RECEIVED

SEP 25 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, DC 20554

In the Matters of	
Deployment of Wireline Service Offering Advanced Telecommunications Capability	CC Docket No. 98-147
Petition of Bell Atlantic Corporation For Relief from Barriers to Deployment of Advanced Telecommunications Services	CC Docket No. 98-11
Petition of U S WEST Communications, Inc. For Relief from Barriers to Deployment of Advanced Telecommunications Services	CC Docket No. 98-26
Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Technology	CC Docket No. 98-32
Petition of the Alliance for Public Technology Requesting Issuance of Notice of Inquiry and Notice Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act	CCB/CPD No. 98-15 RM 9244
Petition of the Association for Local Telecommunications Services (ALTS) for a Declaratory Ruling Establishing Conditions Necessary to Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996	CC Docket No. 98-78
Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell Petition for Relief from Regulation Pursuant to Section 706 of the Telecommunications Act of 1996 and 47 U.S.C. § 160 for ADSL Infrastructure and Service	CC Docket No. 98-91

TABLE OF CONTENTS

Page

SUMMARY ii

I. INTRODUCTION 2

II. COMPLIANCE WITH SECTION 706 REQUIRES THAT THE COMMISSION USE ITS POWERS TO PROMOTE DEPLOYMENT OF ADVANCED SERVICES IN RURAL AREAS, RATHER THAN CREATE IMPOSSIBLE BARRIERS THROUGH STRUCTURAL SEPARATIONS REQUIREMENTS 3

A. The Proposed Structural Separations Requirements will Create Substantial Disincentives to Deployment of Advanced Services by Rural Telephone Companies 3

B. The Commission Should Actively Promote Deployment of Advanced Services by Removing Regulatory Barriers 7

III. MANY OF THE PROPOSED RULES VIOLATE THE DE-REGULATORY SPIRIT AND INTENTION OF THE 1996 ACT AND ARE UNNECESSARY 8

A. The FCC should abandon its proposed National Standards for Loop Spectrum Management 8

B. The Rules Dictating National Standards for Attachment of Electronic Equipment are Unnecessary and Will Retard Advanced Services Deployment 9

IV. CONCLUSION 11

SUMMARY

The National Telephone Cooperative Association ("NTCA") is a national association of approximately 500 "Rural Telephone Companies" as the term is defined in the Telecommunications Act of 1996. The subject Notice of Proposed Rulemaking is an example of the FCC's attempt to over regulate the telecommunications industry. The FCC should seek to promote deployment of advanced services in rural areas, as is its statutory mandate. Instead, it proposes an affiliate requirement for the provision of advanced services with structural separations requirements that will create substantial disincentives to deployment of services by Rural Telephone Companies.

The proposed separate affiliate option for the provision of advanced services is simply not a viable option for small and rural telcos. These companies lack the significant monetary and human resources to create such an affiliate. The only practical method for Rural Telephone Companies to continue to evolve their networks and fulfill the objectives of the 1996 Act is to build upon their existing physical, human and financial resources. A further requirement that the affiliate must not obtain credit under any arrangement that would permit a creditor to have recourse to the assets of the incumbent ignores the realities of Rural Telephone Companies. Credit will be difficult or impossible to obtain for an affiliate with no assets. The requirement will inhibit advanced telecommunications service deployment in rural areas.

Furthermore, the proposed national standards for loop spectrum management and attachment of electronic equipment violate de-regulatory spirit and intention of the 1996 Act and are unnecessary.

Before the
Federal Communications Commission
Washington, DC 20554

In the Matters of	
Deployment of Wireline Service Offering Advanced Telecommunications Capability	CC Docket No. 98-147
Petition of Bell Atlantic Corporation For Relief from Barriers to Deployment of Advanced Telecommunications Services	CC Docket No. 98-11
Petition of U S WEST Communications, Inc. For Relief from Barriers to Deployment of Advanced Telecommunications Services	CC Docket No. 98-26
Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Technology	CC Docket No. 98-32
Petition of the Alliance for Public Technology Requesting Issuance of Notice of Inquiry and Notice Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act	CCB/CPD No. 98-15 RM 9244
Petition of the Association for Local Telecommunications Services (ALTS) for a Declaratory Ruling Establishing Conditions Necessary to Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996	CC Docket No. 98-78
Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell Petition for Relief from Regulation Pursuant to Section 706 of the Telecommunications Act of 1996 and 47 U.S.C. § 160 for ADSL Infrastructure and Service	CC Docket No. 98-91

COMMENTS
OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM"), released August 7, 1998.[1] NTCA is a national association of approximately 500 local exchange carriers that provide service primarily in rural areas. All NTCA members are small carriers that are "Rural Telephone Companies" as defined in the Telecommunications Act of 1996. Approximately half of NTCA's members are organized as cooperatives.

