Arnold & Porter LLP Legislative History: P.L. 104-104

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HEARINGS

*1 NATIONAL COMMUNICATIONS INFRASTRUCTURE (PART 2)

Bills to supersede the Modification of Final Judgment in antitrust action, to amend the Communications Act of 1934 to regulate the manufacturing of Bell operating companies, and to promote a national communications infrastructure to encourage deployment of advanced communications services through competition

January 27, 1994 and

February 1, 1994 and

February 2, 1994 and

February 3, 1994

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I want to thank you for this opportunity to bring to the subcommittee our proposals early in the process so that later witnesses over the next 2 weeks will have an opportunity to comment also on the administration's proposals. It is a product of an intergovernmental process.

Many members of this administration, the Vice President's office, OMB, National Economic Council, Council of Economic Advisors, the Department of Justice, Department of Commerce and others, contributed under the leadership of Vice President Gore and Secretary Brown to that product. It is a part of our ongoing dialogue with this Congress. We look forward to that dialogue.

This concludes my testimony and I will be pleased to respond to any questions of any of the members of this panel.

Thank you.

Mr. MARKEY.

We thank you very much, Mr. Secretary.

[Testimony resumes on p. 182.]

[The prepared statement and attachment of Mr. Irving follows:]

TESTIMONY OF LARRY IRVING

ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION

U.S. DEPARTMENT OF COMMERCE

INTRODUCTION

Good morning. Thank you for this opportunity to testify before you today on issues related to the development of a national telecommunications and information infrastructure -- and, specifically, on Administration legislative proposals to promote the advancement of this infrastructure in a procompetitive manner that benefits all Americans. I am pleased to join Assistant Attorney General Bingaman, who will focus on the Administration's reform proposals bearing on the AT&T consent decree. I will discuss more generally the changes in the competitive landscape that make the passage of telecommunications legislation this year a top Administration priority, and, in the context of that discussion, highlight the key elements of the Administration's proposals.

***81** Vice President Gore and Secretary Brown unveiled the Administration's National Information Infrastructure (NII) initiative in September of last year, setting forth an agenda for a public-private partnership to help bring about this revolution. This includes support for innovative applications that will use the NII, improving access to government information, protecting individual privacy and intellectual property rights, and the passage of telecommunications legislation -- the subject of today's hearing.

Before proceeding further, let me underscore, Mr. Chairman, the profound debt of gratitude the Administration owes you and Congressman Fields and other Members of this Subcommittee for seizing the initiative in developing H.R. 3636. Our proposals for reform of telecommunications regulations, particularly the telephone-cable television company crossownership restriction, interconnection and equal access requirements, local telecommunications service competition, and universal service requirements, substantially build upon your trail-blazing, bipartisan work product. The Administration also wishes to salute the creative bipartisan legislative initiative to revamp the AT&T Consent Decree undertaken by Chairmen Dingell and Brooks. The thoughtful legislative initiatives undertaken by Senators Hollings, Inouye, and Danforth, among others, also merit recognition. We have closely studied all these proposals and they have influenced our thinking as we developed an Administration legislative initiative. Aspects of our set of legislative proposals, which I will touch on today, also build in large part upon the foundation they have established. The Administration looks forward to working closely with Congress to arrive at a final telecommunications legislative product this year.

In working with Congress, the Administration will seek to ensure that a complete, integrated telecommunications set of reform proposals moves forward. The meritorious reform ideas embodied in different bills currently before Congress complement each other. A comprehensive, far-reaching overhaul of our telecommunications regulatory system is badly needed. Failure to take such an approach could also, perversely, distort competition between firms most affected by regulatory changes and other firms

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whose operations largely escaped regulatory revamping. The Administration will consult and cooperate closely with Congress to ensure that an integrated legislative approach succeeds.

THE NEED FOR LEGISLATION

There is a national consensus that an advanced information infrastructure will transform everyday life for every person in the United States in the near future. We have all heard of countless examples of how broadband, interactive communications will connect and empower all people in this country. Vice President Al Gore recently said that the word "revolution" by no means overstates the changes ahead.

The newspapers bring us daily examples of the ways in which the development of the NII will revolutionize American life.

***82** • The January 19 Washington Post reported how interactive dial-up computer network services allowed individuals to communicate with friends and relatives in the Los Angeles area immediately after last week's disastrous earthquake, and to spread vital news to other interested subscribers within a matter of minutes.

• On January 19, Secretary of Health and Human Resources Shalala announced a contract that will provide by the end of this decade for the electronic payment of nearly all of the $1 billion annual Medicare bills.

• It is worth noting that programs like InterPractice Systems, a joint venture of Harvard Community Health Plan in Boston and Electronic Data Systems, have placed terminals in the homes of heavy users of health care, such as the elderly, pregnant women, and families with young children, so that these users can access health care information 24 hours a day in a form that aids decision making.

• The Texas Education Network serves over 25,000 educators and is making the resources of the Internet available to classrooms, so that students in small school districts can access NASA and leave messages for the astronauts, browse around in libraries larger than they will ever be able to visit, and discuss world ecology with students in countries around the world, among other things.

These and countless other examples attest to the rapid rate at which the American public is entering the information age.

It would be a mistake, however, simply to "let nature take its course" and allow change to proceed under the existing legal regime, whose underlying structure was established 60 years ago. This is true for three essential reasons.

First, in an increasingly competitive world trade environment -- which will become even more open with the implementation of NAFTA and the GATT Uruguay Round -- we simply must ensure that our telecommunications capabilities remain the best in the world. Because information transmission increasingly is the life's blood of all our industries, archaic rules that inappropriately retard innovation by telecommunications firms have a negative impact on the international competitiveness of the private sector in general by inhibiting industrial productivity and job creation. Legislation that lifts these outdated structures will enhance competitiveness and spur the creation of good new jobs.

Second, the existing regulatory structure has been altered on an ad hoc basis over six decades to meet perceived problems of the moment. This has created an uneven playing field that artificially favors some competitors over others, and that in some instances unnecessarily discourages investment and risk-taking. These effects, in turn, inappropriately skew the growth of industry sectors and retard the development of the NII itself. Accordingly, legislation is needed to eliminate these unwarranted regulatory disparities.

Third, we need to be sure that our telecommunications policies are fully responsive to the needs of the American people as a whole, and, in particular, poorer and disadvantaged Americans. As Secretary Brown stressed on January 5, we cannot "become a nation in which the new information age acts as a barrier, rather than a pathway, between Americans" -- a nation divided between the information rich and the information poor. Yet, while the universal provision of "plain old telephone service" has long been a national goal, the existing regulatory structure may not be sufficient to ensure that all Americans benefit from the broader range of information services that will become available under the NII. Accordingly, legislative reform is urgently needed to address this shortcoming. I will have more to say about the Administration's views on universal service below.

THE ADMINISTRATION'S PROPOSALS

***83** The Administration, as promised last fall, has prepared a set of legislative proposals setting forth the principles under which we believe the advanced infrastructure should operate. As I have already indicated, these proposals further the visions set forth in House and Senate legislative initiatives. We are also building upon innovative regulatory reforms and other dramatic

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steps taken by various states, and we intend to work closely with the states in promoting an advanced telecommunications and information infrastructure. Together we can encourage competition, infrastructure modernization, and advanced NII applications in health care, education, and government services.

Underlying the Administration's set of proposals are five fundamental principles that Vice President Gore and Secretary Brown have outlined. These principles are:

- Encouraging private investment in the NII;
- Promoting and protecting competition;
- Providing open access to the NII by consumers and service providers;
- Preserving and advancing universal service to avoid creating a society of information "haves" and "have nots";
- Ensuring flexibility so that the newly-adopted regulatory framework can keep pace with the rapid technological and market changes that pervade the telecommunications and information industries.

ENCOURAGING PRIVATE INVESTMENT AND PROMOTING COMPETITION

The Administration believes it is time to act decisively to lift the artificial regulatory boundaries that separate telecommunications and information industries and markets.

Those clear, stable boundaries served us well in the past. They enabled regulators to establish separate regulatory regimes for firms in different industries. They also prompted regulators to address the threat of anticompetitive conduct on the part of some telecommunications firms by barring them from certain industries and markets.

