DOCKET FILE COPY ORIGINAL

RECEIVED

MAY - 4 1998

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

Petition of the Alliance for Public Technology	)	
Requesting Issuance of Notice of Inquiry and	)	RM - 9244
Notice of Proposed Rulemaking to	)	CCB/CPD 98-15
Implement Section 706 of the	)	
1996 Telecommunications Act	)	

REPLY COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION

INTRODUCTION

The United States Telephone Association ("USTA") hereby submits these reply comments in response to the Commission's Notice.[1]

The Alliance for Public Technology ("APT") has proposed that the Commission not impose the regulations applicable to incumbent local exchange carriers ("ILEC") wireline networks on their efforts to deploy advanced telecommunications networks. In addition, APT seeks elimination of existing regulations that impair the ILECs ability to compete with competitive local exchange carriers ("CLECs"). USTA agrees with these central themes in APT's Petition and urges the Commission to expedite approval of the RBOC applications, and any other ILEC request to deploy advanced telecommunications networks.

Parties opposing APT's central themes are misguided in their reading of Section 706 and

---

[1] *Public Notice* RM 9844 released March 12, 1998.

No. of Copies rec'd 029
List ABCDE

the adverse impact imposing regulations applicable to ILEC wireline networks would have on consumer and business access to advanced telecommunications services. Contrary to the arguments of some parties, Section 706 requires the Commission and state commissions to affirmatively remove barriers to competition to ensure that incentives exist for the deployment of advanced telecommunications networks. Section 706 of the Act provides in relevant part:

> The Commission and each State Commission with regulatory jurisdiction over telecommunications services shall encourage the deployment ... of advanced telecommunications capability ... by ... regulatory forbearance measures that promote competition ... or other regulatory methods that remove barriers to infrastructure investing.

Congress clearly intended that the Commission move to create the necessary incentives for investments in advanced telecommunications networks. The directive to the Commission in support of Section 706 is as follows:

> ... the ... bill ensures that advanced telecommunications capability is promptly deployed .... Measures to be used include ... regulatory forbearance, and other methods that remove barriers and provide the proper incentives for infrastructure investment. The Commission may preempt State commission if they fail to act to ensure reasonable and timely access.[2]

The regulations applicable to ILECs existing network operations are being contested in federal court. If the Commission delayed approval of RBOC petitions to deploy advanced telecommunications services, or imposed regulations on ILECs which serve as disincentives to the investment required to construct such networks, they may not be constructed. Regulatory uncertainty, coupled with public policy choices that thwart the development of advanced

---

[2] *Telecommunications Act of 1996, Conference Report*, S. Rep. 104-230, Joint Explanatory Statement at 210, February 1, 1996.

networks, will deprive consumers and businesses of choices and impair the ability of ILECs tom effectively compete in the global marketplace.

While those competitors who oppose ILECs competing on a level playing field to rapidly deploy advanced telecommunications networks urge the Commission to erect barriers to competition in high-speed data networks, competitors continue to take full advantage of regulatory delay which adversely impact ILECs. For example, Lucent Technologies Inc. has agreed to purchase Yurie System Inc, a developer of products that provide high-speed data transmissions for, $1billion. According to a news report about the Lucent purchase:

> The telecommunications industry is undergoing a fundamental shift in investments as demand for high-speed data transmission and access to the Internet put a greater burden on traditional phone carriers. Carriers such as AT&T and the Bells must upgrade their networks to handle booming Internet traffic along with traditional voice phone calls ....
>
> ***The telecommunications industry doesn't have a lot of time. Internet traffic is growing 1,000%a year and data traffic over the public network is doubling annually ....***
>
> ***'Data will account for more than 95% of the traffic on the public network by the year 2005, and this will force public carriers to adopt a new architecture for handling voice, data and video transmissions.' Indeed, public carriers are already under attack by new networks such as Qwest Communications International Inc., IXC Communications Inc., Level 3 Communications and others.***[3]

Bell Canada intends to invest $523 million to "provide high-speed data and Internet

---

[3] Keller, *Lucent Agrees to Buy Yurie for $1 Billion*, Wall St. J., April 28, 1998 at A3 (emphasis added).

broadband services to business customers over a 'nationwide broadband network.' "[4] This network will extend through major Canadian cities and domestic locations such as Seattle, Minneapolis, Milwaukee, Chicago, and Detroit.[5] The network will be used to provide "a portfolio of advanced broadband telecom services, with a 'one-stop shopping' approach encompassing all business customer service, billing, and network-related requirements."[6] According to the news article, Bell Canada believes no regulatory approvals are required. [7]

