

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**IN THE MATTER OF  
DEPLOYMENT OF WIRELINE SERVICES  
OFFERING ADVANCED  
TELECOMMUNICATIONS CAPABILITY,  
ETC.**

) **CC Docket Nos. 98-147, 98-11**  
) **98-26, 98-32, 98-78, 98-91**  
) **CCB/CPD Docket N. 98-15**  
) **RM 9244**  
)

**REPLY COMMENTS OF  
THE CONSUMER FEDERATION OF AMERICA  
AND CONSUMERS UNION**

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October 16, 1998

## **INTRODUCTION**

In initial comments, the Consumer Federation of America (CFA)<sup>1</sup> raised several areas of concern about the Proposed Rule that the Commission issued in the instant proceeding. Having reviewed the initial comments of others in this proceeding, we are more convinced than ever that the Commission's proposal is premature and would be counter productive (see Table 1 for a list of the issues that lead us to this conclusion). CFA is joined by Consumers Union (CU) in that opinion.<sup>2</sup>

We base our conclusions on a careful review of the initial comments of disinterested third parties – public service commissions, advanced service content providers who are not also telecommunications service providers, and public interest groups not linked to any part of the telecommunications industry. CFA's initial comments identified four substantive areas where the proposed rule was inadequate or unwarranted. We find extensive support in the comments of these parties in each of these areas.

Based on this evidence, we urge the Commission to suspend all activity in the instant proceeding and devote its efforts and energies to securing competition under the Telecommunications Act of 1996. Once local markets have been opened to competition and

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<sup>1</sup> Founded in 1968, the Consumer Federation of America is the nation's largest consumer advocacy group. Composed of over 250 state and local affiliates representing consumer, senior citizen, low-income, labor, farm, public power, and cooperative organizations, CFA's purpose is to represent consumer interests before the congress and the federal agencies and to assist its state and local members in their activities in their local jurisdictions.

<sup>2</sup> Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumer's Union's income is solely derived from Sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees.

**TABLE 1**

**PROBLEMS WITH THE PROPOSED RULE**

**UNDERMINES ABILITY TO PREVENT ANTICOMPETITIVE BEHAVIOR**

- Denial/Delay Of Service**
  - Denial Of Wholesale**
  - Affiliate Preference**
- Abusive Marketing**
  - Steering**
  - Slamming**
- Information Abuse**
  - Network**
  - Customer**
- Bundling/Tying**
- Discriminatory Interconnection**
  - Cross Connect**
  - Degradation Of Service**

**OPENS THE DOOR TO ABUSE OF AFFILIATE RELATIONS**

- Board Of Directors Not Independent**
- Logo Exploited Unfairly**
- Asset Transfer May Be Anticompetitive**
- Byzantine Relations Make Oversight Impossible**
- Price Squeeze**
- Joint Marketing Abuse**
- Cross Subsidy/Loop Cost Shifting**

**FAILS TO PROMOTE GOAL OF UBIQUITOUS ADVANCED SERVICES**

- Lack Of Obligation /Failure To Target**
- Undermining Pubic Network**

**LACKS A DEMONSTRATION OF NEED**

- No Finding Of Failure Of Competitive Market**
- Reduced Incentive To Open Local Market**

in the event that evidence can be found that there is a public interest need for a section 706 rule, the Commission can revisit the question of what type of rule is necessary.

In the following discussion, CFA/CU cite only comments by regulatory agencies. Table 2 presents a matrix that identifies a full set of citations to the comments of independent parties.

### **THE PROPOSAL IS PREMATURE**

CFA argued that the NPRM is premature because the FCC is proposing an exception to rules that have never been fully implemented. Since Local Exchange Companies (LECs) have not fully 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.

The evidence presented to the FCC shows that the failure of LECs to open their markets extends directly to the case of advanced services. Several state Commissions have attested to the discriminatory practices of at least two LECs. Independent advanced service providers complain bitterly of discrimination and anticompetitive behavior. These state Commissions and competitors point out that preventing this type of behavior will become more difficult should the FCC move forward with its proposal.

