N.J. Coalition for Local Telephone Competition

November 20, 1998

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Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
Room TW-B204
445 12th Street, S.W.
Washington, DC 20554

Re: CC Docket No. 98-184

Dear Ms. Salas:

The New Jersey Coalition for Local Telephone Competition (CLTC) is a broad-based alliance of consumers and businesses in support of local telephone competition. Our membership includes the New Jersey Retail Merchants Association, the National Federation of Independent Business - New Jersey chapter, the New Jersey N.A.A.C.P., AT&T, the New Jersey Statewide Black Ministers Council, the New Jersey Coalition for Lower Taxes, chaired by former U.S. Representative Dick Zimmer, and the New Jersey Public Interest Research Group (PIRG). This diverse mix of interests attests to the overwhelming desire of consumers to realize the benefits inherent in the Telecommunications Act of 1996.

The CLTC is adamantly opposed to the proposed merger between Bell Atlantic Corp. and GTE Corporation. We believe that this merger would not advance the public interest, as required by the Federal Communications Commission, and would, in fact, be anticompetitive. Contrary to assertions by Bell Atlantic, this merger is not good for consumers. The nation's largest local phone company is now poised to become a mega-monopoly with a lock on the local phone market, and would like to extend that monopoly to long distance. Our concerns are heightened by the fact that key provisions of the Telecom Act pertaining to long distance entry by ILECs do not apply to GTE. A marriage between Bell Atlantic and GTE would result in an even larger local phone monopoly that could encroach upon the long distance market without fulfilling the 14 point checklist required by the FCC under the Telecommunications Act.

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P.O. Box 8127 • Trenton, NJ 08650 • 800-619-5268 • www.competitionnow.org
Walter Fields, Executive Director

Just one year ago Bell Atlantic received permission to merge with its New York counterpart, NYNEX. As part of Bell's merger agreement, it promised to take certain specific steps to open the local phone market to competition. It has not done so. Consumers in New Jersey were led to believe that the NYNEX merger would result in service enhancements, faster deployment of new technology and better pricing due to efficiencies gained through the consolidation of operations. Instead, we have witnessed Bell Atlantic's use of its monopoly position to thwart local competition.

Bell Atlantic still controls 99% of the local phone lines in their service areas in our state. The New Jersey Board of Public Utilities (BPU) has duly recognized their stranglehold on the local network. This past summer the BPU issued a landmark report on local phone competition and determined that competition in the residential local market does not exist in our state. In its report, the Board noted that the lack of competitor access to the Bell network elements was a major barrier to competition. The BPU report also found that Bell Atlantic had failed to adequately develop a system to switch customers to CLEC's in a timely fashion. Most recently, in response to Bell Atlantic's challenge to its jurisdiction over rate setting, the state regulatory body asserted its authority to order access to the network.

Technical issues aside, the New Jersey Ratepayer Advocate found last year that Bell Atlantic has also failed to live up to service commitments it has made to invest in new technology to benefit consumers in our state. One of the most glaring examples is its much publicized Opportunity New Jersey (ONJ) program. Consumers were led to believe that Bell Atlantic would wire the state with fiber optic cable and provide unprecedented high speed, low cost Internet access. This program was initially hailed as a means to technologically advance our state, particularly public schools. The state Ratepayer Advocate determined that Bell Atlantic had failed to honor its ONJ commitments and had avoided wiring many communities that are most in need of access to new technology; even though it received price relief in order to do so. Given its past performance, we have little faith in the local phone monopoly to keep its word.

Bell Atlantic should not continue to be rewarded for its failure to keep its commitments to consumers.

The NYNEX merger also did not free consumers from the burden of subsidizing a monopoly. In its first year under its new configuration, Bell Atlantic boasts a cost saving of $1.1 billion as a result of the merger. Where are the savings for consumers? Payphone rates have increased without any substantive improvement in service. While Bell Atlantic boasts of providing New Jersey's consumers with the rates that are among the lowest for basic phone service in the nation, we also have the smallest calling areas. This means that consumers make and pay for more in-state toll calls. Consumers must also pay for touch-tone service; technology that was introduced at the *1964* New York World's Fair. Is it any wonder that Bell Atlantic has used every means possible to maintain its monopoly position?

Most onerous are the hidden taxes in the form of excessively high access charges that consumers are still paying in New Jersey. If these charges were reduced to cost, it is estimated that consumers in our state could save $160 million per year. Instead, subsidies inflate the monopoly's coffers.

The steady stream of subsidies has not improved service. In fact, a recent report by the FCC Common Carrier Bureau indicates that consumer complaints against the Bell Atlantic companies have risen by 30 percent from the prior year; even though improved customer service was part of Bell's commitment when it merged with NYNEX. That same report also indicates complaints against GTE also increased over the past year. Are we to be led to believe that a Bell Atlantic-GTE merger will reverse that trend? That certainly has not been the experience borne from the NYNEX merger.

