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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of | ) | |
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| Unbundling of Local Exchange Carrier Common Line Facilities | ) | RM-8614 |
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# COMMENTS OF AT&T CORP.

Mark C. Rosenblum
John J. Langhauser
Aryeh S. Friedman
Clifford K. Williams

Attorneys for AT&T Corp.

Room 3244J1
295 N. Maple Avenue
Basking Ridge, N.J. 07920
(908) 221-3539

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## SUMMARY

With only one principal exception, the United States' telecommunications market is intensely competitive. The current vigorous competition for interexchange services, network equipment and CPE has resulted in enormous consumer benefits through dramatically increased innovation, greater efficiency and sharply reduced prices. The only U.S. telecommunications market that has thus far escaped the beneficial forces of competition is the market on which all other telecommunications businesses depend -- the local exchange. It is now time for the Commission to lead in taking the next logical step in completing the transition to competition and eliminating the last bastion of monopoly in the U.S. telecommunications industry. If competition can develop and flourish in the local exchange and exchange access businesses, the consequences for consumers will be profound and positive.

The availability of an unbundled local loop is an essential step in creating conditions that will best test the potential for competition in the provision of interstate switched access and local exchange services. Because this competition is indisputably in the public interest, the Commission can and should promptly grant MFS' petition for a

rulemaking to adopt rules requiring unbundling of the local loop.

Indeed, the rulemaking requested by MFS should be expanded to consider how all the elements of the loop can be unbundled and made available to alternate providers. It should also consider interconnection, technical standards and access to service ordering, provisioning, maintenance and operating systems issues. Furthermore, the rulemaking initiated by the Commission should also invite comment, and propose rules, on matters in addition to unbundling which are needed to test the possibility of local competition.

The Commission has the authority to exercise plenary federal jurisdiction in this area. The testing and promotion of competition throughout the local exchange has implications for the availability of "a rapid, Nation-wide, and world-wide" telecommunications infrastructure (see Section 1 of the Communications Act, 47 U.S.C § 151). For the purposes of promoting such competition, there is no practicable means of severing the local exchange into "interstate" and "intrastate" components without frustrating or thwarting the federal interest in competition.

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COMMENTS OF AT&T CORP.

Pursuant to Section 1.405 of the Commission's Rules, 47 C.F.R. § 1.405, AT&T Corp. ("AT&T") submits these comments on the petition of MFS Communication Company, Inc. ("MFS"). In its petition, MFS asks (p. i) that the Commission initiate a proceeding "to adopt rules promptly requiring the Tier 1 LECs to provide the common line element of interstate switched access service (that is, the "local loop") on an unbundled basis, at cost-based rates, to state-certified competing providers of such service." Because unbundling the local loop is an essential step in creating conditions that will best test the potential for competition in the provision of interstate switched access and local exchange services, and because such competition is in the public interest, the Commission should grant the MFS petition.

## I. POLICIES PROMOTING COMPETITION HAVE SUBSTANTIALLY BENEFITED CONSUMERS AND THE PUBLIC, AND SHOULD NOW BE EXTENDED TO THE LOCAL EXCHANGE

AT&T strongly supports initiatives to unbundle the basic components and functionalities of the local exchange network used in interstate telecommunications, such as the common line (i.e., the "local loop"). Such unbundling is a critical element of an appropriate test of whether local exchange competition is feasible and, if so, of a policy to promote that competition.[1] If such a test succeeds, and competition develops and becomes vigorous, the benefits to consumers of interstate and local telecommunications services alike will prove enormous.

The changes in the market for interexchange services brought about by the Modification of Final Judgment ("MFJ")[2] and associated Commission policies to promote interexchange competition are a testament to these benefits. The MFJ, and the divestiture of local exchange facilities that it required, promoted interexchange competition by separating operation of the monopoly local exchange networks

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[1] As AT&T has demonstrated in other regulatory proceedings, there are at least nine interrelated conditions that must be established to conduct a full test of local competition. These conditions are described in greater detail in Section II. Full unbundling of the local loop, and the remaining functionalities and components of the local exchange network, is but one of these nine conditions.

