. Andrews

COMMUNICATIONS BILL SIGNED, AND THE BATTLES BEGIN ANEW

President Clinton today signed a sweeping bill to overhaul the telecommunications industry, starting a new round of warfare between the giant media and communications companies even before the ink was dry.

Scores of industry executives, from Ted Turner to the chairman of AT&T, crowded into the signing ceremony along with politicians of both parties and the lobbyists, lawyers and regulators who will be the foot soldiers in the struggles ahead.

"Today, with the stroke of a pen, our laws will catch up with the future," Mr. Clinton said, signing a bill that knocks down regulatory barriers and opens up local telephone, long-distance service and cable television to new competition.

Within hours of the signing at the Library of Congress, however, civil liberties groups filed a lawsuit challenging provisions that block indecent sexual material from being transmitted over computer networks. Television broadcasters began bracing for a new battle with the Clinton Administration over provisions aimed at reducing violence on television. And top executives at local and long-distance telephone companies immediately vowed to start attacking each other's markets within the next 12 months.

Robert E. Allen, chairman and chief executive of AT&T, vowed that his company would try to offer local telephone service in every state and pledged to capture one-third of the business now controlled by the regional Bell companies. Elsewhere in the same room, the president of the **Bell Atlantic** Corporation all but said publicly that his company was actively seeking some kind of alliance or merger with the Nynex Corporation—a deal that would create a company that controls local phone service from Virginia through Maine.

The measure, passed after years of struggle and lobbying between rival segments of the communications industry, is expected to unleash a wave of mergers and ac-

quisitions but eventually knock down traditional monopolies in local telephone service and cable television.

Its most immediate impact will probably be ferocious legal battles in the the courtroom and at the Federal Communications Commission. In Philadelphia, a broad range of civil liberties groups led by the American Civil Liberties Union immediately sought a court injunction against provisions that impose heavy fines and prison terms on those who make available pornography or indecent sexual material over computer networks.

In Brooklyn, abortion-rights groups went to court to block a provision that some say would make it illegal to transmit information about abortions over computer networks. But the Justice Department said the provision, which expanded the reach of a little-known law passed in 1873, was clearly unconstitutional and would never be enforced.

President Clinton also put new pressure on television broadcasters to develop a system for rating violence on their shows. The new law requires manufacturers of television sets to install a special V-chip in every new set to allow parents to automatically block any program with a special code.

To be effective, however, broadcasters must develop a system for deciding which shows are violent and then transmit the signal. Commercial broadcasters are adamantly opposed to the whole idea, and some have threatened to challenge the law in court.

Today, Mr. Clinton announced that the White House would meet with representatives of the entertainment industry on Feb. 29 to discuss ways of reducing gratuitous violence on television and to make a plea for a new rating system.

"However well intentioned, legislative proposals to restrict violence or access to programs deemed to contain 'objectionable content' mean government control of what people see and hear and violate the First Amendment," the National Association of Broadcasters said in a statement today.

Much of today's ceremony was couched in theater and hoopla, a rare moment of relief shared by political leaders from both parties and executives of most segments of industry after finally passing the huge bill.

To that end, Vice President Al Gore engaged in a bid of cybershtick with Lily Tomlin, the comedian, who reprised her famous role as Ernestine the telephone operator. Ms. Tomlin, who appeared over a voice-and-video link through the Internet, told Mr. Gore he wasn't as stiff as he he seemed. "You're just a techno-nerd," she snorted, as Mr. Gore politely thanked her.

Behind the theater, however, the country's biggest telephone and media companies were already gearing up for a new era of unbridled competition. One of the biggest battles will between the local Bell telephone companies and long-distance carriers like AT&T, MCI Communications and Sprint.

Mr. Allen, AT&T's chairman, said his company would offer an unprecedented new range of local, long-distance and even television services to its customers in the near future.

Mr. Allen said his company would immediately start striking deals to lease local telephone capacity from both the Bells and from newer rivals in the local phone market, and that AT&T would also invest in local communication networks of its own—possibly using wireless links as a substitute for phone service carried over copper wires today.

Even though long-distance carriers fought adamantly against provisions to let the Bell companies offer long-distance service within about two years, Mr. Allen said the future was bright for his company.

"This legislation is good for America, it's good for the communications industry and, not incidentally, it's good for AT&T," he said.

James G. Cullen, president of Bell Atlantic, which provides local phone service in the mid-Atlantic region, said his company would start offering long-distance service outside its traditional region immediately and inside its region within a year. He also strongly suggested today that Bell Atlantic would team up in some fashion—though probably not an outright merger—with Nynex, which serves New York and New England. "We've got to figure out how we can offer long-distance and local service in competition with the likes of AT&T," Mr. Cullen said as he waited for President Clinton to arrive at the signing ceremony. Mr. Cullen insisted he could

not comment on widespread news reports about merger talks with Nynex, but offered a broad hint. "In between where we are today and something that falls short of a full merger, there are things that make sense," he said.

Cable television executives, who suffered a huge political defeat only four years ago when Congress voted to regulate cable rates, gleefully talked about how the new law would sweep away regulatory barriers that keep them from entering the local phone business and other new markets.

"The beauty of this is that there is enough new business, both domestically and internationally, that there won't be a war of attrition" between telephone and cable companies, said Gerald M. Levin, the chairman and chief executive of Time Warner Inc.

Even some consumer advocates who had warned that the new law would raise prices for consumers and lead to a new era of media conglomerates said the final bill had been moderated by pressure from Mr. Gore and Senate Democrats and might actually be good for ordinary people.