GTE, in fact, does not offer a better profile than its proposed partner does. The National Cable Television Association (NCTA) awarded its "Brick Wall Award" to GTE in 1996 due to its attempt to stonewall local phone competition. The FCC has been the target of a concerted effort by GTE to use the courts to invalidate FCC jurisdiction over interconnection agreements. GTE's relationship with consumers also leaves much to be desired. In a J.D. Powers and Associates survey on the quality of local phone service, GTE ranked last among local phone companies.

Based on the behavior of these two mega-monopolies – their refusal to open their markets to competition, inattention to customer service and Bell Atlantic's failure to pass on to consumers savings from the Bell Atlantic/NYNEX merger, the CLTC does not see any advantages for the consumer if these two companies are allowed to merge.

We appeal to the FCC to adhere to the mandate of the Telecommunications Act and reject this merger. As you know, opening markets to local competition is a prerequisite under the Act prior to a Bell company receiving permission to offer in-region long distance service. A premature Bell Atlantic/GTE footprint in long distance will doom local competition.

We trust that the FCC will be guided by a strict interpretation of the rules for competition. Consumers in New Jersey are dependent upon your wise judgement to establish a level playing field.

Sincerely,

Walter Fields

Attachments

The Times
SERVING OUR COMMUNITY FOR MORE THAN A CENTURY
May 30, 1997

Open the local phone market now

DICK ZIMMER

Last year, as a member of Congress, I supported the Telecommunications Act of 1996 because it brought the promise of competition to our nation's telecommunications industry. Our experience with competition shows that when we move from a monopoly system to a competitive environment, consumers are the winners, benefiting from more choice, lower prices, improved customer service and technological advances.

In the telecommunications industry, we have the example of the long-distance market. We have evolved from the time when long-distance calls were family events to the present time when we make long-distance calls routinely. The very way we communicate and receive information has changed, not just because the technology is available, but because the technology is affordable. Due to competition, rates have fallen approximately 70 percent in the past 12 years.

Recently, the second segment of the telephone market, local toll calls, became fully open to competition in New Jersey. New Jersey consumers can now choose a local toll carrier in the same fashion that they choose a long-distance carrier. In just a week we saw how competing carriers quickly offered deals such as eight-cent flat-rate calling and free weekend calling.

NOW IT IS TIME to open the final segment, the local market, to competition in accordance with the Telecommunications Act. We in Congress recognized that developing competition in a monopoly market would be difficult and would not happen on its own, so we created incentives for local telephone companies such as Bell Atlantic to allow potential competitors into their markets. Under the provisions of the Telecommunications Act, Bell Atlantic cannot enter the long-distance market in its region until it makes its network available to potential competitors and effective competition develops in the local telephone market.

One aspect of developing the local market has been troubling, however. That is the question of how to preserve our nation's longstanding policy of universal service in a competitive environment. Universal service means that each and every American should be able to have basic telephone service at an affordable price, regardless of the actual cost of providing the service.

Traditionally, we have allowed the local phone companies to charge more for certain services in order to offset the provision of below-cost basic phone service to certain, mostly rural and low income, customers. In effect, the below-cost phone rates of certain customers have been subsidized by the above-cost rates of services, such as long-distance calls, through access charges, business lines and enhanced services such as call waiting, call forwarding and so on.

As we move to a competitive environment, we all agree that universal service should be maintained, although there is debate on the definition of universal service and greater debate on how to pay for it. One thing is clear — *local phone rates should not go up!* By identifying the true cost of universal service and creating a special fund, paid for by the competing telecommunications carriers, to implement universal service, we not only preserve this worthwhile ideal but eliminate the need for the present tangled-web subsidies that, in *effect, tax* the nation's phone consumers.

UNDER THIS MODEL, access charges can be greatly reduced, lowering the price of long-distance calls and freeing needed capital for new competitors to invest in network infrastructure. Rates for long-distance and other service will drop as subsidies are properly developed and competition develops.

The net effect of removing the present excess subsidies and replacing them with a properly sized fund will be a reduction in telephone bills. We will also be leveling with the public on where subsidies are coming from, where they are going and exactly how much is involved. All the cards will be on the table.

New Jersey must move quickly to the competitive local telephone marketplace. Already, mid-to-large-size businesses in New York and Philadelphia have greater choices in telecommunications carriers than New Jersey businesses do. Through competition, we can bring New Jersey the telecommunications system that consumers and businesses deserve.

Former Congressman Dick Zimmer, a Republican, is honorary chairman of the Coalition for Lower Taxes.

