BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C 20554

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

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COMMENTS OF THE
UNITED STATES DEPARTMENT OF JUSTICE

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SUMMARY

The Telecommunications Act of 1996 ("the Act") reflects a fundamental change from the premises which have guided telecommunications regulation for most of this century. Earlier regulatory efforts were based on the belief that local telephone services markets were natural monopolies. Under this model, legal barriers were erected to ward off competition that was believed, in a natural monopoly setting, to be economically or socially undesirable. The 1996 Act, building on efforts at the state level, reflects a Congressional decision to encourage competition in local telephone markets in order to bring to consumers the lower prices, better quality, and more diverse services associated with competitive markets.

Based on its extensive experience in local telephone competition issues, the Department of Justice believes that the Commission should follow five principles in order to promote the rapid development of competition in these markets. The Commission should:

(1) Establish clear national rules governing the basic prerequisites for successful entry by local competitors.

(2) Ensure that entrants will have access to all technically feasible points of interconnection with local telephone company networks, and all technically feasible elements of the networks.

(3) Ensure that access to interconnection and network elements is available at economically reasonable prices.

(4) Avoid subjecting new entrants to unnecessary regulatory restrictions.

(5) Move quickly, with the states, to develop new approaches for ensuring universal service in a competitive environment.

With respect to the specific questions raised in the Commission's Notice of Proposed Rulemaking, the Department urges the Commission to take the following measures.

The Commission should promulgate national standards governing the determination of technically feasible interconnection and the pricing of ILEC facilities and services provided to entrants. These standards should include minimum requirements specifying technically feasible interconnection, and should permit states to require interconnection at additional points. Likewise, the Commission should specify minimum unbundling requirements, while allowing additional unbundling to be required by the states. The Department also urges the Commission to specify the principles that must govern the prices that ILECs may charge when providing their facilities and services to entrants.

The Department believes that the price of unbundled network elements should be based on total service long run incremental costs, adjusted to permit recovery of forward looking joint and common costs. This pricing standard, which we believe is fully consistent with the requirements of the Telecommunications Act, is the standard best suited to achieve the competitive goals of the legislation. Pricing based on TSLRIC principles is best suited to stimulate efficient and effective entry, efficient production of end services, competitive pricing to end

users, and the avoidance of anticompetitive behavior of ILECs seeking to preserve their market power.

The Department believes that TSLRIC pricing is also appropriate for the pricing of transport and termination. However, we also urge the Commission to carefully consider the adoption of a "bill and keep" standard as an interim policy, if it finds, as may be the case, that bill and keep represents an efficient approximation for rates based on incremental costs.

The Commission also requested comment on a number of possible restrictions on entrants' purchase or use of ILEC facilities and services. Many of these restrictions would impede entry, and they should not be imposed by the Commission for that reason. Restrictions that would prevent entrants from using network elements and interconnection in the provision of exchange access are particularly anticompetitive. Such restrictions would interfere with the development of competition in access markets and, because of the substantial economies of scope between local exchange and exchange access markets, would interfere with the development of local exchange competition as well.

Finally, the Department urges the Commission to move promptly to develop new policies for promoting universal service and other important social goals in a competitive environment. Regulators should not attempt to preserve obsolete mechanisms for promoting universal service, which restrict competition in order to preserve above-cost pricing for some services. By doing so, they would deny consumers the benefits of competition. Rather, they should develop new

approaches that will afford all consumers the benefits of competition while providing revenues for universal service in a competitively neutral manner. Indeed, the promotion of local telephone competition can enhance the achievement of universal service goals. Thus, it is important that the Commission reject suggestions to limit or delay market opening measures in order to maintain existing subsidy schemes.

