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PACIFIC TELESIS
Group-Washington

May 16, 1996

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FEDERAL [illegible] COMMISSION
OFFICE OF SECRETARY

DOCKET FILE COPY ORIGINAL

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Dear Mr. Caton:

Re: *CC Docket No. 96-98, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*

On behalf of Pacific Telesis Group, please find enclosed an original and 12 copies of its *"Comments"* in the above proceeding. Please stamp and return the provided copy to confirm your receipt.

Also, as required, a diskette of the above referenced comments is being sent to Janice Myles of the Common Carrier Bureau. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

Alan Ciamporcero

Enclosure

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

In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	CC Docket No. 96-98

COMMENTS OF PACIFIC TELESIS GROUP

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Date: May 16, 1996

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Summary

This proceeding should mark a historic turning point. The 1934 Act was predicated upon comprehensive regulation rather than competition. The 1996 Act, as Chairman Hundt recently observed, "turns the 1934 Communications Act upside down."[1] Its purpose is "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition." To accomplish this purpose, the Commission should establish "safe harbors" that are sufficient, but not mandatory to comply with Section 251.

California has had an "open all markets" policy since 1993; Nevada, since 1995. The California Public Utilities Commission (the "CPUC") has instituted an aggressive program for full local exchange competition with an aim to open all markets to competition by January 1, 1997. The Public Service Commission of Nevada (the "PSCN") also has adopted a new plan of regulation for telecommunications providers which provides for open market elements and local competition. With the CPUC's encouragement and review, we negotiated several interconnection agreements with competitive local exchange carriers ("CLCs") in the months leading up to the enactment of the 1996 amendments to the 1934 Act. We continue to negotiate such agreements in California and Nevada today.

[1] "The Telecommunications Act of 1996: Evolution Not Revolution," May 10, 1996, Northwestern University.

The CPUC's approach to encouraging local exchange competition is similar to what Congress intended the FCC to do. The CPUC and PSCN impose a duty to negotiate; so does Section 251 of the 1996 Act. The CPUC has adopted "preferred outcomes," general guidelines for parties to consider when they negotiate particular terms. "While we will entertain contracts that deviate from the preferred outcomes," said the CPUC, "parties will bear the burden of proving the deviations will lead to more economic and/or efficient outcomes and are in the public interest." Sections 251 and 252 provide guidance in the form of broad statutory duties, but leave "the particular terms and conditions of agreements to fulfill the duties" to freely negotiating parties and State oversight.

The CPUC's "preferred outcomes" and its other actions have provided, in effect, "safe harbors," outcomes that are presumed to be reasonable but do not prevent parties from reaching other arrangements. California explicitly rejected a mandatory approach. The CPUC rightly decided that when freely negotiating parties are told what is *presumed* reasonable, but not prevented from contracting for any other arrangement, a "more level playing field is created;" there is a "greater opportunity to negotiate flexible interconnection arrangements to meet the needs of both parties;" there is "an overall increase in efficient utilization" of networks; and the LEC can "more readily deploy new technologies as they become available." Nevada, too, leaves the negotiation of all particular terms in the hands of the parties, subject to PSCN approval.

We are not opposed to a "national" approach *per se* -- only to a mandatory approach, built around "minimum requirements," that substitutes the judgment of national regulators for the judgments of diversely situated, well-informed private parties and States. The FCC appears to believe that a mandatory approach is necessary to counteract the "vastly superior bargaining power" of incumbent LECs. But California's experience disproves this. And since the negotiation of our first interconnection agreements, the pressure on us has only increased. The 1996 Act holds out the carrot of interLATA entry and manufacturing to RBOCs who take specific actions that stimulate new entry -- and withholds it from those who don't.

Before they may provide in-region interLATA or manufacturing, RBOCs must show that they have met numerous requirements, such as interconnection, unbundled access to network elements, number portability, and dialing parity, that are also requirements of Section 251. The Commission should specify that compliance with these requirements of Section 251 will also satisfy the corresponding Section 271 checklist items. If the Commission remains silent on Section 271 compliance, or adopts overly burdensome Section 251 rules, some CLCs will have every incentive to game the process and delay the RBOCs' entry into interLATA almost indefinitely. This result would be contrary to Congress's intention of "opening *all* telecommunications markets to competition" (emphasis added).

