APPENDIX B

Louisiana Overview and Description of Local Competitors in Louisiana

Louisiana is the nation's 21st most populous state, with over 4.3 million inhabitants as of 1995, and is the fifth most populous state in the BellSouth region.[1] According to U.S. census data, 75.1% of its population is in metropolitan areas.[2] The principal cities and their populations are New Orleans (496,938, with over 1.30 million in the metropolitan area), Baton Rouge (219,531, with over 558,000 in the metropolitan area), Shreveport (198,525, with over 378,000 in the metropolitan area), and Lafayette (94,440, with over 361,000 in the metropolitan area).[3]

Louisiana has four LATAs (Baton Rouge, Lafayette, New Orleans, and Shreveport) and had 8,050,704,000 interLATA access minutes in 1996.[4] As of 1996, there were over 2.30 million total access lines in Louisiana served by reporting ILECs,[5] with 2.13 million served by BellSouth.[6]

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[1] <http://www.census.gov/statab/ranks/pg01.txt> as of July 1, 1995.

[2] <http://www.census.gov/statab/states/la.txt> as of July 1, 1994.

[3] The population information was taken from U.S. Census data as of April 1, 1990 and the metropolitan area information was obtained from the Statistical Abstract of the United States, 1997 edition at pages 41-43.

[4] Federal Communications Commission, Preliminary Statistics of Communications Common Carriers, at Table 2.6 (1996) ("FCC 1996 Preliminary Statistics").

[5] FCC 1996 Preliminary Statistics at Table 2.5.

[6] FCC ARMIS Annual Summary Report 43-01, BellSouth Telecommunications Louisiana, 1996, at Table II, row 2150.

In 1996, BellSouth had in Louisiana $843 million in local service revenues, $387 million in access revenues (slightly over one-fifth intrastate), and $53 million in intraLATA toll revenues.[7]

Of the 88 telecommunication carriers with whom BellSouth has executed agreements as of October 31, 1997, ten wireline providers have been certified by the LPSC to provide competing local telephone service in Louisiana[8] and three more have their certifications pending.[9] Two of the three operational PCS providers in Louisiana are also certified by the LPSC as CLECs[10] and the third's certification was pending as of October 31, 1997.[11] BellSouth also cites Cox Fibernet as a potential facilities-based entrant in Louisiana despite Cox's lack of an interconnection agreement with BellSouth.

As of BellSouth's application, at least six wireline switches had been installed by CLECs to provide local exchange services in Louisiana but only one was operational,[12] while BellSouth

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7 Id. at Table I, rows 1010, 1020 and 1030. IntraLATA dialing parity is not present in Louisiana.

8 ACSI, AT&T, American MetroComm, GNET Telecom, Hart Communications, ITC DeltaCom, Kamine Multimedia Corp., MCI, Shell Offshore Services, and Sprint. Affidavit of Gary M. Wright at Ex. WLPE-A ("Wright Louisiana Aff."), attached to Brief in Support of Application by BellSouth for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 97-231 (Nov. 6, 1997) ("BellSouth Louisiana Brief") as App. A, Vol. 6, Tab 16.

9 AXSYS, Intermedia Communications, and WinStar Communications, Id.

10 MereTel Communications and Sprint Spectrum, Id.

11 PrimeCo Personal Communications, Id.

12 See Wright Louisiana Aff. ¶¶ 17-86.

had 122 switches in the state.[13] As of October 1, 1997, Louisiana CLECs had resold over 7000 BellSouth lines, divided almost equally between business and residential customers.[14] These statistics demonstrate that actual competitive entry into Louisiana is still extremely limited; BellSouth's market share of local exchange in its service area is about 99.61% based on access lines.[15]

To detail the competitive landscape, the Department discusses below the wireline providers that are now or soon could be providing local exchange services to business and residential consumers in Louisiana. The Department also addresses the status of the three operational PCS providers cited by BellSouth in Louisiana.