TABLE OF CONTENTS

I. INTRODUCTION . . . . . -1-

II. THE COMMISSION SHOULD PROMULGATE NATIONAL STANDARDS GOVERNING THE DETERMINATION OF TECHNICALLY FEASIBLE INTERCONNECTION AND UNBUNDLING AND THE PRICING OF ILEC FACILITIES AND SERVICES PROVIDED TO ENTRANTS. . . . . -8-

A. The Commission Should Define Minimum Standards For Technically Feasible Interconnection, And Permit States To Require Interconnection at Additional Points. . . . . -15-

B. The Commission Should Specify Minimum Unbundling Requirements, and Permit the States To Require Additional Unbundling. . . . . -19-

C. The Commission Should Not Allow Reciprocal Interconnection or Unbundled Access Obligations to Be Imposed on Non ILECs . . . . . -21-

D. The Commission Should Specify Principles Governing the Prices That ILECs May Charges For Facilities and Services Provided To Their Competitors. . . . . -23-

III. THE COMMISSION SHOULD REQUIRE THE PRICE OF UNBUNDLED NETWORK ELEMENTS TO BE BASED ON TOTAL SERVICE LONG RUN INCREMENTAL COSTS. . . . . -26-

A. Total Service Long Run Incremental Cost. . . . . -26-

B. TSLRIC is Consistent with the Telecommunications Act. . . . . -27-

C. The Choice of a TSLRIC Standard Is Consistent With Ensuring Competition . . . . . -28-

D. Methodology -- the problem of Joint and Common Costs . . . . . -31-

IV. THE COMMISSION SHOULD CAREFULLY CONSIDER THE ADOPTION OF A "BILL AND KEEP" STANDARD AS AN INTERIM PRICING POLICY FOR TRANSPORT AND TERMINATION. . . . . -33-

V. REGULATORY RESTRICTIONS ON ENTRANTS' PURCHASE OR USE OF ILEC FACILITIES AND SERVICES WILL IMPEDE ENTRY, AND SHOULD NOT BE IMPOSED BY THE COMMISSION. . . . . -35-

A. The Commission Should Reject the Proposals to Limit Interexchange Carriers' Use of Interconnection and Access to

Unbundled Elements under Section 251(c)(2)and (c)(3) To Provide Exchange and Exchange Access Services. . . . . -39-
1. The Commission Should Not Prevent Interexchange Carriers From Obtaining Interconnection Pursuant to Section 251(c)(2) In Order To Provide Exchange Access. . . -41-
2. Section 251(c)(3) Permits Interexchange Carriers Access To Unbundled Network Elements For Use In Providing Exchange Access. . . . . -44-
B. The Commission Should Not Restrict The Ability Of Requesting Carriers To Obtain, Under Section 251(c)(3), A Package Of All Network Elements Needed To Provide A Complete Local Exchange Or Exchange Access Capability. . . . . -47-
C. Carriers Purchasing Interconnection and Access to Unbundled Network Elements Should Not Be Subject To Additional Access Charges. . . . . -51-
D. The Resale Obligations of Incumbent LECs . . . . . -52-
1. Section 251(c)(4) requires that incumbent LECs "must offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers" . . . . . -53-
2. The ILECs Should Not Be Allowed To Nullify the Resale Requirement By Offering Services As "Promotions" In Which Resellers Are Not Allowed To Participate. . . . . -54-
3. Permitting ILECs to Avoid the Resale Requirement by Withdrawing Retail Offerings Is Not Consistent With the Act. . . . . -55-

VI. THE COMMISSION SHOULD WORK TO ENSURE THE DEVELOPMENT OF EXPLICIT AND COMPETITIVELY NEUTRAL POLICIES TO PROMOTE UNIVERSAL SERVICE AND OTHER SOCIAL GOALS, RATHER THAN DELAYING THE INTRODUCTION OF COMPETITION IN ORDER TO PRESERVE EXISTING BUT OBSOLETE MECHANISMS FOR ACHIEVING SUCH GOALS. . . . . -56-

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I. INTRODUCTION

The Telecommunications Act of 1996 ("the 1996 Act") constitutes a profound change in telecommunications law, reflecting fundamentally different premises about telecommunications markets than the premises underlying telecommunications regulation for most of this century. The 1934 Communications Act and the complementary state regulatory regimes that have prevailed for most of this century were based on the belief that local telephone services markets were natural monopolies, and that extensive regulation was needed to protect consumer interests. Under this regulatory model, legal barriers were erected to ward off competition that was believed, in a natural monopoly setting, to be economically or socially undesirable.

The 1996 Telecommunications Act, building on earlier efforts at the state

level, rejected this basic premise. The Act represents a congressional determination that technology would permit, and the interests of consumers and producers required, the development of competitive markets for the provision of many local telecommunications services. To that end, the Act removed legal impediments to such competition, established legal mechanisms to facilitate the rapid and efficient entry of new competitors, and sought to dissipate the artificial advantages that accrued to the incumbent local monopolies under the old regulatory regimes.