The Star-Ledger

September 19, 1997 Page 22

SPEAKING UP

BPU makes the wrong call on local phone competition

By Walter Fields

In 1996, Congress crafted the Telecommunications Act to create local telephone competition, and state regulators were given the responsibility of establishing rules to open the local phone monopolies.

In New Jersey, the Board of Public Utilities (BPU) is required to make decisions on how Bell Atlantic's competitors will be able to enter the local telephone market. Unfortunately, the BPU has once again sidestepped a decision that would allow local competition to move forward. As a result, New Jersey consumers are still waiting to receive the benefits of competition.

The BPU failed to act last week on an interconnection agreement between AT&T and Bell Atlantic. At the heart of the issue are the prices new competitors will have to pay to lease parts of Bell Atlantic's network. Leasing is one of the key ways new companies can enter the local market and offer competitive pricing and services to consumers while they develop their own networks.

In July, the BPU rejected lower prices determined by the BPU-appointed arbitrator who reviewed evidence from the two companies. Instead, the BPU ordered prices that are between what Bell Atlantic claims it should be paid and the lower prices set by the arbitrator.

Unfortunately, the BPU set prices that are too high to allow local phone competition to develop, and the issue is now likely to end up in the courts. The BPU's action will only delay the day when New Jersey consumers enjoy the benefits of competition.

Companies that want to provide choice for local service may interpret the BPU's decision as a signal that New Jersey isn't a state in which they can profitably compete. What company would want to expend valuable resources to do battle with the local monopoly and local regulators?

Competition in the local telephone market will not be successful unless the BPU understands the facts and makes the tough decisions that will foster local competition and all of its related benefits. Given the clear statements from AT&T and others that the BPU's thinking is flawed, it would be wise for it to reexamine the facts. When you hear potential competitors saying a decision is bad and the monopoly saying it can live with it, you know something is wrong.

The BPU also needs to consider the promises Bell Atlantic made to the Federal Communications Commission to gain approval of its merger with NYNEX. Why didn't Bell Atlantic use the FCC's methodology to determine prices in New Jersey — which would result in lower prices that would allow local competition to move forward?

Bell Atlantic controls the local phone network in virtually all of New Jersey. This will be true for some time, despite all the hoopla about interconnection agreements somehow magically delivering us a competitive marketplace.

The BPU needs to make the right decisions to encourage a competitive environment. After all, this fight is about bringing the best to New Jersey residents — giving them a choice so they can benefit from high-quality, reasonably priced services. By doing this, the BPU can bolster New Jersey's reputation as a telecommunications leader and continue to make the state a good place in which to live and do business. Competition would be a boon to consumers and a boost to the economy if the BPU gives it a fighting chance.

Walter Fields, former political director of the New Jersey NAACP, is spokesman for the NJ Coalition for Local Telephone Competition.

The Times
SERVING OUR COMMUNITY FOR MORE THAN A CENTURY

September 19, 1997

Road to phone competition is bumpy

WALTER FIELDS

Little did we know more than a year and a half ago that the road to competition in the local telephone market would be such a bumpy ride. The passage of the landmark Telecommunications Act of 1996 was deliberately crafted to create local telephone competition, with state regulators given the responsibility of establishing rules to open the local monopolies. As the dramatic reductions in long distance rates has demonstrated, open competition can be a boon to consumers and a boost to the economy. The trouble is, nobody realized how hard decisions on local telephone service would be for state regulators or how easily the process could be delayed. As a result, consumers are still waiting to receive the benefits of competition.

This certainly is the case in New Jersey, where no resident has a choice for local telephone service. Last week, the New Jersey Board of Public Utilities (BPU) again sidestepped a decision to rule on an interconnection agreement between AT&T and Bell Atlantic that would allow local competition to move forward in the state. At the heart of the issue are the prices new competitors will have to pay to lease parts of Bell Atlantic's network. Leasing is one of the most practical ways new companies can enter the local market and offer competitive pricing and services to consumers while they develop their own networks.

RECENTLY, THE BPU changed its own policy so it could reject the lower prices determined by its appointed arbitrator who reviewed evidence presented by the two companies. Instead, the BPU ordered prices that are between what Bell Atlantic claims it should be paid and the lower prices set by the arbitrator.

Unfortunately, the prices ordered by the BPU are too high to allow local competition to develop. As a result, the real losers are consumers who are again denied the benefits of competition. The BPU's decision also sends a bad message to other potential competitors who may see this as a signal that New Jersey isn't a state in which they can profitably compete. What company would want to expend valuable resources to do battle with the local monopoly and local regulators?

The BPU is responsible for understanding the facts and making the tough decisions that will foster local competition and all of its related benefits in New Jersey. Given the clear statements from AT&T and others that the BPU's thinking is flawed, it would be wise for it to reexamine the facts. When you hear the new competitors saying it's bad and the existing monopoly saying it can live with it, you know something is wrong.