"This bill went from being a consumer nightmare to being something that while it still has significant risks is dramatically improved and offers at least at hope of greater competition and lower prices," said Gene Kimmelman, co-director of Consumers Union.

Yes, Mr. Neel is correct that it is voluntary. That is the one big mistake we made. Because we assumed, with all of their talk about competition, competition and deregulation, that they were going to get into it. After all, they knew the business, they had the infrastructure, they had the expertise, experience, and otherwise in the particular field, so they had every advantage. And we knew—and they are all well-run companies—that they would just continue and go ahead and move. The mistake we made is making it voluntary.

We should have required deregulation, namely, made 271 mandatory. They said they wanted to comply. That is how we got a 95 bipartisan vote in the U.S. Senate. We would have never, with all of their angling and pressures and representations on us, as Senators in that vote, we would have never gotten a bipartisan 95 vote if there was something wrong with the 14 points. They all were going. But, finally, money is money and business is business. And as long as you can continue to hold your monopoly and the Federal Communications Commission cannot change that monopoly to force you into the thing.

I know the long distance. I made the record earlier, Senator Breaux, that MCI had spent $800 million, and it caused them to lose British Telecom. They say, you are wasting our money and everything else, so they cutoff their agreement back 4 years ago. I know that Bob Allen, in AT&T, they spent $3.2 billion trying to get into local. They could not hardly make it, so they moved Mr. Allen along and got Mr. Armstrong as a result.

But AT&T, the ex Act numbers, according to Merrill Lynch, of lines, on local lines, they got 625,000 out of the 161 million. And Sprint, trying to get into local, has got 167,893 lines out of 161 million. And all of the ones, the CLEC's and all that are testing, all of this competition and thousands of this and thousands of that, it is 3.4 percent local competitive share.

Now, if you have still got 96 percent, you have got a monopoly. And let us assume I was meeting here as the board of Bell South, I would say, now, colleague, let us keep on going. We have a 19 percent increase in profit this last quarter, $972 million. We have got some nibbles. I call them nibblers, these CLEC's, but they are not really getting anything, with 3 percent, 4 percent. Come on.

What we are doing, we continue to make the money and see if we cannot buy Qwest, see if we cannot buy Sprint. We have got a lot of money, so we are not interested in getting into long distance. We are interested in getting bigger and making more. That is common sense. That is markets. That is what I would say if I was chairman of the board of Bell South. It is working. Unless they change that Act and make 271 mandatory.

And that is why I put in S. 1312. You have had enough time. You misled us. I do not want to say you lied to us, but I do not know the difference under this circumstance, because you definitely misled this particular Committee and this Congress, because they said competition, competition. We have got their statements. They have got no intention of doing it.

And they can get into long distance anywhere they want in the country except where they have got a monopoly. And they cannot get in there, according to their own regulation that they wrote, their own goalposts, 271. And they have taken it all the way to the Supreme Court about moving it. The Commission has not moved it; they cannot get compliance.

And we hope that our friends at Bell Atlantic get in up there in that New York area. Because if that breaks it—we have been looking for some kind of breaks. Maybe if AT&T comes around and buys up enough local lines through cable, that will break them. Something has got to break it, because it is a gravy train. They get 40 percent of every access charge at the local level for that long distance call. And that is a lot of good money.

And we should not run around and wonder what is wrong with the Act, when common sense says continue to make the fortune. They are not blocked by the local people. Instead of a 12 percent return, they are making almost double that, 24 percent returns. So they are happy. Everybody is getting along good. And we are puffing and blowing like we have really got something about local competition and everything else. Well, we did today, because Mr. Neel has had to listen to these other witnesses.

Senator BURNS. Senator Breaux.

Senator BREAUX. Let me ask the question with regard to, Mr. Houser, you talked about going up to Bell South and seeing on the fourth floor a museum. If you were running Bell South, you would have probably put in some more equipment that perhaps they could give to someone like you. But their decision was not to do that. Do you or anybody else think or feel that Section 271 requires that a regional Bell construct facilities in excess of their need in order to make it available to you?

Mr. HOUSER. Well, first of all, let me make clear that there was not a museum there. They said that that was their plan for that space.

Senator BREAUX. OK, but does Section 271 say that you cannot use it for another purpose, that you have to use it for making or producing equipment that you can make available to you?

Mr. HOUSER. What it does is it says that it has to make space available, if there is space available, for CLEC's.

Senator BREAUX. If there is space available. But suppose the Bell company says we think that space in that building should be used for something else. Are you arguing that they have an affirmative

obligation to build equipment to make it available to you, in excess of their capacity?

Mr. HOUSER. Well, let us make sure we understand something, Senator. The space that we are talking about was empty, was not being used, had not been used for a long time.

Senator BREAUX. Is there anything wrong with them leaving it empty?

Mr. HOUSER. Well, except that it does not go by the spirit of the law, as far as I am concerned.

Senator BREAUX. Where in the law does it say that the fourth floor of that building that Bell South may want to leave empty should not be left empty if that is their decision? Is there anything in the law that says, spirit or otherwise, that says they have to construct things that they may not need to run their company in order that you may come in and claim it?

Mr. HOUSER. Well, wait a minute. Here is a key point. They are not constructing anything.

Senator BREAUX. That is right. But do they have an obligation to construct anything?

Mr. HOUSER. Well, all I am saying is all they had to do is make that space available. We do the construction. We are the ones that spend the money. All they do is rent us that floor space at an exorbitant price. By the way, which there are no negotiations for. It is whatever price they set.

