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July 22, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

ORIGINAL

Re: Ex Parte Presentations in (1) CC Docket Nos. 98-11, 98-26, 98-32/98-78 and 98-91 Regarding Section 706; and (2) CC Docket No. 96-98 & CCB/CPD 97-30 Regarding Reciprocal Compensation

Dear Ms. Salas:

On behalf of the Competitive Telecommunications Association ("CompTel"), I am writing to notify you of a meeting yesterday between Genevieve Morelli, Joseph Gillan and I, on behalf of CompTel, and Dale Hatfield of the Office of Engineering and Technology. In that meeting, CompTel discussed the attached materials in connection with the numerous petitions filed to implement Section 706 of the Telecommunications Act of 1996.

Further, CompTel recommended that the Commission take no action on the issue whether Internet access traffic is subject to reciprocal compensation obligations under Section 251(b)(5) of the Telecommunications Act of 1996. In particular, CompTel noted that any problems regarding reciprocal compensation can be and are being resolved through negotiations for new interconnection agreements between incumbent local exchange carriers and competitive local exchange carriers. CompTel also distributed the attached document to show that withdrawing Internet access traffic from the statutory reciprocal compensation mechanism would violate the express terms of the WTO Basic Telecom Agreement.

Respectfully submitted,

Robert J. Aamoth

cc: Dale Hatfield (w/encl.)

CompTel Recommends a Comprehensive Investigation into ILEC Corporate Structure

I. There are multiple proceedings addressing ILEC corporate structure currently pending before the Commission.

A. CompTel's Petition to declare the CLEC-affiliate of an ILEC an incumbent LEC within the ILEC's Serving Territory under Section 251(h).

B. RBOC requests under Section 706 to exempt data services/investments from a variety of regulatory obligations, including Section 251(c).

C. LCI has recommended the structural separation of a RBOC into distinct network and retail subsidiaries to promote local competition and establish presumptive compliance with Section 271.

II. The CompTel 251(h) Petition addresses the use of a subsidiary corporate structure by an ILEC to avoid its obligations under the Act and foreclose local competition.

A. Several ILECs (most notably BellSouth) are establishing CLEC affiliates to offer local service in "competition" with themselves, in the same geographic areas and using brand names deliberately intended to evoke (in the public's mind) the ILEC's reputation.

B. Because the ILEC and its affiliated CLEC report consolidated results to the same stockholders, the CLEC affiliate faces no independent obligation to innovate or operate profitably. By the affiliate reselling the ILEC's services under Section 251(c)(4), the ILEC can give the appearance of nondiscrimination without the risk of competitive harm:

1. Because the CLEC-affiliate *wants* to be seen as the incumbent, the concern that service-resale limits the entrant to offering the same service as the incumbent is irrelevant.

2. The CLEC-affiliate benefits from the incumbent's advertising and inherited reputation -- factors which other entrants must offset through expenditures which erode the financial viability of the wholesale discount.

3. The ILEC/CLEC together have a financial relationship that no independent CLEC can duplicate -- the ILEC retains an access-monopoly to its affiliated CLEC's customers and they share a single stockholder which judges only their combined performance.

III. LCI has identified the minimally acceptable conditions necessary for a separate subsidiary arrangement to promote competition.

A. There must be a clear and comprehensive separation between the ILEC's wholesale (i.e., network) and retail subsidiaries.

B. The ILEC's retail subsidiary must obtain its network facilities from the ILEC at cost-based rates, ordered and provisioned using the same operational systems as any other CLEC.

C. The ILEC's CLEC-affiliate must have a significant fiduciary obligation to independent stockholders to assure that it operates with the same economic incentives as other CLECs.

If -- and *only* if -- the basic conditions identified in the LCI Petition are in place, then the ILEC's CLEC-affiliate can be subject to the same regulation as its CLEC competitors.

IV. An ILEC affiliate limited to data services will not be sufficient to promote competition for data services specifically, much less promote competition more generally.

A. Without independent ownership, the data affiliate will not have the same economic relationship to the ILEC as other CLECs. Any non-cost component in network element prices (or collocation charges) will favor the ILEC-affiliate over other potential providers.

B. *Even if* competitors are given the same access to ILEC facilities as the data-affiliate, however, the data-affiliate will enjoy a significant uneconomic advantage.