There also are new facts to consider. In order to gain FCC approval of its merger with NYNEX, Bell Atlantic committed to use the FCC's cost-based methodology to determine prices. Why is it then, that Bell Atlantic isn't applying this approach in New Jersey — which would result in prices lower than those set by the BPU and allow local competition to move forward? The BPU should ask Bell Atlantic that question.

THE BPU NEEDS TO get the right prices and rules in place to encourage a competitive environment. After all, this fight is about bringing the best to New Jersey residents — giving them a choice so they can benefit from high-quality, reasonably-priced services. By doing this, the BPU can enhance New Jersey's reputation as a telecommunications leader and continue to make the state a good place to live and do business in the future.

Walter Fields, former political director of the New Jersey NAACP, is spokesperson of the NJ Coalition for Local Telephone Competition.

The Star-Ledger

WEDNESDAY FEBRUARY 11, 1998

Phone monopolies keep healthy competition on hold

By Dick Zimmer

It's been two years since the Telecommunications Act was passed, and New Jersey residents are still nowhere near receiving the benefits of competition the law promised. As a congressman, I voted for the act, hoping it would swiftly bring residents a choice for local phone service while increasing efficiency, improving technology and lowering rates. Unfortunately, those expectations have not been fulfilled largely because local phone monopolies seem to prefer litigating to giving consumers a choice for local phone service.

These lawsuits have caused progress toward local phone competition to come to a virtual stop. Most recently, the Bells persuaded a federal court in Texas to declare part of the Telecommunications Act unconstitutional. The ruling overturned the act's requirement that the local phone monopolies — which control the telephone lines into virtually all our homes — must first face effective competition in their market before expanding into long-distance service.

Although I'm confident the judge's decision will be overturned, I find it ironic and disturbing that the same local monopolies that fought so hard for and applauded the Telecommunications Act have now gone to court to hold the act unconstitutional. Even though this court is located in Texas, Bell Atlantic has asked to join in the suit to block the act's provisions from being applicable in New Jersey.

New Jersey residents deserve better. They deserve a choice for local phone service. The Consumer Federation of America estimates that the local phone monopolies' resistance to competition is denying consumers $10 billion in savings. Since competition was introduced in the long-distance market in 1984, prices have dropped by more than 60 percent and fiber-optic networks have been developed for speedier, more efficient communication. Similarly, competition for regional toll calls has forced Bell Atlantic to offer more competitive prices in New Jersey.

The Telecommunications Act holds the same promise for local phone service . . . if Bell Atlantic upholds its part of the bargain. Bell Atlantic's entry into the long-distance market can be as good for consumers as it is for Bell Atlantic's bottom line, but fair is fair. Bell Atlantic should live up to the bargain it made when it endorsed the Telecommunications Act. It should give New Jersey residents a choice for local service now.

Dick Zimmer, a former congressman, represented New Jersey's 12th District. He is head of the Coalition for Lower Taxes, a member organization of the NJ Coalition for Local Telephone Competition.

The Times

December 19, 1997

Bell Atlantic, show us the money

WALTER FIELDS

Every month we New Jersey telephone customers receive phone bills, but we really don't know what we are paying for or how much local phone service costs. Recently, I testified before the Board of Public Utilities (BPU) regarding universal service because New Jerseyans deserve to know where there money is going, and we should have a say in how our money is spent.

Universal service generally, and access to basic phone service in particular, are at the heart of the Telecommunications Act of 1996. The Universal Service Fund ensures that basic local phone services are available to low-income customers and high-cost areas. Another federal fund has been created to provide telecommunications discounts to schools and libraries.

FUNDING FOR the existing universal service system comes from the local telephone monopoly. To subsidize local service, Bell Atlantic is permitted to charge almost whatever it wants on enhanced services such as Caller ID and Call Waiting and also to charge long-distance companies for access into homes and businesses — sometimes as much as 17 times the actual cost — artificially inflating the price of long-distance calls.

Today, about 30 percent of the money long-distance customers pay for calls in New Jersey goes to Bell Atlantic, allegedly to support universal service. I say "allegedly," because we suspect Bell receives a lot more money than it needs to subsidize local service. Bell Atlantic claims it uses essentially all its revenue to maintain low prices for local phone service, yet it makes enormous profits and fails to deliver on its promises. Last year alone, it made over $500 million in profits in New Jersey and indicated it expects additional profits now that it has merged with Nynex. Despite all this money, Bell failed to deliver on its Opportunity New Jersey commitment to bring high-speed Internet access to homes and businesses, regardless of location and in spite of the fact that consumers have been paying for it for years.

