paper or left out the price at which goods in services were transact it, claiming that price was not necessary as part of the public disclosure. The FCC rejected this approach.[71]

Ameritech proposed truly remarkable language for a telemarketing script which was intended to ensure that its long distance affiliate would gain no competitive advantage when customers interact with the incumbent local exchange company. It read as follows:

> You have a choice of companies, including Ameritech long distance, the long distance service. Would you like me to read from a list of other available long distance companies or do you know which company you would like.[72]

There have also been complaints by competitors of refusals to offer services to selected competitions[73] and counter selling by the company.[74] That is, the company targets individuals in the process of changing service providers to try to win them back, based upon proprietary information that must be given to Ameritech to make the change.

The FCC rejected all of these practices, but these behavior abuses of affiliate relations underscores how difficult it will be, even when all the technical conditions of opening markets are met, to ensure a level playing field for new entrants competing against a hundred year old monopoly.

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[71] FCC Michigan, paras. 363, 367, 373.

[72] FCC Michigan, para. 375.

[73] FCC Michigan, para. 377.

[74] FCC Michigan, para. 379.

VII. THE PUBLIC INTEREST

The public interest test is largely undefined in the 1996 Act and the accompanying report. The only mention is to require the FCC to make a public interest determination and to base its decision on "substantial evidence on the record as a whole." Further, the Department of Justice is given broad latitude in its evaluation of the request for entry. The Conference report mentions specifically (1) the House standard, (2) the standard included in the AT&T consent decree, "or (3) any other standard the Attorney General deems appropriate.

Although some have sought to downplay the importance of the public interest test, that approach is not supported by the law or the legislative history.[75] The fact that Congress added a broad public interest standard to the 1996 Act is seen by the Department of Justice as an

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[75] Turetsky, David, "Bell Operating Company InterLATA Entry Under Section 271 of the Telecommunications Act of 1996: Some Thoughts," before the Communications Committee of the National Association of Regulatory Commissioners, July 22, 1996, pp. 19-20.

> In view of this history and Congressional policy it is especially curious that, since enactment of the new law, it has been suggested in certain quarters that the public interest requirement might be less significant in section 271 than in other context and that it may be just some sore of gratuitous restatement of the competitive checklist, presumed to be satisfied whenever the checklist is. I would like to put that notion to rest...
>
> The equally critical importance of the public interest requirement is unmistakable. Its importance is not only reflected in the express terms of the statute itself, where the requirement is given co-equal billing with the checklist and the other requirements that he Bells must establish that they satisfy. It is also indicated time after time in the legislative history. Members whose support was absolutely essential to the new law's passage made it clear that an independent public interest requirement, of at least the breadth that public interest requirements - and with emphasis on its competition component -- generally have before commissions such as the FCC, was essential to their support. It was also an important consideration for President Clinton in signing the new law.

important step.[76] The FCC took this view as well.

> As discussed below, we believe that section 271 grants the commission broad discretion to identify and weigh all relevant factors in determining whether BOC entry into a particular in-region, interLATA market is consistent with the public interest. Before making a determination of whether the grant of a particular section 271 application is consistent with the public interest, we are required to consult with the Attorney General, and to give substantial weight to the Attorney General's evaluation...
>
> The Communications Act is replete with provisions requiring the commission, in fulfilling its statutory obligation to regulate interstate and foreign communications by wire and radio, to assess whether particular actions are consistent with the public interest, convenience, and necessity. Courts have long held that the Commission has broad discretion in undertaking such public interest analyses...
>
> The legislative history of the public interest requirement in section 271 indicates that Congress intended the commission, in evaluating section 271 applications, to perform its traditionally broad public interest analysis of whether a proposed action or authorization would further the purposes of the Communications Act. We also conclude that Congress granted the Commission broad discretion under the public interest requirement in section 271 to consider factors relevant to the achievement of the goals and objectives of the 1996 Act. Moreover, requiring petitioning BOCs to satisfy the public interest prior to obtaining in-region, interLATA authority demonstrates, in our view, that Congress did not repeal the MFJ in order to allow checklist compliance alone to be sufficient to obtain in-region, interLATA authority...
>
> In adopting section 271,Congress mandated, in effect, that the commission not lift the restrictions imposed by the MFJ on BOC provision of in-region, interLATA services until the commission is satisfied on the basis of an adequate factual record that the BOC has undertaken all actions necessary to assure that its local telecommunications market is, and will remain, open to competition.[77]

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[76] DOJ, SBC, p. 39.