**TABLE 2**  
**CONCERNS EXPRESSED BY THIRD PARTIES ABOUT THE FCC PROPOSAL TO EXEMPT ILEC ADVNACED SERVICE AFFILIATES**

	REGULATORS					INDEPENDENT SERVICE PROVIDERS							
	FTC	IURC	TEX	MN	NY	UTAH	ISPC	IAC	RHY	AOL	ADH	ITAA	NNI
<b>ANTICOMPETTIVE BEHAVIOR</b>													
DENIAL/DELAY OF SERVICE				9		6	6	9	2,3	6,8			iv
STEERING/SLAMMING				10,11		10,11	9	9		6,8			
INFORMATION ABUSE			3	3		9,16	7,15	14		6,8			
BUNDLING/TYING		5	14		7	13,15	11	9			27		16
DISCRIMINATORY INTERCONNECT		14				8,9	7	10,11	9	6,8	26		13,15
<b>AFFILIATE RELATIONS</b>													
BOARD OF DIRECTORS		10	2								24		8,9
LOGO	5,7			3		16							
ASSET TRANSFER			4,8	16				13			22		12,13
BYZANTINE RELATIONS		7											
PRICE SQUEEZE		8					11			6,8	21		
JOINT MARKETING	11	10		8,10	7	10	7	11		6,8			6,15
CROSS SUBSIDY/LOOP COST SHIFT	6	16	5					9			23		15
<b>FAILURE TO PROMOTE GOAL OF UBIQUITY</b>													
LACK OF OBLIGATION/TARGET		11		5,20									
UNDERMINING PUBIC NETWORK		12,16			6								1
<b>NO DEMONSTRATION OF NEED</b>													
COMPETITION HAS NOT FAILED		5,13									8		4
REDUCED INCENTIVE TO OPEN LOCAL				5									

NUMBERS REPRESENT PAGE REFERENCES.

COMMENTORS ARE AS FOLLOWS: FTC = FEDERAL TRADE COMMISSION, STAFF OF THE BUREAU OF ECONOMICS; IURC = INDIANA UTILITY REGULATORY COMMISSION, TECHNICAL STAFF OF THE PUBLIC SERVICE COMMISSION OF WISCONSIN; TEX= PUBLIC UTILITY COMMISSION OF TEXAS MN= MINNESOTA DEPARTMENT OF PUBLIC SERVICE; NY= STATE DEPARTMENT OF PUBLIC SERVICE, UTAH= COALITION OF UTAH INDEPENDENT INTERNET SERVICE PROVIDERS; ISPC= INTERNET SERVICE PROVIDERS' CONSORTIUM; IAC= INTERNET ACCESS COALITION; RHY= RHYTHMS: NETCONNECTIONS, INC... AOL= AMERICA ONLINE; ADH= AD HOC TELECOMMUNICATIONS USERS COMMITTEE; ITAA = INFORMATION TECHNOLOGY ASSOCIATION OF AMERICA; NNI=NEW NETWORK INSTITUTE

The majority of safeguards that the FCC has outlined in the NPRM... are geared at preventing discrimination in the provision of advanced telecommunications services by the incumbent LEC to its affiliate, not from the affiliate to the incumbent LEC (IURC, p. 8).

## **DENIAL AND DELAY OF SERVICE TO COMPETITORS**

Gaining a timing advantage in the offer of services appears to be the goal of some LECs in the provisioning of advanced services. The strategy involves multiple elements. For example, the Minnesota Commission points to a complaint in its jurisdiction.

The Complaint alleges that US WEST's deployment of Megabit discriminates in favor of its information service affiliate... U S WEST had in fact accepted two orders prior to the tariff's effective date -- from two U S WEST information services affiliates... In contrast, when an unaffiliated ISP... attempted to order MegaCentral before the effective tariff date, U S WEST delayed processing the order until after the service was tariffed.

In addition, the Complain alleges U S WEST provisioned its affiliate... much sooner than it did for independent ISPs... (Minnesota, p. 9)

First, to prevent competitors from getting a head start, the incumbent who controls the bottleneck refuses to make the underlying wholesale service available to competitors, until it has fully developed its own retail offering even though the wholesale components are clearly available.

Second, in some cases, it appears that incumbent began accepting orders from its affiliate for wholesale service before the service was available to competitors.

Third, after the service is "generally" available, it appears that the incumbent delivers wholesale services to its affiliate more quickly than it is made available to competitors.

## **ABUSIVE MARKETING – SLAMMING/STEERING**

Abusive marketing takes two primary forms – steering and slamming.