Senator BREAUX. Mr. Neel, can you comment on my question about any kind of an affirmative obligation that is imposed upon the regional Bells to construct anything that they would then have to make available to someone who comes in and requests it over and above what they need to run their own business?

Mr. NEEL. Senator, I think the implication of the question is correct: there is no such requirement. And I am not sure what the spirit would be. I do not think it was envisioned by this committee or the Congress. It is another example of adding to a checklist. I mean you are never going to totally please a competitor.

And back to the point about unmet promises, when Senator Hollings talks about the Congress perhaps being misled on what was going to happen, there were promises made on the optimism that the FCC would implement this Act as the Congress intended. This is another example here. This industry never believed that we would have a situation like we have illustrated here on his chart, where you would have a cable provider offering telecommunications services totally unregulated, but the local phone company trying to offer the same services totally regulated. Now, that is not an even playing field. It is something totally different. And if anything, the promises are being unmet by the FCC.

Senator BREAUX. Can you elaborate on that? Because obviously I missed your testimony. What was the point you were making with the cable operators being able to offer services?

Mr. NEEL. Yes, Senator. There is a great deal of attention paid to data services. Our complaint is that the local companies are not allowed to be in this business on even terms with other providers of the services. Local phone companies are heavily regulated, about 15–16 items here. A competitor offering ex actly the same service through a cable modem has no such regulation whatsoever.

Now, this regulation costs a lot of money. It creates delays and barriers and, in many cases, totally prohibits a company from offering those services. So this was never envisioned in the 1996 Act and, in our view, represents a real backtracking from not only the spirit but the letter of the law.

Senator BREAUX. What kind of companies are doing that?

Mr. NEEL. On the cable modem side? Well, the best example is MediaOne, TCI, which is about to be owned by AT&T, to make the biggest cable conglomerate this is, that will dominate the high-speed Internet access market. None of the local companies will have a market share even close to what that company will have. And they have no regulation whatsoever.

Now, that is not a level playing field. And that was not envisioned in the Act. The promises that the Congress made in this Act that have not been followed by the FCC.

Senator BREAUX. The technology continues to change so rapidly, things that we never considered back in 1996 are now entering into the picture. And I guess that is one of the prime examples that tilts the playing field even further.

I appreciate it, Mr. Chairman.

Senator BURNS. Senator Hollings.

Senator HOLLINGS. Mr. Chairman, let us go right to the reality. The reality is that Bell Atlantic has petitioned now that they have complied with the checklist. And the Justice Department says, not quite. And they have recommended, I think, approval subject to the compliance. And the questions by our distinguished colleague would infer that they are not under the law required to make any buildings or get into rooms or not put a museum or whatever. That is not the case.

The case is that before you can get in—and we should have made it mandatory, but here is what the court and the Justice Department are saying, reading the act—they have got to have an interconnection in accordance with Section 251; nondiscriminatory access to network elements in accordance with Sections 251 and 252; nondiscriminatory access to the poles.

Do the Bell companies have to give it to them? Yes, they have got to give them access to their poles, their ducts, their conduits and rights-of-way, owned or controlled by the Bell operating companies at just and reasonable rates. So they have got a chance to look at the rates.

When they look at the rates under that paragraph 3, then the distinguished lawyer says, oh, no, they are moving the goalposts for local loop transmission from the central office to the customer's premises, unbundled from local switching or other services. That would cost money. Local transport from the trunk side of a wireline local exchange carrier switch, unbundled from the switch, they have got to pay money to do that. And I can go right on down the line. Switching the white pages directory listing for customers, they have got to pay for that. Adoption of a telephone numbering administration for new carriers, yes, they have got to pay for that.

Why was all of this? Because we, the taxpayers of America, built these monopolies. We made sure they did not have any competition. We guaranteed them a profit. And it has worked. The finest telecommunications system in the world. But we are saying now,

wait a minute, you are going to market forces. We do not want anybody's taxpayer-built monopoly to extend the monopoly. We do want competition.

And that is why they would agree all of these are going to be taken care of. And they are expensive. Do not worry about that before the public service commissions and everything else of that kind. But the answer is yes, they are supposed to spend money in order to allow the others to compete, under the requirements of 251, on resale, on the requirements of getting into long distance. And I think the record ought to show it. It was intended. It was agreed upon. And it is very, very reasonable and understandable.

Senator BURNS. Thank you very much.

I have one question. Because what I am trying to do is to, when you get down to the bottom line, we, as policymakers, we would like to do the right thing and we would like to keep that playing field level if we possibly could and have everybody operate out of the same rule book. I have made this speech 100 times before. That I can go to South Carolina and referee a football game and I can work one in California and I can work one in Montana. And the reason we can do it, us poor, old fat guys with striped shirts have very few problems for the simple reason there is only one rule book, and it is all across the country.

Now, pro is a little bit different than college. College is a little bit different than high school. I worked head linesman a lot, because I was the only guy on the crew who could count to four.

[Laughter.]

Senator BURNS. Mr. Houser, I would just like to have your comment on this, and maybe a comment by Mr. Neel. You have got years and years in your bio of being in the capital venture business. What advice would you give us so that we can avoid damaging a competitive local carrier's ability to raise capital? Because I think that is where, if you are a viable competitor, you have to have capital. We do not want to get fiddling around with things and limit any competitor's ability for capital formation.

Mr. HOUSER. Mr. Chairman, I think, from someone's perspective that has both invested a lot of money and had other people invest a lot of money, if you look at this landscape, the key thing that I think that we all can do, or that should be done, is simply to enforce the rules that are in place. We all spent a lot of time a few years ago working on this 1996 Act. I was involved and almost everybody here was involved. And there were hundreds of us up here discussing back and forth the pros and cons.