The 1996 Act is remarkable for its Federalist, free market approach. Yet the Commission seems poised to adopt Section 251 rules that dictate the "explicit" terms and conditions of interconnection agreements -- the same "particular" terms that Congress said freely negotiating parties should determine for themselves. We are also concerned by the attitude the Commission takes toward the States. We recognize that some States may have done less to encourage competition than others. But preempting any State or local barriers to entry is what ***Section 253*** of the 1996 Act is about. Sections 251 and 252 unambiguously make States the referees of competition in the local exchange -- a role they have played for decades already. Section 251 regulations should not, and cannot be used implicitly to preempt State regulation of the terms and conditions of State services.

The FCC, for example, asks how it might define "good faith" and whether it should establish a uniform national definition of technical feasibility. We do not think the Commission should adopt such definitions, but we do believe it should establish a uniform *process*, which we describe in our Comments, that seeks to encourage good faith and a full evaluation of technical feasibility. Such a process, which if followed should be deemed reasonable and sufficient to satisfy Section 251, would ensure that new entrants enjoy uniform treatment across the nation, without compromising what private parties and States can bring to the process or discouraging the deployment of new technology. No mandate of what is "technically feasible" would do justice in every State and locality. This proceeding is being conducted under extreme time pressures, with practically none of the fact-finding tools or due process safeguards that State procedures provide. There is a real danger that inflexible national "minimum requirements" would prove widely infeasible, would shortcut existing venues to consider technical specifications or requirements, and could remove any incentive for incumbent LECs to deploy advanced technology.

We are concerned by any approach that would splinter the network or blur the statutory distinctions between interconnection, unbundled network elements, wholesale services, and transport and termination. Some requirements proposed by new entrants, such as access to sub-loops, switching "capacity" or call processing features, software "building blocks," or intelligent network (IN) triggers, are either technically unrealistic, or are transparent attempts to evade the legal requirements of existing rules and the 1996 Act, or are intended to block the opening of the interLATA market to new competitors.

The FCC is in no position to micromanage the deployment of technology. We do not think it intends to do so. But such micromanagement would be sure to result from a tops-down deconstruction of the network into its component subparts. The FCC cannot decide how to piece the network apart without deciding, in effect, how it should be pieced together.

We would be equally concerned by national pricing ceilings that fail to recognize incumbent LECs' need to recover their costs. State commissions have many years of experience balancing financial requirements and investor expectations against universal service goals and the interests of consumers in having low rates. No one should need to be reminded that this is a devilishly complex task. It is made no less simple by the fact that the local telecommunications industry is characterized by huge sunk costs, highly cross-elastic products, and significant required shared and common costs that are not attributable to any one service or even family of services. Every incumbent LEC has a unique cost structure and product continuum. If the FCC's interconnection rules refuse to acknowledge this balance, they may violate longstanding precedent against confiscatory takings, and ignore provisions of the Act, such as Sections 2(b) and 251(d)(3), that expressly reserve to State regulators the regulation of State prices. The Commission may establish zones, based on current rates, within which interconnection prices would be presumed reasonable. This would guide negotiating parties and discourage arbitrage. But the Commission should not interfere with negotiations or State review by mandating prices.

The precepts of the 1996 Act are not new. "It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.... If we would guide by the light of reason, we must let our minds be bold."[2] This was the animating spirit of the 1996 Act. It is not the animating spirit of the Commission's approach, which the Commission says candidly "should minimize variations among states" and "narrow the range of permissible results." We urge the Commission to let privately negotiating parties and States create a *wide* range of permissible outcomes, as Congress intended them to do.

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2 *New State Ice Co. v. Liebman*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

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

In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	CC Docket No. 96-98

COMMENTS OF PACIFIC TELESIS GROUP

Pacific Telesis Group ("Pacific" or "PTG") hereby respectfully comments on the Commission's *Notice of Proposed Rulemaking*[1] in the above-captioned proceeding.