First, competitors and regulators maintain that incumbents have been guilty of unfairly steering customers to affiliated ISPs at the expense of competitors. The affiliated ISP gets the preferential first spot in the list of options and this gives it a huge advantage. There are even suggestions that incumbents may offer only one option.

Customers calling this number were given two options to continue the ordering process. Option 1 was to order MegaBit as provided in conjunction with USWEST.NET. Option 2 enabled customers to order MegaBit as provided by other ISPs. The vast majority of customers responding to the 888 number, having no need to listen further than Options 1 to order MegaBit, chose USWEST.NET as their ISP. In addition, U S WEST has indicated that it may eliminate Option 2 from the 1-888-MegaUSW marketing script, so that customers calling the toll free number to order Megabit Service will only be able to order MegaBit in conjunctions with USWEST.NET (Minnesota, pp. 10, 11).

Second, competitors have also complained about slamming. That is, customers call for the competitor's advanced data service and are given the incumbent's.

## **INFORMATION ABUSE**

Competitors and regulators have also identified severe problems in the use and abuse of information. There are two issues – abuse of network information and abuse of customer information.

First, affiliates of incumbents have access to detailed information about the readiness of facilities for specific customers and/or the usage characteristics of those customers. This gives them an advantage in targeting markets.

For example, to offer xDSL-based information services it is important to be aware of loop characteristics like the presence of bridge taps, load coils, etc. Depending upon the presence of such loop characteristics, the loop may need to be conditioned to make it suitable for offering xDSL-based information services. The ILED may condition the loop and the advance services affiliate may deploy xDSL network elements (e.g. digital subscriber line access multiplexers or DSLAMs) primarily in an area of interest to the affiliated information services provider. This action gives the ILEC's affiliates a strategic advantage over their competitors (Texas, p. 3).

Second, incumbents have access to information about customers who have chosen competitors. These customers are then targeted by the ISP affiliate for "win back" programs.

For example, as described below, U S WEST has provided and promoted its digital subscriber line service (DSL) in Minnesota in a manner that encourages end user customers to sign up with its information services affiliate, U S WEST.NET, rather than with unaffiliated information service providers (ISPs) (Minnesota, p. 2).

## **BUNDLING/TYING**

A concern has been expressed that incumbents could tie their advanced service offering to their other monopoly services to gain an advantage for their advanced service affiliate.

In addition, we recommend that the Commission, along with the states, monitor ILEC marketing practices to ensure that ILECs do not use their local loop market power to require customers to purchase services from an advanced services affiliate in order to receive favorable treatment with respect to other ILEC services (New York, p. 7).

## **DISCRIMINATORY INTERCONNECTION AND PROVISIONING**

Regulators and competitors have expressed a concern that without specific guidance on interconnection and quality standards, the incumbents may have the ability to impair the quality of service of competitors, while favoring affiliates. Several examples are given including precluding competitors from cross connecting to one another, degradation of service, repositioning of service, etc.

There are very complex and critical interconnection issues that could arise in by allowing a private data network to be carved out of the incumbent's public switched network through unregulated affiliates, as the IURC points out.

For example, suppose an RBOC affiliate provider of an xDSL offering directs its data traffic to its ISP affiliate. While it would be required to offer interconnection, the question is at what level it interconnects and what operability the connection would provide...

This situation appears similar to the early years of telephony, when customers of competing telephone companies could only call each other. In fact, in the xDSL scenario, it is not clear that the provider's own customers would be able to intercommunicate. So what would constitute an indirect interconnection? Could the ISP's Internet connection be interpreted to meet the requirement? This would seem to be an economical alternative. Unfortunately, currently, such an interconnection would not assure privacy of communication or reliability of services (IURC, p. 14).

## **THE PROPOSAL COULD BE COUNTERPRODUCTIVE**

CFA argued that the FCC's proposal could be counter productive because the FCC intends to protect the public interest by applying section 272 type separations to high speed data and these safeguards have yet to be fully developed and implemented. The comments

make it clear that these safeguards leave a great deal to be desired and must be significantly strengthened.

The IURC and Staff of the PSCW encourage the FCC to undertake a similar investigation into RBOC corporate operating structures. Although the relationship described above is between an RBOC LEC and its interLATA affiliate, we believe that it is possible that the same type of relationship may exist between RBOCs and their advanced services affiliates (IURC, p. 10).

CFA has had the opportunity to review the corporate structure of SBC in the California section 271 proceeding. We conclude it is highly abusive and contrary to section 272 of the Act.