Technological and market changes are now blurring these boundaries beyond recognition, if not erasing them entirely. As Vice President Gore emphasized on January 11, we are moving away from a world where technologically valid regulatory distinctions may be made among local telephone, long distance telephone, cable, and other purveyors of information transmission. Digital technology enables virtually all types of information, including voice, video, and data, to be represented and transmitted as "bits" -- the ones and zeros of computer code. Thus, rules which artificially distinguish among different types of "bit transmitters" based on old historical understandings will no longer serve a socially useful purpose. Accordingly, regulatory change is necessary to fully realize the benefits of private investment and greater competition in the information infrastructure. Regulatory policies predicated on the old boundaries can harm consumers by impeding competition and discouraging private investment in networks and services. The Administration is therefore committed to removing unnecessary and artificial barriers to participation by private firms in all communications markets, while making sure that consumers remain protected and interconnected. These reforms are necessary in order for people in the United States to "win" the information revolution as soon as possible.

***84** To this end, the Administration supports the initiation by the Federal Communications Commission (FCC) of a review of current broadcast policies. Broadcasters remain the principal source of free, universally available electronic information in the United States, and it is important to ensure full participation by that industry in the NII.

CABLE TELEVISION-TELEPHONE COMPANY CROSS-OWNERSHIP

The Administration strongly supports most of the major provisions on telephone-cable television company crossownership in H.R. 3636. Mr. Chairman, you, Mr. Fields, and other cosponsors of this bill are to be commended for your insightful, carefully-crafted approach to the telephone-cable crossownership issue. While the Administration's initiative in this area does differ in certain respects from H.R. 3636, it is in line with the overall philosophy and general approach outlined in H.R. 3636.

The Administration supports repeal of the current cable television-telephone company cross-ownership restriction in the 1984 Cable Act. We believe that telephone companies should be allowed to provide video services in their local exchange areas, subject to effective safeguards to protect consumers and competition. The Administration is proposing two critical safeguards.

First, consistent with the approach of H.R. 3636, telephone companies will be required to make channel capacity available to unaffiliated video program providers on a nondiscriminatory basis, while providing video programming through separate affiliates. This requirement should create market opportunities for competing providers of video services, thereby reducing prices and expanding the diversity of programming and services available to television viewers.

Second, the Administration proposes to prohibit telephone companies from acquiring cable systems located in the companies' local exchange areas for at least five years. This will deter premature and potentially anticompetitive mergers between telephone

companies and their most likely competitors, existing cable companies. The Administration proposal allows fewer exemptions of telephone company buyouts of cable firms than H.R. 3636. However, telephone companies operating in rural areas will be exempted, because these markets may be unable to support more than one carrier.

The need for this second safeguard may wane in the coming years as markets change, so the Administration has added to it a flexible element. We propose to authorize the FCC to begin proceedings that could allow such acquisitions five years after the date of legislative enactment, if certain conditions, to be established by the Commission, are met. An example of such a condition might be the presence of sufficient competition in the telephone company's service area in the delivery of telephone or cable services.

Of course, any telephone company/cable system acquisition would be subject to the antitrust laws in the same manner as an acquisition in any other industry.

***85** The Administration's proposals on the "video platform" are similar to those in H.R. 3636, except that the Administration's proposal makes clear that the platform will be subject to all requirements of Title II, not simply the requirement that rates be nondiscriminatory, as H.R. 3636 appears to contemplate. The Administration proposal also requires a carrier to afford nondiscriminatory access to the video platform whenever it offers video programming.

LOCAL TELECOMMUNICATIONS SERVICES

The Administration's proposals regarding local competition in telecommunications services bear much similarity to H.R. 3636. The Administration owes a debt of gratitude to the framers of H.R. 3636 for their creative and thoughtful approach to these issues. The most notable difference is that the Administration's approach identifies general obligations and leaves to the FCC (and in some cases, the states) the task of prescribing details.

The Administration supports removal of those barriers preventing competition in the provision of local telecommunications services. Competition has already generated substantial benefits for consumers in a host of communications and information service markets. For example, the varieties of customer premises equipment have expanded dramatically since deregulation. In addition, the price of interstate long distance telephone service for the average residential user has declined more than fifty percent in real terms since 1984, due to competition and regulatory reform. At the same time, the infrastructure used to provide long distance services has been substantially upgraded. There are now four digital, fiber-based national networks serving the United States, and many more interconnected regional networks. Consumers will realize similar benefits in service innovation, declining prices, and infrastructure enhancement from the expansion of competition in the local telephone service market. Such competition will reduce the ability of any telephone company to harm competition and consumers through monopoly control and will encourage investment and innovation in the "on and off ramps" of the NII.

The early history of local telephone service demonstrates the benefits of such competition. The Bell Company originally marketed telephone service as a high priced business service that, with few exceptions, was not offered outside of major cities or to residential customers. When competitors were able to enter local services markets after the Bell Company's patents expired in 1893-1894, a large number of entrepreneurs began offering telephone service, first in areas unserved by Bell and then in direct competition with the Bell system. Bell responded by rapidly building out its own system, and soon in most major cities consumers and businesses had a choice of telephone companies. In 1906, 57 percent of the communities with more than 5,000 people were served by two or more local telephone companies. By 1907, non-Bell companies served more than half -- 51 percent -- of the telephone customers in the country. During this period, prices for services fell dramatically, while at the same time "infrastructure" investment soared.

***86** In 1920, at the close of the "first" competitive era, there were some 13.4 million telephones in the United States, or one telephone for every eight of the nation's 105.7 million people. At the rate the number of telephones was growing prior to competition, there would have been fewer than one million telephones in the United States by 1920. Moreover, 55 percent of all telephone subscribers were residential customers, and more than 30 percent of all farm households had telephones. Thus, competition proved to be a powerful engine in serving what we now call universal service goals -- that is, making advanced telecommunications technology widely available to the American people at affordable prices. Unfortunately, competing systems were not interconnected, leading to public dissatisfaction eventually addressed by government establishment of franchised monopolies for telephone service. Had government intervened instead by establishing interconnection obligations among competing carriers, we might have had local competition for the last 100 years. The Administration's local competition proposal I am about to describe demonstrates that we have learned from this historical lesson.

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Current policies regarding interconnection, service bundling, and specific barriers erected by individual states inhibit competition -- and the low prices, service choices, and other benefits such competition brings to consumers. The Administration proposes to ensure that competing providers have the opportunity to interconnect their networks to local telephone company facilities on reasonable, nondiscriminatory terms. Local telephone companies will also be required to unbundle their service offerings whenever technically feasible and economically reasonable, so that alternative providers can offer similar services using a combination of, for example, telephone company-provided switching and their own transmission facilities. Finally, in order to ensure a consistent, procompetitive environment for telecommunications services, the Administration proposes to preempt state entry barriers and rate regulation of new entrants and other providers found by the FCC to lack market power.

Competition in local telecommunications markets should generally lower prices and increase innovation in the services offered users. Nevertheless, we are aware of concerns that repricing of some local services may result in rate increases in some cases in an increasingly competitive environment. Accordingly, in order to guard against any possible "rate shock" for users, the FCC and state regulators will be directed, in implementing network interconnection and unbundling, to prevent undue rate increases for any class or group of ratepayers.

MODIFIED FINAL JUDGMENT (MFJ) RESTRICTIONS

The Modified Final Judgment (MFJ) in the AT&T Consent Decree helped unleash an era of competition and innovation that brought low prices and new service choices for consumers. In short, it has been a tremendous success. The Administration acknowledges the great public service the judiciary has performed in overseeing the breakup of that monopoly. But twelve years have passed since the basic framework of the MFJ was established, and it has been over ten years since the breakup took place. Technologies and markets are changing rapidly. A judicial decree may at some point soon become a barrier to a more comprehensive, far-reaching approach to an advanced information infrastructure.

*87 Reform of the MFJ goes hand-in-glove with opening up local competition, which I described above. The development of full-fledged competition in local telecommunications services will alleviate the competitive concerns that prompted the strictures placed by the MFJ on the activities of the Regional Bell Operating Companies (RBOCs). Thus, comprehensive legislative procedures for loosening the MFJ restrictions as competition develops are appropriate. Implementation of these procedures in the wake of enhanced local competition will allow the RBOCs to compete in markets for goods and services now closed to them. This will further enhance innovation in the American economy and benefit consumers.

Assistant Attorney General Bingaman will address the MFJ reform provisions. I wish to note, however, that while Assistant Attorney General Bingaman will describe the Administration's position, the Departments of Commerce and Justice have worked together closely in developing the Administration's position in this area. This position represents not only the joint efforts of our two Departments, but also the work of others in the Administration who have joined in this policy initiative.