I. INTRODUCTION

The NPRM proposes an "optional alternative pathway" for incumbent LECs to provide advanced services under reduced regulation provided that an entirely separate subsidiary is utilized. The Commission also proposes additional rules which will apply whether or not the advanced services are provided through a separate subsidiary. Both proposals should be rejected as contrary to the public interest; in any event the separate affiliate is not a realistic option for Rural Telephone Companies and they should not be subject to any additional rules regarding advanced services provided through the incumbent LEC.

The NPRM is an example of the FCC's attempt to over regulate the rural telecommunications industry. The Telecommunications Act of 1996 charges the FCC with the task of balancing its often competing pro-competitive and universal service goals. The proposals

---

[1] FCC 98-158. The Common Carrier Bureau established the pleading cycle on August 12, 1998, DA 98-1624. NTCA submitted comments in the related Notice of Inquiry (NOI), CC Docket No. 98-146, on September 14, 1998.

put forth by the FCC in this proceeding do not represent a balance, but rather a potential sacrifice of universal service in favor of competition. The realities of small and rural incumbent local exchange carriers ("LECs") need to be considered as the FCC determines how to proceed with its regulation of advanced services. The rules proposed by the Commission in this proceeding do not provide the regulatory flexibility necessary to make true universal service a reality in rural America.

II. COMPLIANCE WITH SECTION 706 REQUIRES THAT THE COMMISSION USE ITS POWERS TO PROMOTE DEPLOYMENT OF ADVANCED SERVICES IN RURAL AREAS, RATHER THAN CREATE IMPOSSIBLE BARRIERS THROUGH STRUCTURAL SEPARATIONS REQUIREMENTS

A. The Proposed Structural Separations Requirements will Create Substantial Disincentives to Deployment of Advanced Services by Rural Telephone Companies

The NPRM proposes to specify the conditions under which an "advanced services" affiliate of an incumbent LEC would not be considered the *alter ego* of the LEC and thereby not subject to regulation as an incumbent LEC, particularly under the provisions of Section 251(c) of the Communications Act.[2] In essence the separation would be so complete that any possible economies of scale or scope or synergies from evolution of existing facilities would be entirely destroyed.

Such a strategy may or not be viable for the BOCs and other large companies and they will decide the issue for themselves. It is absolutely impossible, however, for the great majority of Rural Telephone Companies to either duplicate or abandon their existing investment and,

---

[2] NPRM at ¶¶ 92- 100.

more importantly, it would be disastrous for the people they serve. Rural telephone companies are small and operate in low density, high cost areas. These companies have nevertheless today demonstrated an outstanding level of service quality and innovation that equals and often exceeds that of the large companies.

The only practical method for Rural Telephone Companies to continue to evolve their networks and fulfill the objectives of the 1996 Act is to build upon their existing physical, human and financial resources. A Hobson's choice to either duplicate these resources or incur all of the expense and business risk for the benefit of competitors will inevitably discourage investment in the means to provide advanced services. The Commission must find a better way to provide incentives for continued development of telecommunications in rural America.

Although most rural incumbent LECs are presently exempt from the unbundling requirements of § 251(c),[3] several companies have lost their exemption, and more are likely to do so. Under the proposal put forth in the NPRM, rural companies that have lost their exemption will be forced to subject their advanced services to the unbundling requirements of 251(c) unless they comply with the FCC's proposed structural separation requirements in providing the services through a separate affiliate. Rural incumbent LECs present unique circumstances which are not addressed or even considered in the blanket proposals in the NPRM. True universal service is best promoted when rural telephone companies have the ability and incentive to choose corporate organizational structures suited to their circumstances.

---

[3] 47 USC § 251(f)(1).

The NPRM's proposed structural separations requirements ignore the realities of small and rural telcos. Rural towns and communities do not have a large pool of qualified people from whom to choose separate officers or directors of an advanced services affiliate of their local telephone company, much less hire an entire separate staff. A small or rural telephone company will often have only ten or fifteen employees to perform all of its functions, including the one or two people who do all of the installation and maintenance.[4] Not only may there be no pool of qualified people from whom to choose, such an adventure is incredibly expensive. The costs of finding, recruiting and hiring a new staff may be prohibitive, especially considering that the costs of providing any service in rural areas are higher than in urban areas. Furthermore, the customer base for advanced services initially may be quite small, so that the cost per user will result in unaffordable service.[5]

The FCC also proposes that the affiliate must not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the incumbent. Again, the proposal ignores the realities of rural telephone companies. Such a requirement will retard deployment of advanced services. Credit will be difficult or impossible to obtain for an affiliate with no assets. For companies with RUS funding, the affiliates will be forced to make

---

[4] In 1996, the average Rural Utilities Service (RUS) borrower had just 28 employees. *1996 Statistical Report Rural Telecommunications Borrowers*, United States Department of Agriculture, Rural Utilities Service, International Publication 300-4, p. 39.