Evidencing its belief that rapid development of competition in local telephony is vital to the public interest, Congress required the Federal Communications Commission ("FCC" or the "Commission") to promulgate regulations implementing the local competition provisions of the 1996 Act within six months of its enactment. In response to that Congressional directive, the Commission issued this Notice of Proposed Rulemaking ("Notice") and invited interested parties to comment on the issues raised therein.

The United States Department of Justice ("the Department"), one of the federal agencies responsible for enforcing the antitrust laws and promoting competition, has played an active role in the telecommunications industry throughout this century In the 1970s and 1980s, the complementary efforts of the Commission, through its regulatory policies, and the Department, through its antitrust case against AT&T Corporation, established rivalry in markets for long distance telephone service and the manufacturing of telecommunications

equipment -- markets that had previously been monopolized by the integrated Bell system. In the twelve years since the AT&T divestiture, long distance rates have declined more than 50 percent, use has exploded, service has improved, and four nationwide fiber optic networks have been constructed providing, among other things, the backbone of the Internet.

Subsequent to the entry of the Modification of Final Judgment in U.S. v. AT&T, the Department investigated numerous waiver applications raising questions relating to the existence of bottleneck monopoly power in local telephone markets.

Recently, the Department has devoted extensive efforts to investigating and analyzing opportunities for and impediments to the emergence of local telephone competition. From 1994 through 1995, the Department worked closely with Ameritech Corp., the Illinois Commerce Commission, the Michigan Public Service Commission, consumer groups, and a large number of potential local competitors and industry groups to craft a proposed modification to the Modification of Final Judgment that would have allowed Ameritech to offer long distance telephone services on a trial basis, after implementation of local market opening initiatives in the States of Illinois and Michigan.[1]

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[1] Motion Of The United States For A Modification Of The Decree To Permit A Trial, Supervised By The Department Of Justice And The Court, In Which Ameritech Could Provide Interexchange Service For A Limited Georgraphic Area, With Appropriate Safeguards, When Actual Competition and Substantial Opportunities For Additional Competition In Local Exchange Service Develop, No. 82-0192, (D.D.C. April 3, 1995).

From 1994 through 1996, the Department also conducted an intensive investigation of local competition issues in connection with a motion to vacate the Modification of Final Judgment filed by four of the Bell Companies. One of the central issues raised by that motion was the contention by the movants that emerging local competition reduced or eliminated any continuing need for the MFJ. The Department therefore conducted an intensive investigation -- entailing the review of millions of pages of documents and numerous depositions of high level executives -- concerning, among other things, the local entry plans of potential competitors and the planned strategic responses to such entry by the incumbent monopolists.

Finally, since the enactment of the 1996 Act, in conjunction with its antitrust enforcement responsibilities and in preparation for consultations with the Commission under section 271 of the Act, the Department has monitored carefully the efforts of potential entrants to negotiate access and interconnection arrangements with incumbent local exchange carriers ("ILECs"), and to surmount the multitude of other impediments to successful entry into local telephone markets.

The statutory emphasis on promoting competition in exchange access and local exchange service markets reflects this history and Congress' belief that consumers will benefit greatly from increased competition in local telephone markets. Our national experience with the benefits of long distance telephone competition points to the various benefits that consumers can hope to obtain from

the advent of local telephone competition. Competition can be expected to spur innovation in local telecommunications as rivals attempt to gain or preserve market share by better meeting consumers' needs and desires. Competition can also be expected to drive prices towards cost-based levels, thereby increasing output and consumer utilization of various telecommunications services, and promoting economic efficiency. Consumers would also benefit from the greater variety of service offerings that result from rivals' attempt to cater to specialized needs. Congress' desire to achieve these consumer goals are manifested in the interconnection, unbundled access, and resale requirements that it imposed on the ILECs under section 251 of the Act. It sought to attract efficient entrants who would impose the discipline of competition on the incumbent monopoly providers. By allowing new entrants to purchase interconnection and access to network elements at efficient cost based prices, and to re-sell ILEC services, Congress sought to introduce into local telephone markets the innovation, service variety and efficient cost-based pricing that benefit consumers in competitive markets throughout our economy

On the basis of its experience, and the statutory expression of Congressional will, the Department has concluded that the rapid development of efficient and effective local competition, within the framework established by the 1996 Act, requires adherence to five fundamental principles.