OPEN ACCESS AND PROGRAMMING DIVERSITY

The public benefits of the information revolution would be severely diminished without a wide range of diverse programming. An advanced information infrastructure, to be truly useful, must offer a potpourri of educational material, health information, home and business services, entertainment, and other programming matter, both passive and interactive. Barriers to open access and widespread availability of programming serve only to harm users.

The Administration's set of legislative proposals would further the goals of promoting a diversity of programming and open access to distribution of this programming. Specifically, the Administration proposes that the FCC, one year after enactment, promulgate rules that would establish nondiscriminatory access obligations on cable television systems, except when technology, costs, and market conditions make it inappropriate.

ENSURING REGULATORY FLEXIBILITY AND FAIRNESS

As barriers to an advanced information infrastructure fall, the regulatory regime must adapt to the changing environment. In the rapidly changing telecommunications and information industries, the only certainty is uncertainty. A new regulatory framework is required that will stand the test of time, without the need for continual upheaval in the nation's overall approach to telecommunications and information policy. At the same time, similarly situated services should be subject to the same regulatory requirements.

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In order to advance these principles, the Administration proposes to allow the FCC to reduce regulation for telecommunications carriers that lack market power. This so-called "forbearance" authority will ensure that unnecessary government regulation -- however well-intentioned -- does not harm users of the infrastructure, or impede competitive entry, investment, and the introduction of new services.

TITLE VII SERVICES

*88 A new kind of communications service provider will soon emerge, one that offers broadband, interactive, switched, digital transmission services to homes, offices, schools, hospitals, and other places. Firms offering these services face the potential of being regulated under two different parts of the Communications Act -- Title II, which regulates common carriers, and Title VI, which regulates cable communications. These firms could also be subject to regulation at the state level for the intrastate component of their Title II services and at the local level for their Title VI services. This will create a needlessly overlapping and complex regulatory environment.

The nation needs a flexible, adaptable regulatory regime that encourages the competitive provision of the broadband, interactive, switched, digital transmission services that will enable the American people to enjoy the full benefits of the information age. The Administration therefore proposes a new Title VII to the Communications Act that will encourage firms to provide these services.

The Administration's proposal will provide the FCC with broad regulatory flexibility while maintaining key public policy goals, including open access, interconnection, and interoperability requirements, and obligations to support universal service. Rate regulation of Title VII services would occur only when the FCC finds that a firm has market power in offering those services. State regulation of the intrastate components of such services would be subject to varying degrees of federal oversight, depending on the service.

Firms would elect to be regulated under the new framework, provided that they meet threshold criteria established by the legislation. The FCC would be authorized to tailor regulation of Title VII firms in light of changing competitive conditions.

UNIVERSAL SERVICE

A revolution is not complete without extending its benefits to everyone. "Universal service," that is, the widespread availability of basic telephone service at affordable rates, has been a bedrock principle of U.S. telecommunications policy for many years, and helped provide equal opportunities for all people in the United States to communicate. This principle should be expanded to the advanced infrastructure of the future.

The Administration is committed to developing a new concept of universal service that will serve the information needs of the American people in the 21st century. Indeed, the full potential of the NII will not be realized unless all Americans who desire it have easy, affordable access to advanced communications and information services, regardless of income, disability, or location. In a January 5 speech, Secretary Brown challenged the private sector "to expand universal service to the National Information Infrastructure." He pointed out that promotion of universal service advances American competitiveness, stating: "Just as progressive businesses have increasingly recognized that their fate is tied to education and good schools, so the businesses that will take advantage of the new information marketplace must realize that our national future is dependent on our national competitiveness -- on ensuring that no talent goes to waste."

*89 In crafting its universal service provisions, the Administration was greatly inspired by -- and borrowed in large part from -- the approach to universal taken by H.R. 3636. Mr. Chairman, once again, the Administration is indebted to the outstanding work by you, Mr. Fields, and the cosponsors of H.R. 3636 in developing a universal service concept for the new information age.

The Administration recognizes that crafting a new, meaningful, and practical definition of universal service will require flexibility, foresight, and the balancing of diverse interests. Given these circumstances, our set of legislative proposals will establish several overarching guidelines and charge the expert agencies -- the FCC and the state regulatory commissions -- with establishing the details.

Specifically, the Administration proposes to:

- Make the preservation and advancement of "universal service" an explicit objective of the Communications Act. The concept, which has evolved over time, is not specifically described in the Act. The "universal service" goal should be

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codified in order to provide the FCC and the states with a sound legal basis to address these issues as they apply to advanced telecommunications services.

• Charge the FCC and the states with continuing responsibility to review the definition of universal service to meet changing technological, economic, and societal circumstances.

• Establish a Federal/State Joint Board to make recommendations concerning FCC and state action on the fundamental elements of universal service. In its deliberations, the Joint Board must gather input from nongovernmental organizations.

• Oblige those who provide telecommunications services to contribute to the preservation and advancement of universal service. However, the FCC, in consultation with the states, would be authorized to permit "sliding scale" contributions (for example, to avoid burdening small providers and new entrants), or "in-kind" contributions in lieu of cash payments.

In addition, it is an Administration goal that, by the year 2000, all of the classrooms, libraries, hospitals, and clinics in the United States will be connected to the NII. To help attain that goal, the Administration proposes that the National Telecommunications and Information Administration of the U.S. Department of Commerce conduct an annual nation-wide survey of the availability of advanced telecommunications services to those locations and report on its findings. Moreover, the Administration proposes that the FCC be directed to commence an inquiry and, subsequently, a rulemaking proceeding to ensure, to the extent feasible, the availability of advanced telecommunications to school classrooms, health care institutions, and libraries. The FCC would consider the tariffing of preferential rates for interstate services to such locations, and ensure that standards are in place to permit uniform interconnection to the NII.

***90** Implementation of new universal service policies for the information age is of profound public policy significance. It will empower individuals and thereby complement the Administration's efforts to advance health care, educational, and welfare reform. For example, it will enable disabled people and members of poor families to obtain health care or job training information that enhances the quality of their daily lives. It will give students in remote rural areas the ability to "attend" classes interactively in distant locations that they cannot access today, thus better preparing them for higher education -- and for the jobs of the future. It will allow rural health care providers to render better service to their patients through consultations with specialists at research hospitals. It will allow welfare recipients to consult more frequently with social service agencies and be made aware of educational or training opportunities that can prepare them for steady jobs. It will enrich the lives of shut-ins by providing them with a wider variety of news and cultural programming. It will, in short, contribute to the public welfare by affording large groups of citizens new opportunities to realize the American dream.

As the examples outlined above suggest, the new universal service for the information age will help advance the Administration's goals of health, welfare, and education reform by enabling chronically disadvantaged individuals to improve their quality of health care and education. In short, an expanded universal service concept for the information age complements the Administration's broad domestic policy goals.

The Administration's universal service proposal adopts a broad framework of general principles, leaving specific implementation details to the FCC, to permit governmental flexibility in this rapidly changing industry. It does include provisions that bear similarity to H.R. 3636, such as use of a Joint Board and requiring contributions from service providers. The Administration also includes FCC consultation with the Department of Commerce on universal service, which, as I have said, is a high priority for the Administration.

NTIA is working proactively to advance the universal service agenda by holding hearings in a variety of locations on the desirable scope and attributes of new universal service offerings. An initial hearing was held on December 16 in New Mexico. A Los Angeles hearing scheduled for January 20 was postponed due to the earthquake and will be held in February. Other hearings will be held over the coming months. We anticipate that these hearings will provide valuable information on the universal service needs of various groups and the means by which universal service goals can best be advanced.

CONCLUSION

In conclusion, enactment of telecommunications reform legislation will promote the development of the NII in a flexible, procompetitive fashion that creates incentives for desirable investment, economic growth, and the wide-scale availability to all Americans of new, highly valued information services. In developing its telecommunications reform proposals, the Administration has benefited from the bipartisan spadework undertaken by Congress. The Administration looks forward to close collaboration with Congress to enact a set of legislative proposals that achieves these desired ends. This concludes my testimony. I would be pleased to respond to any questions you may have.