American Communications Services, Inc. ("ACSI")

ACSI is a facilities-based provider of competitive local telecommunication services in Louisiana[16] with operational local fiber networks located in New Orleans, Baton Rouge, and Shreveport.[17] ACSI began providing competitive local exchange services on a resale basis in

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[13] FCC ARMIS Annual Service Quality Report 43-05, BellSouth Telecommunications Louisiana, 1996 at Table IV, row 0200.

[14] Wright Louisiana Aff. ¶ 122.

[15] This calculation is based on information from Wright Louisiana Aff., Confidential Exhibits WLCE-A to G.

[16] Wright Louisiana Aff. ¶ 18.

[17] Id.

those markets on April 1, 1997 and introduced a facilities-based service to the New Orleans market on July 30, 1997.[18] The LPSC approved ACSI's negotiated interconnection agreement with BellSouth on November 4, 1996 and certified ACSI as a CLEC on March 24, 1997.[19] ACSI's local exchange tariff in Louisiana was approved by the LPSC in April 1997 and includes terms and conditions for basic local exchange line service, PBX services, and other enhanced telecommunications services and features in the markets.[20]

While "ACSI's business strategy focuses primarily on business customers," ACSI has said that it "will provide facilities-based service to residential callers through multi-tenant dwelling units ("MDUs") and shared tenant service ("STS") providers where it makes economic sense."[21] ACSI currently provides a high capacity connection to an STS provider in Birmingham, Alabama, who, in turn, arranges service with its individual residential tenants.[22] ACSI has not, however, announced plans to provide residential service in Louisiana.

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18 Id.

19 Id. ¶ 17.

20 Id. ¶ 19.

21 Affidavit of James C. Falvey ¶ 11 ("Falvey South Carolina Aff."), attached to Opposition of ACSI, In re: Application of BellSouth Corporation, BellSouth Telecommunications Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Service in South Carolina, CC Docket No. 97-208 (Oct. 20, 1997).

22 Falvey South Carolina Aff. ¶ 11.

American MetroComm

American MetroComm ("AMC") currently operates a fiber optic CAP network in the New Orleans and Baton Rouge metropolitan areas.[23] AMC began providing competitive resold local exchange services to both business and residential customers in July 1997 and is expected by BellSouth to begin providing a facilities-based local exchange service in New Orleans in November 1997 and Baton Rouge by late 1997 or early 1998.[24] AMC's interconnection agreement with BellSouth was approved by the LPSC on October 8, 1996 and provides for interconnection of networks, exchange of traffic, unbundling of the BellSouth network services and functions, and the resale of BellSouth's retail service offerings in Louisiana.[25] AMC's local exchange tariff was approved by the LPSC in July 1997.[26]

KMC Telecom Inc.

KMC is a competitive local exchange carrier authorized to provide local exchange service in seventeen states, including at least five in BellSouth's region. KMC was granted CLEC certification by the LPSC on January 31, 1997, and had its interconnection agreement with

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[23] Wright Louisiana Aff. ¶ 32.

[24] Id. ¶ 33.

[25] Id. ¶ 31.

[26] Id.

BellSouth approved by the LPSC on June 10, 1997.[27] Also in June 1997, the LPSC approved KMC's local exchange tariff which included offerings for basic local exchange line service, PBX services, and other enhanced telecommunications services and features to customers in the Baton Rouge and Shreveport markets.[28]

KMC constructed and operates fiber optic networks in both Baton Rouge and Shreveport and has installed local exchange switching facilities in both cities.[29] BellSouth expected KMC to begin providing facility-based local exchange services to the Baton Rouge market by the middle of November 1997 and the Shreveport market during early December 1997.[30] KMC currently provides both business residential local exchange access lines to Louisiana customers on a resold basis.[31]

ITC DeltaCom

DeltaCom is a subsidiary of ITC Holding Co. and is a regional long-distance company in the southeast that has traditionally focused on the business market.[32] The ITC DeltaCom network

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27 Id. ¶ 36.