The "public interest" standard under the Communications Act is well understood as giving the Commission the authority to consider a broad range of factors and the courts have repeatedly recognized that competition is an important aspect of the standard under federal telecommunications law.

[77] FCC Michigan, paras. 383, 384, 385.

Putting aside the effort to downplay the significance of the public interest test, controversy has arisen over both the process of reaching the broad conclusions about whether entry serves the public interest and the substantive criteria by which the conclusion will be reached.

A. FULL EVIDENTIARY BASIS FOR DECISION MAKING

The evidentiary basis required by the 1996 Act has led The Oklahoma Attorney General to complain about the process of decision making in that state. The hearing process was deficient, in the opinion of the AG.

> At that evidentiary hearing before the Administrative Law Judge and at the hearing on appeal before the OCC *en banc*, the Oklahoma Attorney General argued that "in order to *verify* the compliance of the Bell operating company with the requirements of subsection [c]," 47 U.S.C. s271(d)(2)(B), the FCC envisions that the OCC consultation be based upon a reliable evidentiary foundation. Based upon this and upon the fact that the OCC proceeding conducted to determine if SBC satisfies s271 fits within the state law definition of an "individual proceeding," Okla. Stat tit. 75 s250.3(7), the OCC's procedural rules for conducting O.C. adjudications, which include the examining and cross examining of witnesses and adherence to the rules of evidence should be enforced.[78]

The Department of Justice also underscores the important role that independent review of the facts of the case by each entity charged with review of the application should exercise in its criticism of the Oklahoma Corporations Commission compilation of evidence and reading of the law.

> In this case, however, the OCC majority did not adopt detailed factual findings concerning the checklist compliance issues, and their conclusions appear to rest, in large part, on what we believe to be an incorrect legal interpretation of the checklist.[79]

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[78] AG Oklahoma, p. 3.

[79] DOJ, SBC, p. 26.

RBOC efforts to restrict the nature of the hearing at the state have been vigorous, with many parties excluded for proceedings under section 251 and 271. If the states fail to build a full evidentiary record, then the Department of Justice and the FCC will have to build a record of its own. The Attorneys General have echoed this concern.[80]

The FCC has expressed similar concerns. It defined the standard to be applied as a preponderance[81] of sworn[82] evidence in the record.[83]

B. COMPETITIVE STANDARD

The Department of Justice underscored the fundamental competition analysis which must be the basis of any ultimate finding on authorization of RBOC entry. The Department of Justice stresses the distinction between the minimum conditions set out in parts of section 271 and the broader public interest test. DOJ concludes that Congress clearly made a distinction between threshold conditions and an overall reading of the public interest.

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[80] Attorneys General, p. 3.

The Commission must also consider the extent to which it can rely upon the consultation provided by the Oklahoma Corporation Commission in this proceeding. If the Oklahoma Commission has fallen short in its review of SBC's compliance with the competitive checklist set forth in section 271(c)(2)(B) of the 1996 Act, it is incumbent upon the Commission to say so. Otherwise, the Commission runs the risk of undermining the work of public utility commissions (PUCs) in other States that, often with the assistance of the State's Attorney General's office, have undertaken or will undertake thoroughgoing reviews of their local BOC's compliance with the requirements of section 271. A Commission decision that appears to sanction Oklahoma's level of scrutiny will endanger PUC efforts in other States to conduct more detailed reviews.

[81] FCC Michigan, para. 46.

[82] FCC Michigan, para. 47.

[83] FCC Michigan, para. 152.

Congress supplemented the threshold requirements of Section 271, discussed in Parts II and III above, with a further requirement of pragmatic, real world assessments of the competitive circumstances by the Department of Justice and the Commission. Section 271 contemplates a substantial competitive analysis by the Department, "using any standards the Attorney General considers appropriate. The Commission, in turn, must find before approving an application that "the requested authorization is consistent with the public interest, convenience, and necessity," and, in so doing, must "give substantial weight to the Attorney General's evaluation." The Commission's "public interest" inquiry and the Department's evaluation thus serve to complement the other statutory minimum requirements, but are not limited by them...