1. The ILECs recognize that bundled service-packages are likely to dominate the competitive landscape in the future.

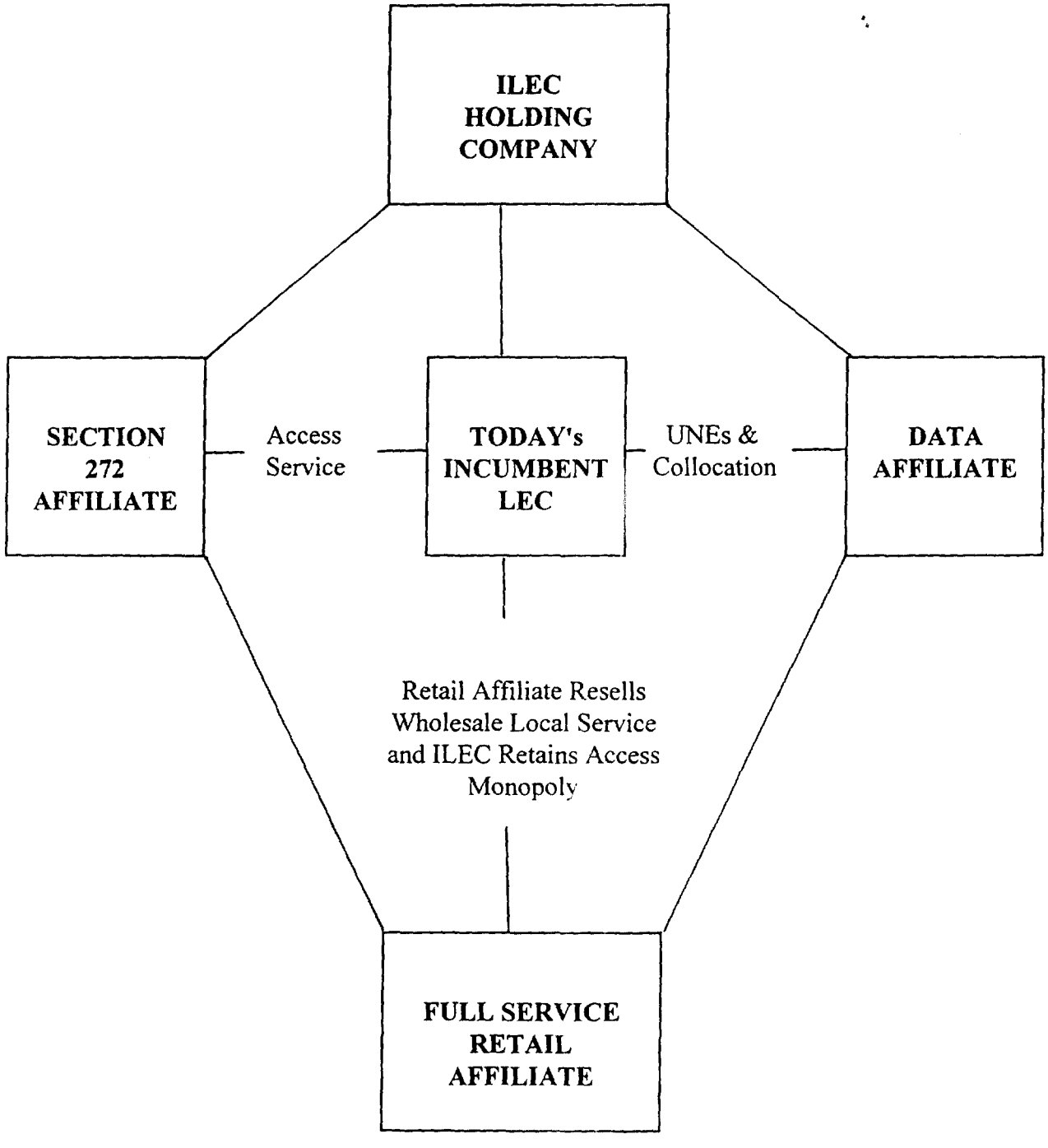
2. Competition depends upon all competitors having an ability to compile similar packages of services.

3. Undistorted competition requires that CLECs have cost-based, nondiscriminatory access to the ILEC's *entire* network, not just those elements needed to provide data services.