And guess what? There is a lot of things about the Act that I do not like. It hurts our company. But, guess what? We agreed to the rules. That is just what you said. We made a set of rules. Now let us live with it.

If we can do that, if we will do that, venture capital companies can live with some risk. And there is obviously risk in any of us getting into business, competing with a 100-year-old monopoly. But that is fine. As long as they know what the rules are and as long as we know what the rules are, we can all live by them. Now, I think that is the major thing that I would recommend.

Senator BURNS. Does anyone else want to comment, because that is the last question I have. Do you want to respond, Mr. Neel?

Mr. NEEL. Well, I think I can agree with Mr. Houser that we all want to know what the rules are, but we do not want them to keep expanding. The Act is clear. In many respects, it is the implementation that has been confusing and unclear. And I would say that if there is something that ought to be done to stimulate investment and to build this information superhighway into rural America and everywhere, it is to let the local phone companies compete by displaying high-speed data services, as the Act or just about anyone looking at that would have intended.

This is a perfect example of an uneven playing field in a market that was not intended to be heavily regulated by the 1996 Act. So that should be the target and the goal—not so much for creating sanctions, new sanctions, for services or issues that were entirely voluntary. If you are going to go back and create sanctions for 271 or make it mandatory, then you have got to have a commensurate release of those companies and deregulation of those companies.

They would have gladly accepted an immediate level playing field in 1996, an immediate level playing field. Let everybody get in at the same time, and let the FCC oversee that marketplace. But that is not what happened. We ended up with a staggered entry, and we are still staggering toward the finish line on long distance entry.

So a level playing field is what we all would want, clear rules. And that would get the job done. And an FCC that follows that law as you and the Congress intended it to be.

Thank you.

Senator BURNS. Yes, sir, Mr. Holland.

Mr. HOLLAND. Yes, Mr. Chairman, I did want to make one more comment. I think that today, certainly Wall Street, the venture capital industry, there have been tens of billions of dollars raised since February 1996, when the Telecom Act was signed by President Clinton, and those dollars are going into putting in state-of-the-art, world-class facilities.

The thing that would jeopardize that is if there was a perception that the competitive checklist was never going to be implemented, that the local markets are not going to be open to competition as the Act promised. I think it would be very, very dangerous to do anything that would bypass that obligation to open up the local market. And certainly letting the Bell companies into long distance services for data might reduce their commitment to volunteerism, if that is what it is, to implement the competitive checklist.

And I would also take issue with the fact that the goal line is being moved. In reality, the reason the FCC clarified the checklist was at the request of the RBOC's. In fact, our ALTS organization wrote a detailed letter to this Committee recently, explaining in detail a response to US West's complaint that the checklist was expanded. And if you would like, I would be pleased to provide that as part of the record of this hearing.

[The information referred to follows:]

June 23, 1999

The Honorable John McCain
Chairman
Committee on Commerce, Science, and Transportation
United States Senate
Washington, D.C. 20510

The Honorable Ernest F. Hollings
Ranking Democrat
Committee on Commerce, Science, and Transportation
United States Senate
Washington, D.C. 20510

Dear Chairman McCain and Senator Hollings:

The Association for Local Telecommunications Services (ALTS) hereby provides its response to the letter and analysis submitted to you by US West on May 10, 1999 and the testimony of US West CEO Sol Trujillo before the Senate Commerce Committee on April 13 concerning the process under which the Regional Bell Operating Companies (RBOCs) apply to enter the long distance market. In his testimony, Mr. Trujillo expressed concern that the 14-point checklist in section 271 of the Communications Act had been expanded to 1014 points. In the letter, US West alleges that, "[t]hese requirements [of section 271] cannot change over time. . . as a matter of fact, they should be reduced over time."

ALTS believes that US West's testimony and its submission grossly and unfairly mischaracterizes the Federal Communications Commission's (FCC's) enforcement of the section 271 process. Furthermore, US West's letter is internally inconsistent: as it asks for the rules not to change at the same time that it asks for the requirements to be reduced and to be enforced differently for rural states. As we demonstrate in the attached review, the FCC has, in general, taken a consistent, principled approach to the enforcement of section 271 that is faithful to both the spirit and the letter of the 1996 Telecom act.

ALTS is the leading trade association representing facilities-based competitors to the incumbent local telephone companies. ALTS' membership currently includes over 70 companies with a market capitalization of over $200 billion. ALTS' membership does not include the traditional long distance companies (such as AT&T, MCI and Sprint).

Nevertheless, ALTS' members have a significant business interest in the debate over when the RBOCs are allowed to enter the long distance market under section 271 for one overriding reason. We view this provision as the act's only incentive for the RBOCs to open their local markets. The interconnection and unbundling obligations included in the 14-point competitive checklist in section 271 are the critical building blocks for local competition. If the RBOCs are allowed into the long distance market BEFORE satisfying these interconnection and unbundling requirements, the RBOCs will have no incentive to comply with these requirements, and competition for local telephone service could be stopped in its tracks. For this reason, ALTS supports the current statutory language which requires the RBOCs to open their networks to competition first and then receive the right to provide long distance service thereafter.

US West's submission implies that the FCC has expanded the 14-point competitive checklist into a laundry list of items that are changing and are impossible to meet. ALTS strongly disagrees with this interpretation of the FCC's actions. While US West would prefer that the FCC simply accept US West's self-certification that the checklist has been met, the FCC has instead asked for ascertainable facts to prove that the checklist is being implemented. This fact-based determination is exactly what the statutory language requires (the RBOC must "fully implement the competitive checklist" (section 271 (d)(3)(A)(i)).