First, the Act contemplates, and rapid, successful local entry requires, <u>national</u> rules governing incumbent obligations to provide the basic prerequisites

for entry, including clear national rules governing the scope of unbundling and interconnection requirements and the principles governing the prices at which essential services and facilities of incumbent monopolists will be provided to entrants. Carefully devised national standards can facilitate the mutual federal/state efforts to implement the Act. Negotiations with incumbent monopolists will not succeed in the absence of clearly established legal parameters for such negotiations. The Act reflects basic economic theory, long experience, and common sense in recognizing that without such parameters, incumbent monopolists would only grudgingly negotiate arrangements to facilitate competitive entry. Since competitors need access to a wide variety of facilities and services of the monopolists in order to enter these markets successfully, in the expeditious manner contemplated by the Act, the parameters for such access must be clearly articulated in Commission rules to guide the states and reviewing courts.

Second, the development of widespread facilities-based local competition will be promoted by offering entrants a range of options to obtain from the incumbent monopolist, on an economically appropriate basis, those facilities and services that will most efficiently supplement the entrant's own facilities and services. Because of the capital and time required to construct a full-fledged network, facilities-based competition necessarily will be incremental, and must be supplemented through use of the incumbent's facilities and resale of the incumbent's services.

Third, such access must be appropriately priced. Forward-looking

incremental cost is the appropriate basis for pricing of access to the incumbent's facilities. Departures from this standard will distort and deter investment by entrants, and subject them to risks of anticompetitive behavior by incumbents.

Fourth, entrants should not be subjected to unnecessary regulation in order to satisfy notions of competitive "equity." Incumbent LECs are subjected to regulatory restrictions largely because they possess substantial market power. Absent possession of market power, there is no reason to subject entrants to the same constraints, and there is a substantial cost to competition in doing so.

Fifth, the transition to competitive markets will require new mechanisms to promote important social goals such as universal service. Traditionally, regulation has encouraged or required LECs to offer some services at prices above cost, and to use some portion of these profits to offer other services below cost, in furtherance of a variety of social goals. There is no incompatibility between promoting competition and achieving these social goals. However, the traditional inter-service cross-subsidization mechanism for achieving social goals is fundamentally incompatible with a competitive market because competition will sharply limit or prevent above-cost pricing. Moreover, any attempt to preserve this mechanism will necessarily impede the development of competition, since preserving the mechanism necessarily requires restrictions on the competition that otherwise would drive prices downward. In the 1996 Act, Congress sought to use competition to enhance the achievement of its universal service goals. Indeed, by combining the benefits of competitive markets -- lower prices and more efficient

use of resources -- with universal service mechanisms that are properly designed and implemented for a competitive environment, universal service or other social goals are likely to be achieved more effectively and efficiently than under traditional approaches. Thus, it is critically important to resist suggestions to delay or limit market-opening measures in order to maintain existing subsidy schemes.

This rulemaking presents a unique and exceptionally important opportunity for the Commission to move boldly to fulfill the goal of the Telecommunications Act to foster local telephone competition. Congress sought to move quickly to create a new environment in which competition would be allowed to provide substantial benefits to consumers and lessen the need for intrusive regulation. We urge the Commission to act in accordance with these fundamental principles, and offer the following comments to aid the Commission in this historic endeavor.

II. THE COMMISSION SHOULD PROMULGATE NATIONAL STANDARDS GOVERNING THE DETERMINATION OF TECHNICALLY FEASIBLE INTERCONNECTION AND UNBUNDLING AND THE PRICING OF ILEC FACILITIES AND SERVICES PROVIDED TO ENTRANTS.

The Telecommunications Act evinces a clear intent to establish a national policy to promote competition in local telephone services, and to establish a national framework governing many of the specific measures that must be taken by ILECs to facilitate competitive entry. Drawing on the experience and insight

from the pioneering efforts of many states to open local markets, Congress adopted the model that it considered most likely to succeed in promoting rapid, effective, and economically efficient competitive entry in local markets throughout the country, and directed the Commission to adopt regulations implementing that model.