Unfortunately, SBC takes the position that it can establish an unregulated affiliate to prepare for entry into long distance and then, on the day of approval, transform that affiliate into a regulated subsidiary. It claims that it will comply with the law at the time it accepts the legal obligation to do so (after it gains entry) and that it has voluntarily complied with the law before entry.

The former promise cannot be trusted. SBC has changed its public policy position on other major elements of the statute. In particular, it cited sections 271-275 in a number of jurisdictions in seeking to have its status changed (e.g. in seeking the return of documents before the MFJ court, in seeking a change in its Certificate of Convenience and Necessity in Oklahoma), but then attacked those sections in court. Its current promise to accept section 272 may be just as ephemeral.

The later claim should be thoroughly tested by insisting on a full audit of all transactions to date.

SBC's practices are in blatant violation of the structural safeguards required by the Act.

- o The board and officers are also employees of the parent and therefore it is hard to believe that they are independent.
- o The subsidiary is purchasing services from the parent in the areas in which these officers have responsibilities in the parent.

The reported information on the company covers over 60 agreements.

- o The details of the transactions have not been reported.
- o Terms and conditions have been constantly changing so it is impossible to know which terms have applied to which actual transactions (which have not yet been reported).
- o The affiliate has been provided services on rates, terms and conditions that are not available to competitors (e.g. access to SORDES for order processing, multiple lines per order).
- o Records are being kept in the wrong place.<sup>3</sup>

## **BOARD OF DIRECTORS**

Several commentors point out that the independence of the Board of Directors of the LEC affiliates under the section 272 rules has been doubtful at best. While commentors hark back to the lack of independence as evidenced by early section 271 applications, CFA and CU have experience with ongoing problems in Boards of Directors involving SBC in California and Texas. SBC's section 272 long distance affiliate is made up almost entirely of employees of the parent holding company. These employees have senior management responsibility over areas involving the transactions between SBC and the long distance subsidiary.

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<sup>3</sup> "Affidavit Of Mark N. Cooper On Behalf Of The Consumer Federation Of America." Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks Investigation on the Commission's Own Motion Into Open Access and Network Architecture Development of Dominant Carrier Networks. Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service, Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange Service, R.93-04-003, I.93-04-002, R.95-04-043, R.95-04-044, Before The Public Utilities Commission Of The State Of California, April, 1998, paras. 93-97.

## **LOGO**

Several commentors note that the use of the incumbent logo by the advanced service affiliate raises problems. The problem revolves around cross-subsidization of name advertising by giving the incumbent

incentives to overinvest in building its reputation (as a provider of high quality services, for example) to enhance the reputation of both it and its affiliates. This may be done in ways that are difficult for regulators to detect and prevent, resulting in harmful effects in both the regulated and unregulated markets (FTC, p. 5).

## **ASSET TRANSFER**

Questions have been raised about a variety of forms of asset transfer from the incumbent to the affiliate. These include transfer of customer accounts, CPNI, bottleneck facilities, and collocation space.

Transfers of customer account and CPNI, as well as joint marketing, should make an incumbent LEC's advanced services affiliate an assign (Minnesota, p. 16).

If the state commissions are required to treat the advanced services affiliate just as another unregulated competing carrier, local loops and network elements, facilities, interfaces and systems used to provide advanced services must remain with the ILEC. Therefore, to the extent possible, the separate affiliate must be required to acquire its own facilities to provide advanced services... if the FCC allows the ILEC to transfer their ATM facilities to the advanced services affiliate, the affiliate will not be under the FTA section 251(c) obligation to interconnect with other CLECs (Texas, p. 4).

## **BYZANTINE RELATIONS BETWEEN SUBSIDIARIES**

The Ameritech regulators report a complex organizational structure in which services are passed back and forth between the affiliate and the ILEC. The net effect is to make oversight more difficult.

Ameritech Indiana stated that AADS-IN [the advanced service affiliate] owns frame relay switches. Ameritech Indiana then purchases switching service from AADA-IN, which is combined with Ameritech Indiana's distribution plant to create frame relay services. AADS-IN in turn purchases frame relay service pursuant to tariff from Ameritech Indiana, which AADS-IN then resells to end users. The switches owned by AADS-IN are not collocated in Ameritech Indiana central offices, but instead are housed in non-Ameritech Indiana facilities (IURC, p. 7).