Furthermore, the courts have rejected the RBOCs' arguments that the FCC has departed from the statutory language. The RBOCs have appealed several FCC decisions denying their applications to enter the long distance market. In each case, the court has ruled in favor of the FCC and against the RBOC.

Despite US West's current complaints about the level of detail in the FCC's orders, the RBOCs asked for this guidance. By setting forth in detail the types of facts that the FCC will examine to determine whether the RBOC has implemented the checklist, the FCC attempted to provide advance notice to the RBOCs of how the FCC will enforce these requirements. The RBOCs requested exactly this form of guidance on many occasions, including in testimony before this Committee one year ago. It is hypocritical for US West and other RBOCs now to complain about the FCC'S effort to provide the very guidance that the RBOCs requested.

As the Committee considers the RBOCs' arguments for exemptions from the Act, ALTS encourages you to keep in mind one central fact:

Over three years after passage of the Telecommunications Act of 1996, not a single telephone company has opened its network to competition in compliance with that Act.

No state has agreed with US West's claim that it has opened its market to competition. In fact, the members of ALTS continue to encounter significant and systematic difficulties in obtaining nondiscriminatory access to the telephone company networks. For instance, the incumbent telephone companies (including US West) often fail to provision loops, deny competitors the right to collocate equipment in telephone company central offices, and fail to provide directory listings. Each of these obligations is essential to the growth of local telephone competition, and each obligation is specifically required by the 14-point competitive checklist in section 271.

Furthermore, the incumbent local exchange companies continue to discriminate against the competitive local exchange companies (CLECs). For instance, the incumbent telephone companies frequently cut off telephone service to customers before the service can be switched to a competitor, and require CLECs to fax customer change orders (which are often lost or misread) while they provide electronic change orders to themselves. As a result, CLECs simply do not yet receive the same quality of access to the local telephone network that the RBOCs provide to themselves.

While we are disappointed that the RBOCs and other incumbent local exchange companies (ILECs) have not yet fully opened their markets, we believe progress has been made. Our members report that some of the RBOCs are clearly making good faith efforts to open their networks in some states. We are working closely with the RBOCs in a number of states to rectify the technical and other forms of discrimination that we currently face.

Largely because of the RBOCs' reluctance or difficulties in opening their local networks to competition, local telephone competition is growing, but not as quickly as we would have hoped. According to several investment analysts, CLECs have grown their share of the local telephone market from .5% in 1996 to only about 3% today. In other words, the local telephone market is far from competitive. CLECs could make far greater progress if the 1996 Telecom Act were enforced and implemented as intended. Therefore, we urge the Congress and FCC to enforce the Act as is, and refrain from making any changes to the act.

I hope the following review of the US West submission is informative and responsive. Please feel free to call me if you have any questions.

Sincerely,

JOHN WINDHAUSEN, JR.
President

ALTS Review of the US West Submission of May 10, 1999 Concerning the FCC's Enforcement of Section 271 and the Entry of the RBOCs into the Long Distance Market.

Below is a detailed response to the US West submission. ALTS believes that US West's submission grossly and unfairly mischaracterizes the FCC's enforcement of the section 271 process. As we demonstrate below, we believe the FCC has, in general, remained faithful to both the statutory language in section 271 and the spirit of the 1996 Telecom act.

Before turning to the specific allegations, we offer some general observations:

First, it is clear that Mr. Sol Trujillo overreached when he stated at the hearing that the FCC had expanded the 14-point checklist into a 1014 point checklist. (Note that the US West letter of May 10, 1999 does not even mention the "1014-point checklist" comment.) To attempt to justify his rhetoric, Mr. Trujillo asked the law firm of Verner, Liipfert to conduct a costly study of the FCC's requirements to try to justify his extreme statement — a statement that had no basis in the record before Mr. Trujillo's testimony. Thus, the lawyers who put together this study for US West had every incentive to come up with as long a list as possible to make Mr. Trujillo's statement appear to be based in fact. Even then, Verner, Liipfert could not come up with 1014 points, but only 690, including the statutory requirements themselves.

More important, however, is the fact that the Verner, Liipfert study improperly exaggerates the FCC's interpretation of the checklist. Every law requires explication. Just because an opinion explicates a law, that does not mean that the law,

itself, has been expanded. The FCC, in a few of the documents (specifically the five 271 orders and the letter to Congress detailing how a BOC can satisfy the competitive checklist) cited by US West, simply has interpreted and explicated, often at the request of a RBOC (although never at US West's request), what is required to satisfy the finite 14-point competitive checklist.

US West would know this if it had participated in the FCC's 271 collaborative process, begun in January, 1998, to foster a dialogue between the FCC, the RBOCs, the CLECs (including long distance companies) to provide guidance on the requirements of the competitive checklist. In March, 1998, as a result of the collaborative process, the FCC prepared a written summary outlining the requirements for each checklist item. In October, 1998, the FCC addressed all 14 checklist items in the BellSouth Louisiana 271 application. US West, however, did not participate in this collaborative process until just recently.

US West Letter

The following discussion provides a direct response to several claims raised in the US West letter:

US West claim: "[W]e firmly believe that we meet the checklist".