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ADMINISTRATION WHITE PAPER ON COMMUNICATIONS ACT REFORMS

I. Introduction

*91 Vice President Al Gore and Secretary of Commerce Ron Brown announced the Administration's National Information Infrastructure (NII) initiative in September 1993, establishing an agenda for a public-private partnership to construct an advanced NII to benefit all Americans. In speeches and policy papers since then, the Administration has proposed legislative and administrative reform of telecommunications policy, based on the following fundamental principles:

- Encouraging private investment in the NII;
- Promoting and protecting competition;
- Providing open access to the NII by consumers and service providers;
- Preserving and advancing universal service to avoid creating a society of information "haves" and "have nots";
- Ensuring flexibility so that the newly-adopted regulatory framework can keep pace with the rapid technological and market changes that pervade the telecommunications and information industries.

The Administration shares the belief of many in Congress that legislative reform of telecommunications policy is essential to meeting these goals, in order to bring the benefits of advanced communications and information services to the American people. For many years, government regulation assumed clear, unchanging boundaries between industries and markets. This assumption sometimes led regulators to view and regulate firms in various industries differently, even when they offered similar services, and to address the threat of anticompetitive conduct on the part of some firms by barring them from certain markets and industries.

A new approach is needed. Even if the lines between industries and markets were clear in the past, technological and market changes are blurring and erasing them. Regulatory policies that are based on such perceived distinctions can harm consumers by impeding competition and discouraging private investment. In light of these realities, the Administration is committed to removing unnecessary and artificial barriers to participation by private firms in all communications markets, while making sure that consumers remain protected.

In developing legislation to meet these challenges, the Administration is grateful to Chairman Markey, Congressman Fields, and their colleagues on the Telecommunications and Finance Subcommittee for their pathbreaking, bipartisan work on H.R. 3636, which addresses many of the Communications Act issues that are most important to the development of the NII. The Administration's legislative telecommunications reform proposals build on H.R. 3636, as well as S. 1086, developed by Chairman Inouye and Senator Danforth. The Administration also salutes H.R. 3626, the related legislative initiative to reform the AT&T consent decree undertaken by Chairmen Brooks and Dingell, and the leadership of Chairman Hollings on these matters.

The specifics of the Administration's legislative proposals on telecommunications reform are discussed below. Because the Administration supports the general approach and many of the existing provisions of H.R. 3636, the provisions of that bill serve as a framework for describing the Administration's proposals. Those proposals also reflect the innovative regulatory reforms taken by many state telecommunications regulators.

II. Local Competition and Interconnection

*92 Competition has generated lower prices, improved choices for consumers, and rapid technological innovation in many communications and information service markets, including customer premise equipment and long distance service. Similar benefits should be realized by the expansion of competition in the local telephone service market. Competition in that market also will reduce the ability of any telephone company to harm competition and consumers through monopoly control and will encourage investment and innovation in the "on and off ramps" of the NII.

- The Administration supports the general requirement of H.R. 3636 that all carriers must interconnect with other providers of telecommunications and information services. Such a requirement helps ensure that the NII functions seamlessly.
- The Administration also supports the approach of H.R. 3636 to impose more specific pro-competitive interconnection requirements on local exchange carriers (LECs), in light of these carriers' monopoly positions:

-- an obligation to interconnect at any "technically feasible and economically reasonable point";

-- an obligation to afford nondiscriminatory access to network facilities, services, functions, and information, where technically feasible and economically reasonable;

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-- no restrictions on resale or sharing of network facilities and services.

• H.R. 3636 would require the FCC to adopt regulations governing the price, terms, and conditions under which carriers may provide interconnections, access, facilities, and services. The Administration agrees with this general approach, but suggests that some of the details of this provision, such as the tariff filing requirement for LECs, are unnecessary based on current law and practice. The Administration also would emphasize that, in carrying out this requirement, the FCC and the States must prevent undue rate increases for any class or group of ratepayers.

• The Administration supports the approach of H.R. 3636 of requiring carriers to provide facilities, services, and network functions on an unbundled basis, i.e., carriers would have allow customers to pick and choose the constituent parts of the services to be taken. Thus, for example, instead of offering only switched local telephone service, a carrier would also have to offer separately the switching and transport components of that service.

• The Administration supports authorizing the FCC to modify all of the foregoing obligations for small LECs and LECs serving rural areas. This differs slightly from H.R. 3636, which would exempt carriers serving rural areas from the foregoing interconnection and unbundling obligations and authorize the FCC to modify those requirements for carriers with fewer than 500,000 access lines nationwide.

III. Relations with the States

Because of the crucial role of the states in protecting ratepayers and addressing economic and technical infrastructure issues in their areas, substantial state jurisdiction over telecommunications must be preserved. However, when national interests are at stake in realizing the benefits of an advanced, interconnected NII, particularly through local competition, national policies, with limited preemptive effect in a few key areas, are necessary.

***93** • H.R. 3636 would prohibit state entry regulation for telecommunications services or state action restricting a firm from exercising the interconnection rights granted by the bill. Similarly, in order to realize fully the benefits to consumers of increased competition in telecommunications, the Administration proposes to preempt state entry regulation for provision of telecommunications and information services.

• H.R. 3636 does not address state and local rate regulation. However, rate regulation of new entrants and other firms that lack market power not only is unnecessary, but can act as a powerful deterrent to the development of a truly competitive marketplace. Accordingly, to further the procompetitive goals discussed above, the Administration proposes to preempt state and local regulation of the rates for any service charged by a telecommunications carrier that the FCC finds, or has found, after notice and comment, to lack market power. However, the Administration would permit states to petition the FCC to retain or regain authority to regulate such rates under certain conditions. This approach for rate regulation is substantially the same as that passed by Congress in the last session for commercial mobile services, as codified in Section 332(c) of the Communications Act.

IV. Regulatory Flexibility

An Administration priority is to make government work better for the American people by reducing red tape and eliminating regulatory overkill. This is particularly important with regard to the telecommunications and information industries, which are subject to continuing technological and market changes. Detailed regulatory requirements that may be well-suited for incumbent firms with monopoly or near-monopoly positions may be quite inappropriate, and even anticompetitive, when applied to firms that lack market power. Telecommunications reform legislation should provide the FCC with the flexibility to adapt its regulations to meet changing conditions, consistent with the public interest.

• The Administration proposes to authorize the FCC (1) to exempt carriers lacking market power from any provision of Title II of the Communications Act (except provisions relating: to the duty to serve and interconnect; the duty to charge just, reasonable and nondiscriminatory rates; damages; and customer complaints) and (2) to tailor the regulations it does impose to reflect a carrier's market power. H.R. 3636 currently does not have comparable provisions.

• The Administration supports the general approach of H.R. 3636 authorizing the FCC and the states to permit carriers pricing flexibility for their competitive services. H.R. 3636 is very detailed in requiring the FCC to develop standards and criteria to guide regulators in exercising that authority. The Administration believes that legislation should provide more general guidance to the FCC.

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V. Universal Service

The United States has long been committed to "universal service" -- widespread availability of basic telephone service at affordable rates. As we move rapidly into a world in which advanced telecommunications capabilities, well beyond traditional telephony, will soon be available to many Americans, it is critical that our universal service goals and policies advance as well. The Administration seeks to work with Congress and the states to develop an enhanced concept of universal service that will serve the information needs of the American people in the 21st century.

*94 • It is an Administration goal that, by the year 2000, all of the classrooms, libraries, hospitals, and clinics in the United States will be connected to the NII. To help attain that goal, the Administration proposes that the National Telecommunications and Information Administration of the U.S. Department of Commerce conduct an annual nation-wide survey of the availability of advanced telecommunications services to those locations and report on its findings. Moreover, the Administration proposes that the FCC be directed to commence an inquiry and, subsequently, a rulemaking proceeding to ensure, to the extent feasible, the availability of advanced telecommunications to public school classrooms, health care institutions, and libraries. The FCC would consider the tariffing of preferential rates for interstate services to such locations, and ensure that standards are in place to permit uniform interconnection to the NII.

• The Administration supports the approach of H.R. 3636 in making the preservation and advancement of "universal service" an explicit objective of the Communications Act (as opposed to an implicit goal emanating from Section 1 of the Act). The Administration would provide more general guidance, and more flexibility to the FCC and the states in specifying the details of how that objective should be achieved. The Administration would state that advanced services should be available to rural and urban lower income users, to users in areas where the costs of service are high, and to social institutions, especially educational and health-care facilities.

• The Administration supports charging the FCC and the states with continuing responsibility to review and revise objectives for expanding universal service to meet changing circumstances.

• The Administration supports the requirement of H.R. 3636 that the FCC and the states address universal service issues through a Federal/State Joint Board. The Administration proposes giving the Joint Board more time to develop its recommendations to the FCC, and the FCC more time to act on them.

