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November 6, 1998

Marjorie Roman Salas
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Advanced Wireline NPRM, Dkt 98-147 -- Ex Parte Presentation

Dear Ms. Salas:

On November 5, 1998, Sue Ashdown, a representative of the Coalition of Utah Independent Internet Service Providers ("CUIISP"), and Donald Weightman, an attorney for CUIISP, met with Elizabeth Nightingale, Jason Oxman, and Staci Pies of the Common Carrier Bureau staff.

The matters discussed related to CUIISP's views (fully set out in its Comments and Reply Comments in the above-captioned proceeding) on the adequacy of the structural separation regime proposed in this docket, and included reiteration of CUIISP's belief that given the intimate relationship between monopoly telecommunications service and advanced information services such as DSL, the joint marketing permitted under the Commission's Computer III rules may tend to undermine competition in Internet access.

Reference was made during the discussion to a schematic diagram of DSL services. Copies of this diagram, and other materials left for the Staff's review, are enclosed.

Please do not hesitate to contact me if there are any further questions in this matter.

Yours truly,

Donald Weightman

Donald Weightman

cc: Elizabeth Nightingale
Staci Pies
Jason Oxman

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Deseret News 5/26/98

OPINION

US WEST practice questionable

If US WEST's aim is to show regulators it intends to play fair and provide a level competitive playing field in a deregulated environment, it just misconnected. Introduction of the company's "MegaBit Service" was done in a manner to reap obvious competitive advantage and is being challenged with good cause by independent Internet-service providers.

The Public Service Commission should step in and call a quick foul on the home team to encourage fair and equal competition.

MegaBit Service provides customers full-time access to Internet providers at data-transfer speeds 10 times faster than are available using conventional service and a 28,800-baud modem. It enables a single line to simultaneously handle telephone calls and an Internet connection.

That is attractive to many homes and businesses weary of blocking out either calls or data in an information-laden environment when lines are occupied. The concept of allowing both concurrently is a good one, but US WEST's implementation methodology is not.

It offers to install the service for $110, waiving $380 in additional one-time setup expenses to the first 1,000 customers. There is a hitch, however. The consumer's Internet provider must also be a MegaBit Service customer. But the only Internet provider connected when US WEST initiated the service in early May was the company's own service, US WEST Interactive Services, or **USWEST.net**. US WEST should have given other Internet providers time to get connected before launching the service and offering discounts to the earliest subscribers.

That kind of homecourt advantage is unfair to other Internet-service providers and to consumers who should have an equal and equitable choice. A person without an Internet provider who calls wanting to purchase MegaBit service is only informed about **USWEST.net**. They are told they will have to check the Yellow Pages to find a listing of other Internet providers and then contact them directly to see if they offer the new service.

US WEST also is charged with being slow in providing connections to independent providers, and it charges a fee to customers wanting to switch service, an obvious disincentive for doing so. The company's tactics are questionable at best and perhaps even unlawful.

They undermine its claims of compliance with regulatory mandates to level the playing field for other telecommunications providers and fuel suspicion that dialing for dollars at any cost is its modus operandi.

Leah Hogsten/The Salt Lake Tribune

XMission founder Pete Ashdown and his general manager, sister Susan, are troubled by US WEST delays.

Quick Internet Connection Hits Speed Bump

5 companies that planned to provide anticipated US WEST service can't reach the network

BY GUY BOULTON

THE SALT LAKE TRIBUNE

Utahns who want a faster connection to the Internet will find their options temporarily limited.

That's because the only provider to escape delays and technical problems in connecting to US WEST's network is US WEST.

"It just seems to be they are positioning themselves to come into that market with the dominant hand," said David Young, account manager of Teleport Communications Group Utah, which operates a competing telephone network. Telecommunications Inc., the parent company of *The Salt Lake Tribune*, is an investor in Teleport.

On Monday, US WEST announced a new service that would provide faster and better connections to the Internet. The basic service, aimed at residential customers, offers connections nearly five times faster than that available over a standard phone line.

Five competing Internet providers, which also planned to offer the service, have yet to be connected to US WEST's network. And for now US West.net has a head start on its competitors in offering the high-speed service in Utah.

"The first one always picks up customers," said Lincoln Mead, an account manager for ArosNet Inc., an Internet service provider with about 4,500 customers in Utah. ArosNet is among the Internet providers yet to be connected to US WEST's system.

"It's something that we are just going to work through the best we can," Mead said.

Duane Cooke, a US WEST spokesman, said the company is working to make the service available to as many Internet providers as possible. That's in US WEST's best interest, since the service will generate revenue from both Internet service providers and their customers.

"It's safe to say these issues are being addressed," Cooke said. "This is new service."

Some prodding by competitors of US West.net may have sped the process.

XMission LLC, for instance, threatened to seek an injunction from state regulators stopping US WEST from taking orders for the new service.