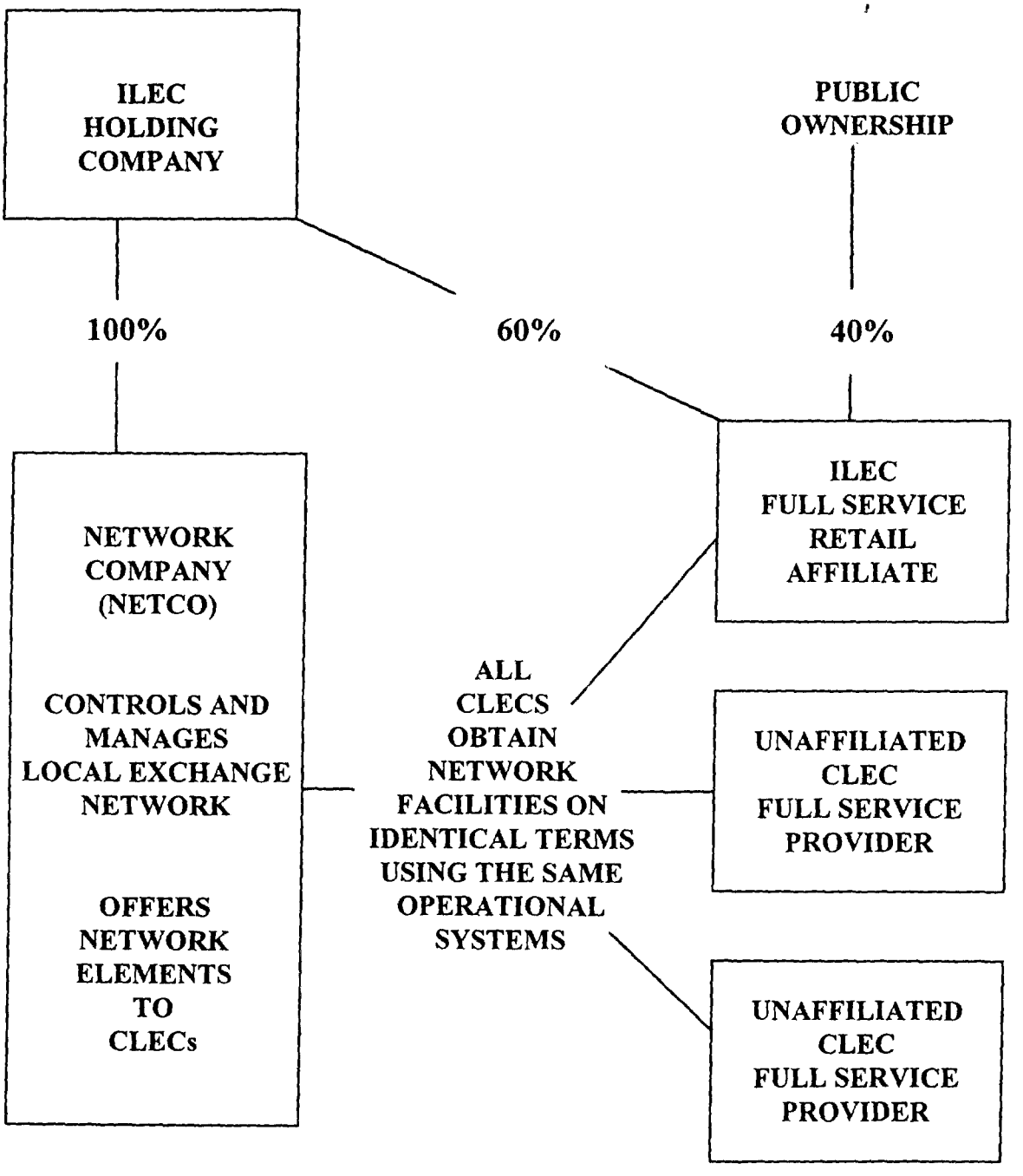
C. The underlying trend of facilities jointly supporting advanced data and conventional phone services calls for a comprehensive solution.

V. The Commission should *comprehensively* address the ILEC corporate structure in a way that will best encourage advanced services, open local markets to competition, and can lead to the deregulation of ILEC retail services. CompTel recommends that the Commission consolidate these proceedings addressing ILEC-affiliates and conduct a single rulemaking intended to promote full retail competition.