28 Id. ¶ 37.

29 Id. ¶ 38.

30 Id. ¶ 40.

31 Id. ¶ 39.

32 Id. ¶ 75.

has over 5,000 miles of fiber-optic cable throughout both North and South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and parts of Texas.[33] DeltaCom has also constructed a series of SONET-rings along its fiber routes in order to provide self-healing high capacity access and transport services.[34] DeltaCom is authorized to provide local telecommunication services in Louisiana,[35] and signed a negotiated interconnection agreement with BellSouth for Louisiana on March 12, 1997, that was approved by the LPSC on June 10, 1997.[36] The LPSC also approved DeltaCom's local exchange tariff in August 1997.[37]

During the second quarter of 1997, DeltaCom publicly announced its intention to offer local exchange service throughout its service area, which includes Louisiana.[38] In its evaluation of BellSouth's South Carolina 271 application,[39] the Department reviewed DeltaCom's business plans and concluded that it was unclear whether DeltaCom intended to provide local exchange service to residential customers on a facilities-basis. DeltaCom has not filed any comments on

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33 Id.

34 Id. ¶ 76.

35 The LPSC certified DeltaCom as a CLEC on August 21, 1997. Id. ¶ 82.

36 Id.

37 Id.

38 Id. ¶ 81.

39 In re: Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, Evaluation of the Department of Justice, App. B at B-7 (Nov. 4, 1997).

BellSouth's Louisiana 271 application and the Department lacks any additional information about DeltaCom's plans beyond what it had previously learned. Consequently, while the Department agrees with BellSouth that DeltaCom intends to provide local exchange service to business customers,[40] its intentions toward residential customers are ambiguous.

Cox Fibernet

Cox Fibernet is a wholly owned subsidiary of Cox Communications and uses its fiber optic network in the New Orleans metropolitan area to provide competitive access services. Cox Fibernet is installing a local exchange switch and has announced plans to use its hybrid fiber/coax facilities to provide telephony services to both residential and business customers in the New Orleans area by the end of 1997 or early 1998.[41] The Cox network passes over 428,000 homes in the New Orleans area and has approximately 275,000 cable television subscribers.[42] Unlike some of the other facilities-based providers, Cox's network is already connected to a significant number of residential homes. With the success of its cable-based telephony trials in Hampton Roads, Virginia and Orange County, California, Cox announced the commercial viability of its local exchange services in those markets and accelerated its roll-out of those services to its other large

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[40] Wright Louisiana Aff. ¶ 85.

[41] Wright Louisiana Aff. ¶ 51. Cox received CLEC certification from the LPSC on October 22, 1997. Id. ¶ 49.

[42] Id. ¶ 52.

Cox cable systems, including New Orleans.[43]

What is unclear from the record in this application, is how Cox plans to interconnect to BellSouth's network. Cox has not made a request for interconnection from BellSouth, consequently there is no interconnection agreement in place. Without a means for interconnection, Cox's customers would not be able to communicate with anyone else. BellSouth implies that Cox may use its affiliation with Teleport Communications Group ("TCG"), who does have an approved interconnection agreement with BellSouth,[44] to gain access to BellSouth's network.

Regardless of how Cox and BellSouth plan to interconnect networks, Cox appears to be committed to becoming a serious competitor to BellSouth for local exchange services to both residential and business customers on a facilities basis.

Shell Offshore Services Company

Shell Offshore Services Company's ("Shell") provides telecommunication services to companies operating in the Gulf of Mexico through a digital microwave infrastructure.[45] Shell can connect terrestrial facilities to offshore ones using this wireless network. In the summer and fall of 1997, Shell began offering a switched telephone product that bundled dial tone, ISDN and

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43 Id.