• H.R. 3636 would require all providers of telecommunications service to make "an equitable and nondiscriminatory" contribution to the preservation of universal service. The Administration agrees that the FCC and the states should have broad authority to require all providers of telecommunications services to contribute to the preservation of universal service. In exercising that authority, the FCC and the states must ensure that no service provider is unfairly burdened relative to its rivals, and that contributions to universal service do not unduly distort consumer choices among alternative services.

• The Administration also proposes authorizing the FCC, in consultation with the States, to permit "sliding scale" contributions (e.g., to avoid burdening small providers and new entrants), as well as "in-kind" contributions in lieu of cash payments. H.R. 3636 has no comparable provisions.

VI. Cable-Telephone Crossownership

*95 Although the existing cable-telephone company crossownership restriction of the 1984 Cable Act may have been appropriate when enacted, today it is an unnecessary and artificial barrier to competition in the delivery of video programming to American consumers and to investment in advanced local infrastructure. The Administration's proposal to remove the current restriction, coupled with its proposals to promote competition in local telephone service, will allow telephone companies and cable operators to compete in providing a full range of video, voice, and data services to the public. Such competition can promote investment that expands consumer choices and services.

To ensure that cable firms and telephone companies do not harm consumers or competition in providing these services, the Administration proposes several safeguards specified below, most notably requirements that most telephone companies and cable operators make transmission capacity available to unaffiliated video providers on a nondiscriminatory basis. In doing so, the Administration also seeks to protect diversity and competition in the flow of ideas, and to ensure that similarly situated firms are regulated similarly.

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The Administration supports the general approach of H.R. 3636 to allow LECs to provide video programming in their telephone service areas, subject to certain conditions and safeguards. The Administration would propose somewhat different conditions and safeguards, which, however, are also designed to protect consumers and competition and prevent undue control of information content and conduit by any one firm.

Structural Separation:

• The Administration supports the approach in H.R. 3636 of requiring LECs to provide video programming through a separate affiliate, in order to prevent improper cross-subsidization and discrimination by the LEC.

• H.R. 3636 specifies many of the details of the separation requirements. The Administration proposes modifying this approach to charge the FCC with specifying the required degree of separation, subject to two basic requirements from H.R. 3636:

-- A LEC's video programming affiliate must have separate books, records, and accounts; and

-- Any contract or agreement between a LEC and its affiliate (1) must be pursuant to regulations adopted by the FCC, (2) must be on a fully compensatory and auditable basis, (3) must be without cost to the LEC's telephone service ratepayers, (4) must be filed with the FCC, and (5) must adhere with rules that will enable the FCC to assess the compliance of any transaction with its rules.

• The Administration supports the approach of H.R. 3636 in permitting the FCC to modify separation requirements for small and rural LECs at any time. H.R. 3636 would allow the FCC to modify separation requirements for other LECs beginning 5 years after enactment. The Administration proposes reducing that waiting period to 2 years, to provide greater regulatory flexibility in the face of changing conditions.

Nondiscriminatory Access Obligations:

***96** • In order to promote competition and diversity in the flow of ideas, H.R. 3636 would require a LEC that provides video programming to subscribers in its service area to establish a "video platform," based on the FCC's current "video dialtone" rules, and make it available to unaffiliated programmers on nondiscriminatory terms. The Administration supports this general approach, with some modifications.

• H.R. 3636, by its terms, would require that the rates for the platform be nondiscriminatory. The Administration proposes specifying that LEC provision of the video platform will be subject to all requirements of Title II of the Communications Act.

• H.R. 3636 appears to require a LEC to afford nondiscriminatory access to its video platforms only when it carries "affiliated" video programming (i.e., programming in which the LEC has an ownership interest). The Administration proposes requiring a LEC to afford unaffiliated programmers nondiscriminatory access to its video platform whenever the LEC carries video programming.

• H.R. 3636 would require the FCC to limit the number of channels on a LEC's video platform that can be occupied by its video programming affiliate (that limit can be no lower than 25% of the platform's capacity). The Administration proposes to authorize the FCC to impose such a limit and give the FCC discretion in selecting what the limit should be.

• The Administration proposes to permit the FCC to modify any of the foregoing requirements for small and rural LECs. H.R. 3636 contains no similar provision for small, non-"rural" LECs.

• The Administration supports allowing the FCC to modify the definition of "video platform" beginning 1 year after enactment. H.R. 3636 contains no such provision.

• The Administration proposes to direct the FCC to adopt regulations, within 1 year of enactment, that would require cable operators to offer nondiscriminatory access to channel capacity on their systems for unaffiliated programmers, except when technology, costs, and market conditions would make such offering inappropriate. H.R. 3636 requires that the FCC study whether to impose such obligations and report to Congress within 2 years after enactment.

Anti-Buyout Provisions:

• To protect competition in the provision of communications and information services and to further the flow of ideas, the Administration supports limiting a LEC's ability to enter the video services market via acquisition of cable systems operating

in its telephone service area. The Administration proposes to limit cable companies' ability to acquire LECs providing local telephone service in the cable companies' franchise areas.

• The Administration supports the provisions of H.R. 3636 permitting in-region acquisitions occurring in rural areas and for joint LEC/cable operator use of the cable "drop wire." The Administration proposes eliminating the provision of H.R. 3636 that would permit a LEC/cable acquisition if the number of households served by the cable systems acquired constituted less than 10% of all households in the telephone service areas of the acquiring LEC and its affiliates.

*97 • H.R. 3636 would also authorize the FCC to waive the anti-buyout policy at any time under certain conditions. The Administration proposes authorizing the FCC to change the policy by rule, or to grant waivers on a case-by-case basis, beginning 5 years after enactment, if it determines that such action would be in the public interest. Such acquisitions would, however, remain subject to the antitrust laws.

Franchise Obligations:

• The Administration supports the general approach in H.R. 3636 of removing some requirements of the Cable Act for the LEC's video programming affiliate and any other user of the LEC's video platform, while maintaining others, such as must carry, retransmission consent, the provision of public, educational, and governmental channels, and others designed to protect consumers.

• To promote symmetric regulation of similarly-situated firms, the Administration proposes to authorize the FCC to remove some Cable Act requirements (most notably, the requirement to have a cable franchise) for cable systems that offer nondiscriminatory access substantially similar to that required of LECs by the bill, while maintaining the overall Cable Act regulatory structure. H.R. 3636 has no comparable provision.

Rural Exemption:

• H.R. 3636 states that provisions concerning the video programming affiliate, the video platform, provision of affiliated programming, and the ban on acquisitions do not apply to LECs offering video programming in rural areas. The Administration proposes to authorize the FCC to modify those provisions for such LECs.

VII. Regulation of Two-Way, Broadband Transmission Services (Title VII)

The Administration proposes adding a new Title VII to the Communications Act to apply, on an elective basis, to providers of two-way, broadband, digital transmission services, offered on a switched basis to end users. The Administration would emphasize these services because, well into the 21st century, they will connect and empower the American public by providing them with a variety of voice, data, video services, and other information that will enhance our nation's economic competitiveness and the quality of life of our citizens.

A new Title VII would provide a unified, symmetric treatment of providers of two-way broadband services, in contrast to the present disparate treatment of common carriers and cable operators under Titles II and VI of the Act. It also would provide important incentives to promote private sector development of this part of the NII and spur availability of advanced services on a widespread basis. The Administration recognizes that communications services are developing in a rapidly changing technical and marketplace environment. A new Title VII would create a regulatory regime that should stand the test of time by providing the FCC with the flexibility to adapt its regulatory approach in light of changes in market and technological conditions.

Eligibility and Certification

*98 • Under the Administration's proposal, firms could elect Title VII regulation of the two-way broadband, interactive, switched, digital transmission services they provide to end users ("Title VII broadband services"), if they offer such services to at least twenty percent of their subscribers in a state. The FCC would be authorized to define Title VII broadband services in greater detail and to modify the subscriber threshold.

• If a firm were to certify to the FCC that it meets the threshold in one or more states and the FCC does not disallow the election, the FCC would apply streamlined Title VII regulation to the firm's Title VII broadband services and the other services that share broadband facilities in those states.