I. IN IMPLEMENTING SECTION 251, THE COMMISSION SHOULD IDENTIFY SAFE HARBORS RATHER THAN ADOPTING MANDATORY STANDARDS OF CONDUCT

A. *Some of the Proposed Rules Would Unnecessarily Interfere With, and Possibly Undermine, Innovations By States That Advance the Act's Pro-Competitive Objectives.*

The Commission faces an unprecedented challenge in meeting its responsibilities under the Telecommunications Act of 1996.[2] The Commission has made that

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1 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Notice of Proposed Rulemaking, FCC 96-182 (released April 19, 1996) (*"Notice"*).

2 All references, unless otherwise specified, are to the Communications Act of 1934 as modified by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("Act").

challenge all the more difficult by proposing to legislate details that Congress intended freely negotiating parties and the States to resolve.

The local exchange is not like the interstate highway system. It is infinitely more complex. And its complexities are best known to private parties and State commissions. We are not opposed to a "national" approach *per se* -- only to a mandatory approach, built around "minimum requirements," that substitutes the judgment of Federal regulators for the judgments of diversely situated, well-informed private parties and States. The more detailed any mandatory specifications the Commission issues, the less efficient will be the outcomes of negotiations and State reviews, and the more disruption will occur in States, such as California, that have already aggressively encouraged competition (see below, §I.A.1).

We recognize that some other States have yet to "adopt the competitive paradigm." But the FCC ought to deal with such issues explicitly, using the preemption authority that Congress conferred (albeit with certain provisos) in Section 253. Mandating the prices and technical conditions of local services would encourage economically inefficient outcomes that cannot be reconciled with a pro-competitive statute. And it would practically ensure that the States mount a strong challenge to the interconnection rules in the courts, with tumultuous effects on the marketplace if and when the rules are overturned.

There is a way to accomplish Congress's objectives without mandatory rules while still opening up the local exchange everywhere. That is to specify outcomes that are reasonable and sufficient to satisfy Section 251 requirements but not the exclusive means to do so. We call these "safe harbors." To ensure that competition comes with equal rapidity to the long distance business, the Commission should specify that its safe harbors will satisfy the corresponding interLATA checklist requirements.

1. **California's Interconnection Rules Constitute One Set of Safe Harbors**.

The Commission's Report and Order in this proceeding should combine regulations patterned after the statute with discussions of specific "safe harbors" that would be sufficient, but not mandatory, to satisfy Section 251. By specifying reasonable outcomes but not precluding alternative approaches, the Commission can minimize posturing by both sides and thereby expedite negotiations. It would offer States the "assistance" they really need in reviewing agreements, the kind that does not prevent them from exercising the primary oversight role the Act assigns to them.

One State's experience with safe harbors has already proven that it will work. California has already adopted, or will shortly adopt, local competition requirements that will be sufficient to meet the requirements of Section 251 and the interLATA "checklist." Several other State PUCs have been equally aggressive in addressing interconnection requirements covered by the Act.

The foundation for freely negotiated interconnection agreements in California was laid in the CPUC's watershed decision of December 20, 1995. The introduction to that decision showed how similar the CPUC's approach was to Congress's -- adopting a duty to negotiate and general guidelines for parties to consider when they negotiate particular terms:

> In this decision, we provide LECs and CLCs [competitive local exchange carriers] with guidance on the content of interconnection agreements. establish an expedited approval process, and design a streamlined dispute resolution process... Our stated goal of promoting economically efficient, timely and fairly balanced interconnection between CLCs and LECs leads us to adopt preferred outcomes that we strongly encourage parties to consider in their own

> negotiations. While we will entertain contracts that deviate from the preferred outcomes, parties will bear the burden of proving the deviations will lead to more economic and/or efficient outcomes and are in the public interest.[3]

The CPUC explained its preference for interconnection agreements over tariffs:

> Allowing competitors to negotiate contracts will have several benefits over tariffs. A more level playing field is created when prospective competitors are able to negotiate their own terms and conditions for interconnection with co-carrier status subject to appropriate Commission rules and guidelines. Contracts will afford LECs and CLCs greater opportunity to negotiate flexible interconnection agreements to meet the needs of both parties. We expect contracts will lead to an overall increase in efficient utilization of the combined CLC and LEC interconnection facilities and, therefore, lead to more economic interconnection than would a more rigid tariff structure. Contracts will allow parties to more readily deploy new technologies as they become available.[4]

The CPUC's "preferred outcomes" covered such areas as the location and number of points of interconnection ("POIs"); one-way versus two-way trunking arrangements for interconnection; signalling protocols; and compensation for terminating traffic. Like Congress, the CPUC leaves "the particular terms" of interconnection up to the parties wherever practicable. For example, with respect to the location and number of points of interconnection, the CPUC decided,

> [t]he environment most conducive to a level playing field is one in which parties have the flexibility to negotiate terms and conditions for interconnection which are best suited to their specific needs. Accordingly, we will not require any fixed number of POIs that a CLC or LEC must have or dictate where the POIs must be located. We will instead adopt general criteria which shall apply to negotiations for POIs.[5]

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[3] *Competition for Local Exchange Service*, CPUC D.95-12-056, slip op. (December 20, 1995), p. 3 ("CPUC Interconnection Decision").

[4] *Id.* at p. 14. The "tariffed" approach rejected by the CPUC is similar to the Commission's tentative approach of "uniform," "explicit," "technical and procedural requirements."

[5] *Id.* at p. 21.

The CPUC's "preferred outcomes" are, in effect, safe harbors that are sufficient, but not necessary to open all markets in fulfillment of the CPUC's goal. The CPUC's actions on other interLATA checklist items include providing nondiscriminatory access to rights of way,[6] white pages listings,[7] 911 services, directory assistance service, call completion, and databases;[8] interim number portability;[9] resale;[10] unbundled transport to Pacific's switches;[11] collocation for interconnectors;[12] and reciprocal compensation for local traffic.[13] In its pending OANAD proceeding, expected to be completed before the end of the year, the CPUC will determine total service long run incremental costs (TSLRIC) for network elements and decide final discounted resale prices. The CPUC is proceeding on its own understanding of Sections 251 and Section 252 of the Act.[14] The PSCN has also addressed, or is addressing these issues.[15]

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[6] *Competition for Local Exchange* Service, CPUC D.96-02-072, slip. op. (February 23, 1996) (CPUC Local Competition Rule 12) ("Companion to CPUC Resale Decision").

[7] *Id.* (CPUC Local Competition Rule 8(J)).

[8] *Id.* (CPUC Local Competition Rules 8, 8(F), 8(G), 11).

[9] *Competition for Local Exchange Service*, CPUC D.96-04-052, slip op. (April 10, 1996).

[10] *Competition for Local Exchange Service*, CPUC D.96-03-020, slip op. (March 13, 1996) ("CPUC Resale Decision").

[11] *Open Access to Bottleneck Services and Network Architecture Development (OANAD)*, CPUC D.95-12-020, slip op. (December 6. 1995).

[12] *Id.*

[13] CPUC Interconnection Decision (CPUC Local Competition Rule 7(B)).

[14] *See* CPUC Resale Decision, p. 4, n.4.

[15] *See Plan of Regulation for Telecommunication Providers*, Docket 94-11035, LCB File No. RO63-95 (May 4, 1995).

The results of the CPUC's "preferred outcomes" approach show that it works. Numerous CLCs have either successfully reached interconnection agreements with Pacific Bell, or requested negotiations. Pacific Bell has already concluded interconnection agreements with MFS, TCG, Brooks Fiber. Pac-West Telecomm, and ICG Access Services. Pacific Bell also has received requests to negotiate interconnection from, and begun negotiations with, numerous other carriers.

These agreements belie the claim that Section 251 rules must "limit the effect of the incumbent's bargaining position on the outcome of the negotiations." (*Notice*, para. 31.) The Act only increases the pressure on us. Our revenues from regulated operations peaked in 1993. Our future as a growing, rather than shrinking, enterprise will largely be the result of entry into the interLATA and manufacturing markets, which we cannot enter until we have proven our compliance with Section 251 and satisfied the additional requirements of Section 271.