44 Id. ¶ 56.

45 <http://www2.shellus.com/sosco/who.htm>

several other telephone services.[46] On July 1, 1997, Shell was certified as a CLEC for Louisiana by the LPSC. Its interconnection agreement with BellSouth was approved on August 28, 1997.

Shell's Louisiana local exchange service tariff was approved by the LPSC in July 1997. The tariff's local exchange service offering distinguishes between residential and business customers and facilities-based and resold services.[47] While the Department is confident that Shell will target business customers for its facilities-based and resold services, it is unclear whether residential consumer market will be addressed through either method.

AT&T

The LPSC certified AT&T as a CLEC in Louisiana on November 1, 1996, and approved AT&T's arbitrated interconnection agreement with BellSouth on October 22, 1997. AT&T has appealed to federal court the LPSC's order approving the agreement and the LPSC's order approving BellSouth's SGAT. AT&T has stated that it intends to provide local exchange service to both residential and business customers throughout Louisiana.

AT&T's entry strategy for Louisiana is based on combining unbundled network elements and resale. AT&T is not currently, however, providing any local service using either method in Louisiana.

AT&T is providing some local services over its own facilities to medium and large

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46 <http://www2.shellus.com/sosco/switch.htm>

47 Louisiana Local Exchange Service Tariff of Shell Oil Offshore Services Company, attached to Wright Louisiana Aff. as Ex. WLPE-F.

business customers in Louisiana.[48] AT&T is using its existing toll switches connected to BellSouth's local network to route local traffic. "Local calls are routed over dedicated facilities ... between the customer's PBX and AT&T's ... switch, and over AT&T's trunks between its [switch] and a BellSouth tandem or end office."[49] It is not clear when AT&T would begin offering local residential services in Louisiana.

Intermedia Communications, Inc.

Intermedia's certification to provide competitive local exchange services in Louisiana has been pending before the LPSC since September 16, 1996.[50] Intermedia negotiated a region-wide interconnection agreement with BellSouth on June 21, 1996,[51] and the LPSC approved that agreement on October 8, 1996.[52] However, because Intermedia is not authorized to provide local exchange services in Louisiana, it is not doing so.[53] The Department is unaware of any specific

48 Affidavit of Jim Carroll on Behalf of AT&T Corp. ¶ 22, attached to Comments of AT&T Corp. in Opposition to BellSouth's Section 271 Application for Louisiana, CC Docket No. 97-231, (Nov. 25, 1997) as App. Vol. IV, Tab D.

49 Id.

50 Comments of Intermedia Communications Inc. in Opposition to BellSouth's Application for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 97-231 at 2 (Nov. 25, 1997) ("Intermedia Comments"). The veracity of Intermedia's comments were attested to by its Director of Strategic Planning and Industry Policy in an attached affidavit.

51 Wright LA Aff. at Ex. WLPE-A.

52 Id.

53 Intermedia Comments at 2.

plans by Intermedia to provide local exchange services in Louisiana or whether Intermedia has filed a local service tariff.

MCI Metro

MCI Metro was certified on August 29, 1997 by the LPSC to provide competitive local exchange services in Louisiana. MCI Metro also signed negotiated interconnection, unbundling, and resale agreements with BellSouth on August 7, 1997 that were still pending approval before LPSC as of October 31, 1997.[54]

MCI has taken a "region-wide approach to entering BellSouth's local markets"[55] -- its efforts focus initially on one or two key markets and then expands to the others once access and interconnection to the BOC's network is reliable. MCI initially targeted Georgia and Florida in the BellSouth region.[56] However, MCI contends that because of difficulties it has faced with BellSouth concerning OSS and other checklist items, it does not yet offer facilities-based service in Louisiana.[57] BellSouth asserts and MCI does not contest that MCI does not have any facilities in place in Louisiana.

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54 Wright Louisiana Aff. ¶ 100-02.