ALTS Response: Just because US West asserts that it meets the checklist does not make it so. No state regulatory commission agrees with US West that its market is open. US West's applications have been rejected, suspended, and "voluntarily" withdrawn by US West itself. Most telling, US West has failed even to submit section 271 applications in a majority of its states, and has not filed any section 271 applications at the FCC, which is wholly inconsistent with its claims of readiness made to Congress.

U S West Application Rejected. Last year U S West filed a section 271 application with the Nebraska state commission which ruled against US West in April 1999 (US West has petitioned to re-open this proceeding).

U S West Voluntarily Withdrew Applications. This year after the **Montana** state commission sent a letter to U S West recommending a New York-style independent third-party OSS test, U S West withdrew its 271 state application in Montana. Similarly, unable to achieve success, US West decided to "voluntarily" withdraw its section 271 applications in both **Wyoming** and **New Mexico.**

Section 271 Proceedings Suspended for Further Investigation. After initially filing only a partial 271 application with the Arizona state commission in April 1998, U S West filed a more complete application in February 1999. After the Arizona commission reviewed the application and obtained additional input from various interested parties, the commission suspended its schedule in order to investigate further the fundamental issue of operations support systems (OSS).

U S West Failed to Apply in Most of Region. Notably, in the remaining states in its region, U S West has failed even to submit section 271 applications, apparently conceding that it is not ready in the states of **Washington, Oregon, Idaho, Utah, Colorado, North Dakota, South Dakota, Minnesota,** and **Iowa.**

US West claim: "The problem is that no one knows exactly what it ultimately will take to convince the FCC that we have met the checklist." "[t]he checklist requirements keep changing."

ALTS Response: Last summer, several RBOC representatives asserted to Congress and elsewhere that the FCC had not provided sufficient detail concerning the meaning of the competitive checklist in Section 271. For this reason, the FCC provided a lengthy "roadmap" in its decision denying BellSouth's application to enter the long distance market in South Carolina in December 1997. Indeed, the same dynamic of RBOC requests for guidance resulted in the detailed decision in August 1997 denying Ameritech's section 271 application in Michigan, and other detailed orders denying section 271 applications. Responding to requests for clarification of section 271, the FCC also provided Senators McCain and Brownback a detailed document summarizing all of the requirements of the checklist in May of 1998. In short, the FCC has provided an enormous amount of information to the RBOCs to explain what will be necessary to meet the checklist, in response to RBOC and other inquiries. ALTS suggests that the real problem is that US West does not agree with the FCC's interpretation of the checklist, not that it is not "known". As we demonstrate below, the FCC's interpretation of the checklist is consistent with the statutory provisions.

US West claim: "I also believe that the 271 process should take into consideration the differences between states." "Because the nature of competition differs from state to state, the requirements of Section 271 should be interpreted in the unique context of each state."

ALTS Response: US West is partly correct. ALTS agrees that the nature of competition will differ from state to state. It is appropriate that the FCC should be flexible to accommodate those differences within the context of the statutory language. Of course, the more variety and flexibility the FCC takes into account, the more difficult it can be to set forth one set of clear nationwide standards for long distance entry. In other words, US West cannot have it both ways. Does US West want a fixed, known-in-advance set of obligations? Or does it want the FCC have a different interpretation of the checklist which is adapted to fit each state?

In fact, the 1996 Telecom Act and the FCC's enforcement of the Act reflects the delicate balance between urban and rural states. The Act calls for the states to provide their views to the FCC as to whether the RBOC has met the checklist. But it also requires that the FCC, not the individual state commission, make the final decision so that there is some uniformity and a consistent national policy. The FCC has offered its viewpoint of how to meet the checklist in order to let the RBOCs know in advance what will be expected of them. At the same time, the FCC has often articulated several ways that an RBOC can meet each checklist item, in order to provide the RBOCs with the flexibility to choose different alternatives. In other words, one reason that the FCC has provided so much detail in its explanation of the checklist is to accommodate the very flexibility that US West is seeking.

US West claim: "There is no compelling reason to subject data services to regulation. BOCs such as US West are new entrants into the data business, and the data services they provide should not be subject to regulation solely because they are being provided by carriers that are incumbent voice traffic providers.

ALTS response: US West's broad claim that data services should not be regulated raises several issues. If US West is concerned about the regulation of its *local* data service offerings to consumers, that concern must be addressed to state regulatory commissions who have jurisdiction over intrastate services. US West may instead be expressing concern that the pieces of its network used for data services should not be provided as unbundled network elements under the 1996 Act. The 1996 Act does not differentiate between data and voice services; both are treated as "telecommunications services"—and rightly so. The basic telephone network has been used to provide data services for decades, and the local telephone companies used their network to maintain a monopoly over both voice and data services. For this reason, the 1996 Telecom Act was intended to promote competition for both voice *and* data services. Furthermore, it is simply impossible to differentiate between voice and data services travelling over the same network, especially when both services are transmitted in digital form. Requiring the telephone companies to make network elements available for voice services but not for data services is simply unenforceable.

Finally, US West may be expressing the view that it should be allowed to provide interLATA long distance services for data services immediately but not voice. Again, it is impossible to separate voice from data traffic, so this proposal is unenforceable. But even more important, granting the RBOCs this form of relief could stop local telephone competition in its tracks. Once the RBOCs are allowed into the interLATA data market, they will have little incentive to open their local networks to competition. For this reason, the RBOCs must be allowed into the interLATA data market only AFTER they open the local network to competition. The data market already surpasses voice in terms of traffic and is on the verge of surpassing it in terms of revenues. The potential revenues from this market for the RBOC is a significant "carrot" that Congress should leave in place to continue to entice the RBOC into complying with the Act and opening the local market to competition.