In vesting the Department and the Commission with additional discretionary authority, Congress addressed the significant concern that the statutory entry tracks and competitive checklist could prove inadequate to open fully the local telecommunications markets.[84]

Without specifying a precise standard, DOJ concludes that competition must be meaningful, real, nontrivial, substantial, and irreversible. At the key point in its response, DOJ uses the term substantial competition.[85] In other places, DOJ and its experts refer to meaningful

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[84] DOJ, SBC, p. 38.

[85] DOJ, SBC, pp. 41-42.

The public interest in opening local telecommunications markets to competition also requires that the Commission deny SBC's interLATA entry application. SBC does not presently face substantial local competition in Oklahoma, despite the potential for such competition and the expressed desire of numerous providers, including some with their own facilities, to enter the local market... SBC's failure to provide adequate facilities, service and capabilities for local competition is in large part responsible for the absence of substantial competitive entry If SBC were to be permitted interLATA entry at this time, its incentives to cooperate in removing the remaining obstacles to entry would be sharply diminished, thereby undermining the objectives of the 1996 Act.

In performing its competitive analysis, the Department seeks to determine whether the BOC has demonstrated that the local market has been irreversibly open to competition. To satisfy this standard, a BOC must establish that the local markets in the relevant states are fully and irreversibly open to the various types of competition contemplated by the 1996 Act -- the construction of new networks, the use of unbundled elements of the BOC's network, and resale of BOC services... In applying this standard, the Department will look first to the extent to which competitors are entering the market. The presents of commercial competition at a nontrivial scale both (1) suggests that the market is open; and (2) provides

competition and real competition.[86] Thus, we have a series of adjectives far beyond the simple condition set out in section 271 [c](1).

The Oklahoma Attorney General uses the term meaningful as well, but applies it to the 271 [c](1) condition

> The reason such a "competing provider" is required to be "unaffiliated," obviously, is to prevent a BOC from getting interLATA authority when its only competitor in its local market is a bogus competitor. In other words, Congress intended there to some meaningful competition in the BOC's local market as a prerequisite to interLATA entry.[87]

The Department of Justice's analysis focuses primarily on the behavior of competitors. Are they actually entering and at what scale. The Michigan Consumer Federation comments in the Ameritech application suggest that an equally legitimate area of analysis should be broader incumbent behavior in the marketplace. If competition is real or meaningful, it must be affecting incumbent behavior in a number of areas. Entry, on which the Department of Justice focuses, is only one indicator of the competitive status of the market.

> It is premature to reward Ameritech Michigan with long distance entry under Sec 271 because the local bottleneck has not yet been broken pursuant to Sec. 251. If the local Michigan market were competitive, relevant indicators suggest that customers would be switching to other providers; historic monopoly rates would be going down; innovations, expanded services options and service quality would be increased. Instead it is clear that the local bottleneck has not been broken.[88]

The Department of Justice has recently pointed out the failure of competition to spread

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an opportunity to benchmark the BOC's performance so that regulation will be more effective.

[86] DOJ, SBC, p. 51.

[87] AG Oklahoma, p. 3.

[88] DOJ, Michigan, pp. 32...33.

beyond a very small number of select markets.

> The local competitive entry to date is primarily located in the largest urban areas, Grand Rapids and Detroit, but competitors have facilities in several other communities, including Lansing, Ann Arbor, and Traverse City.
>
> Ameritech remains, however, by far the dominant provider of local exchange services, with a near monopoly in its service areas. Most parts of Michigan still have no local competition, save possibly on a resale-basis, since such CLEC competition as exists in Michigan is overwhelmingly concentrated in parts of the cities of Grand Rapids and Detroit and is primarily focused on business customers...
>
> Given this level of competition, we cannot presume that no barriers to entry exist. At the same time, given the successful small-scale entry that have occurred using all three paths, we cannot presume that the local markets necessarily remain closed either.[89]

The FCC used a similar string of adjectives[90] and offered a long series of examples of evidence that indicated the goals of the Act to promote competition are being met.[91]

C. OTHER PUBLIC INTEREST ISSUES

The public interest inquiry need not be limited only to competitiveness questions, however. The Michigan Consumer Federation points out that the impact of entry on other public policy goals in the 1996 Act should be considered (not to mention the broad range of considerations generally associated with the public interest standard).

