

excuse that their billing and operational support systems cannot readily be adapted to opening competition.

11. The RBOCs often delay implementation of industry agreements for anti-competitive reasons. I will describe another example, involving the exchange of billing information between LECs and competitive local exchange carriers (CLECs). CLECs needed LEC billing information to properly bill their customers. The existing monopoly LECs traditionally exchange this information with other non-competing LECs. However, they refused to provide this information to CLECs, on grounds that it was proprietary, resulting in a competitive burden being placed upon the CLECs. This issue triggered a series of industry forum and association discussions resulting in the offending parties becoming less overtly antagonistic to the CLECs' position on this issue.

12. This Commission as well has recognized that there is a LEC dominance problem, e.g., its decision not to select ATIS as North American Numbering Plan Administrator.¹⁰ The Commission stated "[w]e share the concerns expressed in the comments of the appearance of bias associated with entities such as NECA and ATIS, both of whom historically have been closely associated with LECs."¹¹ The

¹⁰ In the Matter of Administration of the North American Numbering Plan, CC Docket No. 92-237, Report and Order, at ¶¶ 54-59 (released July 13, 1995).

¹¹ Id. at ¶ 57.

Cellular Telephone Industry Association (CTIA) has also observed that "ATIS' governance remains LEC controlled, despite requests from CTIA to broaden its scope."¹² George L. Edwards, President of ATIS, wrote to the Commission in response to CTIA's description of ATIS, explaining that ATIS now allows non-LEC memberships. That may eventually solve the LEC dominance problem, but it will not happen overnight. Also, it is a matter of public record in the North American Numbering Plan proceeding that a large number of non-LECs perceived that ATIS was LEC-controlled.¹³ ATIS is now expanding its membership, which is a positive step towards reducing LEC dominance. As an ATIS board member, I am personally committed to recruiting new ATIS members and working to reduce the membership imbalance. Also, I would like to note that this imbalance does not mean that ATIS itself necessarily acts improperly, but the LEC monopolistic membership imbalance still remains and cannot be ignored.

13. It is thus clear that there are many others besides myself who are concerned about their experiences with the RBOCs and other monopolists' ability to manipulate or delay the outcome of regulatory and industry issues.

¹² Ex parte presentation by the Cellular Telecommunications Industry Ass'n, CC Docket No. 92-237 (May 23, 1995), at 2, attached to letter from George L. Edwards, President of ATIS, to Mr. William F. Caton, Secretary, Federal Communications Commission, dated June 1, 1995, Re: CC Docket No. 92-237 and IAD File Nos. 94-102 and 94-104 Ex-Parte Presentation May 23, 1995, by the Cellular Telecommunications Industry Association, attached hereto as Appendix E.

¹³ See n.10, supra.

STRUCTURAL SEPARATION IS CLEARLY IN THE PUBLIC INTEREST

14. The need for structural separation is based on the premise that structural integration of the RBOCs' and LECs' basic and enhanced services allows cross-subsidies at ratepayers' and competitors' expense and discrimination against enhanced service providers (ESPs). Integration thus is a major impediment to full development of the competitive marketplace. The RBOCs' filings in this proceeding claim, over and over again, that structural separation adds major costs to their provision of enhanced services.¹⁴ The efficiencies sought by the RBOCs, however, are typically cross-subsidies in disguise.

15. ESPs cannot compete equally unless the RBOCs treat them as the RBOCs treat themselves. Asking the Commission to require that the RBOCs cooperate to implement full, true network unbundling, as opposed to just having more industry discussions without any assurance of what network interfaces will be opened, is not unreasonable. Without such direction, my experience is that ESPs will remain uncertain as to when new capabilities will become a reality. Thus, RBOC delays will likely impede competition. Structural separation has proven to be the only possible whip to bring about such equal treatment, since the joint provision of basic and enhanced services during the past several years has been such a failure in that regard.

¹⁴ Reply Comments of Bell Atlantic, at 3, 5, and 11-13; NYNEX Reply Comments, at ii, 2, 16-17, and 23; U S West, Inc., Reply Comments at 7.

**THE RBOC REPLY COMMENTS MISREPRESENT THEIR
ORGANIZATIONAL ABILITY TO DOMINATE THE
STANDARDS AND FORUM PROCESSES**

16. The RBOCs collectively dominate standards and industry forum processes to the disadvantage of their ESP competitors. More details are provided in the affidavits of Mr. Anthony J. Toubassi, Mr. James D. Joerger, and Mr. David P. Jordan, filed herewith. Mr. Toubassi illustrates the RBOC dominance of the IILC process. Mr. Joerger addresses the reluctance of RBOCs to provide effective and timely carrier identification code service and how Bellcore serves as the RBOCs' private standards-setting organization through the use of its Technical Reference (TR)/Generic Requirements (GR) process. Finally, Mr. Jordan addresses how poorly the RBOCs design and implement fraud-control processes when they do not bear the costs of associated fraud.