[2] United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983).

from the provision of interexchange services dependent upon local exchange facilities. Underlying the MFJ was the recognition that, wherever it is feasible, competition best serves consumers' interests in lower prices, greater efficiency, innovation and choice.

Since divestiture, there has been an extraordinary increase in the amount and intensity of competition in the interexchange market. Assured that owners of essential local exchange facilities could not thwart competition in the interexchange market, more than 400 carriers today offer long distance service, nearly twice as many as were offering such service at the end of 1986. The benefits to consumers have been extraordinary. The price paid by consumers for interexchange services has declined approximately 60 percent since divestiture, allowing customers to save approximately $850,000,000 in the last three years alone. Carriers have developed and introduced a plethora of new interexchange services that benefit residential customers, small business customers, and large customers. The Commission has noted the benefits that the robust and "thriving" competition in the interexchange market has generated for customers of interstate services.[3]

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[3] See Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd. 5880, 5892 (1991).

The MFJ and related pro-competitive policies implemented by the Commission have had equally remarkable and beneficial effects in the network equipment and CPE markets, which now are likewise intensely rivalrous, and marked by steeply declining prices, rapid innovation and expanded choice.

The only U.S. telecommunications market that has thus far escaped the beneficial forces of competition, ironically, is the market on which all other telecommunications businesses depend: the local exchange. It is now time for the Commission to lead in taking the next logical step in completing the transition to competition. If competition can develop and flourish in the local exchange and exchange access businesses, the consequences for consumers will be profound and positive.

With respect to interstate telecommunications, local and access competition will mean greater efficiency, innovation and choice for carriers in originating and terminating customers' interstate calling. It will stimulate carriers to design and offer innovative service and pricing options to meet consumer needs. It will also generate the kinds of efficiencies in the local network that stimulated the extraordinary increase in usage of interexchange services that accompanied competition in that

market.[4] And it will increase the incentives for innovative technologies to be brought to market, as new providers (and new means of providing) local and access services respond to the forces of competition. In short, competition in the local exchange offers the greatest opportunity to offer all Americans the most efficient and least expensive access to the new services and technologies that make up the "information superhighway."

## II. THE UNBUNDLING OF LOCAL NETWORK FUNCTIONS AND FACILITIES SOUGHT BY MFS IS A VITAL FIRST STEP TOWARD COMPETITION

Today, virtually all LECs offer local loops only as part of "bundled" local exchange service sold to their subscribers.[5] As a result, alternative providers seeking to

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[4] The extent to which the MFJ and other pro-competitive policies have promoted the use of interstate services has been truly astounding. In the third quarter of 1984, AT&T's interstate switched access minutes totaled 31.6 billion; by the third quarter of 1994, they had reached 58.6 billion -- an increase of more than 85 per cent in only a decade. The results have been even more pronounced for the long distance industry as a whole. During the same period, the industry total for interstate switched access jumped from 39.6 billion minutes to 101.3 billion minutes -- an increase of 155 percent. See Long Distance Market Shares, Third Quarter 1994, Federal Communications Commission, Common Carrier Bureau, Industry Analysis Division, January 1995, Table 2.

[5] The New York Public Service Commission has approved trials under which Rochester Telephone Company and NYNEX offer unbundled loops to alternative carriers, and Ameritech has announced intentions to begin similar trials in two cities.

compete in the provision of interstate switched access or local service face the insuperable obstacle of first replicating the existing local distribution network controlled by the LEC -- a massive up-front investment that has, to date, deterred any meaningful local competition. Requiring LECs to unbundle the local loop, together with other pro-competitive changes, will enhance greatly the ability of alternative providers to compete with LECs in the provision of interstate switched access and local exchange services. Such unbundling will, among other things, eliminate the "up-front" need for alternative providers to duplicate the local loop in order to compete.