For example, the 1996 Act clearly calls for service quality to be maintained and enhanced. It suggests that entry into long distance could result in a diversion of attention from this important

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89 DOJ, Michigan, pp. 32-33.

90 FCC Michigan, para. .

91 FCC Michigan, paras. 391-402.

goal. A company that had not achieved the service quality goals of the Act could well be denied entry until it showed that it could handle the burden of long distance while enhancing quality

> Ameritech's spiraling diversification and emphasis on one-stop shopping strategy are apparently creating serious management distractions... The resulting distraction is at the expense of attention to the core business and network that most consumers must rely upon -- and are paying for -- long into the foreseeable future. Withholding long distance entry until Ameritech Michigan has been forced to attend to the needs of its core network and customer base is in the public interest.[92]

The Michigan Consumer Federation also calls for consumer education policies to be in place before entry is authorized to prevent quality problems and to promote competition.

> Of practical concern to ratepayers is the absence of administrative procedures as a framework for handling day-to-day problems already being faced by customers who have switched to a competitor. For example, as between Ameritech Michigan and competitive providers, how do customers identify which entity is responsible for problems being encountered. The lack of administrative procedures also impedes provider accountability and contributes to consumer confusion in trying to determine whether customers must seek redress with regulators or whether in a "competitive" environment, they now have recourse in court.[93]

Finally, the Michigan Consumer Federation argues that a variety of rate questions should be addressed in considering whether the public interest would be served in authorizing entry. These cover local rate impact (to be considered by the state commission) but also embedded excesses in interstate rates and are related back to competitive issues.

> It is not in the public interest to grant long distance authority until Ameritech Michigan's monopoly revenue streams have been eliminated. Local competition cannot occur if Ameritech Michigan continues to collect excess monopoly revenues for use in gaining competitive advantage. Before entry into long distance takes effect, the Commission must curtail Ameritech Michigan's monopoly revenue streams. That unfair advantage currently exists as a result of excess

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92 MCF, p. 7.

93 MCF, p. 6.

access charges and from Ameritech Michigan's current price cap formula which includes an overly high rate of return and inadequate productivity factor.[94]

These discussions by third party intervenors leads to a significant number of issues to be raised in implementing the public interest standard under the 1996 Act (see Table 8).

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[94] MCF, p. 6.

TABLE 8
ELEMENTS OF THE PUBLIC INTEREST TEST

COMPETITION

1) POSSIBLE STANDARDS

   a) PROBABILITY TO SUBSTANTIALLY IMPEDE COMPETITION
   b) VIII[C] TEST
   c) OTHER STANDARD

2) EVIDENCE TO CONSIDER ON COMPETITION

   a) MARKET SHARES
   b) PRICE LEVELS
   c) PRICE TRENDS
   d) PROFIT LEVELS
   e) SERVICE QUALITY
   f) OPTIONS
   g) INVESTMENT PATTERNS

OTHER PUBLIC INTEREST FACTORS

1) SERVICE QUALITY
2) CONSUMER PROTECTION
3) RATE STRUCTURES AND REFORM

EVIDENTIARY PROCEEDINGS

1) CONDUCT OF HEARING
2) SWORN TESTIMONY
3) IN THE RECORD
4) SUBSTANTIAL EVIDENCE
5) PREPONDERANCE OF THE EVIDENCE
6) OUTSTANDING COMPLAINTS

APPENDIX A

INDUSTRY CHARACTERISTICS

Table A-1 presents the basis for the excess profits calculation.

The high figures are based on 1996 result only. This assumes that a competitive rate of return on equity is 15 percent based on the following return on equity: Business Week 1000 - 16.8. This is quite generous, since other measures show lower rates of return for the economy as a whole (e.g. Forbes1200 - 13.0, Fortune 500 -14.1). The low estimate is base on the three year average return on equity.

RBOC reasonable rate of return is equal to .9 percent of national average reflecting the lower level of risk RBOCs face in their core businesses. The Beta for RBOCs is .9 compared to a Beta of 1 or more for long distance companies.

The tax effect converts after tax profits to pre-tax overcharges by dividing by .62.