CFA and CU have direct experience with these complex relationships. In describing the corporate structure, SBC admitted that there were "dotted lines" not shown on the organization chart. These were relationships from senior corporate employees with responsibility for major holding company functions that are sold to the unregulated affiliate. Thus, there is responsibility for the same functions as employees of the holding company and as members of the Board of Directors of the subsidiary. This makes a mockery of the claim that there is independent decision making or that transactions will be at arms length.

## **PRICE SQUEEZE**

The IURC sees this "byzantine" relationship as the source of a price squeeze that will keep competitors out of the market.

If AASD-IN charges Ameritech Indiana an exceptionally high rate for use of a switch, this price will not harm Ameritech Indiana or Ameritech Corporation

(although it could have an adverse impact upon American Indiana customers who are charged the rate). Under this scenario, the “extremely high rate” could actually benefit Ameritech Corporation: the recovery from Ameritech Indiana customers would simply represent a transfer of monies within the larger Ameritech holding company. In contrast, the AADS-IN rate might not be affordable to new entrants in the data services market, and therefore may serve as a barrier to carriers who plan to provide service by interconnecting their distribution plant with an AADS-IN switch. It may be necessary for the unaffiliated new entrants to resell Ameritech Indiana’s service. Alternately, AADS-IN could provide switching to Ameritech Indiana at a lower rate than it offers the same service to competitors because AADS is not subject to the interconnection requirements of section 251 (c) of the Act, which are applicable only to ILECs (IURC, p. 7).

## **JOINT MARKETING**

Virtually all of the commentors point out that the incumbent can gain an insurmountable advantage if they can market advanced services during transactions involving monopoly services without rules to ensure consumers are presented with alternatives.

The FCC should, at the very least, prevent incumbent LECs from leveraging their local monopoly status to advantage their affiliates through joint marketing by enacting equal access standard similar to those required for BOC in-region, interLATA services affiliates (Minnesota, p. 15).

## **CROSS-SUBSIDY LOOP COST RECOVERY:**

The perennial problem of cross subsidy is raised by commentors. With the creation of an unregulated affiliate, the problem is twofold. First, there is concern about ongoing cross-subsidy that cannot be detected. Second, the valuation of assets transferred to the unregulated affiliate is raised.

Furthermore, some of these assets may have been funded by ratepayers prior to the transfer from the ILEC to the advanced services affiliate. Therefore, state commissions should have an opportunity to review periodic transfers between the ILEC and its advanced services affiliate to ensure that ratepayers are adequately compensated, and to determine whether the regulatory status of the affiliate is affected as a result of the transfer (Tex, p. 5).

Establishing unregulated affiliates for advanced services also creates an incentive to shift revenues into the unregulated advanced services affiliate and leave costs in the regulated company.

It is important for the FCC to recognize that the IURC and the Staff of the PSCW view xDSL and other broadband technologies that rely on the existing copper loop as enhancements to the loop itself, not separate services. Therefore, the FCC's proposed rules allowing RBOCs to offer broadband capability such as xDSL through an affiliate could have serious implications on how the cost of the loop is recovered, and by extension, local rates. If loop recovery is not adequately addressed, we believe that the FCC and state commissions may be left with little choice but to raise the rates under their respective jurisdictions (IURC, p. 16).

### **THE RULE WILL BE INEFFECTIVE IN ACCOMPLISHING ITS GOAL**

CFA also concluded that the proposal was not likely to be effective because the exception contemplated 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. Several of the commentors reiterate this observation.

The PUCT suggests that targeted actions could be implemented after ILECs have fully complied with FTA sections 271 and 251 to create incentive or alleviate disincentives for the development and deployment of new and advanced technologies (Texas, p. 5).

## **LACK OF OBLIGATION/TARGETING**

Several public utility commissions point out that the FCC's proposal does not create a direct obligation to expand the availability of facilities or to target them to areas where there is a need. The IURC poses the question, "How can the FCC and the states ensure ubiquitous deployment of broadband technology when the IIEC shifts an essential component of its network to a non-regulated affiliate?" Minnesota points out that

The BOCs have not demonstrated that such modification of LATA boundaries will improve rural access to the Internet or rural high-speed access to the Internet. For example, the illustrations in U S WEST's earlier Petition for Relief in this proceeding demonstrate that U S WEST and other providers have placed their backbone networks for advanced services in population centers rather than rural areas. Thus, there is no historical evidence that the BOCs would find it profitable to place advanced services facilities in rural areas or have any plans to do so. In fact, the FCC should consider the possibility that the BOC's major interest is rather to offer their in-region customers access to a national backbone network in order to improve their ability to compete with other companies in providing advanced services in major population centers (Minnesota, p. 21).