55 Supplemental Declaration of Marcel Henry on Behalf of MCI Telecommunications Corporation ¶ 4 attached to Comments of MCI Corporation, CC Docket No. 97-231 as Ex. A (November 25, 1997)

56 Id.

57 Id. ¶ 5.

MCI asserts that it intends to compete in BellSouth's region using each method of entry -- resale of incumbent services, purchasing UNEs, using MCI's own facilities, and entering into ventures with other companies to construct or utilize facilities. MCI also intends to offer local exchange service to both residential and business customers.

PCS Providers

Sprint PCS

Sprint PCS signed an interconnection agreement with BellSouth on April 14, 1997 which was approved by the LPSC on August 27, 1997.[58] Sprint PCS was certified by the LPSC on June 27, 1997 under the name of Sprint Spectrum, and since May 1997, has provided wireless service to customers in the New Orleans area. BellSouth's brief asserts that Sprint PCS and PrimeCo have over 8000 customers combined.[59]

PrimeCo

PrimeCo Personal Communications signed an interconnection agreement with BellSouth on April 15, 1997 which was approved by the LPSC on August 27, 1997.[60] PrimeCo's certification by the LPSC is still pending. PrimeCo's PCS service was introduced in the New

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58 Wright Louisiana Aff. ¶ 111.

59 BellSouth Louisiana Brief at 16.

60 Wright Louisiana Aff. ¶ 114.

Orleans market in November 1996.[61]

MereTel

MereTel Communications operates as a PCS provider in Baton Rouge.[62] MereTel also has a PCS license for the Lafayette area and is currently establishing interconnection services with MereTel's Mobile Telephone Switching Offices there and in Lake Charles.[63]

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61 Id. ¶ 115.

62 Id. ¶ 117.

63 Id. ¶ 119.

Certificate of Service

I hereby certify that I have caused a true and accurate copy of the foregoing Evaluation of the United States Department of Justice to be served on the persons indicated on the attached service list by first class mail, overnight mail, or hand delivery, on December 10, 1997.

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EXHIBIT 1

Affidavit of Marius Schwartz on Behalf of the U. S. Department of Justice

COMPETITIVE IMPLICATIONS OF BELL OPERATING COMPANY ENTRY INTO LONG-DISTANCE TELECOMMUNICATIONS SERVICES

AFFIDAVIT OF MARIUS SCHWARTZ

May 14, 1997

TABLE OF CONTENTS

Professional Background

1. My name is Marius Schwartz. I am a Professor of Economics at Georgetown University I received my B.Sc. degree with first-class honors from the London School of Economics and my Ph.D in economics from the University of California at Los Angeles. My research areas are in industrial organization, antitrust and regulation. I have published on these subjects and have taught courses at Georgetown University and to executives and government officials in the U.S. and other countries.

2. From April 1995 to June 1996, I served as the senior staff economist at the President's Council of Economic Advisers responsible for antitrust and regulated industries. Much of my work was on regulatory reform in telecommunications, and I participated in the development of the Administration's policy leading up to the enactment of the 1996 Telecommunications Act From 1980 to the present, I have served intermittently as a consultant to the Antitrust Division of the Department of Justice on a wide variety of competition matters. I have also consulted for the OECD, World Bank, USAID, and private clients. My curriculum vitae is attached to this affidavit.

Scope of Assignment

3. I have been asked by the Antitrust Division of the U.S Department of Justice to analyze the economic conditions under which authorizing regional Bell Operating Company (BOC) provision of in-region interLATA telecommunications services ("BOC entry") would be consistent with the public interest in competition, under the entry standard of § 271 of the Telecommunications Act of 1996 ("Act"). I have also been asked for my opinion, in light of my analysis, regarding the Justice Department's general standard for evaluating BOC applications under § 271 that is described in the Department's comments filed with the Federal Communications Commission. As part of my analysis I have considered both the potential costs and benefits of authorizing interLATA entry by the BOCs, consistently with the specific provisions and overall competitive objectives of Act. I have not been asked to consider whether any individual BOC has met the requirements of § 271 in a particular state.