These and other industry developments clearly signal that ILECs are operating at a competitive disadvantage as they seek to compete on a level regulatory playing field. In addition, global competitors like Bell Canada are building competitive broadband networks which will not only provide high-speed, broadband telecommunications services, but will also compete for technological and economic supremacy, through first-to-the market innovations which directly challenge the continued growth of the domestic economy. USTA asserts that these events, coupled with the pending WorldCom/MCI merger which would place 60% of Internet backbone capacity under the control of WorldCom, and the increasing need for high-speed broadband capacity, creates an urgency in support of expedited approval by the Commission of the pending RBOC applications and any ILEC request to construct advanced telecommunications networks, without the regulatory burdens applicable to their existing wireline network. Moreover, Commission delay in approving construction of high-speed

---

[4] *Telecommunications Reports* at 22 (April 27, 1998).

[5] *Id.*

[6] *Id.*

[7] *Id.*

advanced telecommunications networks by ILECs will only lead to regulatory uncertainty and forestall the deployment of advanced telecommunications services to all Americans as contemplated by the Act. Regulatory forbearance, and the elimination of regulatory barriers to entry by ILECs in this competitive market, will determine whether ILECs can commit the financial, technical and human resources necessary to build the high-speed data and Internet networks which all agreed are needed.

II. ILEC PARTICIPATION IN NEXT GENERATION DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS NETWORKS IS CRITICAL TO MEETING CONSUMER DEMAND

In comments, Chairman Kennard continues to voice support for deployment of advanced telecommunications networks. At the National Press Club, Chairman Kennard remarked:

> With the explosion of Internet and data traffic that is occurring, it is has become apparent that new types of networks need to be built over the next several years to more efficiently handle that traffic....
>
> ***And I want to make sure that current regulation does not prevent the deployment of facilities that otherwise would be built. I want incumbent telephone companies to play a major role in the deployment of these service....***[8]

Chairman Kennard made similar remarks in another forum regarding the need for new bandwidth capacity to meet increasing consumer and business demand for high-speed data and Internet access. As Chairman Kennard stated:

> ***The best way to ensure more bandwidth is to encourage local competition, by having as many providers -- new players as well***

---

[8] Remarks of Chairman Kennard to *USTA's Inside Washington Telecom*, Washington, D.C. (April 27, 1998)(emphasis added).

> ***as incumbents -- competing to deploy faster access networks. They should compete with their technologies as well as their services and prices. And we in government, whether at the FCC or at state commissions, should examine our rules to make sure that we're not standing in the way of new investment in higher bandwidth networks.***[9]

The Commerce Department report on the digital economy echoes the importance of deployment of advanced telecommunications networks to the domestic economy and the global competitiveness of American industry.[10] The impact of information technology on electronic commerce is further evidence why incentives are needed for ILECs to deploy high-speed advanced telecommunications networks. According to *The Emerging Digital Economy* report executive summary: (1) information technology represents 8.2% of GDP, up from 4.9% in 1985; (2) information technology has driven 25% of total economic growth on average over the last 5 years; (3) without information technology, the 1997 inflation rate would be 3.1% and not the actual rate of 2.0%; (4) spending on information technology equipment has risen from 3% of total business equipment investment in the 1960s to over 45% in 1996; (5) 7.4 million people were employed in information technology related positions earning a nationwide average of $46,000 compared with $28,000 earned on averaged in the private sector in 1996; and (6) the number of employees and the salaries of workers in the software and service industries have

---

[9] Remarks of Chairman Kennard to *Educom Networking '98*, Washington, D.C. (April 16, 1998)(emphasis added).

[10] See U.S. Department of Commerce *The Emerging Digital Economy* (April 1998) at www.ecommerce.gov.

increased tremendously.[11] In addition, Internet traffic doubles every 100 days.[12] These developments require private collective action, not government regulation, to realize the potential of information technology and electronic commerce.[13]