> Today, about 30 percent of the money long-distance customers pay for calls in New Jersey goes to Bell Atlantic, allegedly to support universal service. I say "allegedly," because we suspect Bell receives a lot more money than it needs to subsidize local service. Bell Atlantic claims it uses essentially all its revenue to maintain low prices for local phone service, yet it makes enormous profits and fails to deliver on its promises.

BELL ATLANTIC mistakenly believes it provides reasonably priced local service to consumers. It touts its basic phone rates as among the most affordable in the nation, but neglects to tell people that New Jersey has extremely small local calling areas. That means people in New Jersey make — and pay for — more regional toll and long-distance calls than phone customers in other states. According to Sprint, the average total New Jersey telephone bill is higher than the nationwide average. And the total bill is what people really care about.

MCI and AT&T estimate Bell Atlantic is overcharging New Jersey long-distance callers at least $116 to $125 million a year or more — money both companies have made a commitment to return to customers if Bell Atlantic stops overcharging them. Reducing long-distance prices will help to make calling more affordable in the state.

So how much money does Bell Atlantic actually receive to support universal service and where, exactly, is that money going? That's what we would like to know. It's no surprise that Bell Atlantic does not want to show what it is doing with the customers' money it receives and wants to maintain the "hidden" subsidy system. In fact, Bell claims it may have to raise rates if anything changes.

I ASKED the BPU to:

- Find a neutral company to manage the system fairly. No company with a vested interest in this market should hold the purse strings.
- Make sure New Jerseyeans don't overpay for Universal Service by re-examining the cost of providing local phone service, making sure it's targeted where it's needed, and preventing money from going into Bell Atlantic's pockets.
- Order Bell Atlantic to stop overcharging long-distance customers immediately so millions of dollars in yearly savings can be returned to consumers.

These actions will make service more affordable in New Jersey and help create a competitive local telephone market. By giving people a choice for local phone service, Bell Atlantic will have to work to keep its customers. This will bring about competitive prices, better service, and the technology that will take New Jersey into the information age.

Unfortunately, New Jersey has a long way to go to reap the benefits of the information age. We look to the BPU to make the promises of the Telecom Act reality in New Jersey.

Walter Fields, former political director of the New Jersey NAACP, is spokesperson of the NJ Coalition for Local Telephone Competition.

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LEDGEWOOD, NJ
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GARDEN STATE PRESS
CLIPPING BUREAU

LETTERS TO THE EDITOR

N.J. residents should pay less for service

To the Editor:

New Jersey residents pay about $160 million more a year than necessary to place telephone calls within the state. This is because of the excessive fees Bell Atlantic, the local phone monopoly, charges to carry long-distance calls through the phone wires it controls into homes and businesses. These fees or "access charges" were set well above the actual cost of providing the service many years ago to help subsidize local phone service.

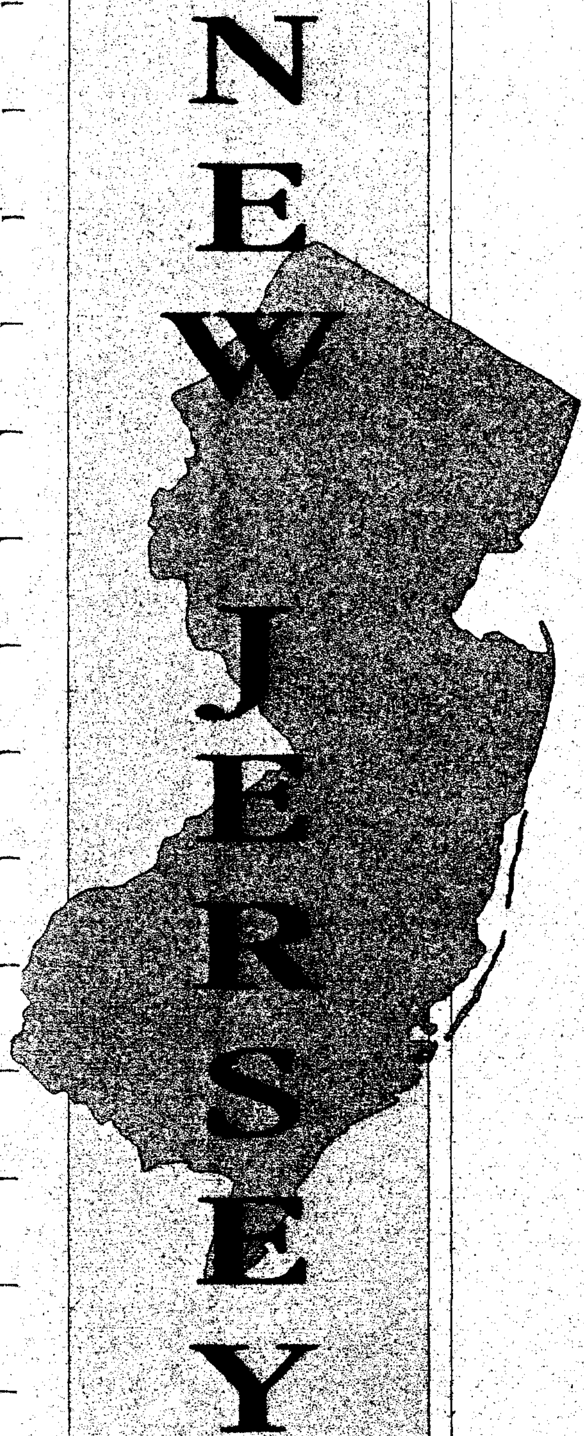
Under this system, 30 percent of the price you pay for a long-distance call goes to the local phone company. That's as much as seven times more than it costs Bell Atlantic to connect those calls.