In AT&T's view, the full benefits of competition ultimately will flow from maximum facilities-based rivalry in the local exchange: numerous firms offering various technologies to connect customers to information and communications networks. As was the case in the interexchange market, however, it is not realistic to expect full facilities-based competition simply to appear at the inception of local competition. In the long distance business, the Commission recognized that, initially, prospective competitors likely would make use of AT&T's facilities -- then the only national network in place -- to "piece out" their own fledgling networks. The Commission thus put into place policies and rules designed to assure

that these new competitors would enjoy reasonable access to AT&T's "wholesale" services to facilitate investment in and deployment of their own networks.

This is precisely the model the Commission should use in stimulating local competition as well. Allowing would-be competitors technically and economically meaningful access to LEC facilities on a "wholesale" basis -- that is, by "unbundling" and permitting resale of all local network facilities and functions -- will encourage these firms increasingly to invest in their own facilities, and deploy new technologies. Some prospective entrants, for example, may employ their own switching and transport facilities, but require (at least initially) interconnection to LEC local loops. Others may be able to offer alternative facilities to and from customers' premises, but require access to LEC switching, concentration and transport functions.

In either case, alternative providers can be expected to make additional investment in their own facilities and equipment to provide their own interstate switched access and local exchange services, just as interexchange carriers invested in their own new networks because of the Commission's pro-competitive policies. As these new local providers deploy their own technologies, moreover, their ability to compete will become even stronger, and market forces inevitably will both drive down

prices for interstate switched access and local exchange services, and force all providers, including LECs, to be more innovative and responsive to needs of customers.

Initiating the rulemaking proceeding requested by MFS would permit the Commission to consider the unbundling and other changes that will maximize opportunities for competition in the provision of interstate switched access and local exchange services. The rulemaking proceeding should thus consider the extent of unbundling that will be required, and how interconnection to the LEC network can be achieved. The rulemaking should also consider whether the Commission can maximize opportunities for competition by adopting uniform technical standards for interconnection, thereby permitting alternative providers to design, implement, and offer their services on a reasonably uniform basis nationwide and preserving the technological integrity and interoperability of the Nation's telecommunications systems.

MFS correctly notes (pp. 24-26) that LECs could frustrate the unbundling of the local loop through improper pricing practices. The rulemaking thus should also consider how LECs should be allowed to price the elements of the local loop (for example, on the basis of total service long-run incremental cost, and at a "wholesale" price that

legitimately reflects the removal of LEC "retail" expense and investment).

In several respects, however, the unbundling sought by MFS does not go far enough to promote a test of competition, and the Commission should consider additional unbundling rules. For example, MFS "is not requesting that the loop itself be unbundled into subelements or smaller components" (p. 5). Because the potential benefits of unbundling are so great, however, the Commission should consider whether it should expand the unbundling requirement to include the full disaggregation of the loop into its components and functions. Disaggregation of the loop (into, among other things, distribution, concentration, and feeder functions) will further enhance the ability of alternative providers to innovate and compete in the provision of access services. With full unbundling someday, a competitive access provider could substitute its own fiber for a LEC's feeder, and a future wireless access provider could, if the technology permitted, substitute its own wireless services for a LEC's distribution plant. Such broader opportunities to compete would place further downward pressure on prices, and could well serve to induce further investment in new technologies, all to the benefit of the interstate telecommunications network.

An expanded rulemaking should therefore seek to define how all of the elements of the loop can be unbundled and made available to alternative providers on terms and conditions equal to those which the LEC makes available to itself. Such a rulemaking should also consider interconnection, technical standards, and access to service ordering, provisioning, maintenance and operating systems issues.

The rulemaking initiated by the Commission should also invite comment, and propose rules, on matters other than unbundling. Although unbundling is an essential aspect of any policy to test -- and ultimately to encourage -- local competition, it is by no means the only aspect. Indeed, as AT&T has previously demonstrated,[6] there are at least nine conditions that must be satisfied for there to be a complete opportunity to test the feasibility of local exchange competition:

1. Franchise requirements, certification requirements, and other state policies that preclude or burden entry by alternative exchange

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[6] See In the Matter of a Petition for a Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region, F.C.C. DA-93-481. Reply Comments of AT&T, p. 11; In the Matter of the Petition of AT&T Communications of Illinois, Inc. for an Investigation and Order Establishing Conditions Necessary to Permit Effective Exchange Competition to the Extent Feasible in Areas Served by Illinois Bell Telephone Company, Illinois Commerce Commission, Dkt No. 94-0146, pp. 7-9.

carriers into the local exchange market should be eliminated.