17. Bell Atlantic misleadingly¹⁵ states that the statements concerning RBOC dominance of standards activities in my 1995 affidavit do not support structural separation. Bell Atlantic does not want to admit that RBOC dominance of network standards for enhanced services, and the timing of development and implementation of such standards, gives the RBOCs a real advantage. Non-structurally separated RBOC enhanced service provision allows RBOC enhanced service developers to work privately with the network developers, resulting in an RBOC time-to-market advantage over other ESPs. Structural separation discourages such practices.

¹⁵ Bell Atlantic Reply Comments at 20.

18. Bellcore claims that exchange carriers cannot dominate the standards process, since Committee T1 has four separate interest groups, only one of which is the exchange carrier interest group.¹⁶ Although Bellcore is technically correct that voting occurs at the governing T1 and T1 Advisory Group levels, this is only after all the preparatory work has been done at the working groups, which operate on “consensus,” as I stated in 1995. Consideration and resolution of concerns are sent back to the working groups, where RBOC dominance often controls the outcome.

19. USTA also denies MCI's assertion that RBOCs can dominate the standards process, by claiming that USTA is not itself dominated by RBOCs.¹⁷ It claims that “all” meetings of USTA are open to “all” USTA members. I never suggested otherwise. However, holding open meetings does not mean that the RBOCs cannot be in control. For example, they comprise most of the attendees at USTA meetings associated with industry forum positioning for the CLC, giving them effective control. The RBOCs' control of USTA is reinforced by the disproportionate amount of financial support they provide to USTA. The RBOCs' dominance of USTA was demonstrated by the massive lobbying campaign conducted by USTA concerning the federal telecommunications legislation that was passed recently. In any event, in the typical

¹⁶ Bellcore Reply Comments at 5.

¹⁷ United States Telephone Association Reply Comments, Paul K. Hart Affidavit, herein after referred to as Hart Affidavit, at ¶ 5.

regulatory context, the RBOCs' interests in maintaining the local exchange monopoly generally coincide with the interests of other LECs.

20. The RBOCs and USTA can and do work together to coordinate LEC positions and thereby dominate standards processes. On April 6, 1994, Paul K. Hart, Vice President, USTA, and CLC Chair at that time, sent a memorandum to the LEC CLC members, inviting them to the routine meeting the day before the May 5, 1994 CLC meeting. Mr. Hart chaired both the USTA preparatory meeting and the CLC meeting the following day. In his memorandum, Mr. Hart stated that the purpose of the preparatory meeting on May 4th would be "to review the agenda of the May 5th meeting in order to acquaint exchange carriers with positions on the issues to be discussed."¹⁸ Moreover, the Hart memorandum was addressed to the LEC CLC members, which are disproportionately RBOC representatives, rather than to the entire USTA membership.

21. Mainly, the RBOCs and GTE, a couple of independents, and certain forum moderators have attended the USTA CLC "LEC position acquaintance" meetings. In addition, CLC forum moderators sent by the Network Operations Forum (NOF), a CLC forum responsible for resolving operational and administrative interconnection issues, and the Industry Carriers Compatibility Forum (ICCF), a CLC forum established to resolve technical interconnection issues -- both of which moderators are Bellcore employees -- have been regular attendees of these meetings as late as 1995. Then, at the CLC, the RBOCs comprise over 70% of the attendees, on

¹⁸ USTA memorandum to LEC/CLC Members, April 6, 1994, attached as Appendix F.

average. Hence, a preparatory meeting the day before the CLC is an ideal mechanism for RBOCs to orchestrate their strategies and tactical plans, since they make up the overwhelming majority of the attendees. Having their Bellcore staff present as “moderators” reinforces their control. LEC members of the CLC will not agreed to open those moderator positions to non-LECs.

22. Despite USTA's assertion in its reply comments that “the process is not ‘controlled’ by any type of company, including the BOCs,”¹⁹ USTA is providing a platform for the RBOCs to manipulate the forum process. MCI has no objection to industry segment meetings if their mission is pro-competitive. However, the USTA meeting prior to the CLC meetings may explain how the delay in resolving vital industry issues is orchestrated. These activities should be viewed as anti-competitive. The following are two recent examples of injuries the interexchange carriers (IXCs) have sustained as a result of these anti-competitive practices:

A. TCAP Equal Access Messaging: This issue was brought by MCI to the ICCF in an attempt to revise Bellcore requirements for SS7-based Calling Name services. After the BOCs refused to accept the issue at the ICCF, the issue was escalated to the CLC.

¹⁹ Hart Affidavit at ¶ 5.

But, at every stage of the industry forum process, the RBOCs collectively refused to address the routing of these messages on an equal access basis, claiming that the routing of Calling Name TCAP messages was a LEC "official traffic" function, and thus not subject to equal access.

B. 800 Database Call Blocking Data -- This issue has been worked since 1992 in the NOF. Our goal was to obtain industry agreement for the technical means of providing information to access customers concerning the number of blocked 800 calls. Although the RBOCs state that they "support the document" that the NOF has produced, they have refused to provide any commitment to implement the agreement.