New Jersey residents deserve the same benefits as our neighboring states — reductions in access fees to accurately reflect the cost of providing the service. In New York, for example, the state Public Service Commission recently ordered an $85 million cut in Bell Atlantic access charges. Long-distance companies, in turn, agreed to pass on the savings. In Pennsylvania, a judge recently recommended an investigation of access charges. New Jersey customers should not be forced to pay what amounts to a hidden tax on our phone bill to subsidize local phone service that may not even need a subsidy in this densely-populated state.

It's true that New Jersey's local phone rates are among the lowest in the country, but we still pay more for overall telephone service than people in other states. That's because New Jersey has the smallest local calling area in the country, which means people make more long-distance calls and, in turn, pay more in excess access fees to the local phone monopoly. It's a crazy system, isn't it?

The bottom line is New Jersey consumers and small businesses are paying more for telephone service than necessary. New Jersey regulators need to step up their efforts to open the local phone market to competition; better services and new technology that a competitive market will provide. By reducing the $160 million in access charges, New Jersey consumers can begin to realize the benefits promised by the Telecommunications Act.

Dick Zimmer,
former congressman



Status of Local Telephone Competition: Report and Action Plan

Board of Public Utilities

Docket No. TX98010010

July 1998

Herbert H. Tate
President

Carmen J. Armenti
Commissioner

State of New Jersey
BOARD OF PUBLIC UTILITIES
TWO GATEWAY CENTER
NEWARK NJ 07102

CHRISTINE TODD WHITMAN
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Tel. 973-648-2013
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July 30, 1998

Since the passage of the Federal Telecommunications Act of 1996, which deregulated the local telephone market, competition in New Jersey's local telephone market has remained stagnant.

In recognizing that competition had not been fostered in New Jersey, the Board of Public Utilities initiated two weeks of investigative hearings in March where representatives from small and large telephone carriers testified on why local telephone competition had not occurred.

This resulted in the Board's taking further steps and developing an action plan to open up the local land line telephone exchange market to spur competition in New Jersey's marketplace.

In doing so, the Board is releasing the attached report entitled "Status of Local Telephone Competition Report and Action Plan" that not only examines the major barriers to competition, but also provides a recommended timetable of implementation to eliminate the obstacles to competition.

It is our goal that, with this report, the impediments obstructing the growth of competition in New Jersey's local telephone market will be eliminated not only to provide the citizens of the state with added choices, but also to provide them with enhanced services and competitive rates.

Herbert H. Tate
President

Carmen J. Armenti
Commissioner

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<u>Technology Today:</u>
Competition and the Freedom to Choose in New Jersey's Telecommunications Marketplace

A day in the life of the George Willoughby Family . . . The setting: sometime in the present. The place: New Jersey. The time: 3 o'clock in the afternoon. The long and short of it: George forgot to tell Jane, his wife, that he will be running late, that both their children have games tonight, and he can't be at basketball and baseball games at once.

Jane, his wife, is a self-employed lens buffer who specializes in telescope maintenance. She is somewhere between the Little Diomede and Big Diomede lenses on the Liberty Park Observatory in Jersey City buffing scratches when her digital pager, strapped to her waist, begins to vibrate.

A text message appears on the message display: "Elroy at school 'til 5, has baseball at 6. Judy at Y 'til 4:30, basketball at 6, too. BIG problem. Can't be in Bay Head and Red Bank at the same time. Help! Love you, Gorgeous. George."

"What on earth's surface has gotten into him? He knows I'm due at my tai chi class tonight. He'll just have to call Grandpa Willoughby to help out," murmured Jane, wedged between two three-foot disks of glass.