A safe harbors approach would also provide advance notice of how the Commission interprets those Section 271 interLATA requirements, such as interconnection, unbundling, number portability, and dialing parity, that are also included in Section 251. This would help minimize gaming of the Section 271 process by parties seeking to delay RBOC entry into the long distance market. The RBOCs must comply with numerous provisions in Sections 251(b) and (c) to satisfy elements of the "competitive checklist" for in-region interLATA entry and manufacturing. Thus, the rules adopted in this proceeding will help lay the foundation for elimination of these barriers to entry. The Commission should specify that compliance with Section 251 "safe harbors" will satisfy the corresponding Section 271 checklist elements.

2. <u>The Commission's Approach Should Be Permissive, Not Injunctive</u>.

The *Notice* seeks comment on an approach of establishing "concrete national standards" that will be "explicit" and "uniform." (*Notice*, paras. 27, 31.) The proposed rules would cover both technical issues, costs standards (such as feasible points of interconnection, ordering, provisioning, and maintenance) and pricing. Though intended to "assist" us (*Notice*, para. 24), the Commission's proposals would be mandatory. They would be built around "minimum requirements." (See, *e.g.*, *Notice,* paras. 57, 77, 79, 89.)

However well-intended it may be, the Commission's approach is inconsistent with good public policy and inconsistent with the Act.

Mandatory "national standards" on technical issues are unnecessary. Under California's aggressive program, Pacific Bell has had considerable experience in negotiating interconnection agreements. Technical standards have never been an obstacle to reaching agreement. As we discuss in more detail below, industry fora have successfully established new technical standards as technology has evolved. Explicit technical requirements that "splinter" the network would have especially pernicious effects on incentives to invest and deploy new technology. Carriers will not buy or deploy new technology and services if it immediately subjects them to interconnection, unbundling, and resale requirements that benefit their competitors more than themselves. New entrants will not build their own networks if they can obtain all the necessary piece-parts from incumbent LECs at cost. An overly technical approach would thus be directly contrary to the purpose of the Act, which was "designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies."[16] Rather than adopting detailed technical requirements with these distorting effects, the Commission should sanction a uniform national *process* that will encourage private parties to decide for themselves.

It is equally critical that States retain oversight to determine costs and set the prices of local exchange services, and enforce the statutory distinctions between interconnection, network elements, wholesale services, and transport and termination of local calls. As we explain more below (§I.A.3), Section 252 of the Act specifically charges State commissions with "determining" local rates, while two other complementary sections -- 2(b) and 251(d)(3) -- specifically fence off State rates and rules from the FCC's authority. "Concrete national standards" for local prices would offend principles of Federalism that are at the heart of the Act, both as originally enacted in 1934, and as amended in 1996.

Congress described the Act as "de-regulatory" and "pro-competitive."[17] The Commission reasons that its own "explicit," "uniform," "national" approach is desirable because it "should minimize variations among states" and "narrow ... the range of permissible results." (*Notice* para. 28.) But nowhere did Congress indicate it shared these concerns. The Act makes freely negotiated agreements the preferred means of achieving local competition. Should these negotiations fail, Congress provided for the States to take responsibility. By entrusting fifty States, and dozens of private parties negotiating in good

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[16] Joint Explanatory Statement of the Committee of Conference, H.R. Rep. No. 458, S. Rep. No. 230, 104th Cong. 2d Sess. at 1 (1996) ("Conference Report").

[17] *Id.* at p. 1.

faith with determining "the *particular terms and conditions*" of interconnection agreements,[18] Congress endorsed the result: a **wide** range of outcomes. Diversity, not "uniformity," is what competition produces.