**THE IILC PROCESS IS INADEQUATE TO ACHIEVE
TANGIBLE NETWORK UNBUNDLING RESULTS**

23. The mission of the IILC is to serve as an inter-industry mechanism for the discussion and voluntary resolution of industry wide concerns related to Open Network Architecture (ONA) and/or local network interconnection. The IILC's charter is to strive to obtain industry consensus on ONA service capabilities and the technical, operational and administrative issues associated with their provision. The problem is that the RBOCs and other LECs insist on having years of discussions without tangible results instead of keeping to a schedule tied to goals and objectives. The IILC has served the RBOCs and the other LECs well in this regard.

24. Mr. Toubassi's affidavit demonstrates that, contrary to Pac Bell's assertions,²⁰ I am not "wrong" in stating that RBOCs dominate industry forums and keep them from meeting the needs of ESPs and IXCs. It is my experience, as substantiated in the Toubassi affidavit, that the RBOCs can dominate the IILC process by coordinating joint positions on issues, despite their denials. The IILC has the charter and mission to coordinate and solve the issues associated with ONA and long term network unbundling. The RBOCs, however, need a greater incentive to cooperate and achieve this goal.

25. ATIS appropriately characterizes the problem in the IILC's Reply Comments in this docket, stating that the IILC provides the framework for industry participants to discuss issues and produce papers within the consensus process. The ATIS/IILC filing states that "consensus, whether it be as a result of the IILC's issue resolution process, or in the specific context of the IILC's Systematic Uniformity Process, is not an agreement by the participants to uniformly implement the proposed service nor the technology on a national basis."²¹ ATIS thus states the problem succinctly: without good faith negotiations and an underlying LEC commitment to implement consensus agreements, the IILC process becomes nothing more than a discussion forum. I made this point in my 1995 affidavit,²² and ATIS's comments

²⁰ Pacific Bell Reply Comments at 45.

²¹ Information Industry Liaison Committee Reply Comments at 10 (emphasis added).

²² Guggina 1995 Affidavit at ¶¶ 4-9.

confirm the nature of the problem. Simply discussing an issue is not satisfactory and will not achieve true unbundling without cooperation or regulatory requirements.

26. US West alleges that MCI's interest in this proceeding is economically motivated and that MCI seeks to use the Commission for anti-competitive ends.²³ MCI's interest in this proceeding is to create an industry environment whereby fundamental unbundling actually occurs, and not just continue years of protracted industry discussions. I do agree with US West that MCI has an "economic incentive" here. But it is an incentive to help create a competitive marketplace in which MCI and others can participate fairly, whereas US West's economic incentive is to maintain the RBOC local exchange monopoly.

27. RBOC domination of the IILC process is addressed in detail in the Toubassi affidavit. Here, I will only emphasize that RBOCs do in fact dominate that process, and that domination gives them an unfair advantage in competition with ESPs. As Mr. Toubassi points out,²⁴ the RBOC representatives to the IILC coordinate their positions before all IILC meetings. Even without such coordination, RBOC and other LEC positions towards their ESP competitors are almost inevitably similar. There are typically seven RBOCs, GTE and a couple of other LECs represented at IILC task group meetings, and only four non-LEC ESPs that actively participate in issue

²³ US West Reply Comments at 6.

²⁴ Toubassi Affidavit at ¶ 3.

resolution. Non-LECs, lacking a captive ratebase, cannot afford to “camp out” at industry fora in the same manner as the LECs. This gives the RBOCs a dominant position, whether the decision is by vote or “consensus.” While the RBOCs are only one interest group, it is the biggest and most powerful one.

28. To the extent that the RBOCs and other major LECs are not inclined to implement unbundling or take other actions that would benefit their ESP competitors, their dominant position in the IILC provides them the opportunity to prevent or delay such actions. Additionally, if the RBOCs decide that continuing to delay an issue longer at the IILC will result in the removal of the issue from their control by regulatory or other non-forum action, they may let the issue get resolved at the IILC but with no intention of ever implementing the solution. This effectively delays efforts to seek regulatory remedies, as regulatory complaints tend not to be filed or resolved while there is hope for an industry forum solution.

THE DELAY IN PROVIDING CARRIER IDENTIFICATION INFORMATION IS A PRIME EXAMPLE OF HOW RBOC CONTROL OF NETWORK STANDARDS IS A MAJOR BURDEN FOR RBOC COMPETITORS

29. The Joerger affidavit addresses in more detail the history of how the RBOCs imposed years of unnecessary delays in providing to IXCs Carrier Identification Code (CIC) information in the SS7 signaling message. That information is vital in order to provision trunk groups efficiently between LEC switches and IXC points of presence. Without LEC passing of CIC information, IXCs typically have to lease

separate additional trunk groups from the LEC to provision CIC-related services. That can be a major difference in costs to the IXC, as well as income to the LECs. Those LEC revenue benefits have motivated delays in developing standard mechanisms for providing CIC information to IXCs.