Immediately, she reaches around her tool belt and slides out a digital phone the size of her palm. Punching in her husband's cellular phone number, she immediately hears his resonant voicemail voice: "You're talking to George Willoughby's voicemail. Not George. Because the real George is on the phone right now. Leave a message and *your number, and I'll call you back. Bye bye and buy tax-free municipal bonds!"*

Jane punches in her phone number -- her digital, PCS phone number -- hits the star button to leave a message, then says, "George, we've got big problems with the kids' schedules tonight. Call Grandpa Willoughby. He's only a few minutes away in Middletown from Elroy's school. He can pick up Elroy and take him to Little League in Red Bank. You can get Judy to the YWCA in Bay Head. Now, if you don't have any other emergencies you can't handle, I'll get back to work. See you later tonight after my class."

George, meanwhile, disengages his long-winded phone call to a client who wants to move his entire 401(k) retirement and personal investment portfolio into indexed funds and decides to check voice mail. He dials up Jane's voice mail message and swings into action.

George on his digital cell phone calls his father in Middletown, but he gets a busy signal. "Rats! He's on the phone again talking to his girl friend in Lakewood! The old man's a teenager!" Suddenly remembering how much of an Internet fanatic Grandpa Willoughby has become since getting a personal computer for his birthday, Willoughby sends his father an e-mail message from his office computer.

Swinging over to his laptop computer with 56.6k modem and cellular on-line hookup capability, Willoughby dials up his Internet Service Provider, goes on-line and dashes off a quick e-mail to his father:

"Dad: Please pick up Elroy from school today about 5. He's got a baseball game in Red Bank. You'll be doing all of us a huge favor. I'll reciprocate this weekend.

Will show you how to upgrade your PC modem by downloading it over the Internet. Oh, just in case you need directions to the ball field, look up NJMAP.COM on the Internet. It'll give you instructions on best way to get there." Willoughby sends the e-mail with receipt confirmation so that he would be assured of his father's reading the message.

Exiting an Internet chat room for seniors, Grandpa Willoughby checks his e-mail and spots the note from son, George. He sends off an immediate and positive response, "George: Don't worry about Elroy. He's as good as there. I know the route. Later. Pop."

Moving along, George decides to check in on his boy, Elroy by dashing off an e-mail to him, too: 'Elroy, don't forget to feed Astro when you get home this p.m. The 'Doggie Do-nuts' are in the left pantry next to the 'Puppy Uppers'. Oh, and how about those Mets?? Two for two. Oh! Good luck in your game tonight. By the way, Grandpa Willoughby is picking you up at school and will take you to the game in Red Bank. Love, Dad" reads the note, which George punches up and off to e-mail land where Elroy will intercept the message while in fifth period pre-calculus class.

Willoughby also decides to page his daughter, Judy, and let her know that alternative arrangements would have to be made for getting her to the basketball game. That he accomplished with a cell phone call to her digital pager, located on her PCS cellular phone. "Better send a message and not disturb her in class with a phone call," he thought.

At almost the exact moment, only an hour before the end of the school day, both Judy and Elroy intercepted messages from their father about the evening schedule *change; whereupon, Judy calls her father using her PCS wireless phone to discuss plans. Tells him that she will meet him at home. Judy and Elroy individually send their mother e-mail and text pager messages to confirm the details and assure their mother, Jane, that they are covered. No problem!*

Elroy, who's online anyway, decides to place an Internet long distance call to his buddy, Marcel, in Paris, who got tickets to the World Cup match. Elroy dials a local call from his Internet service at school, connecting via modem to an Internet provider service (a local call), and connects the call to France. With a small videophone camera atop the school's PC, Elroy decides to make it a video phone call.

"Marcel! It's Elroy."

Marcel, on his way out the door and apparently in a rush, "Elroy, mon ami! Have no time. Big rally at l'Arc de Triomphe for Equipe Football de la France. We defeated Brazil, you know!"

"Yeah, yeah. You told me. Congratulations!"

"Merci beaucoup, mes amis. Can't speak now. Must go! I'll check with you later. Au revoir, Elroy!"

"Goodbye and congratulations, Marcel, and to France!" Elroy signs off to Marcel in France, disconnects the modem and runs off to his next class.

This is today's world of telecommunications, available to consumers in just about every geographic market in New Jersey, at prices that are declining each year due in large part to technological advances and resultant competition.

A person can now stay in touch with family, friends and fellow workers from just about anywhere in North America through a number of recently (within the past 5 to 7 years) developed technologies being provided at progressively declining costs. In fact, the Cellular Telecommunications Industry Association reports the average cellular phone customer's bill has declined from $96.83 per month to $42.78, a 56% decline.

Internet Service Provider fees, costing $400 a year and up for unlimited use only four years ago, now range from $200 to $120 a year for better services with much improved technologies.

Because of this phenomenal rate of technological innovation in telecommunications, our range of choices and applications today bears little resemblance to the marketplace of just 8 years ago and will undergo as great a change in the next 3 to 5 years from now.

