

RECEIVED

JUL 21 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
1998 Biennial Regulatory Review --) CC Docket No. 98-94
Testing New Technology)

**COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION**

The United States Telephone Association (USTA) respectfully submits its comments in the above-referenced proceeding. USTA is the principal trade association of the local exchange carrier (LEC) industry. Its members provide over 95 percent of the incumbent LEC-provided access lines in the U.S. USTA's member companies have consistently sought relief from outdated and unnecessary regulations which have delayed or in some cases prevented them from providing new services to their customers.

On June 11, 1998, the Commission released a *Notice of Inquiry* requesting comment on the effects of existing Title II regulations on experiments involving advanced technology, including technical trials and market trials. USTA urges the Commission to move forward quickly and aggressively to eliminate all regulations which impede or delay the introduction of new services.

The Commission's statutory mandate in this regard is clear. In fact, as the Commission points out, it has long been the policy of the United States "to encourage the provision of new

JHR

technologies and services to the public.”¹ Pursuant to Section 157 of the Communications Act of 1934, any party opposing a new technology or service was to bear the burden of demonstrating that the new technology or service was inconsistent with the public interest. In addition, the Commission was required to determine within one year whether any petition or application proposing a new technology or service was in the public interest. Unfortunately, this statute was not vigorously enforced. The Telecommunications Act of 1996, however, builds on that policy and provides the Commission with specific ways to implement it. The stated intent of the 1996 Act is to “provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.”²

Section 706 of the 1996 Act authorizes the Commission and the state commissions to use a variety of tools to encourage the deployment, on a reasonable and timely basis, of advanced telecommunications capability to all Americans. Section 257 requires the Commission to continue to review regulations to eliminate market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services. In addition, Section 714 establishes a Telecommunications Development Fund to, among other things, stimulate new technology development. Finally, Section 11 of the 1996 Act requires the

¹47 U.S.C. § 157.

²Telecommunications Act of 1996, Pub.L.No. 104-104, 110 Stat. 56 (1996 Act) codified at 47 U.S.C. §§ 151 *et seq.* Conference Report. S. Rep. 101-104, Joint Explanatory Statement at 113, February 1, 1996.

Commission to review all of its regulations in every even-numbered year beginning in 1998 and to determine whether any such regulation is no longer in the public interest as the result of meaningful economic competition. Such regulations are to be repealed or modified. Given this clear mandate, the Commission should eliminate all current regulations which constrain or delay the ability of incumbent LECs to provide advanced telecommunications to their customers.

The exercise of this clear statutory mandate will enhance competition. The competitors of incumbent LEC are not bound by restrictions on the introduction of new and advanced technology and services. Incumbent LECs are severely disadvantaged in the competitive marketplace because they must incur administrative costs which their competitors do not face, they must make information regarding new service offerings public and they must seek approval to test and then to introduce new services. These regulatory constraints on incumbent LECs discourage the introduction of new services which, in turn, deprives their customers of the greater choices and cost savings which competition is supposed to provide.

The social costs of regulatory constraints that artificially increase costs and fail to provide meaningful consumer benefits can be staggering. For example, under current regulation, incumbent LECs must request permission from the Commission in order to introduce a new interstate service. Of course, their competitors have an incentive to stop or at least delay such activity. While the Commission reviews an incumbent LEC's request and evaluates the competing claims, the new service is delayed. This delay diminishes the gains in consumer welfare that would have resulted from the introduction of the new service. Dr. Jerry Hausman estimated that the gain in consumer welfare from the introduction of voice messaging services amounted to \$1.27 billion per year. The introduction of cellular telephone service has led to an

estimated gain in consumer welfare of about \$50 billion per year.³ However, the detrimental impact of delay eviscerates consumer welfare. For example, voice messaging services were first proposed by AT&T in the 1970's. The Commission delayed its decision and then refused to allow the Bell Operating Companies (BOCs) to offer these services on an integrated basis with other services. In 1986, the Commission reversed its decision, but the BOCs were forbidden by the Modification of Final Judgment from offering these services. Finally, more than ten years after they were first proposed, in 1988, the BOCs were permitted to offer information services. These companies began providing voice messaging services in 1989. Dr. Hausman estimates that the ten year regulatory delay cost consumers well over \$10 billion. Dr. Hausman warns that losses in consumer welfare cannot be regained in subsequent periods. "Regulation, as currently implemented, may well be unable to keep up with the fast-paced changes in telecommunications technology. Consumer welfare losses have been in the billions of dollars per year, and the FCC's current approach may well lead to comparable consumer welfare losses in the future."⁴ Given the high stakes involved, the Commission should actively be examining its rules to avoid such a result. Therefore USTA recommends that the Commission examine its rules and undertake the following.