See **US WEST**, Page **E-5**

US WEST's 'Net Connection Hits A Speed Bump

■ **Continued from E-1**

"They have a competitive advantage, and they are trading on that competitive advantage to sign people up for their Internet service," said Susan Ashdown, general manager of XMission.

The company — one of the state's largest independent Internet service providers — ordered the service in March. It also spent about $20,000 on equipment to offer the new service and had a large line run to US WEST's network.

"We had been led to believe that there would be no issues in ordering the service," said Peter Ashdown, company president.

XMission also ran advertisements promoting the new service.

"All it [the advertising] has done is generate customers for US WEST," Susan Ashdown said.

On Friday, US WEST told XMission that its line for the new service — one of two types specified by the phone company — was too big for US WEST's system, Susan Ashdown said. Up to that point, XMission had been unable to get information when its line would be connected to the network.

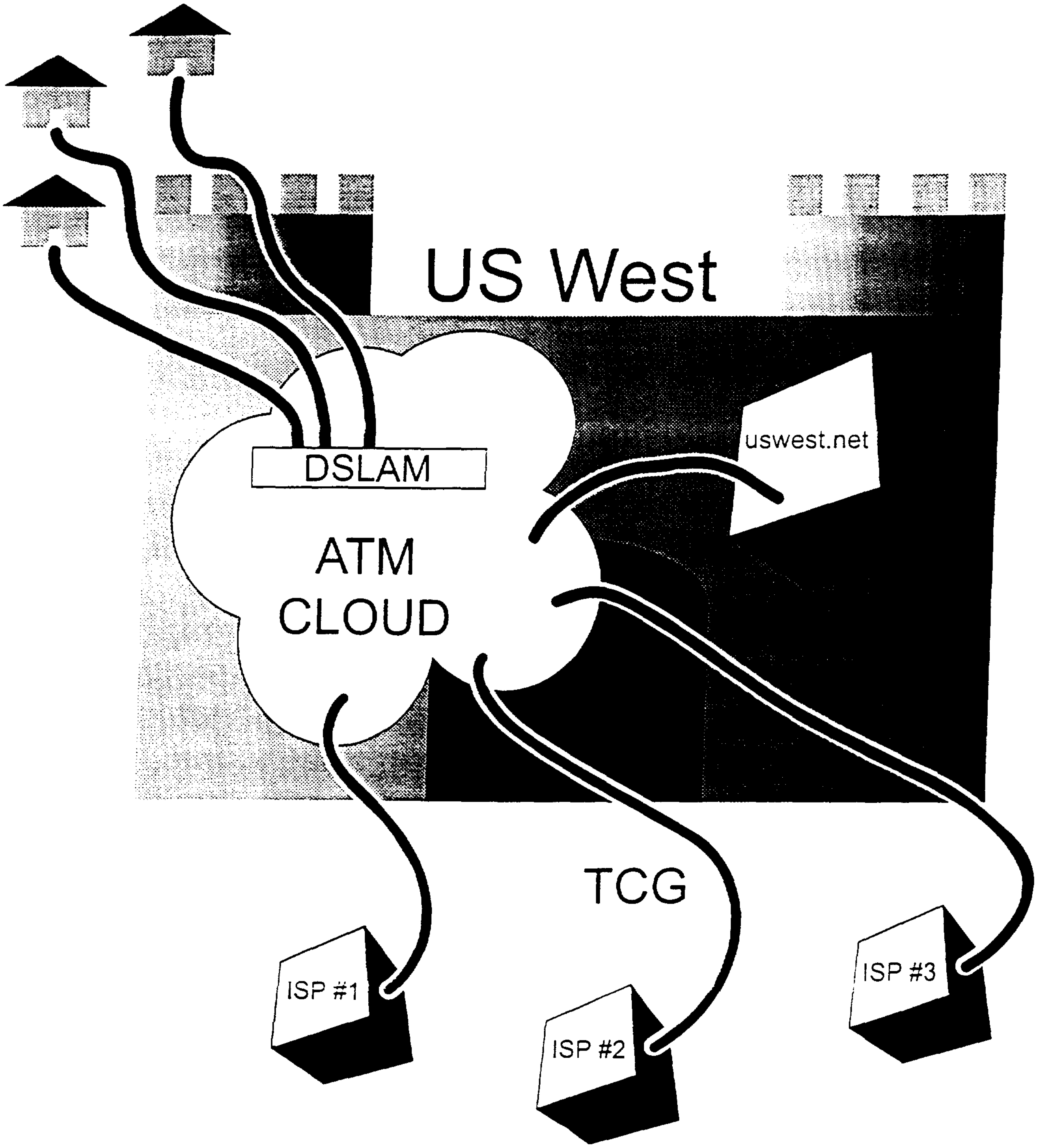
"My question is, what have they provisioned for themselves?" Susan Ashdown asked.