30. The situation faced by RBOC competitors has been as follows: Since 1983, the RBOCs have been delivering CIC information to IXCs, but for international calls only. The technology used for this delivery was based on the Feature Group D in-band multifrequency (MF) signaling protocol. Then, in 1988, MCI asked the RBOCs to simply expand the use of the MF technology in order to deliver CICs for domestic calls. At the time, however, plans were underway to implement the new out-of-band Signaling System 7 (SS7), and the RBOCs convinced MCI that CIC delivery using SS7 would be a superior technique and that the delay in implementing SS7 CIC delivery would not be significant, compared to the time and prohibitive costs required to modify the MF signaling protocol. MCI's assessment was that the best way to use SS7 for this purpose would be to modify the SS7 specifications by making minor changes to the Transit Network Selection (TNS) parameter, which was already designed for providing CICs for international calls.

31. The RBOCs blocked the IXCs' efforts in the standards bodies to adapt SS7 for the purpose of modifying the TNS parameter. The RBOCs insisted that an entirely new parameter had to be incorporated into the SS7 standards, the Carrier Identification Parameter (CIP). In its Reply Comments, Bellcore repeats the claim that

the CIP approach was pursued because it was technically better, and simpler.²⁵ The IXCs, however, would not have suggested TNS if it were inferior. In fact, TNS could have been implemented much more easily, which is more likely the reason the RBOCs were opposed to its use. Mr. Joerger's affidavit provides additional details.²⁶

32. Even after the adoption of CIP standards, the RBOCs threw one roadblock up after another to delay implementation. They still have not committed to ubiquitous implementation of the CIP technology that they selected in the standards process. MCI and the other IXCs have, after over seven years of effort, no assurance that they will have ubiquitous access to information which could have been provided years ago in early SS7 deployment.

33. This dismal history supports MCI's contention that structural separation is necessary to provide fair treatment for entities that compete with RBOCs in competitive services of any kind requiring modification of RBOC network capabilities.

THE RBOCs' FAILURE TO IMPLEMENT FRAUD PREVENTION TECHNIQUES IS ANOTHER EXAMPLE OF HOW THEY DISTORT THE FORUM AND STANDARDS PROCESSES TO THEIR OWN ADVANTAGE.

34. The RBOCs have used their dominant control of both the forums and standards processes to delay effective fraud prevention techniques. Also, they

²⁵ Bellcore Reply Comments at 7

²⁶ Joerger Affidavit at ¶¶ 14-19.

often do not implement the few solutions that they have agreed upon in the standards forums. The Jordan Affidavit discusses in more detail the RBOCs' behavior in connection with certain fraud prevention techniques that could have been implemented quickly with RBOC cooperation, but were not. If these fraud costs were borne by the RBOCs and other LECs, fraud controls would have been implemented long ago. Instead, the RBOCs have succeeded in delaying or preventing many feasible solutions by their dominant control of the industry forums that deliberate fraud issues.

35. When IXCs have access to the information and potential mechanisms for preventing fraud, those mechanisms are typically implemented quite quickly and effectively. However, the lack of corresponding LEC efforts results in major IXC fraud losses. It is disturbing to note that the majority of IXCs' preventable fraud losses are associated with LEC access products and not with IXC calling cards and other IXC-controlled products.²⁷

36. The major gap in the RBOCs' efforts to prevent fraud associated with their products is simply their failure to provide related information to the IXCs that carry long distance calls. Call forwarding is a prime example: The LECs typically do not provide IXCs with information that the call has been forwarded. This is complicated further when the scenario involves remote call forwarding.

²⁷ Jordan Affidavit at ¶¶ 16, 27.

37. An IXC still must pay access charges to the originating and terminating LECs in connection with fraudulent long distance calls, even though it does not get paid for the fraudulent calls. The IXC would be in a much better position to prevent or at least limit such illegitimate calls if it knew that the calls were forwarded and that customer remote access to the call forwarding feature were available.

38. The RBOCs determine the outcome of fraud-related issues deliberated by the Toll Fraud Prevention Committee (TFPC),²⁸ an industry forum under the ATIS-sponsored CLC. The TFPC's mission is to develop industry-wide mechanisms for preventing telecommunications fraud. The RBOCs dominate the TFPC decision process, dilute the effectiveness of recommendations, and often do not implement the recommendations that they themselves have approved. Pacific Bell provides a typical example of making TFPC agreements but not following through with implementation. Pacific Bell states that it is still studying the "feasibility"²⁹ of two TFPC-approved Call Forwarding recommendations. It is disturbing that Pac Bell did not study the feasibility of the recommendations before they were finalized, and then proceed with implementation.

²⁸ *Id.* at ¶¶ 8-9.

²⁹ Pacific Bell Reply Comments at 58.