First, the Commission should facilitate the testing of new technologies and services by eliminating all filing or approval requirements prior to allowing carriers to conduct trials. Since a carrier cannot exercise market power for services that have not yet been introduced or which

³Jerry A. Hausman, "Valuing the Effect of Regulation on New Services in Telecommunications," *Brookings Papers on Economic Activity*, 1997.

⁴*Id.* at 16.

have a zero market share, there is no need to retain such requirements even on a streamlined or expedited approval basis. The rapid advances in technology and new services makes any delay in conducting market trials costly and could inhibit investment, particularly when other providers have no "waiting period". Further, even streamlined and expedited review, will give the competitors of incumbent LECs an opportunity to delay and to obtain information about the planned trial which could be used to their competitive advantage.

The Commission should not place restrictions on the number of participants or the locations of the trials. The carrier should have the discretion to conduct a trial in as many areas and with as many participants needed to ensure its validity.

Second, the Commission should eliminate any tariff requirements or pricing limitations on market trials. Since the purpose of the trial is to assess demand for a new service, incumbent LECs should be free to experiment with different price levels and price structures. The marketplace should determine whether there is demand for the new service and at what price. Any restrictions would impede the carrier's ability to fully conduct a reliable market trial.

In addition, the Commission should not impose any requirements to ensure that shareholders are bearing the full cost of the trial. Such a requirement would be inappropriate unless the profits from the resulting services would also flow solely to shareholders. Again, the marketplace should be relied upon to ensure that resources are utilized efficiently and effectively.

Third, the Commission should eliminate any Section 214 requirement for a trial which would only delay the trial without any corresponding public benefit.⁵

⁵The Commission should immediately forbear from requiring the current Section 214 applications as proposed in CC Docket No. 97-11. Such forbearance should apply to all

Fourth, the Commission should permit carriers to test a variety of interfaces during a trial and to vary the interfaces without issuing a network disclosure statement, including network interface specifications. In addition, carriers should be able to bundle customer premises equipment and information services with telecommunications services during the trial.

Fifth, the Commission should eliminate Part 69 regulations for price cap LECs and streamline those rules for other incumbent LECs. Specific rate elements should not be codified. Even if the Commission only expedites the trial process, any benefits will be lost if incumbent LECs must file a waiver of the Part 69 rules and wait for a Commission decision before introducing a new service. Incumbent LECs should be permitted to introduce a new service on one day's notice without burdensome cost support requirements. Regulation should not be a roadblock to the introduction of new and advanced services.

Sixth, the Commission should utilize the authority granted in Section 706 of the 1996 Act to expedite the deployment of high-speed, advanced telecommunications networks and immediately approve the petitions pending before it. The failure to act in a timely manner will have far reaching consequences for U.S. companies trying to compete in the global telecommunications marketplace and for the U.S. economy. The Commission must reduce regulation if U.S. companies are to be able to respond to the demands of businesses and customers for new technology. The number of Commission proceedings, the delay in

companies, eliminate regulation of small projects, abolish reporting requirements, streamline the process for reducing or discontinuing service, eliminate the certification process for the delivery of video programming by incumbent LECs and define an extension of a line for telecommunications services to include construction of new lines or extensions of existing lines. See USTA Comments and Reply Comments filed February 24, 1997 and March 17, 1997 respectively.

Commission decisions, ongoing litigation and the administrative burden and cost of regulation will disadvantage incumbent LECs and deny customers of a potential market participant.

Seventh, the Commission should eliminate its requirement, which is currently suspended, that independent LECs must provide in-region, interstate, interexchange services through a separate affiliate.⁶ The administrative costs posed by such a requirement are prohibitive and would only serve to provide a disincentive to the provision of advanced telecommunications networks and services by small and mid-sized LECs.

There is no need for the Commission to attempt to promulgate rules to determine which trials should qualify for forbearance and which should not. Such attempts to “split hairs” misses

⁶Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC’s Local Exchange Area, CC Docket No. 96-149 and Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, *Order*, DA98-556 (rel. March 24, 1998).

the point of biennial review. The regulatory lag that delays the delivery of new services to consumers and that creates disincentives to invest in new technology must be abolished. USTA urges the Commission to adopt the recommendations contained herein.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

By: *Linda L. Kent*

Its Attorneys:

Lawrence E. Sarjeant
Linda L. Kent
Keith Townsend

1401 H Street, N.W., Suite 600
Washington, D.C. 20005
(202) 326-7248

July 21, 1998