Verner, Liipfert Study

The Verner, Liipfert study exaggerates the FCC's interpretation of the checklist in the following ways:

1. Mr. Trujillo testified that the FCC has expanded the 14-point checklist into 1014-point checklist. The Verner, Liipfert study, however, goes well beyond the 14-point checklist, and in fact, covers all the requirements of section 271 AND section 251. Thus, the list of 690 items is not consistent with Mr. Trujillo's claim that the checklist itself was expanded.

2. Many of the FCC's rules and policy statements simply restate the statutory language, causing the same requirement to appear twice in the list — once as a statutory requirement and once as an FCC rule. Thus, many of the items in the list are simply double counted.
3. The study frequently carves up a single requirement into several pieces so that it appears that the FCC has imposed numerous burdens on the RBOC, when in fact, several listed items are simply part and parcel of the same requirement.
4. While complaining about the fact that the FCC has provided detail explaining section 271 (at the request of the RBOCs, as discussed above), US West fails to indicate which of the 690 "requirements" it believes should be eliminated as unnecessary or excessive.
5. Perhaps most important, many of the items are not absolute requirements with which each RBOC must comply. In fact, many of the FCC's statements provide the RBOC with alternative ways of satisfying the same checklist item. In such cases, the FCC has attempted to respond to the RBOCs' desire for flexible enforcement. But now, having convinced the FCC to articulate several possible means of complying with one of the 14 checklist items, the RBOCs hold this flexibility against the FCC by claiming that each and every alternative is an absolute requirement. Congress should not reward this "bait-and-switch" tactic.

Conclusion

The Telecommunications Act of 1996 is working, and will work even better once the incumbent telephone companies fully open their market to competition. Competitive local exchange carriers are leading the deployment of advanced broadband services to all Americans, largely because of the Act's market-opening requirements. CLECs could deploy even more services if the incumbent telephone companies would comply with the Act, the enactment of which they supported. Indeed, enforcement of the 1996 Act is the best way to encourage deployment of high-speed communications to all Americans

ALTS urges you not to reward the RBOCs for their failure to implement the Act by granting them unwarranted exemptions from the Act's pro-competition requirements. Instead, we encourage you to support stronger enforcement of the Telecommunications Act of 1996 so that American consumers can fully enjoy the full fruits of competition, including more innovation, better pricing and superior service.

Mr. HOLLAND. The key is to stay the course. Let us get that checklist implemented. And Bell Atlantic, as the leader in New York, is setting a fine example for the rest of the country. I think a lot of these attempts to bypass the Telecom Act become moot once Bell Atlantic gets in. Because all you have got to do is do what they did in New York and you are in. And that is not moving the goalposts.

Senator BURNS. Well, we want to thank all of you for coming today and providing this dialog and this debate at the table. If there are other Senators that want to direct questions your way, we will do that. And we will keep the record open for maybe a week or so. If you will respond to those individual Senators and to the Committee, I would appreciate that very much. And I appreciate your cooperation here today. And I thank the panel members and Senator Hollings on this issue.

This hearing is closed.

Senator HOLLINGS. Thank you, Mr. Chairman.

[Whereupon, at 12:25 p.m., the hearing was adjourned.]

APPENDIX

November 15, 1999

The Honorable John McCain
United States Senate
241 Russell Senate Office Building
Washington, DC 20510-0303

Dear Chairman McCain:

MCI WorldCom was pleased to have the opportunity to testify before your committee on November 8 on the subject of mergers in the telecommunications industry. I thought we should follow up on your invitation to help clarify the situation with respect to long distance pricing.

FCC Chairman Kennard testified that long distance rates had fallen 35% since 1992. Gene Kimmelman of Consumers Union testified that if a consumer now makes less than 30 minutes of long distance calls, he or she would pay three times as much as two years ago. Since these two statements appear to conflict, I wanted to clarify what has been occurring in the marketplace for long distance services.

First, there can be no question that the long distance industry is vibrantly competitive, and consequently, that consumers have many choices of providers. As a result of the more than 600 carriers providing long distance service in the United States, long distance rates are the lowest they have ever been, consumer choice is abundant, and innovation is rampant.

Today, for example, all MCI WorldCom customers, without the need for electing the plan, receive a rate of 5¢ per minute all day Sunday ("MCI 5¢ Sundays"), with no flat fee. Additionally, MCI WorldCom customers can now sign up for "MCI 5¢ Everyday Savings," a rate plan that charges 5¢ per minute weekday evenings, nights, and weekends, and 25¢ per minute week days from 7 a.m. to 6:59 p.m. The monthly flat fee for "MCI 5¢ Everyday Savings" is $1.95, with a $5 minimum per month usage requirement. However, the $1.95 flat fee is applied to the $5 minimum, reducing the minimum usage, in effect, to just $3.05 per month. Also, MCI WorldCom customers can now select "MCI 5¢ Everyday," a rate plan that charges 5¢ per minute weekday evenings, nights, and weekends, and only 10¢ per minute weekdays from 7 a.m. to 6:59 p.m. The monthly flat fee for "MCI 5¢ Everyday" is $4.95, with no minimum usage fee. For both "MCI 5¢ Everyday Savings" and "MCI 5¢ Everyday," customers are required to sign up for the plans because flat fees do apply.