39. Pacific Bell has suggested that IXCs upgrade their networks to control fraud that is caused by Pacific Bell defective access products.³⁰ Pac Bell's suggested fix involves using non-uniform RBOC information, which in itself presents a very onerous and possibly impossible scenario. Even if the Pacific Bell proposal would work, it would only be effective as long as the RBOCs provide switch-based call forwarding service. It should be noted that RBOCs are rapidly moving to an Advanced Intelligent Network (AIN) platform structure for such services, which, by nature, is not totally switch-based. It is my understanding that the AIN plan uses the existing SS7 systems and does not include a means to inform an IXC that a call has been forwarded. So, even if we could get Pacific Bell's proposal to work, it would likely be nullified by AIN.

40. U.S. West provides another typical example of the unwillingness of RBOCs to address fraud problems when other entities bear the cost of the fraud. The Arizona Public Utilities Commission staff recommended that U.S. West modify its call forwarding service tariff proposal, implement the relevant TFPC recommendations, and indemnify IXCs for any access charges associated with fraudulent calls and their call forwarding product. US West simply withdrew its tariff proposal. Rather than take responsibility for preventing the related fraud or even compensating the victims of such

³⁰ Id. at 60.

fraud, they picked up their marbles and went home. A similar pattern was followed in New Mexico.³¹

CONCLUSION

41. The RBOCs and USTA reply comments fail to rebut MCI's demonstration that they dominate the industry standards and fora processes. There are many others in the industry that are becoming aware of RBOC dominance of industry, regulatory, standards and forum processes, as well as the related anti-competitive effects. The RBOCs have a very well organized cartel for the purpose of influencing industry forum and standardization processes. Further, the RBOC-owned and controlled Bellcore TR/GR requirements process effectively provides the RBOCs a private standards-setting mechanism. Also, they often do not implement the solutions that they agree to in industry and standards forums. The RBOCs' dismal performance in the area of fraud prevention is another illustration of their misuse of their dominance over the local network and the standards process.

42. Because of the RBOCs' perversion of the industry standards process, the Commission cannot realistically expect industry fora to develop effective ONA or other anti-discrimination safeguards. Without such safeguards, structural

³¹ Jordan Affidavit at ¶ 19.

separation cannot be eliminated, as the Ninth Circuit held.³² Structural separation for RBOC provision of enhanced services is in the public interest and promotes fair competition. The forum and standards process will also be more equitable with LEC structural separation for enhanced services.

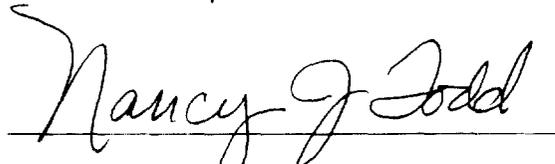
Further Affiant saith not.



Peter P. Guggina

Subscribed and sworn to before me this

5th day of April, 1996



Notary Public

³² California v. FCC, 39 F.3d 919, 930 (9th Cir. 1994)

APPENDIX A

Date: Sun Nov 05, 1995 5:03 pm CDT
Source-Date: Sun, 5 Nov 1995 16:39:00 EST
From: nML Comm. Daily
EMS: INTERNET / MCI ID: 376-5414
MBX: COMDAILY@cis.wdc.mci.com

TO: * Peter P. Guggina / MCI ID: 296-1556
Subject: nML Communications Daily 11/6/95 1 of 2)
Message-Id: 62951105220326/0003765414DC3EM
Source-Msg-Id: <75951105213957/0003054374PJ3EM@MCIMAIL.COM>

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MONDAY, NOVEMBER 6, 1995

VOL. 15, NO. 214

Today:

CHRISTIAN RIGHT OPENS NEW CYBERPORN CAMPAIGN: Internet and on-line defenders strongly oppose proposed changes in telecom bill backed by Hyde. (P. 1)

RHCs SAID TO THWART COMPETITION: CAP executives say CEOs support competition publicly, drag feet when rivals seek connections. Cartel accused of blocking legislation. (P. 2)

NETWORK AND AFFILIATES SHARPLY DISAGREE ON FCC RULES: Big 3 say networks aren't dominant. Yes they are, affiliates counter in opposing FCC plan to relax rules. SBA wants rules kept. (P. 4)

INTERNATIONAL MARKETS AWAIT CAPS: Europe and Latin America seen ready for U.S. partnerships. Financial advisers say MFS success clears path for other small companies (P. 5)

TEE-COMM SELLS \$51 MILLION IN STOCK TO FINANCE SATELLITE TV ventures Alphastar in U.S. and Expressvu in Canada. Says it's at 'disadvantage' in U.S. market because of late entry. (P. 6)

APPROVAL FOR ICO AND BIG LEO PHONES WILL COME SLOWLY, but it will happen eventually in most countries, Comsat Mobile executive tells MoSat conference. 'No big rush' for approvals, he says. (P. 7)

Could 'Close Down the Net'

CHRISTIAN RIGHT ASKS STRONGER CYBERPORN CONTROLS

On-line community and free-speech advocates are gearing up to combat new proposal to restrict obscene or indecent material on on-line services accessible to minors. New campaign is being led by Christian Coalition head Ralph Reed, ex-Attorney Gen. Edwin Meese and others, and has backing of House Judiciary Committee Chmn. Hyde (R-Ill.). Proposed new language would impose criminal penalties for person who "knowingly communicates, transmits or makes available for communication or transmission... an indecent communication by computer to any person the communicator or transmitter believes has not attained the age of 18 years of age."