[5] NTCA surveyed its members about broadband demand and deployment. About half of NTCA's members responded. Respondents indicated that schools created the most demand for advanced telecommunications services, followed by healthcare providers. Residential use created the least demand. See NTCA's Comments in *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to all Americans in a Reasonable and Timely Fashion, Notice of Inquiry*, CC Docket No. 98-146, Released August 7, 1998.

separate arrangements for financing services that arguably could be included in the definition of federally supported universal service at some future date.[6] The proposal, as a whole, is too intrusive and is administratively difficult, if not impossible, to enforce.

The separate affiliate requirement as proposed in the NPRM would be especially burdensome for Rural Telephone Companies organized as cooperatives. In the pending reconsideration petition in CC Docket 96-149, NTCA and 13 independent LECs[7] described how even a minimal subsidiary requirement can have adverse tax consequences for a cooperative as well as impair its ability to provide service.[8]

The argument may be made, and likely will be made, that rural companies may provide advanced services without creating a separate affiliate, but if they lose their rural exemption, they must offer the service unbundled, just as non-rural telephone companies must. In many instances, it may be simply impossible for the rural incumbent LECs to comply with the proposed separate structure requirements after they lose their exemption. Rural telephone companies do not have the resources and large markets that non-rural companies have. Thus,

---

[6] 47 U.S.C. § 254(c)(1) "Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services."

[7] The thirteen independent local exchange carriers are Chequamegon Telephone Cooperative, Inc.; Chibardun Telephone Cooperative, Inc.; Citizens Telephone Cooperative, Inc.; Cochrane Cooperative Telephone Company; LaValle Telephone Cooperative, Inc.; Mabel Cooperative Telephone Company; Marquette-Adams Telephone Cooperative, Inc.; Nelson Telephone Cooperative; Richland-Grant Telephone Cooperative, Inc.; Spring Grove Cooperative Telephone Company; Tri-County Telephone Cooperative, Inc.; Vernon Telephone Cooperative, Inc.; and West Wisconsin Telcom Cooperative, Inc

[8] See, NTCA and 13 Incumbent LECs' "Petition for Reconsideration" of the FCC's *Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61*, FCC 97-142, released April 18, 1997

offering rural telcos the opportunity to be free from unbundling requirements on condition that they offer services through a structurally separate affiliate is not a viable option. The rural telcos will merely be shackled with more regulatory burdens as a result of the rule.

B. The Commission Should Actively Promote Deployment of Advanced Services by Removing Regulatory Barriers

The *Memorandum Opinion and Order* notes that Section 706 of the Act instructs the Commission to encourage deployment of advanced capabilities to *all Americans* by *either* measures that promote competition or "other regulating methods that remove barriers to infrastructure investment."[9] The Commission's conclusion that Section 706 is not an independent grant of forbearance authority,[10] even if correct, does not, therefore, preclude alternatives to reliance on competition to achieve the objectives of that, and other Sections of the Act.[11]

The Commission can reasonably conclude that in the low density, high cost areas served by rural telephone companies it is highly unlikely that there will be competitive providers of advanced services. The long history of these areas demonstrates that only locally owned and controlled small and rural telephone companies have successfully focused on providing state of

---

[9] NPRM at ¶ 66.

[10] NPRM at ¶ 69.

[11] The Commission still has before it a pending petition requesting the allocation of additional frequencies to provide Basic Exchange Telecommunications Radio Service (BETRS). The BETRS service is particularly appropriate for hard to serve areas where wireline service is uneconomical. See, *In the Matter of Petition to Authorize Co-Primary Sharing of the 450 MHZ Air-Ground Radiotelephone Service with BETRS*, Petition for Rulemaking filed by NTCA, National Rural Telecom Association (NRTA), Organization for the Protection and Advancement of Small Telephone Companies (OPATSCO), Rural Electrification Administration (REA), and U.S. Telephone Association (USTA), RM 81-59, filed November 9, 1992.

the art service. As the definition of Universal Service evolves, these companies must be able to continue their solid record of achievement. Section 251(f) recognizes this need for different regulatory treatment, as does Section 214(e)(2). Section 254(b)(3) complements the "all Americans" objective of Section 706 with the requirement that services as well as rates be "reasonably comparable" between rural and urban areas.