The Department of Justice strongly endorses the Commission's declared intention (Notice ¶¶ 25-41) to play an active role in bringing about the "pro-competitive, deregulatory, national policy framework"[2] that Congress expressed in the 1996 Act. In order to achieve the rapid and successful development of local competition, the Commission, in this rulemaking, should articulate clear, national standards governing issues that are critical to the rapid emergence of competition.

Clear national standards are critical to assure that entrants will have prompt access to essential facilities or services of incumbent monopolists, on economically appropriate terms. The Act places substantial reliance on negotiations between ILECs and their potential competitors to implement the detailed requirements of interconnection and unbundling, but such issues are sufficiently complex to allow lengthy delays in negotiations; consequently, the contemplated private negotiations cannot be expected to succeed quickly in the absence of clear national guidelines or standards. There is no basis in economic theory or in experience to expect incumbent monopolists to quickly negotiate arrangements to facilitate disciplining entry by would-be competitors, absent clear

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[2] Conf. Rep. No. 104-230, 104th Cong., 24 Sess. 1 (1996).

legal requirements that they do so. Negotiations between incumbent monopolists and new competitors over access and interconnection have frequently been prolonged and difficult, replete with claims that the incumbent has engaged in delaying tactics, and in the end regulatory or other legal intervention has commonly been necessary to reach a satisfactory result.[3]

Complaints by competitors against ILECs have multiplied over the past few years as the FCC and a number of states have acted to permit forms of "expanded interconnection" competitive access services, and some states have authorized local exchange competition.[4] However disputes of this kind may be resolved, that they

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[3] In the government's case against AT&T that led to the Modification of Final Judgment, the district court found, in rejecting an AT&T motion to dismiss, that:

> AT&T conducted negotiations with competitors as to the possibility and terms of interconnection in bad faith, stringing the competing carriers along for long periods with groundless technical objections, intermittent delays and occasional concessions, and then inexplicably reverting to earlier positions, repudiating previously negotiated compromises, or unilaterally ceasing negotiations.

United States v. American Telephone & Telegraph Co., 524 F. Supp. 1336, 1356 (D.D.C. 1981). Lack of uniform policies among states exacerbated opportunities for such delaying tactics by AT&T, which, the court found, delayed and shifted positions for several years on provision of local distribution facilities, and finally decided to file tariffs at the state level apparently "with the expectation that it would force MCI to litigate the lawfulness of its tariffs before some twenty state regulatory agencies." Id. at 1356 n.84.

[4] In Ohio, Time Warner, a certified local provider that owns cable systems, has been engaged in an interconnection battle with Ameritech since early 1995, involving several issues including pricing, number portability and bill and keep. Time Warner has filed a state complaint charging Ameritech with bad faith delays in negotiations. This dispute, predating the Telecommunications Act, has already had to go before the Ohio Public Utilities Commission and remains unresolved despite commission orders to negotiate and some interim rulings on terms of

occur at all evidences the problems that can arise in the absence of clear legal and regulatory standards guiding the process of negotiated interconnection.

The Telecommunications Act recognizes this fact by mandating that ILECs provide defined services and facilities to their competitors, pursuant to statutorily prescribed pricing standards, and by establishing regulatory mechanisms to enforce that obligation. But in order to implement effectively this scheme, the specific obligations of the ILECs must be made clear, and must be made clear

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service.

In Oregon, Electric Lightwave and MCI Metro, which have been certified to operate as facilities-based local providers, filed motions with the state Public Utility Commission earlier this year charging that U S West has failed to negotiate in good faith as required by state order. Though ELI now has reportedly reached an interim agreement (not yet submitted to the PUC), MCI Metro's motion remains pending before the commission following a hearing.

Several providers have reportedly experienced difficulties in negotiating with SBC over interconnection and access, in which disputes over collocation issues have been significant. During 1995, MCI and MFS objected before the FCC about Southwestern Bell delays and proposed tariff terms for implementing mandated "expanded interconnection" services, including virtual collocation. SBC recently has announced its first interconnection agreement with a local provider, but other substantial prospective competitors remain mired in the negotiating process.

In some of the BellSouth states, MFS reportedly has had to request regulatory intervention to obtain cooperation from the BOC. In Florida, MFS has been successful in a complaint proceeding, and has another complaint pending in Georgia.