New proposal would toughen language on criminal penalties that Hyde added to telecom legislation (HR-1555) by including "knowingly" (rather than "intentionally") standard and by including indecent speech. Letter also showed difference between conservative community based on "family values" and economic conservatives, many of whom support language by Reps. Cox (R-Cal.), Wyden (D-Ore.) and White (R-Wash.) to protect service providers. Hyde's view is that those who put indecent or obscene material on on-line service or Internet should be held responsible, based on belief that service providers have ability to carry out such

screening and aren't doing enough to prevent such access. Standard based on "knowing" principle is considered tougher than language now in bill that would require punishment if someone "intentionally" put material onto on-line service or Internet. Hyde believes there's no constitutional problem with restricting access and he would impose criminal penalties. Section sponsored by Cox, Wyden and White would remove liability for civil penalty from service providers.

In Oct. 16 letter to House Commerce Committee Chmn. Bliley (R-Va.) and Senate Commerce Committee Chmn. Pressler (R-S.D.), 13 groups and individuals asked for tougher language and attacked Cox/Wyden/White proposal by saying: "While there is no perfect solution to the problem of computer pornography, Congress could not hope to solve this problem by holding liable only some who are responsible for the problem." They noted that Justice Dept. has prosecuted child pornographers who put material on America Online and said: "Thousands of individuals both in this country and abroad are regularly placing obscenity and indecency on the Internet." They said that if Congress protects service providers, "it is likely that most in this country who are trafficking in indecency to children or obscenity would continue to do so since the threat of prosecution would be minuscule, given the numbers of those currently involved in this activity." They said suggested changes wouldn't hold Internet access provider criminally liable for all illegal pornography on Internet or require them to check all communications. Access providers would "simply be required to avoid knowing violations of the law." Letter said technology "exists today for access providers, through a simple process, to target or flag and remove files containing objectionable material."

However, attorney Ronald Plesser, who works with several on-line clients, said there could be only one result if Christian Coalition proposal were adopted: "It would entirely close down the Net." He said that access providers and others who provide e-mail and other services would be prosecuted for content over which they had no control. Plesser said: "This is an outrageous attempt to shut down the Network as we know it today." Everyone wants to protect families, he said, but penalties should be applied properly.

Making similar argument, Leslie Harris, public policy critic, said in Nov. 3 letter to Bliley and Pressler that proposal endorsed by Christian Coalition, Phyllis Schlafly, Meese and others "would write an end to the promise of this vibrant new technology. Instead of empowering Americans to be authors and publishers, it will empower the government to surveil and censor the Internet." Harris said coalition proposal misunderstands role of service providers and of First Amendment, and said "knowing" standard would force and others would have "chilling effect" and pointed out that indecent speech is constitutionally protected.

U S West Skewered

TELCO COMPETITORS ATTACK RHC LOCAL MARKET RESISTANCE

PALM SPRINGS -- Barriers erected by RHCs to prevent opening local telephone network should be used by competitive access providers (CAPs) to rally forces in stepping up competition with or without federal legislation, 4 CEOs said here Fri. at Asce. They said

resale agreements, like Ameritech-U.S. Network deal, might be short-term way to get into market, but RHC resistance made resale unlikely long-term solution. Growth in business will come from developing seasoned management team, offering broad array of

services coupled with unparalleled customer service, officials said. "There's a lot of opportunity there," said Thomas Morrow, pres., Time Warner Communications. He said resistance from RHCs is encouraging CAPs to work harder to get into market.

U S West (USW), Ameritech and Southwestern Bell were singled out for repeated efforts to block network access. Darryl Ferguson, pres., Citizens Utilities, unleashed stinging attack on USW and at Chmn.-CEO Richard McCormick, for deciding to hold up access. "Richard McCormick made the decision to go slow, to hold up [CAP] companies and to not care a lot about their customers," Ferguson said. "It's a huge, serious problem." USW repeatedly has blocked action on Colo. PUC rulemakings, to further delay competitor entry, he said.

Morrow said Ameritech has thrown up similar roadblocks in Ohio, where TW filed to provide local service last year, but RHC has challenged every action of Public Utilities Commission (PUCO) from its jurisdiction to language in proposed order. "With Ameritech you get a big bear hug and after you let go you find a knife in your back," he said. He said he would rather face "obviously antagonistic" USW then deal with Ameritech. "It's all just great PR, but the knife's still in the back." TW expects it will still be waiting to provide all services in Ohio more than 2 years after filing application, he said.