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Regulatory Framework for Title VII

• Title VII would impose the following broad requirements (to be implemented by the FCC) to apply to Title VII broadband services and the services that share broadband facilities with them:

-- Open access obligations (including access for the disabled) to enable all persons to send information over the firms' broadband facilities;

-- Universal service requirements consistent with those under other parts of the Communications Act; and

-- Interconnection and interoperability requirements

• Title VII would promote regulatory flexibility by providing that the FCC shall:

-- Regulate rates only for Title VII services that are offered by firms the FCC finds have market power in the provision of such services; and

-- Establish procedures to resolve any complaints expeditiously.

• Title VII would also authorize the FCC adopt rules, as needed, to:

-- Address public interest concerns, such as those currently addressed in Sections 223 through 228 of the Communications Act (dealing with: obscene and harassing communications; regulation of pole attachments; services for hearing and speech-impaired individuals; telephone operator services; use of telephone equipment; and carrier provision of pay-per-call services, respectively).

-- Ensure that delivery of video programming directly to subscribers over broadband facilities is consistent with certain principles now applicable to cable services (e.g., Sections 325(b), 611, 614, 615, and 632 of the Act, dealing with: retransmission consent; public, educational, and governmental access; must carry; and protection of subscriber privacy).

• If a Title VII firm also provides communications services that do not share broadband facilities with Title VII broadband services, those other services would remain subject to regulation under Title II or Title VI, as appropriate.

Relations with State and Local Regulators

• Consistent with the Administration's general approach to relations with state and local regulatory authorities, federal authority over the rates, terms, and conditions under which communications services are provided would predominate only when needed to ensure that national goals of promoting competition and liberal interconnection and access require it.

*99 • Title VII would preempt state and local authorities from regulating rates of Title VII services if the FCC determines that the providing firm lacks market power.

• States would continue to regulate rates for the intrastate components of Title VII services provided by firms with market power:

-- for Title VII broadband services, in accordance with models and guidelines adopted by the FCC in consultation with the states;

-- for other services delivered over the facilities used to furnish Title VII broadband services, in the discretion of the states, subject only to a reserved right of Federal preemption that could be exercised to the extent necessary to avoid conflicts between state regulatory actions and the policies of Title VII.

STATEMENT OF REED E. HUNDT

Mr. MARKEY.

Now I would like to extend a special welcome to Reed Hundt. This is his first appearance before the United States Congress, and he arrives at an historic moment as we begin the process of revolutionizing our telecommunications laws.

He is going to be largely charged with the responsibility of implementing the decisions which are made here by the United States Congress this year. We are glad to have him here today and we look forward to working with him over the next several years in this very important process.

It is very reassuring and refreshing to have a very experienced lawyer who has an outstanding understanding of economics to have this important job as we work with him in the years to come. I have been very impressed with his grasp of these very complex issues in my many conversations with him over the last couple of months.

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HEARINGS

*1 TELECOMMUNICATIONS: THE ROLE OF THE DEPARTMENT OF JUSTICE

May 9, 1995

COMMITTEE ON THE JUDICIARY

HENRY J. HYDE, Illinois, *Chairman*

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Let me again thank you personally for introducing this important legislation, for holding this hearing. We, the Department of Justice, and I personally appreciate your leadership and look forward to working with you and the entire committee on this.

We thank you very much.

Mr. HYDE. Thank you very much.

Now we turn to a panel of three distinguished witnesses who will testify regarding the same topic. This panel consists of Mr. Bert C. Roberts Jr., the chairman and chief executive officer of MCI Communications Corp.; Thomas P. Hester, Esq., the executive vice president and general counsel of Ameritech, and Mr. Timothy J. Regan, who is division vice president with Corning, Inc.

Welcome gentlemen. Each of your written statements will be made a part of the committee record in its entirety. I ask respectfully that you confine your oral testimony to 5 minutes each and if you have caught your breath and shuffled your papers properly, we will recognize you first, Mr. Roberts.

STATEMENT OF BERT C. ROBERTS, JR., CHAIRMAN AND CHIEF EXECUTIVE OFFICER, MCI COMMUNICATIONS CORP.

Mr. ROBERTS. Thank you, Mr. Chairman.

Mr. HYDE. Would you turn your mike on? Some of us are lip-readers, but not all.

Mr. ROBERTS. I am Bert Roberts, chairman and chief executive officer of MCI Communications Corp. Thank you for allowing me to testify before this committee concerning telecommunications reform and to discuss the specific issues raised by H.R. 1528, the Antitrust Consent Decree Reform Act of 1995.

MCI's position on telecommunications reform is well-known. We look forward to a fully competitive, fully deregulated marketplace. The first and highest priority of any bill must be to bring competition to the last bastion of monopoly, the local telephone market. And while this monopoly market is under transition, there must be strong safeguards to protect and promote competition.

***62** Historically, the Department of Justice has held the pivotal role in ensuring fair and open competition in the economy. We believe that this role must continue. MCI knows full well the critical part the Department played in opening up the long-distance markets to competition. The DOJ should continue to be actively engaged in promoting competition in all telecommunications markets.

I believe everyone in this room would agree that without the extraordinary and ongoing efforts of the Department of Justice today, there would be no competitive long-distance industry, there would be no MCI and, most importantly, the United States would not exercise the level of world leadership in telecommunications and information services that it does today.

I commend H.R. 1528 for its recognition of the Department's rightful role to protect and promote critical public interests affected by telecommunications reform legislation.

However, MCI cannot support the bill in its current form. Important revisions are necessary. We believe that the focus of legislation must be on bringing about competition in the local telephone market. There is currently no meaningful competition in local telephone markets. To state the obvious, local phone service is dominated by the Bell companies. For example, everyone here knows if you want to switch from Bell Atlantic, you can't. There is no alternative.

The same dominance of the local exchange has always been at the heart of the Bells' power. Bell company control of the local monopoly was the basis of the 1982 consent decree. There are some people who would like to forget that, dismiss it as part of the past. We cannot. MCI cannot forget the way the Bells treated us and other potential competitors, the FCC, and even their own customers.

We cannot forget the predatory pricing or the burden on our customers of inconvenient multidigit dialing and lower quality interconnection arrangements. We cannot forget that the Bell companies stonewalled for years on providing equal access, resisting and refusing requests until the consent decree required it. Or how the Bell system negotiated in bad faith over new forms of interconnection and deliberately delayed agreements with MCI.

In some cases in the mid-70's, the Bells went so far as to rip out our lines. At MCI we will not forget the Bell's history of anticompetitive abuses and that is why we are adamant that legislation must not create a scenario in which these abuses could be repeated.

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Mr. Chairman, examples of harm by the Bell system are not merely of historical interest. The risks they highlight continue to exist today. The RBOC's currently dominate the $15 billion intraLATA toll market and regularly thwart competition there. They exercise control over the $90 billion local telephone market and are going to do everything they can to preserve their monopoly.

That is why MCI cannot support H.R. 1528 as introduced and why we strongly recommend the following revisions. First, telecommunication reform legislation must effectively open local markets and RBOC entry into long distance must be conditioned on the development of actual competition in the local market.

***63** Second, the existing VIII(C) test, evidentiary standard burden of proof should be retained. I find it a little ironic that the Bells are now arguing against this standard. Last year, Bell Atlantic President James Cullen testified, and I quote, that the standard from section VIII(C) of the AT&T consent decree "is the correct test for whether a Bell company should be allowed to provide interstate long-distance services."

Mr. Cullen's testimony was echoed by Sam Ginn, the chairman of Pacific Telesis who stated the VIII(C) test which focuses on the ability to impede competition in the market the RBOC's seek to, the long-distance market, is the appropriate test.

Now, for some reason, this year the RBOCs don't want to meet that test and it is difficult to contend with their constant change of positions.

The third revision: critical post entry safeguards-separate subsidiaries and a strong imputation requirement-need to be added to the bill.

And fourth, the definition of an affiliate shouldn't permit immediate RBOC entry into long distance through an entity in which they have a substantial equity interest. Without these revisions, there is a great risk that history will repeat itself. The Bells will use their bottleneck control to extend their market power into long distance and other competitive markets.

And there are other risks. The interference of Bell monopolies with free market force might lead to an environment of greater regulation and less entrepreneurial opportunity. We could see hundreds of new antitrust suits and more litigation and regulation. Worst of all, we would see a vibrant industry become stagnant as monopolies drive innovation out.

MCI wants to avoid such a scenario, a return to the past, when the courts were crowded with suits over the Bells' anticompetitive acts is not the way to go.

We look forward to working with you, as well as Chairman Bliley and Fields, to produce reform legislation that makes sense, that is right, and that works.