4 In connection with this assignment, I have drawn on the relevant economics literature and consulted with other academics, regulators, practitioners, and industry participants. I have also

reviewed numerous documents, including but not limited to: submissions in connection with the Motion to Vacate the MFJ that was filed by four BOCs in 1995; submissions in the FCC's proceedings to implement the 1996 Act's provisions on local competition, accounting and non-accounting safeguards, and reform of universal service and access charges; the FCC's relevant Orders, regulatory filings with state commissions; documents submitted to the Department of Justice pursuant to the pending mergers between Bell Atlantic and NYNEX, and SBC and Pacific Telesis, and numerous responses submitted to the letter request of Acting Assistant Attorney General Joel Klein issued on November 21, 1996, concerning the competitive impact of interLATA entry by the BOCs ("responses to Joel Klein letter").

5. My assessment is that the Department of Justice's entry standard strikes a good balance between properly addressing the competitive concerns raised by BOC entry, and realizing the benefits from such entry as rapidly as can be justified in light of these concerns. The Department's standard, therefore, is consistent with the public interest in competition reflected in the entry test of section 271 of the Telecommunications Act.

Summary of Analysis and Conclusions

6. The 1996 Act aims to increase competition in *all* telecommunications markets; for the first time, this includes local markets that today are largely regulated monopolies. It is therefore necessary to evaluate the effects of BOC entry not only on competition in long-distance services, but also in local services and in "integrated services" (the offering of both local and long-distance services—whether bundled or separately—by the same provider).

7. Under appropriate conditions, BOC entry holds the promise of yielding significant benefits to the BOCs and to consumers. The principal benefits may include: (a) reductions in retailing costs enabled by joint provision of local and long-distance services; (b) offering consumers valuable new options from dealing with providers of integrated services, e.g., the convenience of one-stop shopping for all their telecommunications requirements; and (c) increasing the degree of competition in long-distance services (both in interLATA services through BOC entry; and in intraLATA toll services in multi-LATA states that now lack dialing parity for entrants, since the Act requires intraLATA dialing

parity in such a state when and only when BOC interLATA entry occurs in the state).

8. BOC entry, however, also raises potential concerns. The principal risk of authorizing premature BOC entry is that doing so will result in significantly less BOC cooperation, than could be induced by an appropriate entry standard, in providing good access at cost-based prices to the various functions and services of a BOC's local networks needed by entrants wishing to offer local or integrated services. These requisite "wholesale local services" include interconnection, unbundled network elements, and discounted local service for resale. Securing efficient access to these services of the BOCs' ubiquitous local networks will be critical for some time to the development of competition in local and integrated services. A BOC's monopolistic withholding of such access cooperation would be a potent and destructive form of rivalry: it would raise competitors' costs, degrade their quality, and deny consumers the benefits of new products. And if facilities-based local competition fails to develop, BOC entry could pose a growing threat to long-distance competition, since today's established access arrangements will increasingly require changes over time.

9. Authorizing premature BOC entry would prematurely reduce a BOC's cooperation incentives for two main reasons: (a) the BOC stands to gain if it can leverage its local market power into the newly opened markets for long-distance and integrated services; and (b) the BOC is emboldened to stiffen its resistance to local competition having secured its coveted long-distance authority. After explaining these incentives, I argue that regulatory and other post-entry safeguards are considerably less likely to secure the new BOC arrangements for local competition than would a more procompetitive entry standard.

10. First, consider leverage incentives. Once the BOC offers long-distance retail services and thus integrated retail services, it becomes a competitor to its access customers—carriers that must purchase from it access services used to provide these retail services. A BOC then becomes less willing to provide access services to others than if it did not offer the retail services itself. This reduced willingness arises in large part, though by no means entirely, because a BOC's prices for wholesale local services and for local retail services are likely to remain more tightly regulated than its prices for long-distance retail services. Asymmetric regulation of this sort pushes a firm to evade regulation by leveraging the more tightly regulated market power into the less regulated services that

require access to the regulated bottleneck services. To raise prices of unregulated services, a BOC must undermine competitors; this it might do—if unchecked by regulation—through various forms of "access discrimination" that raise competitors' costs or degrade their quality.