TABLE A-1:

ESTIMATION OF EXCESS PROFITS AND POTENTIAL PRICE REDUCTIONS

COMPANY	1994-96	1996	1995	1994
ATT	18.1	26.6	.7	28.2
MCI	8.5	10.5	5.7	8.8
SPRINT	17.4	14.2	20.6	20.0
LD AVG.	14.9	19.5	4.8	19.5
AMERITECH	23.6	28.8	28.6	14.5
BELL ATLANTIC	24.7	23.9	28.1	22.1
BELL SOUTH	16.7	21.6	13.2	15.0
GTE	30.1	40.2	28.8	24.2
NYNEX	15.1	19.9	17.9	9.3
PACTEL	32.3	40.3	47.9	21.7
SBC	26.8	30.7	30.8	20.5
US WEST	27.1	31.0	34.1	21.2
LOCAL AVG.	23.3	27.7	25.3	18.1
BW 1000	16.0	16.8	15.7	15.4

EXCESS PROFITS AND CHARGES
(Billions of Dollars per year)

LONG DISTANCE		
AVG.ROE - BW	.0	1.1
AVG.ROE*.9 - BW	.0	1.2
PRICE EFFECT (EXCESS/.62)	.0	2.0
LOCAL		
AVG.ROE - BW	4.2	6.0
AVG.ROE*.9 - BW	5.2	7.3
PRICE EFFECT (EXCESS/.62)	8.4	11.8

APPENDIX B

MEASURES OF MARKET CONCENTRATION

Identification of exactly where a small number of firms can exercise market is not a precise science. Generally, however, when the number of significant firms falls into the single digits, there is cause for concern, as the following suggests (J.W. Friedman, Oligolopy Theory (Cambridge University Press, 1983), pp. 8-9).

> Where is the line to be drawn between oligopoly and competition? At what number do we draw the line between few and many? In principle, competition applies when the number of competing firms is infinite; at the same time, the textbooks usually say that a market is competitive if the cross effects between firms are negligible. Up to six firms one has oligopoly, and with fifty firms or more of roughly equal size one has competition; however, for sizes in between it may be difficult to say. The answer is not a matter of principle but rather an empirical matter.

The clear danger of a market with a structure equivalent to only six equal sized firms was recognized by the Department of Justice in its Merger Guidelines (revised 1984). These guidelines were defined in terms of the Herfindahl-Hirschman Index (HHI). This measure takes the market share of each firm squares it, sums the result and multiplies by 10,000. A market with six equal sized firms would have a HHI of 1667. The Department declared any market with an HHI above 1800 to be highly concentrated. Thus, the key threshold is at about the equivalent of six or fewer firms.

Another way that economists look at a market at this level of concentration is to consider the market share of the largest four firms (4-Firm concentration ratio). In a market with six equal sized firms, the 4-Firm concentration would be 67 percent (see Table B-1). The reason that this is

TABLE B-1
MEASURES OF MARKET CONCENTRATION

TYPE OF MARKET	NUMBER OF EQUAL SIZED FIRMS	4-FIRM CONCENTRATION RATION	HHI
COMPETITIVE			
LOOSE OLIGOPOLY	10	40	1000
MODERATELY CONCENTRATED			
TIGHT OLIGOPOLY	6	67	1667
HIGHLY CONCENTRATED			1800

considered an oligopoly is that with that small a number of firms controlling that large a market share, their ability to avoid competing with each other is clear.

Shepherd describes this threshold as follows (W.G. Shepherd, The Economics of Industrial Organization (Englewood Cliffs: Prentice Hall, 1985), p. 4):

> Tight Oligopoly: The leading four firms combined have 60-100 percent of the market; collusion among them is relatively easy.

However, as the above quote indicates, one must have many more firms than six to be confident that competition will prevail -- perhaps as many as fifty. Reflecting this basic observation, the Department of Justice established a second threshold to identify a moderately concentrated market. This market was defined by an HHI of 1000, which is equivalent to a market made up of 10 equal sized firms. In this market, the 4-Firm concentration ratio would be 40 percent.

Shepherd describes this threshold as follows:

> Loose Oligopoly: The leading four firms, combined, have 40 percent or less of the market; collusion among them to fix prices is virtually impossible.

The conceptualization and measurement of concentration breaks down as follows:

Even the moderately concentrated threshold of the Merger Guidelines barely begins to move down the danger zone of concentration from 6 to 50 equal sized firms. For a "commodity" with the importance of telecommunications services, certainly this moderately concentrated standard is a more appropriate place to focus in assessing the structure of the market. In other words, in simple economic markets levels of concentration typified by 10 equal sized firms are high enough to raise questions about the competitive behaviors of the firms in the market. Given the nature of telecommunications, this is a conservative level of concentration about which to be

concerned.

