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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20544

IN THE MATTER OF	**) CC Docket Nos. 98-147, 98-11**
DEPLOYMENT OF WIRELINE SERVICES	**) 98-26, 98-32, 98-78, 98-91**
OFFERING ADVANCED	**) CCB/CPD Docket N. 98-15**
TELECOMMUNICATIONS CAPABILITY,	**) RM 9244**
ETC.	**)**

INITIAL COMMENTS OF
THE CONSUMER FEDERATION OF AMERICA

As a consumer group with a long history of supporting competition as the best form of consumer protection, the Consumer Federation of America (CFA) has participated in every major local competition proceeding under the Telecommunications Act of 1996 (the Act) at the state and federal level. While progress is being made, there is a long way to go.

Because of the difficult road that local competition has traveled since the passage of the Act and the perilous journey that lies ahead, we believe that the idea of subjecting advanced telecommunications technology and services to reduced regulation under section 706 of the Act should be shelved at this time. The Notice of Proposed Rulemaking (NPRM) is the wrong way to turn at this stage of the implementation of the Act.

- At best, it is premature.
- At worst, it will be counterproductive.
- It could be unnecessary.
- It will most likely be ineffective.

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Because CFA believes that the NPRM is ill timed, these initial comments focus on the reasons why the Commission should not set out on the journey it has proposed, rather than trying to provide a map to make the journey less perilous. CFA will address specific substantive issues in its reply to the initial comments of other parties.

THE PROPOSAL IS PREMATURE

The NPRM is premature because the FCC is proposing an exception to rules that have never been fully implemented. Since no RBOC has implemented section 251/271 of the Act, we cannot know whether an exception is necessary. Only after the industry has implemented the FCC's rules and we have gained experience with that implementation should exceptions be considered.

When local markets are irreversibly open, we may be inundated with advanced telecommunications services as Congress hoped. Until they are open, we cannot judge the ability of Congress' preferred mechanism "opening all telecommunications market so competition" to achieve its desired goal "to accelerate rapidly private sector deployment of advanced telecommunications and information technologies." Not only would an exception before the fact of competition violate congressional intent, but giving flexibility before full implementation of sections 251/271 is inconsistent with the spirit of section 10 (the forbearance section) since that section requires full implementation of sections 251/271 before any forbearance is granted.

THE PROPOSAL COULD BE COUNTERPRODUCTIVE

The proposal could be counter productive because the FCC is proposing to protect the public interest by applying section 272 type separations to high speed data. Unfortunately, the section 272 requirements have never been effectively implemented and are a bone of contention in the long distance area. The interpretation of the FCC's rules has been butchered by the RBOCs. Each section 271 proceeding reveals a new trick that the RBOCs are using to undermine the intention of this section.

Even if the RBOCs had accepted the Commissions rules in good faith, it remains to be demonstrated that the rules that have been put in place will prevent abuse. Adding another layer of affiliate transactions that are prone to abuse will only make matters worse. Without tried and true affiliate safeguards in place, the exception could be an invitation to abuse.

The FCC needs to have the effectiveness of the section 272 rules demonstrated in practice before it proposes to implement another set of difficult to administer affiliate safeguards.

THE NEED FOR THE EXCEPTION HAS NOT BEEN DEMONSTRATED

It is entirely possible that the NPRM is unnecessary because the FCC has not even found that there is a legitimate need for policies to accelerate the deployment of the targeted services and facilities. It is only now inquiring as to the status of the advanced service marketplace. There has not been any demonstrated public need for the relaxation of the

Act's regulatory requirements to accomplish the purposes of the Act. As previously noted, even if there is a need, the Commission cannot conclude that competition will not fill it.

THE RULE WILL BE INEFFECTIVE

It is likely that the NPRM will be ineffective because the FCC's proposed response could not accomplish the intended purpose, even if there were a demonstrated need. The exception contemplated is a broad invitation to engage in commercial activities subject to reduced regulatory oversight with no requirement that the exempted activities meet further the public interest. Letting LECs deploy commercial facilities subject to less regulation would have little impact on getting facilities to areas that are not commercially attractive.

Internet and advanced services for business and high volume customers are already competitive. DSL trials and services are being rolled out. No exception is needed to foster the deployment of advanced technology and services to this market, but that is who the LECs will serve under the exception. There is nothing in the exception to force such services to be provided to communities that are not being targeted because of their commercial attractiveness.

If the FCC concludes that the extension of advanced services to specific markets is lagging, it should craft specific remedies to deliver services to those markets. As contemplated, the rule will either unleash the abuse of market power or enhance the commercial attractiveness of things companies are already doing.

THE FCC SHOULD SHELVE ALL DISCUSSION OF EXCEPTIONS

The FCC should shelve all discussion of an exception until after companies have met the core requirements of the Act in section 251/271.

It should make it clear that there will be no blanket exception for the industry, only targeted exceptions for specific companies in specific states where they have a well established 251/271 regime in place.

It should make it clear that such exceptions will be targeted to specific applications of a specific set of facilities intended to address a specific problem.

Talking about broad exceptions as the NPRM does may actually undermine the ability of the FCC to further the public policy of the Act in two ways.

First, it encourages the RBOCs who have inexhaustible litigation budgets to press the limits of the law to see what they can get away with. The FCC has a very recent and relevant example of this in its modifications of the equal access rules it offered in the BellSouth South Carolina section 271 decision. The FCC decided that a company that had been allowed entry into long distance under section 271 should be allowed to joint market its competitive long distance services along with local services (provide one-stop-shopping). Two of the RBOCs immediately tried doing this *before* they were compliant with section 271 by entering joint marketing deals with Qwest. We now have two court cases and a FCC proceeding to correct a problem that was created by making exceptions to rules based on the assumption of compliance with the Act.

Second, the premature talk of exceptions reinforces the RBOCs' incentives to do as little as possible under sections 251/271 of the Act. Digital services are the future. As the Commission should be well aware, digital services have been systematically and pervasively withheld by the RBOCs in the section 251/271-implementation process. The prospect of never having to open the local digital market to competition through a section 706 exemption will reinforce this tendency.

A GREAT DEAL OF ADDITIONAL DISCUSSION AND ANALYSIS ARE NECESSARY BEFORE ANY EXCEPTION UNDER SECTION 706 CAN BE GRANTED

The huge number of questions and uncertainties evident in the NPRM and the related NOI make it clear that the Commission could not proceed from the current situation to a proposed rule. At a minimum, the Commission will have to thoroughly define the nature and scope of any proposed treatment of high-speed data services under section 706 of the Act and allow comments on a much more precisely defined proposal.

More importantly, the Commission should turn its attention to pressing for irreversibly open markets.

Mark Cooper
Director of Research

September 24, 1998