In addition to the above-mentioned presubscribed or dial-1 calling plans, MCI WorldCom has led the industry in developing and promoting dial-around (or 10-10) services, with products such as 10-10321 and 10-10220. Dial around products, such as 10-10321 and 10-10220, are ideal for low-volume users. These dial around products allow consumers to buy one call at a time. They are easy to try, easy to use, can be used as often, or as little, as desired, and include no additional fees or charges. With dial around products the consumer is completely in control of his or her long distance usage. 10-10321 offers customers a low per minute rate of 8¢ per minute for calls over ten minutes, and 16¢ per minute for calls under ten minutes. 10-10220 offers customers up to 20 minutes for 99¢, an effective rate of less than 5¢ per minute, and 9¢ for every additional minute.

Contrary to Mr. Kimmelman's sweeping assertion that consumers making less than 30 minutes of long distance calls today pay three times as much as two years ago, the facts demonstrate that while many carriers now offer long distance rates significantly lower than two years ago (for example, the attached table shows carriers offering rates as low as 3.5¢ per minute, with no minimums), and while many new products and dialing plans (such as "dial around") exist today that were not available several years ago, whether a customer's long distance costs have increased, decreased, or remained the same over the last few years depends largely on that customer's unique calling patterns, and his or her carrier, plan and product

selections. Of course, with cheaper rates, many people are calling more and staying on the phone longer.

As background, beginning in January of 1998, observers of long distance pricing witnessed unique changes in the long distance industry, reflecting not only actual and anticipated access reductions and strong competitive forces, but a change in long distance access charge structure paid by the carriers (i.e., a shift from a per minute cost structure to a flat-rated *and* per minute cost structure). Long distance carriers began offering calling plans with flat fees and per minute rates to reflect their two part cost structure. While this move to two part pricing represents rational pricing and more efficient recovery of local exchange costs collected from long distance carriers, it also benefits consumers through significantly lower long distance rates. Wall Street analysts recently have noted that long distance end users are benefitting from competition and lower access charges:

> As costs come down to provision long distance service, customers are benefitting from lower retail rates.'

David Barden, JP Morgan, 8/10/99

> "In the long distance business, revenue per minute has declined in real terms by 80% in the last 15 years... as access charges declined, pricing has followed."

Jack Grubman, Salomon Smith Barney, 8/20/99

> "...it is striking how quickly long-distance rates have fallen. It was just in 1996 that AT&T introduced one of the first flat-rate pricing plans for 15 cents a minute, 24 hours a day."

The Wall Street Journal, 8/9/99

If a customer was presubscribed to MCI two years ago, was not on a calling plan, and made all long distance calls on weekdays, he or she would have been billed $5.20 for 20 minutes of long distance usage (20 minutes time 26¢ per minute). If that customer made no changes, today he or she would be billed $7.14 ($5.20 for per minute long distance charges, $1.46 for the National Access Fee (NAF) designed to recover the presubscribed interexchange carrier charge (PICC) local carriers charge long distance carriers for access, and 48¢ for the Federal Universal Service Fee (FUSF). But today, that customer has available many new products, plans, and carriers from which to choose.

If that same customer made 20 minutes of long distance phone calls on Sunday and was presubscribed to MCI WorldCom, today he or she would be billed just $4.78 (5¢ per minute, plus $2 to reach $3 minimum usage, plus $1.46 NAF, plus 32¢ FUSF), saving that customer 42¢ or 8% compared to charges incurred two years previously on basic rates. On the other hand, if that customer prefers not to be presubscribed to a long distance carrier and instead uses 10-10321 to make long distance calls, the customer would be billed $1.60 in long distance charges and $1.04 PICC from the local exchange carrier. In that case, the customer would now be paying $2.64 for 20 minutes of long distance calls, saving $2.56 or over 49% compared to the 20 minute presubscribed call two years previously.

The fundamental point is that long distance savings, and long distance bills, vary significantly depending on a customer's calling patterns and whether that customer selects the calling plan which best fits his or her needs. MCI WorldCom, and many other long distance carriers offer a range of products to customers based on their diverse needs. There can be no question that the long distance industry is vibrantly competitive, and that consumers have many choices of providers. Long distance providers understand that, in order to maintain and grow their customer base in this competitive marketplace, they must provide consumers with information through advertising, marketing and other educational sources, necessary to make informed decisions. Plans and products now exist to serve all types of long distance customers. There can be no question that long distance competition and access reform is benefitting all Americans, that customer choice for long distance services has never been greater, and that long distance rates are lower than ever.

Sincerely,

Catherine R. Sloan

Long Distance Rates Have Never Been Lower

Carrier	Calling Plan	Per Minute Rate: All Day	Per-Minute Rate: Peak	Per Minute Rate: Off-Peak	Monthly Fee/ Minimum
AT&T	One Rate 7¢	7¢			$5.95 / None
AT&T	Nickel-a-Minute	5¢			$9.95 / None
GTC	5¢ Long Distance	5¢			$1.95 / None
GTC	GTC FreeNet	7.9¢			$4.95 / None
IDT	3.5¢ Long Distance	3.5¢			$3.95 / None
MCI-WorldCom	MCI 5¢ Anytime	5¢			$8.95 / None
Qwest	Communicator	5¢			$9.95 / None
Qwest	Countdown	9¢ to 5¢			$4.95 / None
TALK.COM (AOL)		5¢			$5.95 / None
AT&T	Off-Peak		25¢	5¢	$1.95 / None
MCI-WorldCom	5¢ Everyday Savings		25¢	5¢	$1.95 / $5
MCI-WorldCom	5¢ Everday		10¢	5¢	$4.95 / None
Sprint	Nickel Nights		10¢	5¢	$5.95 / None
Excel	Three-Penny Plan		10¢	3¢	$5.95 / None