11. Leverage into long-distance services would entail a BOC's degrading of competitors' long-distance access arrangements; a BOC's ability to do so, however, is limited in the short run (see ¶ 14). But leverage into integrated services could entail degrading of competitors' long-distance access or denying to competitors good access to its wholesale *local* services—because competitors need both to offer integrated services. Undermining integrated-service competitors by restricting their access to wholesale local services could enable a BOC to charge higher prices for its unregulated long-distance services for two reasons (1) competitors are denied cost savings from joint provision of services, which could raise their cost of providing long-distance services and thus weaken the discipline they impose on the BOC's prices; and (2) some consumers would be willing to pay a premium for dealing with a provider of integrated services, reflecting, for example, the value of one-stop-shopping.

12. Second, and independent of such incentives to leverage market power into long-distance or integrated services, a BOC like any dominant incumbent is inclined to resist cooperating with local entrants that threaten its core local market power. This resistance can be softened—though not eliminated—by authorizing a BOC's long-distance entry only if its adequate cooperation with local entrants has first been secured. Before entry is authorized, the lure of added profit from long-distance and integrated services gives the BOC an incentive to expedite its required cooperation; after entry, however, time is on the BOC's side and its inclination to cooperate correspondingly diminishes. As a practical matter, rescinding a BOC's entry authority if it slows down its cooperation may well be difficult as well as disruptive. (Halting its future marketing efforts may be a more practical option, but is also less potent.)

13. For these reasons, once a BOC's entry is authorized, its incentives to cooperate in providing network access to competitors will diminish significantly. Therefore, a key question is: how effectively can regulatory and other safeguards enforce the requisite BOC cooperation post entry in the face of reduced BOC incentives? Economic reasoning suggests—and historical experience

confirms—that the efficacy of regulatory and other "outside enforcement" varies widely with the economic environment. Regulation fares much better in a stable environment where regulators understand what is and is not standard practice, than in a rapidly changing environment where more frequent adjustments are needed and informational asymmetries are greater. Correspondingly, regulatory oversight can do a reasonable job of maintaining well-established arrangements; but it is far less adept at forcing incumbents to rapidly implement new arrangements, as the lack of historical benchmarks on acceptable performance gives incumbents great latitude to engage in plausible deniability. These observations have important implications.

14. Access arrangements for long-distance services are largely well established; hence regulatory and other safeguards can prevent significant degradation. Although the necessary access arrangements will certainly evolve over time, I understand that radical changes in technical arrangements governing the majority of interexchange revenues are not imminent. While customized arrangements pose a potential problem, such arrangements are used mainly by large customers for whom competitive access alternatives have developed more rapidly. On balance, therefore, regulatory and other safeguards can render the threat to technical arrangements for long-distance access tolerable, at least in the short run.

15. The picture is quite different for access arrangements to wholesale local services. These requisite arrangements are largely new, their implementation will require extensive cooperation by incumbents in developing a host of technical, operational and business protocols, and in establishing appropriate prices.

16. Mandating incumbents' cooperation, as the Act does, surely helps; but the process will evolve much more quickly and efficiently if incumbents have better incentives to cooperate. Thus, the Act sets up the § 271 process which, as is widely acknowledged, only allows for BOC entry when such local-competition access arrangements are meaningfully made available and the market is truly open to competition. This sequencing serves important purposes, as described below. Regulators and other outside enforcers have significantly inferior information than a BOC about how to implement these new systems and how long the task should take. These informational asymmetries hinder reliance on post-entry measures (such as halting BOC marketing of long-distance services, or