

no competition, however, ILECs are able to increase prices when regulations are changed. If competition existed, the ILECs would not be able to increase their prices even if regulators authorized them to do so.

As noted above, ILEC deployment of advanced capabilities appears to have slowed as soon as ILEC hopes of avoiding full implementation of section 251(c) requirements were raised. Now, despite earlier announcements touting their plans to deploy advanced capabilities, the ILECs are claiming that they will not deploy advanced capabilities without some regulatory relief from the Commission. The Commission should quickly dispel the notion that the ILECs will, directly or indirectly, obtain the forbearance from section 251(c) requirements that section 10(d) prohibits, and it should make clear that these requirements will be aggressively enforced. Because competition in the advanced services market is a growing interest to a variety of competitors such as CLECs, ISPs and niche players, the development of competition through full implementation of the Act will give ILECs the economic incentive to engage themselves in meeting the demand for wideband services deploying DSL capabilities and to foreclose others from effectively competing in the market.

Only if the Commission ensures that true competition develops will the ILECs engage in mass deployment of xDSL services. Otherwise, the ILECs may have conflicted incentives that cause them to deploy advanced capabilities more slowly (e.g., second line revenues), will keep prices too high and consequently depress demand. To that end, the development and deployment of advanced capabilities will be largely driven by economics. Assuming the existence of a competitive environment in which no one player is unfairly advantaged, if it is not profitable to provide a service because the likely costs (using current technology) exceed the likely revenues (based on current demand), the service simply will not thrive in the market. It is right that

customers be in the position to make that decision--not the ILECs. To the extent that the ILECs have slowed down their investment in advanced capabilities, it is simply because they are looking to the Commission to deregulate these services so that they can maintain their monopoly status in the local market. However, we are convinced that the ILECs will ramp up their efforts to deploy these capabilities because of the competitive pressure being applied by the introduction of new entrants to serve the advanced services market.

2. Reconciling Sections 706 and 254

MCI and WorldCom fully support the goal to encourage deployment of advanced capabilities to residential, rural, and low-income consumers; however, as MCI and WorldCom have stated, the deployment of advanced capabilities will be best advantaged by the creation of a competitive market. To the extent that the Commission wants to change the economics of providing advanced capabilities to these groups, its choices are limited. If the Commission decides to develop subsidies for advanced (as well as basic) service to these groups, it must do so in a competitively neutral way, consistent with the principles of section 254. The subsidy should be explicit and sized based on economic costs. Any carrier willing to serve these groups should be eligible for the subsidy. Further, contribution to the subsidy fund must be competitively neutral, and the FCC should allow recipients of the technology to decide which technology is the "right" one rather than decide for them.

The Commission has already determined which services are to be funded under section 254, in its universal service proceedings. Although the list of services remains open to modification by the Commission, such modification would be best addressed in the section 254, universal service proceedings, not in the context of the current 706 proceedings.

B. Choosing the Appropriate Regulatory Model

Title II applies to the provision of telecommunications services, and the Commission has determined that advanced capabilities are telecommunications services.⁴⁰ Accordingly, the Commission is constrained in its regulation by the fact that Title II governs the provision of telecommunications services and thus advanced capabilities.

Moreover, Title II and the telephone regulatory model provide important procompetitive controls to ensure that advanced capabilities are deployed in a reasonable and timely manner. Specifically, the telephone model of regulation creates the greatest incentives for the deployment of advanced capabilities in a procompetitive environment, to safeguard against ILEC monopolization of "data networks." Indeed, the telephone model will promote competition in local and long distance markets, resulting in greater innovation, speedier deployment of services, and increased consumer choice.

C. ISP Considerations

MCI and WorldCom support the proposition that consumers are better served with a choice of thousands of ISPs. Further, MCI and WorldCom believe that ISPs ought to have reasonable and nondiscriminatory access to all ILEC advanced network elements and capabilities in order to deliver competitive Internet services. Unfortunately, the ILECs, left to their own devices, will continue to discriminate against potential competitors.

U S West's ADSL deployment activity in Oregon provides a recent example of the lengths to which ILECs will go in their efforts to discriminate against competitors at every level and in every service. On September 1, 1998, the Oregon Public Utility Commission ("PUC")

⁴⁰ See 706 Order and NPRM ¶ 35.

delayed U S West's deployment of ADSL service after questions arose concerning U S West's efforts, or lack thereof, to outfit ISPs with the necessary high-speed telephone lines.⁴¹ U S West, in failing to ensure that competing ISPs were provided access to the telephone lines required to participate in ADSL offerings, demonstrates how an ILEC can deploy ADSL capabilities in a manner that discriminates against and excludes both CLECs and ISPs, in order to favor itself (or its data affiliate) and its ISP affiliate. Moreover, other ILEC discriminatory activities in the provision of data services include over-priced unbundled network elements, high tariff pricing for ADSL services, joint marketing, bundling telecommunications and information services, and other anticompetitive actions.

As MCI and WorldCom will explain in their comments on the NPRM, the Commission's proposed plan to create separate ILEC "data" affiliates would not prevent continued discrimination now experienced by competitors in the local service markets. In determining its course of action under section 706, the Commission must give special consideration to the potential favorable and discriminatory treatment ILECs will afford their ISP affiliates.

Moreover, the Commission need not regulate peering arrangements.⁴² Peering arrangements, as they currently exist, operate effectively without regulatory intervention. Further, section 230(b)(2) of the Act mandates that the current competitive Internet market

⁴¹ See In the Matter of U S West Communications, Inc.'s Asynchronous Digital Subscriber Line Service, UT 144, Order No. 98-362, Or. P.U.C. (entered Sept. 1, 1998).