During 1994, after New York had acted to permit competitive access services and interconnection, several providers including Teleport and ACC complained to either the state commission or the FCC about various NYNEX interconnection practices relating to leasing of fiber, pricing of facilities and resold services, and terms of collocation.

quickly. As the Commission suggests (Notice ¶ 31), clear national standards, by narrowing the range of permissible outcomes, will reduce the ILECs' ability to use their superior bargaining position to retard competitive entry.

Without clear national standards, the outcome of the negotiation and arbitration process established by section 252 will differ from state to state, and will be more difficult to predict. Entrants will be required to litigate the same issue in state after state, adding substantially to the time and cost of entry, and creating uncertainty that may impede investment. The absence of clear rules would also compound the complexity of the arbitration task that individual states would confront in the absence of Commission guidance. Even if each state ultimately reaches the "right" outcome, the uncertainty inherent in such state-by-state regulatory decision-making will seriously delay and impede entry.[5] And recognizing these facts, ILECs will have substantially greater incentives to delay and litigate, rather than negotiate reasonable arrangements with entrants.

Wholly apart from the issue of negotiating incentives, the adoption of national standards in this context would constitute a sound policy choice by the Commission. To be sure, there are some important issues as to which state-by-state variation may provide important benefits, and we believe the Commission

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[5] While we believe that most states will move in the pro-competitive direction contemplated by the Act, there may also be instances of states acting to protect incumbent monopoly providers. Congress recognized this latter phenomenon and mandated the Commission to establish national rules to implement section 251. Anticipating the possibility that there might still be some cases of state resistance to the new goals of the Act, Congress, in section 253 of the Act, empowered the Commission to preempt certain anticompetitive state or local actions.

should carefully consider such benefits to avoid unnecessary and unwise intrusions into the prerogatives of the states. But with respect to the basic framework that will govern matters essential to competitive entry, the Department does not believe that differences among the states are sufficiently great as to militate against national standards. Rather, such national standards offer important benefits.

First, many of the technologies that are driving current and predicted telecommunications developments are national in scope, as are many of the competitive strategies under which the new technologies will be deployed. As a result, reliance on explicit national rules can be expected to produce a number of significant public dividends. It will prevent the "balkanization" of national businesses, thereby preserving for potential entrants the savings afforded by greater economies of scale and scope. A patch-work of regulation, particularly as to issues such as unbundling and interconnection that affect the economics of efficient network engineering, might well raise the costs of constructing and operating a network and limit its functionality. Uniform rules are more likely to reduce both capital and operational costs for entrants and thereby facilitate the industry changes desired by Congress.

Second, the short time-frame given the Commission to promulgate the section 251 rules evidences a congressional belief that the desired industry changes be brought about quickly rather than after many iterations. That judgment also supports reliance on uniform national standards because there is no

doubt that such standards can be implemented long before one could expect all fifty states (or even a substantial majority of them) to develop the necessary standards on so many issues, especially in light of the many other responsibilities that the states must exercise under the Act.

Finally, clear national standards will aid other government agencies in performing their important responsibilities under the Act. Absent such standards, state regulatory agencies, many of which face serious resource constraints, will be compelled to devote extensive efforts towards resolving the complex issues that the Commission, through this rulemaking, has studied carefully already. National standards will enable the states to avoid inadvertently regulating in such a restrictive manner as to require the Commission to exercise the preemption authority provided by section 253. National standards will also provide useful guidance to the federal district courts that will be required to review state arbitration decisions, facilitating their understanding of the issues and promoting judicial consistency in resolving issues critical to the accomplishment of the Act's goals. The existence of national guidelines promulgated by the FCC may in fact be necessary to allow federal district courts (who may not possess experience with the complex technical and economic issues involved in telecommunications policy) to review individual state decisions in a manner that promotes the national policies articulated in the 1996 Act.

In sum, the Department thinks that both policy and practical considerations favor the prompt development of clear, national interconnection and unbundling

rules by the Commission. The Commission's willingness to take on such an active role is, to our mind, essential if the Congressional goal of promoting a competitive, dynamic and technologically efficient national telecommunications system is to be realized.

A. The Commission Should Define Minimum Standards For Technically Feasible Interconnection, And Permit States To Require Interconnection at Additional Points.