[The prepared statement of Mr. Roberts follows:]

PREPARED STATEMENT OF BERT C. ROBERTS, JR., CHAIRMAN
AND CHIEF EXECUTIVE OFFICER, MCI COMMUNICATIONS CORP.

Good morning, Mr. Chairman and members of the Committee. My name is Bert C. Roberts, Jr. I am the Chairman and Chief Executive Officer of MCI Communications Corporation. It is an honor to have this opportunity to testify before the Committee on critical issues regarding telecommunications reform generally and, more specifically, on issues raised by H.R. 1528, the "Antitrust Consent Decree Reform Act of 1995."

I commend you, Mr. Chairman, for your interest in bringing U.S. telecommunications policy in line with changing technological and marketplace developments. We all share a common goal: vigorous competition in *all* telecommunications markets characterized by expanded entrepreneurial opportunity, unprecedented technological innovation and lower consumer prices. The legislative challenge facing the Congress is how best to bring competition to the monopoly local telephone market. It is essential to ensure that this occurs *before* the Regional Bell Operating Companies BOCs) are permitted entry into adjacent competitive markets, so that they do not remonopolize the industry and reverse a decade of gains for consumers.

***64** In this context, MCI applauds Chairmen Tom Bliley and Jack Fields for introducing H.R. 1555, the "Communications Act of 1995." This legislation is intended to open local markets to competition and, critically, to ensure that the RBOCs face full and robust facilities-based competition before they are permitted to enter the long distance market. MCI looks forward to working with the Congress on legislation that achieves this result.

It is appropriate for the Judiciary Committee to hold a hearing on telecommunications legislation. First, this Committee has jurisdiction over our nation's antitrust laws. Given the history of this industry and the scope of comprehensive telecommunications reform, legislation will directly affect the antitrust laws. Importantly, both the antitrust laws and this legislation share the same goal of promoting competition. If legislation were enacted, Congress would, for the first time in its

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history, override an antitrust judgment and consent decree formally entered by a federal district court after Tunney Act review and affirmed by the United States Supreme Court.

Also, this Committee has jurisdiction over the Department of Justice (DOJ). The Department has played a critical part in opening up long distance and other telecommunications markets to competition, and it continues to serve an active role in promoting competition in all markets. Telecommunications legislation should, and will, affect DOJ's role. I applaud H.R. 1528's recognition of the Department's critical role in overseeing RBOC entry into long distance markets. However, as discussed further below, I urge this committee to revise H.R. 1528 in several significant ways, including the standard of review-the RBOCs should be required to demonstrate that there is no substantial possibility that they can use their monopoly power to impede competition in the long distance market.

OVERVIEW

My testimony will focus on two markets: the market for local telephone services and the long distance market. The first and most urgent telecommunications policy priority is to bring competition to *local* markets. There is currently *no* meaningful competition in local markets. It is a monopoly-pure and simple. As a result, the price of local service has increased over the past decade at the rate of inflation.

During the same period, the price of virtually all other telecommunications services and products has decreased-in the long distance market, by nearly 70% in real terms. That is because long distance and other markets have become intensely competitive even while the RBOCs have retained their local monopolies. Accordingly, any legislation must create the environment that will ensure competition in local monopoly markets. To accomplish that goal, Congress must establish basic market-opening ground rules and preempt state and local laws and regulations that preclude effective local competition.

It is important to recognize that mere elimination of legal and regulatory barriers to local competition alone will not cause local competition to develop overnight. There is no magic wand. There are significant economic and technological barriers. Companies like MCI are attempting to surmount all of these barriers. MCI has committed hundreds of millions of dollars to develop a competitive alternative to the local Bell monopolies-just as MCI spent billions of dollars to develop a competitive alternative in long distance over seemingly unbeatable odds.

*65 Removal of legal and regulatory entry barriers is a crucial first step before new entrants will make the massive investments necessary to build new local telephone networks. Capital markets will not put these huge sums at risk unless and until the law is changed to give potential competitors a fair opportunity. Even once legal and regulatory barriers are removed, it will take time for these investments to occur and to pay off. In the meantime, the expert federal agencies must oversee the transition to ensure that artificial barriers are removed and to monitor the progress of competitors.

Once that fundamental step has been accomplished and effective local competition has emerged, restrictions needed to protect competition in other markets from Bell bottleneck abuse can be-and should be-lifted. The issue of Bell entry into long distance has never been a question of whether, but when: either when a Bell Company divests its local monopoly or when effective competition develops in the local telephone services market.

However, if the pro-competitive safeguards of the consent decree are lifted prematurely, the result will be catastrophic for both consumers and competitors. The Bell Companies will leverage their local monopolies and seek to recreate the vertically integrated Bell System that stifled competition for so long in all telecommunications markets. We would likely end up with a dramatic concentration of power in the telecommunications, information services, and media industries, leaving only a few integrated companies that would not compete aggressively against each other. The result would be less rapid technological innovation and significantly higher prices than vigorous competition would produce. If the sequencing isn't done right, there is a grave risk of replacing regulated telephone monopolies with much larger unregulated multimedia monopolies. The hundreds of entrepreneurial companies, many now operating in the states of members of this committee, would go out of business. Small businesses are the real job creators and a key source of innovation in the U.S. economy. Legislation must create an environment in which market forces, not monopolies, decide which companies survive.

Mr. Chairman, without proper safeguards, the industry will become mired in the kind of regulatory and legal proceedings that so preoccupied state agencies, the FCC and the courts in the 1970s. The need for regulation and litigation will *increase,* because regulators will have to struggle with the problem that they have never been able to solve: how to force the Bell Companies to act contrary to their monopolistic incentives and cooperate with companies against which they are competing.

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Of course, the Bell Companies have it within their power to enter the long distance business *tomorrow.* If they don't want to wait until effective local competition develops, they can provide long distance service immediately by spinning off their local telephone business. All the Bell Companies have to do is make a choice between their local bottlenecks and long distance. Once they give up their monopoly power, there is no reason why they cannot provide long distance service.

***66** It is no surprise that the Bell Companies have been unwilling to make this choice. They want it both ways. They want to keep their local monopolies *and* compete in the long distance business. But they do not want to compete in long distance without the unfair anticompetitive advantages that simultaneous retention of their local bottlenecks would provide. The last thing they want is a level playing field.

Allowing them such an unfair advantage would cripple the prospects for local competition and threaten to roll back the progress achieved in long distance since divestiture severed the tie between local and long distance. Long distance competition has flourished because long distance carriers have been able to compete on an equal basis. The Bell Companies lost the incentive and ability to discriminate in favor of an affiliated carrier.

The progress in long distance competition should be preserved and progress toward meaningful competition in local services should begin. An open, deregulated marketplace characterized by entrepreneurial opportunity and technological innovation will best serve consumers-as well as ensure America's leadership in information technologies well into the next century.

LONG DISTANCE COMPETITION: SUCCESS STORY FOR THE ECONOMY AND CONSUMERS

Such a marketplace exists today in the long distance industry. Mr. Chairman, the changes spurred on by the Department of Justice and the FCC have meant that Americans now have multiple options for long distance telephone service. Both large and small entrepreneurial companies now compete in the long distance industry. In Illinois, 87 long distance providers are providing customized service to consumers and small businesses. In California and Texas, over 100 companies offer a variety of long distance services. In Michigan, New York, Colorado, Florida, and Pennsylvania, over 50 long distance companies are today offering service. The vigorously competitive long distance industry has been a windfall for the U.S. consumer and the engine for the unprecedented technological innovations sweeping the telecommunications industry.

A study by Dr. Robert Hall of Stanford University, *Long Distance: Public Benefits from Increased Competition* (October, 1993), confirmed what the world already knew-that competition:

Created a vibrant long distance market with thousands of innovative services offered by hundreds of carriers. (A listing of MCI's major products is attached as Exhibit 1).

Stimulated an unprecedented surge in technological innovation. New features and enhanced billing options are made possible by substantial investments in new technology. Carriers such as MCI have invested billions of dollars in creating state-of-the-art digital networks. Over the last five years, MCI has invested virtually all of its cash flow into its network infrastructure. MCI will spend $3 billion again this year to upgrade its network and transmission technology to hasten the widespread availability of Internet access, broadcast quality videophones, electronic data interchange, long distance medical imaging, multi-media education and a single-number personal communications service that will use the same pocket-sized telephone anywhere in the world.