PART III

ATTACHMENT 2:

THE EVIDENTIARY RECORD AGAINST APPROVAL OF BELLSOUTH TELECOMMUNICATION'S APPLICATION FOR ENTRY INTO IN-REGION, INTERLATA SERVICE IN SOUTH CAROLINA

I. INTRODUCTION

This section applies the framework developed in the Last Chance for Local Competition: Section 271 Policies to Open Local Markets to the evidentiary record in South Carolina, as seen by the South Carolina Consumer Advocate, the Department of Justice, and the Florida staff analysis.

Of the four tests that the Telecommunications Act of 1996 lays out as conditions for entry, BST clearly fails three of them.

- The Consumer Advocate and the Department of Justice conclude that the application fails the public interest test.
- The Consumer Advocate and the Department of Justice both conclude that BST has not met the facilities-based competition standard (Track A) and has no right to seek approval under the alternative, Track B.
- The Consumer Advocate, the Department of Justice and the Florida staff analysis of the details of the competitive check list (section 271 (c)(2) show that many of the checklist items have not been provided on a non-discriminatory basis.
- Since any application for InterLATA entry would be deficient on these grounds, none of the parties has addressed the fourth condition on entry -- affiliate relationships (section 271(c)(3).

For purposes of presentation of the conclusions and insights of these authorities, citations are grouped together after a brief introduction. The source is presenting at the start of each citation with the following identifications scheme. The Sponsoring organization is presented first, its witnesses are presented second. Citations from the Department of Justice or its witnesses are presented first, the Consumer Advocate and its witnesses second, and the Florida staff third. The sources are as follows:

DOJ = Department of Justice, "Evaluation of the United States Department of Justice," Federal Communications Commission, In the Matter of Application by BellSouth Corporation, et. al. for Provision of In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, September 30, 1997.

A = "Appendix A: Wholesale Support Process and Performance Measures," in ibid.

S = "Marius Schwartz, "The "Open Local Market Standard" For Authorizing BOC InterLATA Entry: Reply to BOC Criticisms," which is Exhibit 2 of the DOJ evaluation.

F = "Affidavit of Michael J. Fidruss - South Caroline," which is Exhibit 3 of the DOJ evaluation.

CA = "Brief of the Consumer Advocate," In the Matter of: BellSouth Telecommunications, Inc. Application for Authority to Provide In-region InterLATA Service, Before the Public Service Commission of the State of South Carolina, Docket NO. 97-101-C.

B = "Testimony of Allen Buckalew," In the Matter of: BellSouth Telecommunications, Inc. Application for Authority to Provide In-region InterLATA Service on Behalf of the Consumer Advocate, Before the Public Service Commission of the State of South Carolina, Docket NO. 97-101-C.

FLA = Division of Communications and Division of Legal Services, Florida Public Service Commission, Memorandum, Docket No. 960786-TL - Consideration of BellSouth Telecommunications Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996, October 22, 1997

II. THE PUBLIC INTEREST EVALUATION

Although the public interest test is the last consideration listed in the law, it has become one of the first issue dealt with in many of the comments and will be dealt with first in the evaluations of each application. The public interest issue has been pushed to the forefront because the RBOCs have tried to use a public interest argument to blur the consideration of the specific details of the implementation of the conditions of section 271.

The Consumer Advocate and the staff in Florida turn this around, calling on the states to make public interest findings that run in the opposite direction.

> (CA7)In conducting this analysis, the Commission should examine whether the market is open to competition throughout BellSouth's service territory. Competition should be available in both rural and urban areas and in low income as well as high income areas. This does not require there to be competitive alternative for every BellSouth customer. Instead the Commission should require a showing of real and geographically widespread local competition before concluding that BellSouth's entry into the in-region InterLATA market is in the public interest.
>
> (B12) However, the Commission should keep in mind that the FCC will be required to make such a determination as they review the application; therefore, the CA urges the Commission to seize the initiative, actively determine that local service customers have no realistic competitive choices throughout most of the state and recommend to the FCC that granting BellSouth's application is not "in the public interest, convenience and necessity."
>
> (FLA 34-35)While the FCC concluded that section 271 does not mandate a specified level of geographic penetration or market share, the FCC stated that this conclusion does not preclude the FCC from considering competitive conditions or geographic penetration as part of its public interest consideration under section 271 (d) (3) (C). Staff agrees with the FCC's interpretation on this point. Furthermore, staff would note that while no issue in this proceeding specifically deals with the public interest under section 271 (d) (3) (c), it does not prohibit this commission from providing comments regarding public interest considerations, including the competitive conditions in Florida, once BST files a 271 application with the FCC.