Clearly, there is no dispute that: (1) deployment of high-speed, advanced telecommunications networks is in the public interest; (2) the information technology market-place is highly competitive with market forces fueling consumer and business demands for expanded bandwidth capacity for data and Internet services; (3) regulatory forbearance must drive the deployment of advanced telecommunications networks; (4) America's global technological and economic advantage can only be impeded by imposition of government regulations which serve as disincentives to investment by ILECs in high-speed data and Internet networks; and (5) the Commission should not permit its good offices to be misused by forces with unsubstantiated assertions of doom and gloom if ILECs compete on the same playing field as Qwest, Level 3 WorldCom/MCI, Bell Canada and others now compete. Should the Commission fall pray to the rhetoric already circulating at its headquarters that would keep ILECs from rapidly deploying advanced telecommunications networks, then consumers and businesses would have fewer choices, certain areas may lack access to advanced telecommunications services, and the domestic economy will suffer the consequenses of less, rather than more competition. USTA urges the Commission to act swiftly to approve the

---

[11] *Id. Executive Summary* at *The Digital Revolution.*

[12] *Id. Executive Summary* at *Building Out The Internet.*

[13] *Id. Executive Summary* at *Challenges Ahead.*

existing application by the RBOCs to construct advanced telecommunications networks. The Commission's approval of these applications would send the right signal that market demand, and not unnecessary, burdensome and anti-competitive regulations, will drive economic growth through high-speed data and Internet services.

III. OPPOSITION COMMENTS SHOULD BE DISMISSED AS NOTHING MORE THAN RED-HERRINGS

There is a concerted effort by some parties to simply deny ILECs the opportunity to compete in the data and Internet marketplace. These parties raise frivolous concerns under the guise of public interest arguments. For example, WorldCom questions whether APT is actually an independent organization or a front for the ILECs and USTA.[14] AT&T argues that TELRIC does not discourage competition, and that APT's suggestions are contrary to public policy and beyond Commission authority.[15] ALTS argues that the absence of applying Section 251(c) to ILEC deployment of advanced telecommunications networks would not slow development of such networks by ILECs.[16] LCI opposes phasing out Section 251 obligations for ILECs.[17] MCI asserts that the public needs protection from the RBOC's monopoly power.

The Commission has heard these tired arguments before. The potential loss in actual dollars and consumer welfare associated with delay in Commission approval of the RBOC

---

[14] *WorldCom Comments* at 3-8.

[15] *AT&T Comments* at 3-9.

[16] *ALTS Comments* at 8.

[17] *LCI Comments* at 4.

applications will be more devastating then the losses associated with Commission delays regarding deployment of voice-messaging and cellular services.[18] Contrary to AT&T's assertion, TELRIC has been shown not to allow ILECs to recover their costs. As USTA stated, "***Because TELRIC pricing fails to recover any of the incremental LEC's shared costs or common costs, it interferes with the incumbent LEC's opportunity to earn a fair rate of return on its investment or even to recover its investments***."[19] Simply put, TELRIC is a disincentive to ILEC investment in advanced telecommunications networks. Moreover, the application of Section 251(c) to ILEC networks creates added disincentives which will only impede the deployment of needed bandwidth capacity.

Chairman Kennard has raised the importance of eliminating burdensome regulations:

> I want to get rid of any regulations that are not necessary to promote competition or protect consumers.... Much of what I have learned recently is in the area of common carrier regulation, and the mass of detailed, often arcane, rules that have accumulated over the years is staggering to me.... I am particularly interested in eliminating barriers to innovation and investment.[20]

The Chairman has also recognized the importance of ILECs also benefiting from innovations which lead to first-to-market advantages. As the Chairman stated:

> I, for one, am not afraid of seeing wireline telephone providers have a first mover advantage -- if you make the investments to get to market first ....[21]

---

[18] *USTA Comments* at 8.

[19] *USTA Comments* at 6 (emphasis added).

[20] Remarks of Chairman Kennard to *USTA's Inside Washington Telecom*, Washington, D.C. (April 27, 1998).

[21] *Id.*

USTA agrees with the need to eliminate burdensome regulations. Approval of the RBOC applications to deploy high-speed data and Internet networks without application of Section 251(c) would signal to ILECs, the investment community, and global competitors that market forces, not government regulations, will drive deployment of advanced telecommunications networks.

CONCLUSION

USTA urges the Commission to approve the RBOC applications. In addition, APT raises important issues regarding eliminating barriers to ILECs effectively competing in the telecommunications marketplace. The Commission, however, can approve the RBOC applications to deploy advanced telecommunications networks, without addressing each and every issue raised in the APT petition.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

May 4, 1998 By: 

Mary McDermott
Linda Kent
Keith Townsend
Lawrence E. Sarjeant

1401 H Street, NW
Suite 600
Washington, D.C. 20005
(202) 326-7310