Section 251(c)(2)(B) imposes on each incumbent local exchange carrier a duty to provide requesting telecommunications carriers with interconnection to the ILEC's network "at any technically feasible point within the carrier's network". In Paragraphs 50-52 and 56-60 of the Notice, the Commission solicits comments on whether it should issue uniform minimum national interconnection standards and, if so, how it should determine what constitutes a "technically feasible point" of interconnection for the purposes of implementing the goals of the 1996 Act.

For the reasons indicated by the Commission in Paragraph 50 of the Notice, the Department believes that national interconnection standards issued by the Commission will facilitate the Congressional goal of expediting the introduction of competition in local telephone markets. As a general proposition, we believe that there is a positive relationship between the clarity of applicable legal rules and the cost and speed of compliance therewith, a relationship that is stronger in this context because of the likely economic incentives of the negotiating parties. As the

Commission recognizes, in the past, questions pertaining to interconnection have engendered lengthy, and sometimes fruitless, negotiations between parties and regulators that retarded competitive entry. Uniform national interconnection rules can be expected to provide sufficiently clear guidance to move the process along more quickly than would be the case under divergent state-imposed rules. By reducing potential confusion or ambiguity about interconnection rules, the Commission can accelerate the process necessary to promote competitive entry.

The Department does not offer the Commission a technical assessment of the precise points where interconnection to local telephone networks is feasible. Others are better suited to that task. Rather, we simply note that the purpose of requiring the ILECs to afford interconnection at technically feasible points is to maximize the options available to new entrants. Congress thought that competitive entry would be facilitated by allowing potential entrants to choose the points at which they would interconnect with an ILEC's local network, rather than allowing ILECs to limit interconnection points to those that would least threaten their incumbent's advantage. If interconnection points are artificially limited, would-be entrants will be denied the opportunity to combine facilities in a manner they deem to be most efficient, and competitive entry may be retarded.

In view of the Congressional desire to allow entrants to design their own means of interconnection to the extent technologically feasible, interconnection criteria should be forward looking; they should be based on what is feasible today, but should allow for additional interconnection points in the future to the extent

that such become feasible under new technology. Thus, we agree with the Commission's tentative conclusion in Paragraph 57 of the Notice

> "that interconnection at a particular point will be considered technically feasible within the meaning of section 251(c) 2) if an incumbent LEC currently provides, or has provided in the past, interconnection to any carrier at that point, and that all incumbent LECs that employ similar network technology should be required to make interconnection at such points available to requesting carriers."

In urging the adoption of national minimum standards, we recognize that we might be sacrificing some opportunities for state contributions that might not otherwise have occurred to the Commission. However, because of the industry's history of rapid technological change, retarded by regulatory and judicial delay, Congress has adopted a time schedule that places a premium on reasonably rapid change. Absent national standards, the states would be faced with many complex issues and recalcitrant ILECs, a combination not likely to lead to the expeditious entry sought by Congress. Under these circumstances, the Department endorses the Commission's decision to issue uniform minimum interconnection standards. Such standards, of course, should incorporate the sound interconnection principles already developed at the state level.

In addition, whatever the number or type of interconnection points the Commission deems to be technically feasible in its first set of section 251 rules, room should be left to the states to determine that interconnection at additional

points is also feasible. While it might be theoretically possible that allowing the states to designate additional interconnection points could make it more difficult for a carrier to develop a regional or national network (Notice ¶ 58), we think such an outcome unlikely. As long as carriers have more options, they can choose whether to enter quickly under the FCC's rules or wait until more states liberalize their standards beyond those of the FCC. Therefore, unless potential entrants demonstrate in their comments to the Commission that allowing the states to give them more interconnection options will retard entry, the Commission should allow the states to designate additional interconnection points.

Since providing potential entrants with more interconnection options is more likely to promote competition, the Department would support a broad Commission determination of minimum interconnection points. Such a determination would promote efficient entry; entrants would build their own facilities when, and only when, they deemed it more efficient to do so; and they would not be required to pay for ILEC network elements or services that they did not need. Allowing the states to designate interconnection points in addition to those recognized by the FCC should not be viewed as justifying a narrow Commission list. While risks to network reliability or safety should not be dismissed out of hand, we agree with the Commission's determination (Notice ¶ 56) that the party alleging harm to the network should have the burden of adducing detailed information supporting its claim. In the same manner, an ILEC claiming that interconnection at a particular point is technologically infeasible