XMission's lawyer called US WEST and threatened to seek an injunction on Monday. On Tuesday, shortly before 4 p.m., two US WEST managers told XMission the problem would be resolved.

"The situation has been escalated," Cooke said, "and we are responding."

XMission installed the larger of the two lines required for the new service, he said, and that caused the delay.

"We are, however, doing everything we can to correct the situation as soon as possible, including having equipment flown in overnight," Cooke said.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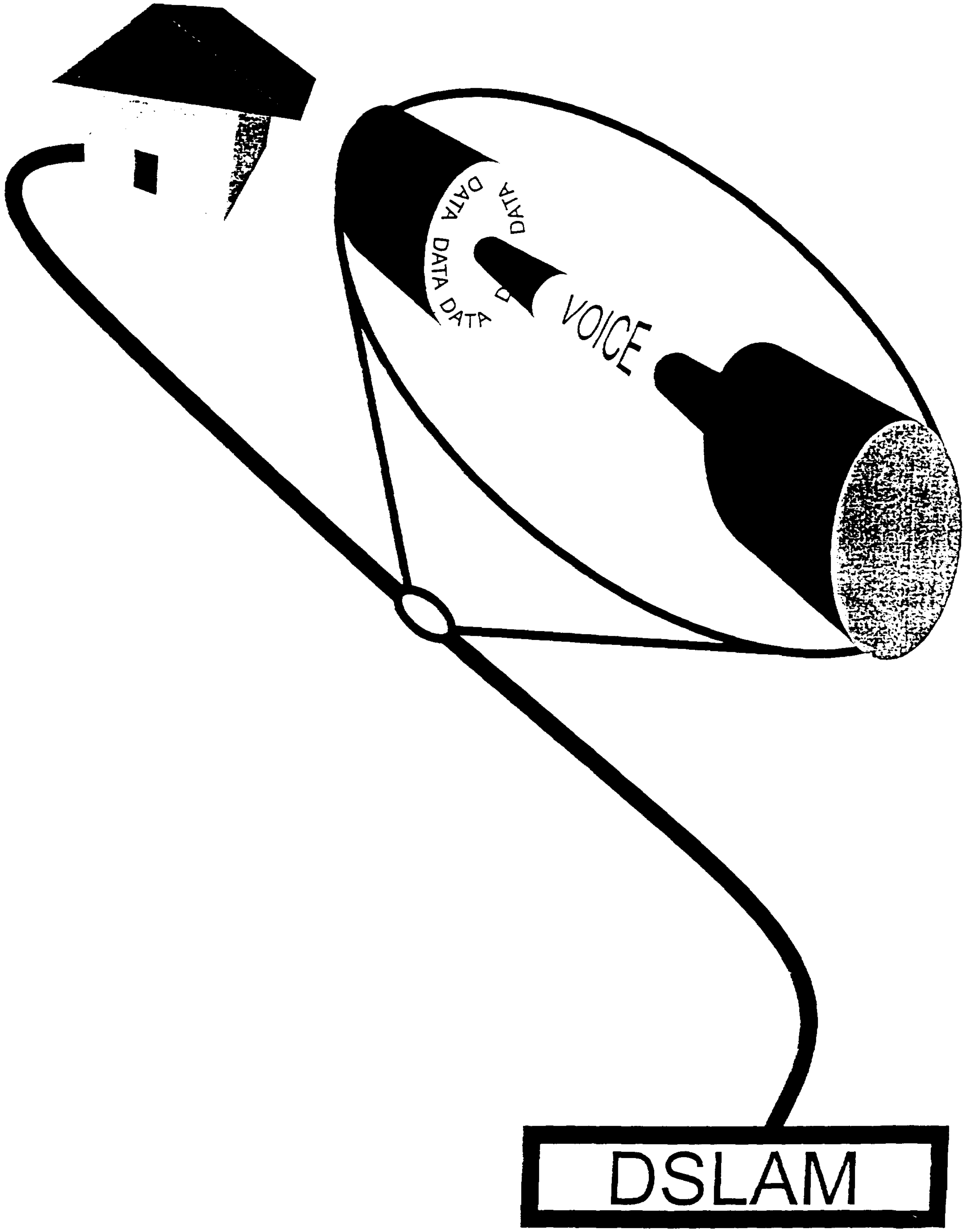
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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Computer III Further Remand Proceedings: CC Docket No. 95-20
Bell Operating Company Provision of Enhanced Services
1998 Biennial Regulatory Review -- CC Docket No. 98-10
Review of *Computer III* and ONA Safeguards and Requirements

Reply Comments of the Washington Utilities & Transportation Commission

The Washington Utilities and Transportation Commission ("WUTC") hereby files reply comments concerning the Further Notice of Proposed Rulemaking ("Further Notice") issued by the Federal Communications Commission ("Commission") in the above-captioned proceeding on January 30, 1998. We did not file initial comments in response to the Further Notice. However, our review of the initial comments filed by other parties leads us to offer our views on the specific issue of whether the Commission should restrict LECs from engaging in marketing practices that would have the anti-competitive effect of allowing LECs to leverage their monopoly power over bottleneck basic services into greater market share in the market for enhanced services.