Alliance of RHCs has created "cartel" to "slow roll" federal reform efforts, Craig Young, pres.-COO, Brooks Fiber Networks, said, although he joined with other panelists in endorsing need for legislation: "If we let this one slide, I don't know what the next one will look like." Others said legislation won't solve problems, but will help open markets in some way and spur industry to further growth driven mostly by entrepreneurial companies. He said states may be unable to handle new responsibilities spelled out in both versions: "I don't know if the states have the manpower to check for the pea under the pod" when LECs file tariffs.

Despite problems, Ferguson and Morrow said local market remains jewel in U.S. telecom industry, and reluctance of some RHCs to cooperate on opening markets or setting reasonable rates could be driving CAPs to work harder. "They may be doing us a favor," Morrow said. "I think the LECs are killing themselves. They're setting themselves up for a fall, and we're the ones who are going to give it to them."

Executives said they weren't especially interested in working out resale agreements with RHCs and other providers, citing low rates established by some companies and reluctance to make quick agreements. "It will be hard to make it a business based on the prices Southwestern Bell has set," said Richard Kolsby, pres., Metro Access Network of Tex. His company is looking at other options, including direct connections and some bypass to provide services. Market is ready, executives said, with residential and many business customers anxious to get new services incumbents can't provide. "They're tired of the lack of responsiveness from the local phone company," Kolsby said.

Alternative local carriers won't be able to build networks alone, and some alliances will be necessary, although Young stressed need to find partners who share same goal and vision rather than joining company that's moving on different part. IXC relationship is said to be key ingredient to providing alternatives, with frame relay, wireless and even PCS providers expanding opportunities for business. "You don't have to own everything to sell everything," Morrow said.

Hidden costs for CAPs are back office and infrastructure

required to compete in local market and other "stuff customers will never see," Morrow said. Most companies began by providing bypass of LEC, but as full competitors they need full billing, database access for 911 and other calls, and labor-intensive operator-assistance services. Some work can be provided by subcontractors, but officials stressed danger of building bureaucracy that duplicates former Bell companies, and with it slow response time and other problems. Opening residential market, events, has become viable business option because LECs aren't giving customers service they want, Morrow said.

Critical need is for mature management team that works well together and sends common message to rank-and-file that company intends to compete and win in market, Ferguson said. Managers must be "tenacious" in battles with incumbent providers. Team needs to know how to "go slow but fast" in spending capital to build networks and services but lack of new technology, represents major opportunity for CAPs.

ALTS Notebook...

ALTS doubled size of exhibition from year ago to include more than 36 exhibitors, and 80% of space for next year's conference already is sold out, Pres. Heather Gold said Fri. Exhibits included equipment suppliers, such as Alcatel, AT&T Network Systems, Ericsson, Northern Telecom and Siemens, which showed off new cellular phones and switches, and newcomers that are planning entry into local market. LinkUSA Senior Vp Kristi Feltz said long distance wholesaler plans major push to provide plain label services to CAPs in 1996; company sent large delegation of sales and marketing executives to show. Ericsson passed out 30 cordless phones to show off lightweight system that works as cordless in building or home and converts to cellular away from AXE switch.

Telecom legislation hasn't become "consumer competition" issue or part of constituent discussions as staff of House and Senate conferees move to daily and weekend meetings to resolve difference before year-end, Washington lawyers and Hill staffer said. Panelists said despite intense lobbying and media blitz, including Consumer Federation of America commercials on TV stations, constituents aren't raising issue when members return home. "Consumer competition argument is starting to emerge a little bit more," said Carol Ann Bischoff, telecom aide to Sen. Kerrey (D-Neb.); "It's important to keep the pressure on." Kerrey isn't member of conference committee. Panelists agreed conference probably won't come up with bill until Dec., perhaps not until first quarter next year. If issues remain unresolved in April or May, "bill won't happen," said Gary Slaiman, partner, Swidler & Berlin, Washington. He said Sen. Hollings (D-S.C.) holds key votes to stave off threatened veto. Among stumbling blocks that could delay action: "Back-end safety valve" after FCC and states set benchmarks for local entry "to make sure RBOCs play fair," said Thomas Cohen, pres., Davison, Cohen & Co. Debate over universal service also could delay action, even though universal service doesn't become post-law issue until checklist issues are settled, they said. "This bill is by no means an end point," Cohen said. "It's a starting point for a lengthy process in which it's essential that all of you play." Gail Schwartz, Teleport Communications Group vp-govt. affairs, questioned process for cleaning up deficiencies in bill from ALTS' point of view: "Once they pass the checklist, we fear that they will seize the opportunity to delay the operational and economic benefits." Cohen said: "That's the 64-billion-dollar question. The goal is to do the best you can and make it better than it is today." He said that if bill falls short, industry can seek new laws to modify law in future, just as Cable Act has been modified. Slaiman said Justice Dept. role in revising market access isn't "dead issue"

even though chief House supporter was excluded from conference. "It's still possible for them to do that, although as a political matter, the jury is still out."