## **UNDERMINING THE PUBLIC NETWORK**

Several commentators have noted that the ability to shift the advanced services to unregulated activities may starve the public network of resources, exactly the opposite of what the FCC intends.

A shift of ILEC customers to an affiliate that provides combined voice/video/data could leave the ILEC serving only consumers who cannot afford such services, or whose facilities have not been modernized to maintain the provisioning of basic telecommunications services (NY, p. 6).

Data networks may be engineered to target areas with large, high-volume business users. Many residential and/or high-cost subscribers might be left on

the public switched network, which could receive little additional investment if the RBOCs do not make the business decision to serve these customers. Not only might quality of service remain stagnant, or even decline, but the number of customers paying for these services may decrease as well. In the end, fewer subscribers may be paying more for poorer quality service (IURC, p. 11).

### **NO DEMONSTRATION OF NEED**

CFA also argued that 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. Commentors agree.

We believe that section 706 should be applied after advanced services are considered in relation to the definition of universal service, and only if the scope of deployment is unsatisfactory to the FCC and the States based on the results of the section 706 Notice of Inquiry and any additional federal or state analyses (IURC, p. 13).

### **NO FINDING THAT COMPETITIVE MARKET HAS FAILED**

The FCC 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. In addition, since the policy to introduce competition into local markets has not been fully implemented, the Commission cannot conclude that competition will not solve the problem.

The FCC should take action, under section 706, to accelerate deployment of advanced telecommunications capability only if after an investigation it finds that such capability is not being deployed to all Americans in a reasonable and

timely fashion despite its and the States' efforts to promote its deployment under the Act and State law (IURC, p. 5).

Not only do commentators echo this concern, but also recent events substantiate it.

Since the initial comments were filed, the California Commission staff has issued a report showing that the SBC meets only half of the 14 points in that state. The FCC has found that BellSouth meets fewer than half the 14 points in Louisiana. Competition has not yet had a chance to fulfill the congressional mandate.

### **REDUCED INCENTIVE TO OPEN LOCAL MARKETS**

The road to competition remains arduous and granting this exemption would only diminish the incentive that the LECs have to open their markets. By granting the exception, the LECs will be encouraged to exploit the loophole, rather than open their markets.

The Department fears that the FCC's proposals provide incumbent LECs with a large part of what they desire without firmly enforcing the requirements of the 1996 Act or the FCC's own rules to aid competitive entry. Advanced services are not some small, unimportant subset of services that can be an exception to the general rules set both by the FCC's rules on local competition. Rather, "advanced" services may soon take on an everyday character as technology continues to develop rapidly. Advanced services could well be a major source of the telecommunication's market's growth in the future. Thus, if gaining flexibility in providing advanced services is one of the incumbent LECs' primary goals, then granting flexibility now without demanding the incumbent LECs fulfill their obligations eliminates a large part of their incentive to ever open the network (Minnesota, pp. 4-5).

## **CONCLUSION**

The problems identified in the initial comments all have theoretical solutions and the commentors have made hundreds of recommendations. There comes a point, however, when the patches to prevent abuse become so pervasive that the chances of success are nil. Moreover, the clear possibility that the exercise of market power will be increased and the incentive to open local markets decreased by the proposal demonstrates that it would be counterproductive at present. We believe that, at this time, the market power of the incumbents is so strong that the proposal should be withdrawn. The Commission should suspend consideration of this issue until after the local competition requirements of the Act have been fully implemented throughout the industry.

In fact, the problems that independent service providers have had in getting fair treatment from incumbent telephone companies highlights an issue that is rapidly developing into one of the most important public policy problems facing the FCC -- How do we ensure open access to the information superhighway? The first response of the FCC should definitely not be to allow incumbent telephone companies with a monopoly on local service to create a private network not subject to full common carrier obligations.

At that point, case-by-case exceptions for specific companies in specific states where the section 251/271 requirements have been met can be considered. Under all circumstances the exceptions should be for specific instances where the FCC and state commissions find that advanced services are not being deployed to meet identifiable needs.