A DATA-ONLY SEPARATE AFFILIATE WILL NOT PROMOTE FAIR COMPETITION



A COMPREHENSIVE SUBSIDIARY POLICY CAN PROMOTE COMPETITION



COMPTEL *EX PARTE*
RECIPROCAL COMPENSATION
JULY 20, 1998

THE ILEC PROPOSALS TO WITHDRAW RECIPROCAL COMPENSATION FOR INTERNET ACCESS TRAFFIC WOULD VIOLATE THE WTO AGREEMENT

I. THE ILECS ARE ASKING THE FCC TO HOLD THAT INTERNET ACCESS TRAFFIC IS NOT SUBJECT TO RECIPROCAL COMPENSATION UNDER SECTION 251(B)(5).

A. THE ILECS WANT TO PAY NO COMPENSATION TO CLECS FOR THIS TRAFFIC, OR THEY WANT TO "SHARE" END-USER RETAIL REVENUES (I.E., AMERITECH REVENUE SHARING PROPOSAL).

B. THE ILECS WANT TO HAVE THE RIGHT TO FORCE CLECS TO INCUR COSTS TO TERMINATE ILEC-ORIGINATING TRAFFIC WITHOUT PAYING COST-BASED INTERCONNECTION RATES.

II. THE ILECS' PROPOSALS WOULD VIOLATE U.S. OBLIGATIONS UNDER THE WTO BASIC TELECOMMUNICATIONS AGREEMENT

A. THE WTO REFERENCE PAPER CONTAINS DEFINITIONS AND PRINCIPLES THAT ARE BINDING TREATY OBLIGATIONS OF THE UNITED STATES.

B. SECTION 2 OF THE WTO REFERENCE PAPER DEFINES THE TERM "INTERCONNECTION" TO INCLUDE *RECIPROCAL* INTERCONNECTION OBLIGATIONS – NAMELY, "LINKING WITH SUPPLIERS PROVIDING PUBLIC TELECOMMUNICATIONS TRANSPORT NETWORKS OR SERVICES IN ORDER TO ALLOW THE USERS OF ONE SUPPLIER TO COMMUNICATE WITH USERS OF ANOTHER SUPPLIER."

C. WITH RESPECT TO DOMINANT CARRIERS SUCH AS ILECS, THE WTO REFERENCE PAPER IMPOSES SEVERAL OBLIGATIONS.

(i) SECTION 2.2(a) REQUIRES NON-DISCRIMINATORY INTERCONNECTION RATES WHICH ARE NO LESS FAVORABLE THAN THE ILEC CHARGES TO ITSELF.

(ii) SECTION 2.2(b) REQUIRES INTERCONNECTION AT "COST-ORIENTED RATES."

D. THE ILECS' PROPOSAL TO ELIMINATE RECIPROCAL COMPENSATION FOR INTERNET ACCESS TRAFFIC WOULD VIOLATE BOTH REQUIREMENTS.

(i) THE ILECS WOULD TERMINATE THEIR OWN INTERNET ACCESS TRAFFIC AT THE UNDERLYING ECONOMIC COST, BUT THEY WOULD NOT PAY A SIMILAR RATE FOR THE TERMINATION OF INTERNET ACCESS TRAFFIC THAT THEY HAND-OFF TO CLECS.

(ii) THE ILECS WOULD NOT PAY A "COST-ORIENTED" RATE TO THE CLEC FOR THE TERMINATION OF ILEC-ORIGINATING INTERNET ACCESS TRAFFIC.

III. THE UNITED STATES HAS UNDERTAKEN SIGNIFICANT EFFORTS TO EDUCATE AND PERSUADE THE REST OF THE WORLD TO IMPLEMENT COST-BASED INTERCONNECTION REGIMES. IT WOULD SEND THE WRONG SIGNAL TO ENDORSE A DEVIANT, NON-COST BASED INTERCONNECTION REGIME FOR INTERNET ACCESS TRAFFIC.

WORLD TRADE ORGANIZATION

GATS/SC/90/Suppl.2
11 April 1997

(97-1457)

Trade in Services

THE UNITED STATES OF AMERICA

Schedule of Specific Commitments

Supplement 2

(This is authentic in English only)

This text supplements the entries relating to the Telecommunications section contained on pages 45 to 46 of document GATS/SC/90.