⁴² "Peering," in its simplest terms, is a technical arrangements by which two ISPs exchange traffic either through a public exchange point (public or NAP peering) or over point-to-point connections between hubs of each ISP (direct peering). In a peering relationship, each ISP delivers the traffic received from the other ISP only to the receiving ISP's own customers, whether such customers are ISPs or end users, but not to ISPs with which it peers. Peering involves a *quid pro quo* -- one ISP agrees to terminate the traffic of another in exchange for the second ISP's agreement to terminate traffic from the first.

should be left “unfettered by federal or state regulations,” and any attempt to regulate peering would contravene this policy. As such, because peering involves relationships among ISPs, not relationships between ISPs and regulated telecommunications carriers, the Commission should not attempt to regulate such arrangements unless ILECs’ monopoly powers begin to interfere with the current competitive environment.

D. Competitive Behavior, State Authorities & Information Gathering

MCI and WorldCom endorse the deregulatory philosophy of the 1996 Act. Further, regulators should intervene only when monopoly power exists and causes the market not to function in a fair and competitive manner. Only when sections 251 and 271 have been fully implemented and consumers are receiving the benefits of a fully competitive local market, should the Commission consider forbearance from regulation. Until that happens, regulation will be necessary to protect consumers and to ensure that local market competition has an opportunity to develop and thrive.

The Commission should work with the states to encourage the deployment of advanced capabilities throughout the country by ensuring that CLECs have access to the necessary elements (equipment, loops, and sub-loop unbundling) and all other obligations under section 251, to compete in the provision of advanced capabilities and services.

In addition, with respect to monitoring technology trends and gathering data to assess the deployment of advanced capabilities, the Commission should expand the infrastructure reporting requirements set forth in ARMIS 43-07.⁴³ Because the current infrastructure reports do not capture data on digital loop carrier (“DLC”) systems and other advanced networks utilized by the

⁴³ See MCI Comments, In the Matter of Modifications to ARMIS 43-07 Infrastructure Report, AAD Filed No. 98-23 (filed April 24, 1998).

ILECs for delivering broadband services, the infrastructure report must be expanded to collect sufficient data to provide an accurate picture of the advanced technologies being deployed by the ILECs. Accordingly, the infrastructure reporting should be revised to include ILEC data on the number of copper pairs terminated at customers' premises and the percentage of copper pairs served by a DLC.

While the existing infrastructure report collects information on some digital fiber-based services provided to end users, several other approaches are being taken to provide high-bandwidth services to small business and residential customers. For example, coaxial cable is being used in some instances for increasing bandwidth delivered to the home. To capture statistics on coaxial cable deployment in the ILEC network, the Commission should require the ILECs to report separately the number of "sheath miles" of coaxial cable and coaxial cables terminated at customer premises.

A second approach to delivering advanced services uses digital signal processing techniques to support broadband digital transmission over existing copper loops (i.e., xDSL technology). As explained above,⁴⁴ the data rate that can be supported by xDSL modems depends on the condition of the ILEC's loop plant, including loop length and gauge, presence of bridged taps and loading coils, the condition of customer premises wiring, and crosstalk. In order to monitor the capability of the ILECs' networks to support xDSL and other advanced capabilities, the Commission should require ILECs to report the following additional loop plant information:

- the distribution of loop lengths in the ILECs' outside plant;

⁴⁴ See, Section II.A.

- the percentage of each range of copper loop lengths served by a switch or switch remote;
- the percentage of copper subscriber loops provisioned with loading coils;
- copper gauges and gauge changes;
- the percentage of copper subscriber loops provisioned with bridged taps, including the number of bridged taps and the average total bridged tap length; and
- other loop plant information essential to the provision of advanced capabilities.

Moreover, because the ILECs' loop plant and loop length data often differ between rural and urban areas, the Commission should require the ILECs to disaggregate their reported data by Metropolitan Statistical Area ("MSA") and non-MSA, on a state-by-state basis.

While MCI and WorldCom believe that cooperation between the Commission and the states and revised reporting requirements for the ILECs will do much to enhance the deployment of advanced capabilities by decreasing incentives for ILECs to discriminate against CLECs, ISPs, and other competitors and potential competitors, additional steps should be taken to remove such incentives to discriminate. Specifically, MCI and WorldCom suggest that the Commission use its authority to create a third-party administrator responsible for overseeing spectrum management issues, collocation space assignment and pair allocation. The proposed third-party spectrum management plan will be explained in greater detail in response to the appropriate issues open for comment in the section 706 NPRM proceeding.⁴⁵

⁴⁵ For example, the third-party administrator would perform DSL service tracking and copper pair assignment in the local loop. In addition, the administrator would define and develop industry standards for xDSL technologies. Moreover, the third-party administrator would be responsible for creating national deployment guidelines for advanced capabilities as well as implementing enforcement mechanisms for dispute resolution.

CONCLUSION

The Commission should carefully review the information submitted in response to the instant NOI and take any appropriate measures to promote competition in the local market, which will in turn promote investment and widespread deployment of advanced capabilities and services. Such measures should include strict enforcement of section 251's unbundling, pricing interconnection, collocation and resale requirements.

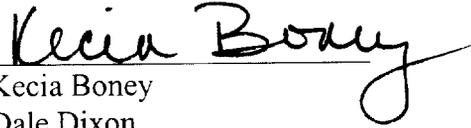
Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Lonzena Rogers, do hereby certify that on this fourteenth day of September, 1998, I served by first-class United States mail, postage paid, a true copy of the forgoing Comments, upon the following:

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