2. Alternative exchange carriers should be assured access to necessary rights-of-way, conduits, and other pathways on the same terms and conditions the LEC enjoys;

3. The assignment of phone numbers and codes should be lodged with a neutral party, a means should be devised to make telephone numbers portable to the full extent economically and technically feasible, and every end user should be able to place calls using the carriers of his or her choosing without dialing access codes or other protocols not required for use of the LEC's services;

4. Basic network components and functions and all monopoly components of the LEC's local exchange service should be fully unbundled, priced, tariffed, and offered for sale in a nondiscriminatory manner at nondiscriminatory, cost-based prices;

5. There should be comprehensive interconnection between local exchange competitors for all unbundled network components;

6. Prices for all services should be based on principles of efficiency and reflect underlying costs;

7. The LEC, and each of its successors or affiliates, should be required to satisfy an imputation test;

8. All services, features, and functionalities should be subject to resale, with "wholesale" or "bulk" charges reflecting only underlying "wholesale" costs, and excluding "retail" costs that are not incurred as part of "wholesale" or "bulk" offerings; and

9. The unbundled basic network components should be furnished pursuant to open technical standards, with mechanisms to assure that all firms have equal access to new basic network functions and components as they are developed.

These conditions will afford alternative service providers the greatest opportunity to explore whether it is feasible to compete in the exchange access and local exchange markets. In order to foster such competition, the Commission should establish, consistent with the Communications Act, policies and rules designed to create as many of these conditions as possible. Further, the Commission should, as part of this Rulemaking, invite comment on additional conditions that will facilitate and promote competition in the provision of exchange access and local exchange services.

## III. THERE IS A PRESSING NEED, AND AMPLE STATUTORY BASIS, FOR COMMISSION LEADERSHIP IN TESTING LOCAL EXCHANGE COMPETITION

As explained in the preceding sections of these comments, the development of competition in the local exchange, if it is possible, promises significant benefits to consumers of all telecommunications services, interstate and intrastate alike. The Commission plainly has an important role and duty in leading this drive for competition in the last bastion of monopoly in the U.S. telecommunications industry.

Because of its bottleneck character, the local exchange vitally affects interstate telecommunications in the most obvious way: interstate calling can only occur if there is access to the local facilities needed to originate

and terminate that traffic. On this basis, the Commission can and does regulate specifically the rates, practices and classifications of LEC local exchange facilities, to the extent those facilities are used for interstate access. The Commission likewise acts properly to develop and apply new policies favoring competition to LECs in respect of their access business, because the public interest in competition is so strong and the existence of interstate competition is so dependent on the local exchange.[7]

The Commission need not and should not confine its rulemaking proceeding here to access issues, however. The testing and promotion of competition throughout the local exchange has implications for the availability of "a rapid, efficient, Nation-wide, and world-wide" telecommunications infrastructure (see Section 1 of the Communications Act, 47 U.S.C. § 151). Moreover, for purposes of promoting such competition, there is no practicable means of severing the local exchange into "interstate" and "intrastate" components

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[7] See, e.g., Expanded Interconnection with Local Telephone Company Facilities, Transport Phase II, Third Report and Order, 9 F.C.C. Rcd 2718 (1994); Expanded Interconnection with Local Telephone Company Facilities, Memorandum and Order, 9 F.C.C. Rcd. 5154 (1994), appeal docketed sub nom. Southwestern Bell Telephone Co. v. F.C.C., No. 94-1547 (D.C. Cir., filed Aug. 10, 1994); Expanded Interconnection with Local Telephone Company Facilities, Second Report and Order and Third Notice of Proposed Rulemaking, 8 F.C.C. Rcd. 7374 (1993). pet. for review pending sub nom. Bell Atlantic v. F.C.C., No. 93-1743 (D.C. Cir., filed Nov. 12, 1993).

without frustrating or thwarting the federal interest in competition.