Table of Contents

I. SUMMARY: THE COMMISSION SHOULD RESTRICT LECS FROM CROSS-SELLING BASIC AND ENHANCED SERVICES.

In summary, the WUTC urges the Commission to restore the prohibition on joint marketing of basic and enhanced services, particularly when the enhanced service is Internet access. The WUTC believes that the conditions that led the Commission to permit such joint marketing no longer prevail and that the public interest in promoting competition and protecting consumers now would be best served by requiring fair competition in enhanced service markets. At a minimum, should the Commission choose not to restrict anti-competitive practices by LECs, it should make clear that state commissions such as the WUTC are not preempted from such oversight.

II. THE EXPERIENCE WITH VOICE MESSAGING DEMONSTRATES THE POTENTIAL FOR A TELECOMMUNICATIONS COMPANY TO CAPTURE A DOWNSTREAM OR ENHANCED SERVICE MARKET IF ANTI-COMPETITIVE MARKETING PRACTICES ARE NOT RESTRICTED.

The current Commission policy of permitting cross-selling and other anti-competitive marketing practices resulted from a desire to promote the introduction of advanced services for the benefit of consumers. Voice messaging was seen as a particularly good example of a service that was not being deployed to the Commission's satisfaction, and the Commission was persuaded that LECs would be more likely to deploy the service if they were permitted to market the service to their captive customer base. The rationale was, in essence, better a monopoly than no service.

The outcome of that policy decision to permit anti-competitive practices is both a very widespread deployment of the voice messaging service by LECs and a virtual lock on that market by those LECs. Voice messaging has become so closely associated with local exchange telephone service that consumers typically neither appreciate that it is available from other providers nor understand why it is not regulated like the other services they purchase from their LEC. Consumers suffer from this monopolization, because competitors who might enter the market and drive prices lower are stymied by the advantage of LECs in selling the service to their captive customer base. Voice messaging has become yet another overpriced vertical feature, albeit an unregulated one. One may debate whether the alternative would in fact have been no voice messaging service at all, but clearly the ideal outcome of a robust competitive market where consumers have a choice of providers has not been realized.

III. THE RATIONALE THAT SUPPORTED THE FCC'S INITIAL DECISION TO ALLOW UNRESTRICTED, ANTI-COMPETITIVE JOINT MARKETING IS NO LONGER VALID, PARTICULARLY WHEN THE ENHANCED SERVICE IN QUESTION IS INTERNET ACCESS.

Regardless of whether the Commission's original approach was the right one at the time, it is apparent that the original rationale for unrestricted, anti-competitive joint marketing is no longer valid. Voice messaging is now widely deployed. Given this widespread deployment, the Commission's focus should now shift to promoting greater competition and consumer choice in that market. LECs will likely be able to maintain their very large market share -- and the high profit margins that result from the lack of real competition -- as long as they are allowed to tie voice messaging into their bottleneck telecommunications services.

The most important concern with allowing LECs to continue their anti-competitive practices is not, however, that they would maintain their hold on voice messaging but that they would use these practices to obtain an unwarranted market share in the Internet access market. It should be noted that the LEC industry did virtually nothing to develop the market for Internet access service. The Commission gave LECs the same free rein to monopolize the Internet access market through anti-competitive practices, but the LEC industry did not develop that market. Instead, independent Internet service providers entered the business and met the demand of consumers for this service.

At this point, Internet access is a robust business that is experiencing rapid growth in demand and capacity. Indeed, LECs complain about the additional (revenue-producing) lines they are asked to provision on behalf of ISPs and their customers. Now, finally, LECs are entering the ISP market after it is well-established with few advantages of incumbency or consumer association of phone service with Internet service.

In such a robust and growing market, the "infant industry" protections adopted by the Commission with voice messaging in mind are inappropriate for Internet access service. If LECs are allowed to engage in anti-competitive behavior, such as joint marketing, the result will likely not be a greater deployment of the service but rather a shift of market share from independent ISPs to the LECs' ISP operations.

Consumers will be harmed if LECs are permitted to use anti-competitive marketing practices to gain market share in Internet access service and other enhanced services. If LECs are restricted from anti-competitive marketing practices, they will be forced to earn their market share the old-fashioned way, by offering customers better prices or better service. If LECs are allowed to engage in anti-competitive marketing practices, they can use those marketing practices to gain market share, without having to offer better prices and better service.