A. THE GOAL: PROMOTING THE PUBLIC INTEREST BY PROMOTING COMPETITION IN ALL TELECOMMUNICATIONS MARKETS

1. Both Local and Long Distance Markets Must be Considered

The companies are attempting to attack and weaken the standards established by the DOJ and the FCC by claiming that these standards harm the public interest because they delay RBOC entry. That argument is wrong. The key point is that all marketplaces are to be opened to competition and the impact on both local and long distance markets must be considered, as the following observations of the DOJ and the Consumer Advocate show.

> (DOJv) Competitive benefits in markets for InterLATA services do not justify approving this application before BellSouth's local market has been fully and irrevocably opened to competition. BellSouth's estimate of the magnitude of these benefits rests on unconvincing analytical and empirical assumptions, but more importantly, its analysis fails to give adequate consideration to the more substantial benefits from increased competition in local markets that will be gained by requiring that local markets be opened before allowing InterLATA entry.
>
> (DOJ48) BellSouth erroneously contends that the benefits of allowing its entry now into the InterLATA market in South Carolina warrant approval of this application under the "public interest" standard. BellSouth's economic experts significantly overvalued the benefits of the BOC long distance entry now, and undervalued the benefits to be gained from opening BellSouth's local markets.
>
> (S7) The goal of the 1996 Telecommunications Act is to open *all* markets to competition. This includes, in particular, the local market which is both much larger than long distance and is currently the least open to competition. It is important not to lose track of this point -- the key bottleneck that needs to be unclogged is in the local market...
>
> Unfortunately, BOC experts are silent on the benefits of local competition, or even contend that the Open Market Standards for BOC InterLATA entry can play no major role in fostering local competition and could even retarded it.
>
> (S8) Putting aside the much larger size of the local market, there is much more

room to improve economic performance in the local market than in the InterLATA market by fostering any additional competition because of the different current competitive conditions in the two markets. The InterLATA market is substantially more competitive (though certainly not perfectly competitive) and largely unregulated. Moreover, absent consolidation, long distance competition will continue to increase even without BOC entry. By contrast, the local market is a largely regulated monopoly rife with distortions...

(S9) My only quarrel on this score with BOC experts is this: if additional competition can deliver such impressive gains in oligopolies, why do they not expect even greater benefits from stimulating competition in local BOC markets that today are largely *monopolies*?

(CA6) The consumer advocate believes that, since there is a level of competition in the long distance market, the primary focus for this Commission in evaluating the public interest should be whether consumers in South Carolina have a realistic choice for local service. If consumers have a realistic choice, many of the other potential problems with BellSouth entry into long distance market will be lessened.

2. Estimating Savings in the Long Distance Market

The DOJ has presented a vigorous and precise refutation of BST's benefits claims. The DOJ has shown that BST and the RBOCs are far off the mark in their estimates.

When these mistakes are eliminated, the overwhelming majority of consumers are not likely to save a great deal as a result of BOC entry into the long distance market

(DOJ48-49) economic incentives of BOCs to cut prices substantially on entering InterLATA markets is considerably weaker than the BOC experts claimed. Long distance markets already are significantly more competitive than local markets. Particularly, higher volume residential and business customers benefit from considerable rivalry. The BOC experts that have estimated large price reductions from BOC InterLATA entry, based on experience with SNET and GTE, have exaggerated the benefits realized by customers from InterLATA competition by those ILECs, by failing to take into account the best available rates from the inter-exchange carriers already in the market and focusing primarily on undiscounted AT&T rates, and the less favorable of the rate plans AT&T offers.