The objective of encouraging and fostering competitive entry into the switched access business, for example, would dramatically and unnecessarily be undermined if a state could forbid the use of "unbundled" local exchange elements for intrastate access or local competition. To prevent this, the Commission has the authority to exercise plenary federal jurisdiction, even to the extent of preempting conflicting state regulations.[8] And although the states enjoy broad latitude to regulate the rates for intrastate services (see Section 2(b) of the

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[8] See e.g., Computer and Communications Industry Association v. F.C.C., 693 F.2d 198 (D.C. Cir. 1982) ("CCIA"); North Carolina Utils. Comm'n v. FCC, 537 F.2d 787 (4th Cir.) cert denied, 429 U.S. 1027 (1976) and North Carolina Utils. Comm'n v. FCC, 552 F.2d 1036 (4th Cir) cert denied, 434 U.S. 874 (1977) ("NCUC cases") In CCIA, the court confirmed the Commission's authority under the Communications Act to de-tariff customer premises equipment, and to preempt state regulations requiring tariffing of CPE, so that the Commission could ensure that charges for transmission services were severed from charges for CPE used in interstate communications. The Court held that the Commission's federal goal -- promoting the efficient and full utilization of the interstate network by fostering competition in the CPE market -- was paramount, and justified preemption of inconsistent state regulations. Similarly, in the NCUC cases, the court upheld Commission rules preempting state regulations that barred the use of customer provided telephone equipment for intrastate service, where such state regulations could frustrate the Commission's goal of promoting competition in the provision of CPE used in interstate communications.

Communications Act, 47 U.S.C. § 152(b)), the Commission equally has authority to assure that state pricing regulation does not prevent attainment of important federal objectives.[9]

In all events, the objective of fostering local competition is unlikely to create significant conflicts between federal and state regulators, because both jurisdictions are likely to embrace its benefits. For this reason, there is perhaps an even greater basis for the Commission to initiate a broad rulemaking proceeding here: to provide national leadership, expertise and consistency in moving toward competition. Even to the extent that there will be individual state regulation in this field, it clearly would serve vital federal interests for that state regulation to be consistent. Numbering plan administration, number portability, interconnection standards, pricing and

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[9] Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986) is distinguishable. There the Supreme Court invalidated an FCC attempt to preempt the states from imposing their own rules governing the calculation of depreciation expenses for purposes of intrastate ratemaking. The Court held that the FCC could not preempt the exercise by the states of their exclusive intrastate jurisdiction over depreciation because inconsistent state and federal depreciation policies could co-exist under the jurisdictional "separations process" set forth in the Act. Here, on the other hand, inconsistent state regulation of the local loop could not co-exist with, and would effectively negate, federal competition goals.

subsidy reform all are examples in which Commission leadership and standards-setting can assist individual states in adopting rules and policies that facilitate (rather than frustrate) the federal scheme.

## CONCLUSION

For the reasons stated here and in the MFS petition, the Commission should move promptly to initiate a broad rulemaking to address all the changes needed to test and encourage the development of local exchange competition.

Respectfully submitted,

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

By: Mark C. Rosenblum/JJL

Mark C. Rosenblum
John J. Langhauser
Aryeh S. Friedman
Clifford K. Williams

Its Attorneys

Room 3244J1
295 N. Maple Avenue
Basking Ridge, N.J. 07920
908-221-3539

Dated: April 10, 1995

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 10th day of April, 1995, a copy of the foregoing Comments of AT&T Corp. was mailed by U.S. first class mail, postage prepaid, to the parties listed below:

Andrew D. Lipman
Russell M. Blau
Mary C. Albert
Eric J. Branfman
Swidler & Berlin, Chartered
3000 K Street, N.W.
Washington, D.C. 20007
Attorneys for MFS Communications Co., Inc.

Ann Marie Abrahamson