This proceeding should focus the Commission's attention to remove the barriers to technology deployment that it has placed in the way of rural telephone companies. For example, rules that limit their access to frequencies for wireless local loop applications, and the cross ownership restrictions on rural telcos in the LMDS 1150 block. In the USF arena, the Commission should remove both the individual and overall caps which are directly contrary to the objectives of Section 254.[12]

III. MANY OF THE PROPOSED RULES VIOLATE THE DE-REGULATORY SPIRIT AND INTENTION OF THE 1996 ACT AND ARE UNNECESSARY

The FCC proposes several requirements in this NPRM that are not only unnecessary, but will actually inhibit advanced services deployment. Adoption of the detailed rules proposed is exactly counter to the need for reduced regulation in the competitive market envisaged by the 1996 Act. The FCC must strive to create a careful balance between promoting competition and providing incentives for incumbents to provide and promote new service offerings.

A. The FCC should abandon its proposed National Standards for Loop Spectrum Management

The FCC proposes national standards for loop spectrum management. However, the

---

[12] See also, NTCA's comments in the related NOI in CC Docket 98-146.

industry is not one-size-fits-all. Federally developed national standards are not only unnecessary for rural incumbent LECs, the associated cost would outweigh the benefit.[13] Service in rural areas is, by nature, high cost. The loop is customized to fit various situations. The rural LECs need flexibility in order to best serve their subscribers. The adoption of national standards will force rural LECs who have lost the rural exemption to significantly upgrade their systems, even where no competition or demand exists.

Currently the demand for advanced services by residents in rural areas is low. There is a great deal of risk in investing in technology without the demand or revenues to pay for it. The creation of national standards is an example of the FCC pushing technology without considering the demand. It is better for the FCC to let the marketplace decide.

Furthermore, today's loop configurations require Universal Service support. Without such support, the cost of the loop would be prohibitive. Technical upgrades to local loops to meet the proposed standards will increase loop costs and require even more Universal Service support, even where there may be little demand for high speed services. If national standards for loop spectrum management are adopted, rural companies should be exempt unless the Commission provides a cost recovery mechanism.

B. The Rules Dictating National Standards for Attachment of Electronic Equipment are Unnecessary and Will Retard Advanced Services Deployment

The FCC proposes to adopt national standards for the attachment of electronic equipment.

---

[13] Rural areas by nature have long local loops. It is currently technically infeasible for xDSL technology to work properly over long loops. As the technology improves and becomes more cost effective and as demand increases, rural LECs will naturally deploy the services without the FCC creating standards.

The general problem with such a proposal is in an industry as volatile as the telecommunications industry, standards will always lag behind technology. The imposition of a standard will delay the introduction of new and better technologies, as the industry waits for new standards to use the technologies to be developed and implemented. Such an approach hardly encourages deployment.

Furthermore, every network environment is unique in structure. The FCC would be faced with the arduous task of writing standards to encompass all of the permutations and combinations of attachment and resulting exceptions. It would be difficult, if not impossible, to determine a standard that would be applicable to all networks without requiring significant changes to an incumbent's structure, at significant expense. This is an especially difficult task given the structure at many rural incumbent LECs. Because of extreme space limitations, rural LECs have often been rather inventive in developing and building their structures. These same space limitations will require equal inventiveness for attachment.

Rural telephone companies need the flexibility to determine how best to comply with Commission rules. Standards, while easy to enforce, are not always possible to achieve.

Furthermore, attachment requirements are an issue best left to the states. The Commission could require incumbent LECs to include in their interconnection agreements their requirements and guidelines for attachment and provisions for incorporating new technology on a timely basis. Attachment then becomes a state issue. Monitoring and the handling of disputes is then performed at the local, rather than federal level, where unique regional circumstances may be appropriately dealt with.

IV. CONCLUSION

For the above-mentioned reasons the FCC should not adopt the separate affiliate requirement for the provision of advanced telecommunications services as proposed in the Notice of Proposed Rulemaking at least not for Rural Telephone Companies. The FCC should also consider the de-regulatory spirit and intention of the Telecommunications Act of 1996 and not adopt its wholly unnecessary and intrusive proposed rules dictating national standards for loop spectrum management and attachment for electronic equipment.

Respectfully submitted.

NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

By: _____
L. Marie Guillory

By: _____
Jill Canfield

Its Attorneys

2626 Pennsylvania Avenue, N.W.
Washington, D.C. 20037
(202) 298-2300

September 25, 1998

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CC Docket No. 98-147/FCC 98-188 was served on this 25th day of September, 1998 by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

Gail C. Malloy

Gail C. Malloy

Chairman William E. Kennard
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

Commissioner Michael Powell
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Commissioner Harold W. Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Ms. Janice Myles
Policy and Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 544-1600G
Washington, D.C. 20554

Commissioner Gloria Tristani
Federal Communications Commission
1919 M Street, N.W., Room 814-0101
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832-0104
Washington, D.C. 20554

International Transcription Service
1231 20th Street, N.W.
Washington D.C. 20036