(S26-27) The argument that the BOCs would like to see a lower average

interLATA price than currently prevailing assumes that a BOC can compete only by lowering price, not by increasing competitors' cost or degrading their quality through network access discrimination. (It also assumes, as discussed shortly, the BOCs cannot capture a large share of the interLATA market.) Since the average elasticity of demand for long distance service is estimated to be well below 1 (0.7 is a consensus figure), interLATA industry revenue would be increased by raising price and accepting the reduction in output, hence profits would also be increased (as costs would decrease due to reduced output). Thus, an integrated monopolist over both access and downstream long distance sales *would prefer to raise, not lower, the average interLATA retail price* from today's level...

Following this logic, BOCs entering interLATA retail services and that was capable of expanding its own output rapidly would have incentives to nudge the industry towards the higher monopoly price, by using technological access discrimination to inflate competitors' costs or degrade their quality, thus enabling the BOCs to raise its own price... Hausman's contrary argument, that a BOC would prefer *lower* prices, assumes away the ability of a BOC to undermine IXCs through such access discrimination.

(S29) The key point in stressing that the bulk of BOCs interLATA profits are likely to come from retail revenues rather than from increased access minutes is this; an increase in BOCs share of interLATA revenues might be achieved largely by *diverting* output away from IXCs *not by expanding industry output*. Therefore it need not hinge on reducing industry price significantly; and hence BOCs may not have strong incentives to cut interLATA prices.

(S31-32) Professor Hausman assumes that BOC entry would bring about a price reduction of about 18 percent and applies this figure to *all* interLATA revenues from residential customers. But in 1995 only 77 percent of all interLATA minutes originated in BOCs service areas... Making this correction would deflate Hausman's projected benefits to consumers by about one quarter -- even assuming, counter factually, that his projected percentage price reduction in region is accurate.

Second, Professors Hausman and McAvoy over estimate the scope of the likely price reduction in BOCs regions. Even if entry might plausible yield price reductions of the order of 15 percent to low volume residential customers that do not participate in IXC discount plans, the majority of interLATA expenditures are made by higher volume customers who do not participate in discount plans and for whom competition already is more intense. For example, AT&T already offers 10 cent per minute anytime rates, anywhere with a relatively low flat monthly fee. High-volume residential customers subscribing to such plans are likely to see considerably smaller price reductions than those assumed by Professor Hausman.

(S32-33) However, the 17 to 18 percent average residential rate reductions predicted by Professor Hausman based on his interpretation of the SNET and GTE experiences overstates this potential substantially for at least two reasons.

First, Professor Hausman selectively focuses on certain relatively high-priced AT&T rate plans and fails to consider lower rate plans already offered by AT&T and other IXCs. These low rate plans should induce customers to migrate from the particular, relatively high-priced AT&T schedules that Professor Hausman selected for his IXC/AT&T rate comparison, even absent the availability of SNET or GTE interLATA service. In fact, for the *off peak* callers that make up the bulk of the residential market, SNET and GTE *do not* offer the best interLATA rates available in their respective territories, *for any customer calling volume*. For *on peak* calling, competing carriers also have lower rates than GTE *for most service levels*, while the comparison of their rates with those of SNET is mixed.

Second, although Hausman's submissions do not state how he weighted the rate schedules that he does compare, the 17 to 18 percent projected average price reduction appears to be based on initial average prices that are computed by weighting prices in discount and non-discount plans according to the number of customers in each. This ignores the fact that customers in discount plans tend to be the heavier users and account for a much higher share of both minutes and total expenditure.

(S34-35) Competition has been increasing in long distance services to a significant extent even in the absence of BOC entry... Thus, it is misleading to argue that prices with BOCs entry would be lower than without it by about 15 to 20 percent in steady state. Rather, BOC entry would accelerate and perhaps deepen the already intensifying competition. Barring consolidation, this competition would bring interLATA prices lower even without BOC entry. The added reduction in prices that hinges on BOC entry is therefore likely to diminish overtime.

(CA 6) In its testimony, BellSouth urges this commission to look only at the effects of its entry will have on the InterLATA market. While witnesses for BellSouth long distance testified that its entry into the long distance market will result in lower prices, there is no guarantee that BellSouth will not become part of the IXC lockstep pricing problem the company criticizes in its testimony. There is also no guarantee that BellSouth will have to cut long distance prices in order to obtain market share. Therefore, while there may be benefit to BellSouth entry, that benefit is speculative, at best, given the current state of competition in that market.