***67** MCI's technological investments are also helping the cause of addressing mankind's next challenges. Two weeks ago, MCI and the National Science Foundation announced the launch of a new high-speed network to use advanced information technologies that enable massive amounts of voice, data and video to be combined and transmitted at speeds nearly four times faster than current technology. Initially, the network service will tie together the Pittsburgh and San Diego Supercomputing Centers; the Cornell Theory Center; the National Center for Supercomputer Applications in Urbana, Illinois; and the National Center for Atmospheric Research in Colorado.

Some of the possible applications for high performance computing and the highspeed network service offered by MCI include building more energy-efficient cars; improving environmental modeling; and designing better drugs. The existence of a national highspeed broadband backbone for experiments in networking between super computing centers will enable researchers to develop technologies such as high-density video conferencing from personal computers, remote telemedicine and two-way communications between citizens and their government.

Caused quality to soar as long distance companies criss-crossed the nation with fiber optic networks that today comprise the Information Highway. Digital transmission, particularly digital fiber, enhances quality. The dropped calls, echoes, and

noisy lines that once plagued the pre-divestiture Bell System long distance service are a thing of the past. Calls across the country now typically sound as though they are coming from next door.

Drove real long distance prices to American consumers down by more than 60 percent between 1995 and 1992, net of access charge reductions.

Since 1992, long distance prices have dropped even further. Professor Hall recently updated his study to reflect long distance price changes in 1993 and 1994. He found that real long distance prices continued to decline in 1993 and fell again in 1994 by 5 percent. As of today, Mr. Chairman, the vigorous competition in long distance has produced a nearly 70 percent decline in real prices. The same long distance call that cost $1.77 (in 1994 dollars) ten years ago, would cost less than 58 cents today. Exhibits 2 and 3 provide graphic evidence of these significant price reductions.

Vigorous price competition abounds in the long distance industry. Many discount plans are available. All long distance customers-both residential and business-have numerous opportunities to cut their long distance bills substantially by signing up for one of these many options. For example, business customers that make term commitments can save by 20, 30 or 40 percent. Similarly, residential customers that make use of various calling plans, such as MCI's new Friends and Family program, can also save from 25 to 50 percent. Discounting dramatically lowers the effective price to the customer and is the principle mechanism by which vigorous and aggressive price cutting is achieved.

***68** The benefits of long distance competition can be replicated in industry sectors now dominated by monopolies if legislation follows the appropriate "blueprint."

"BLUEPRINT" FOR PRO-COMPETITION LEGISLATION

If legislation is to accomplish for consumers and for all sectors of the industry what divestiture did for long distance competition, it must remove entry barriers that today thwart the achievement of effective local exchange competition. These barriers deny consumers the lower prices, innovative services and information infrastructure enhancements that competitive forces have provided to long distance telephone consumers. True local number portability; dialing parity; unbundling of local service elements; interconnection requirements; nondiscriminatory, cost-based access; and unrestricted resale availability are among the important features that will, over time, break down the RBOCs' bottleneck monopoly and spur competition in the local exchange.

Legislation should provide for reasonable and achievable conditions for RBOC entry into the competitive long distance marketplace. Legislation can promote competition in all telecommunications markets and protect consumers by:

Requiring the Federal Communications Commission (FCC), with an appropriate role for the states, to find that the entry barriers to local exchange competition have been removed, to prescribe and ensure full implementation of rules for interconnection, cost-based nondiscriminatory access and true number portability, among other things.

Providing the appropriate sequencing for RBOC entry into the long distance marketplace. Actual competition in the local exchange *must* occur *first.* Only then should the RBOCs be permitted to seek entry into the long distance market.

Giving the DOJ an appropriate role and requiring the RBOCs to satisfy a test based on market facts that ensures that there is no substantial possibility that the RBOCs can impede competition before the DOJ can approve their entry into the long distance market.

Effective telecommunications legislation must establish important post-entry consumer safeguards to guard against anti-competitive abuses. For example, opportunities for cross-subsidization must be reduced by requiring that the RBOCs provide long distance services through a separate subsidiary.

DOJ-AMERITECH AGREEMENT

Mr. Chairman, Congress has an historic opportunity to pass legislation that will complete the transition from a monopoly telephone system to an open and competitive multimedia marketplace. To assist you in that effort, I commend the recent Justice Department-Ameritech agreement to your attention. That agreement itself is an historic event. For the first time, DOJ, a Bell Company and AT&T have reached agreement on a plan for opening up the local telephone market and, if that succeeds, then allowing Ameritech to provide long distance service. This agreement is very important to the telecommunications reform debate for several reasons:

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*69 Ameritech has agreed to open its local network and further agreed that actual local competition must exist *before* entering the long distance market. Under the terms of the agreement, Ameritech would stay out of long distance until DOJ determined that actual local competition exists.

It includes a competition-based test designed to make certain Ameritech cannot block competition in the future-requiring the Justice Department to make sure there is no substantial possibility that Ameritech could use its position in local exchange telecommunications to impede competition.

It includes continued oversight by the Justice Department. The order gives the DOJ ongoing power to order Ameritech to discontinue conduct that impedes competition in the long distance market. It also allows the Justice Department to order Ameritech to cease offering long distance services if it finds that Ameritech is blocking competition.

It requires separate subsidiaries. Under the agreement, Ameritech must keep its long distance operations in a separate subsidiary, with its own officers and personnel, its own financial and accounting records, and its own facilities. This requirement is absolutely critical if we are to have any chance of policing and preventing RBOC cross-subsidization of their long distance operations with local ratepayer revenues. I urge this committee to include such a requirement in H.R. 1528.

PRE-DIVESTITURE BELL SYSTEM ABUSES HARMED THE PUBLIC

MCI pioneered competition in long distance. MCI knows from experience the benefits of competition in the marketplace-as well as the anti-competitive harm that can occur when a monopoly leverages its power. Competition makes a big difference. As we look to the future, it is critical for Congress to reflect on and draw from the lessons of the past.

Prior to divestiture in 1984, the Bell System had a virtual monopoly in almost all segments of telecommunications in the United States-local telephone service, long distance service and equipment manufacturing. Competitors were forced to file antitrust cases because regulators were unable to prevent the unfair and anti-competitive exercise of market power. The DOJ initiated its *second* formal investigation of the Bell System in 1974 and sued on behalf of the U.S. government later that year. The DOJ charged that the Bell System violated federal antitrust laws by conspiring to monopolize three major markets: long distance, customer premises equipment, and network switching and transmission equipment. Among the anti-competitive abuses suffered by MCI and identified by DOJ in its lawsuit were predatory pricing and denial of equal access to essential local exchange facilities:

Customers of the competitors were burdened with inconvenient, multi-digit dialing arrangements and lower quality services. The Bell System did nothing to further the provision of equal access (1-plus calling with presubscription) for years after MCI requested it. Equal access was not implemented until it was required under the terms of the consent decree.

*70 The Bell System negotiated in bad faith over new forms of interconnection. They persisted in slow-rolling MCI on interconnection agreements. During the interconnection fights of the mid-1970's, *several Bell companies went so far as to rip out MCI's lines.* To get the lines restored, we had to go to court.

The Bell telephone companies and Bell Labs delayed releasing technical information long distance carriers needed to develop new services.

These kinds of illegal, anticompetitive behavior impeded MCI's bid to compete in the long distance market for many years. And consumers were denied the lower prices, innovation and better quality that competition has since delivered.

Mr. Chairman, these examples of Bell System harm are not merely of historical interest. The risks they highlight continue to exist today. As long as the Bell Companies maintain a stranglehold over local telephone services, they have the same ability and incentive to engage in this kind of anticompetitive conduct. Regulatory "safeguards" have never been adequate to prevent it; nor will they ever be. As Assistant Attorney General Anne Bingaman recently testified before the Senate:

Until the success of the Department's suit, regulation and litigation had not been effective in breaking through that local bottleneck. The Bell System proved itself adept at devising new ways to use the bottleneck to hurt competition in other markets more quickly than the courts and regulatory agencies could order solutions. Among other things, the Bell System used its monopoly profits to hire legions of lawyers to make sure that any proceeding that challenged any aspect of the monopoly was bogged down in endless proceedings.

The framework of the 1982 consent decree is based on the Justice Department's basic theory of the antitrust case: the bottleneck monopoly had to be separated from potentially competitive services in order to allow competition to develop. The RBOCs were prohibited from engaging in long distance, equipment manufacturing and information services because only a structural

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