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NETWORKS/AFFILIATES DISAGREE SHARPLY ON REPEAL OF RULES

Only Big 3 TV networks favored FCC relaxation of rules limiting their dealings with affiliates, in comments on rulemaking last week. Affiliates, individually and in groups, opposed any major changes, as did several nonbroadcast organizations such as Small Business Administration (SBA). ABC, NBC and CBS claimed that they're no longer dominant over affiliates. Yes, they are, more than ever, affiliates countered in asking that rules be kept. Rules were adopted for radio in 1941 following Report on Chain Bcstg., which forced NBC to divest Blue Radio Network to ABC, then were applied to fledgling TV industry in 1946

INTV and chmn. of affiliate associations of Big 3 networks sent FCC joint letter urging that rules be kept, position they said was taken by "an overwhelming majority" of commercial stations. Network Affiliated Station Alliance (NASA) said restrictions are "essential rules that permit network affiliates effectively to serve their communities" and to maintain control over programming. NASA, which represents more than 600 affiliates of Big 3 networks, said "the assumption is demonstrably false" that balance of power has shifted from networks to stations, as networks maintain. Networks, freed from finsyn and prime-time access rule (PTAR) restrictions, "have become massive network-studio conglomerates that have the incentive and power to demand uniform clearance of network programming," said NASA. Post-Newsweek Stations told FCC it "fully supports" NASA position. Group said it "adamantly disagrees" that balance of power has shifted to affiliates and that in fact network power over stations has grown "larger and larger."

SBA urged Commission not to relax rules "in order to prevent the networks from further dominating affiliates." Coalition of 5 major station groups said right-to-reject network programming is "cornerstone protection" for affiliates, and option time is "essential" for licensee to maintain control of programs. Group of 5 other licensees maintained that networks' power over affiliates "if anything, has been enhanced" by changes in video marketplace.

Changes taking place in TV industry haven't had impact on long-standing relationships between networks and affiliates and thus most of existing rules should be retained, INTV said: "There has been no diminution of network power [and] new vertically integrated network/studio combinations are becoming commonplace... Because the networks will have a financial interest in network programs as well as programs in syndication, there will be increased pressure to clear network-owned programs. As a result, network pressure on affiliates to clear programs will increase, not decrease."

AFLAC Bcstg. said changes proposed would impair affiliates' ability to "make programming decisions free of network interference." Sinclair Bcstg. reminded FCC that responsibility for licensees' programming "may not be delegated." Networks still possess "powerful economic leverage" over affiliates and don't need "additional advantages" that relaxation of rules would bring, Sinclair said. N.Y. Times Co. said it supports NASA position with proviso that networks should be permitted to sign exclusive contracts with affiliates.

Opposing relaxation of rules, Media Access Project said: "The

Commission seems willing to incur a significant cost to the public interest in exchange for illusory benefits [that] would seriously undermine program diversity. Blade Communications said relationship between affiliates and networks has changed "from one of mutual cooperation to one in which the networks are aggressive and even hostile..." Rulesles should be kept because they restrain power of established networks to "inhibit" development of new networks.

New World said FCC "has continually attempted to micromanage ownership, control and bargaining power within the industry... Unless the Commission deregulates both sides of the network/affiliate relationship at once, it risks fundamentally changing the local nature of the broadcasting industry." Reason for adopting rules in 1941 (diversity objectives today," New World said. "The basic tension between networks and their affiliates has not changed... The overall fragmentation of the video marketplace has no effect on this equation." It said it's "particularly concerned" about proposal to eliminate dual network rule, which it said would cause affiliates to suffer "a competitive disadvantage that would be harmful to the industry as a whole."

Pappas Telecasting said "effect of this pieceir affiliates and the public interest." FCC must review network/affiliate rules "together and not ignore the totality of their impact... To tinker with these protections because of age alone is simply wrong," said Pappas. In

plea for retention of rules, Southern Bcstg. detailed its fight with ABC (which led to legal action) to retain ABC affiliation for WWSB Sarasota, Fla., when network switched from VHF to UHF affiliate in Tampa-St. Petersburg.

CBS said it "strongly supports" repeal of rules as no longer necessary because of "highly competitive conditions that now prevail." Rules are "ripe for review, amendment and, in most respects, for repeal," said ABC. "The rules impose costs on networking that undermine the strength of that system, and they do so at a time when other players in the video marketplace -- unfettered by the rules -- are taking a growing share of viewers at the networks' expense." ABC said reliance on antitrust laws is sufficient to protect public.

Said NBC: "The time has come for the Commission to stop micromanaging" relationship between networks and affiliates "in light of current market conditions, trends in the video marketplace and the degree of present and foreseeable competition... Broadcast networks and their affiliates today stand as equal partners in an ongoing business relationship. Each is critically dependent on the other... Neither party dominates the relationship." Upheaval in affiliations, in which 68 stations have switched networks in last 18 months and networks have had to increase compensation by as much as 50%, "is compelling evidence of the shift in network-affiliate bargaining power," NBC said.

Warner Bros. TV Network, calling itself "a newly minted, still fragile network," said now would be "worst of times" to relax restrictions on Big 3 networks. United Paramount Network said that if any changes are made, FCC must recognize differences between emerging and established networks.