Consistent with a desire for privately negotiated outcomes, Congress provided that private parties are free to ignore statutory requirements where mutually agreeable and non-discriminatory. "A local exchange carrier may meet its section 251 interconnection obligations by negotiating and entering into a binding agreement that does not reflect the minimum standards listed in section 251(b)."[19] Section 252 of the Act provides that when the parties have finished negotiating agreements, including "a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement,"[20] they must submit them to States for approval.[21] A State may reject such an agreement (or any portion of it) only if it is discriminatory or against the public interest, convenience, and necessity.[22] The failure to meet the requirements of Section 251 or the regulations prescribed by this Commission pursuant to Section 251 is *not* grounds for a State to reject the agreement.[23] If the State does not act to approve or reject the agreement within ninety days (or thirty of an agreement adopted by arbitration), it is deemed approved.[24]

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18 Act, Section 251(c)(1).

19 Conference Report, p. 124.

20 Act, Section 252(a)(1).

21 *Id.* at Section 252(a), (e).

22 *Id.* at Section 252(e)(1), (2)(A), (i), (ii).

23 *Id.* at Section 252(e)(2)(A).

24 *Id.* at Section 252(e)(4).

Where parties failed to reach agreement, Congress intended the States to step in. Consistent with a preference for freely negotiated agreements, Congress provided for States to *mediate* between parties at any time.[25] Not for 135 days after a request for negotiation is made may a party petition for *arbitration*; and not unless arbitration is required may a State impose the requirements of Section 251 on parties.[26]

Certainly, one reason the Act defers so much authority over interconnection arrangements to the States is that some State PUCs, such as California's, have already made much progress toward resolving interconnection issues -- though pursuing a multiplicity of policies and approaches, tailored to differences in local conditions. But Congress also must have recognized that the States are better situated than the FCC to impose any technical *requirements* and adjudicate the extraordinarily fact-rich disputes that will undoubtedly arise between some parties. What is "feasible" or "reasonable" under widely differing circumstances are not easily susceptible to Federal rulemaking. They are classic adjudicative issues. California and Nevada, like every other State we know of, decide in individual instances what is "feasible" or "reasonable" after a *trial-type hearing*, conducted by an *administrative law judge* according to established rules of procedure, with *live* testimony that is *sworn* and subject to *cross-examination*. The States have also developed non-adversarial processes, such as workshops, that are used to supplement hearings and make recommendations on factual or technical issues. These fact-finding tools and due process safeguards simply do not exist at the FCC.

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[25] *Id.* at Section 252(a)(2).

[26] *Id.* at Section 252(e)(2)(B).

Only in certain areas of the interconnection process, where negotiated outcomes may not achieve the Act's goals, does the Act carve out a primary role for the FCC. The FCC is given authority and jurisdiction over numbering administration.[27] The FCC is to pre-empt the enforcement of any legal requirement of a State or local government that prohibits the ability of any entity to provide any telecommunications service.[28] It is given responsibility for defining "incumbent LECs."[29] With such occasional exceptions, the Act contemplates that the FCC will respect private negotiations and State PUC actions.[30] Section 252, the roadmap for the actual achievement of interconnection, gives the FCC just one assignment --- to act if a State "fails to act to carry out its responsibility" under Section 252.[31] Even in that one instance, Congress attached an unusual proviso that the FCC is to act not on its *own* behalf but on the *State's*.[32]

Finally, principles of universal service -- still deeply rooted in the Act and never far from any State regulator's mind -- cannot be squared with detailed national standards or any constructive preemption of State ratemaking authority. No one seriously

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[27] *Id.* at Section 251(e)(1). This specific grant implies that the Commission does not have *exclusive* jurisdiction over any of the other issues listed in Sections 251(b) and (c). *See*, for example, *Hirschey v. FERC*, 701 F.2d 215, 218 (D.C. Cir. 1983). If the Commission did have general exclusive jurisdiction, Congress would not have had to designate this particular issue as subject to the Commission's exclusive authority.

[28] Act, Section 253(d).

[29] *Id.* at Section 251(h).

[30] Such specificity indicates that tasks not explicitly delegated to the Commission are to be undertaken in the first instance by other entities. See, for example, *Railway Labor Executives Ass'n v. National Mediation Board,* 29 F.3d 655, 671 (D.C. Cir. 1994) (en banc).

[31] Act, Section 252(e)(5).

[32] *Id.*