UNITED STATES - SCHEDULE OF SPECIFIC COMMITMENTS

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
2.C. TELECOMMUNICATIONS SERVICES*:			
2.C.a. Voice services	(1) None	(1) None	The United States undertakes the obligations contained in the reference paper attached hereto.
2.C.b. Packet-switched data transmission services	(2) None	(2) None	
2.C.c. Circuit-switched data transmission services	(3) None, other than - Comsat has exclusive rights to links with Intelsat and Inmarsat. - Ownership of a common carrier radio license: Indirect: None Direct: May not be granted to or held by (a) foreign government or the representative thereof (b) non-U.S. citizen or the representative of any non-U.S. citizen	(3) None	
2.C.d. Telex services			
2.C.e. Telegraph services			
2.C.f. Facsimile services			
2.C.g. Private leased circuit services			

ɔdes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
C.o. Other Mobile Services Analogue/Digital cellular services PCS (Personal Communications services) Paging services Mobile data services *Excluding one-way satellite transmissions of DTH and DBS television services and of digital audio services	(c) any corporation not organized under the laws of the United States or (d) U.S. corporation of which more than 20% of the capital stock is owned or voted by a foreign government or its representative, non-U.S. citizens or their representatives or a corporation not organized under the laws of the United States. (4) Unbound except as indicated by horizontal commitments	(4) Unbound except as indicated by horizontal commitments.	

ATTACHMENT TO THE UNITED STATES SCHEDULE

REFERENCE PAPER

Scope

The following are definitions and principles on the regulatory framework for the basic telecommunications services.

Definitions

Users mean service consumers and service suppliers.

Essential facilities mean facilities of a public telecommunications transport network or service that

(a) are exclusively or predominantly provided by a single or limited number of suppliers; and

(b) cannot feasibly be economically or technically substituted in order to provide a service.

A major supplier is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of:

(a) control over essential facilities; or

(b) use of its position in the market.

1. Competitive safeguards

1.1 Prevention of anti-competitive practices in telecommunications

Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

1.2 Safeguards

The anti-competitive practices referred to above shall include in particular:

(a) engaging in anti-competitive cross-subsidization;

(b) using information obtained from competitors with anti-competitive results; and

(c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

2. Interconnection

2.1 This section applies to linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier, where specific commitments are undertaken.

2.2 Interconnection to be ensured[1]

Interconnection with a major supplier will be ensured at any technically feasible point in the network. Such interconnection is provided.

(a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;

(b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and

(c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

2.3 Public availability of the procedures for interconnection negotiations

The procedures applicable for interconnection to a major supplier will be made publicly available.

2.4 Transparency of interconnection arrangements

It is ensured that a major supplier will make publicly available either its interconnection agreements or a reference interconnection offer.

[1]Rural local exchange carriers may be exempted by a state regulatory authority for a limited period of time from the obligations of section 2.2. with regard to interconnection with competing local exchange carriers.

Rural telephone companies do not have to provide interconnection to competing local exchange carriers in the manner specified in section 2.2. until ordered to do so by a state regulatory authority.

2.5 Interconnection: dispute settlement

A service supplier requesting interconnection with a major supplier will have recourse, either:

(a) at any time or

(b) after a reasonable period of time which has been made publicly known

to an independent domestic body, which may be a regulatory body as referred to in paragraph 5 below, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

3. Universal service

Any Member has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member.

4. Public availability of licensing criteria

Where a licence is required, the following will be made publicly available:

(a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence and

(b) the terms and conditions of individual licences.

The reasons for the denial of a licence will be made known to the applicant upon request.

5. Independent regulators

The regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants.

6. Allocation and use of scarce resources

Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, will be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands will be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

WORLD TRADE ORGANIZATION

GATS/EL/90/Suppl.2
11 April 1997

(97-1462)

Trade in Services

THE UNITED STATES OF AMERICA

List of Article II (MFN) Exemptions

Supplement 2

(This is authentic in English only)

This text is inserted in document GATS/EL/90.

THE UNITED STATES - LIST OF ARTICLE II (MFN) EXEMPTIONS

Sector or subsector	Description of measure indicating its inconsistency with Article II	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
:lecommunication rvices: One-way tellite transmission of TH and DBS television :rvices and of digital ıdio services	Differential treatment of countries due to application of reciprocity measures or through international agreements guaranteeing market access or national treatment	All	Indefinite	Need to ensure substantially full market access and national treatment in certain markets.