Take for example the world of wireless communications with the vast array of choices in telephones and pagers. Since the introduction of cellular technology in 1984, wireless customers in New Jersey now can enjoy the advantages of having four competitors (AT&T, Bell Atlantic, Comcast and Sprint) who offer ever-improved products at competitive prices. Cellular phone service includes not just the telephone but competitive service for local exchange, local toll and long distance calling.

Types of cellular phones, whether analog or digital, come in various sizes and shapes, some for use only in the car and portable models for use anywhere. Technological advances have afforded smaller, more convenient sizes with batteries that last longer between charges.

Customers can shop for varying types of wireless phones with varying degrees of uses and capabilities and competitive rates for local, local toll and long distance services.

The domestic wireless market growth, in terms of revenues, is projected to quadruple during the 2-year period between 1997 and 1999 to an estimated $100 billion, a 200-fold increase from $486 million in 1985, according to industry association reports.

PCS or Personal Communications Systems wireless phones were introduced about three years ago in the consumer market, offering advances such as clearer signals, lower power requirements for longer usage between battery charges, and multiple functions. Some PCS phones include pager, calculator, address keeper, notepad and calendar. Nortel Public Carrier Network estimates there are 10 million PCS customers today, up from about 1.5 million in 1996. They project 23.2 million PCS customers nationwide in 2000. Again, PCS technology, digital wireless phones, not only afford customer choices on usages and applications but also provide competitive rates for local exchange, local toll and long distance phone calls.

Depending on the level of usage, from 60 to 1,400 minutes per month, cellular consumers can take advantage of competitive pricing ranging from 57 cents a minute to as little as 11 cents a minute, depending on usage level. Moreover, thanks to competition, service territories have been enlarged, with some communications companies offering customers a calling range throughout most of New Jersey without roaming or long distance charges.

A pager is a simple electronic device that used to be a phone number prompter. Thanks to digital technology, today's pager can offer much more in the way of services and functions. Text messaging, two-way communication through PCS, and plain old message prompting are major functions now offered to customers. Satellites assist in relaying messages from just about anywhere in North America or the world.

Some parents prefer their children to wear pagers in order to keep apprised of their whereabouts, especially in households where parents work outside the home.

New Jersey has six pager companies competing for market share with different product innovations and pricing packages. Pricing levels range from $10 a month for basic paging to $50 a month for more sophisticated digital messaging. Some offer pagers for sale with monthly service contracts, others specialize in selling services with the pager as part of the monthly charge.

The Internet. Growth in Internet usage and traffic, according to *Telephony* magazine (June 8, 1998), has outstripped that of television in the late 1940s and early 1950s. The Internet began as a backup information system developed by the U.S. Government in the early 1960s in case of a worldwide emergency.

Today, the Internet is a universal fountain of knowledge, news, entertainment, and anecdotal information used by over 60 million American households, including over 1.5 million New Jersey households, according to industry estimates. Compare this to only 5 million Internet households nationwide in 1995, according to industry analysts' figures.

Reflecting the popularity of the Internet in the state, there are approximately 300 New Jersey-based Internet Service Provider companies (ISPs) listed in the Internet.com buyers guide out of 7,500 ISPs nationwide. This figure indicates there are more ISPs per capita than the national average (one ISP per 27,000 residents in New Jersey versus one per 37,000 nationally).

The Internet, or Worldwide Web, has opened up a burgeoning marketplace. Knowledge once found in research libraries can now be found via the Internet, 24 hours a day, 7 days a week, with audio, video and interactive capabilities.

With Internet e-mail, people have the ability to communicate with persons around the world, instantly, bypassing postal systems and eliminating the need for facsimile and telephone communication.

Internet Long Distance. Taking the Internet one step further, people now can, through their personal computers, dial up a local ISP access number and place an Internet long distance call . . . anywhere in the world. The personal computer and the Internet combine to form a conduit enabling us to bypass traditional long distance carriers and convert a local telephone call into a long distance or even an international call.

A big advantage of Internet long distance is it is a fraction of the cost of long distance services; some Internet long distance companies are offering rates from 8 cents to 5 cents a minute; where international phone rates and long distance land line rates average 74 cents (international) and 11.6 cents (domestic) a minute.

Using a small telephony camera and enabling software, people now can dial up video telephone calls from their home personal computers for worldwide access. Technology for Internet long distance is making significant strides to the point that clarity and quality of the connection is expected to equal that of satellite voice communication.

At this time, there are at least five companies offering New Jersey residential customers Internet long distance, including: AT&T, Sprint, MCI, and two relatively new companies in New Jersey, ITXC Corp. of North Brunswick and IDT of Hackensack.

It is clear that residential customers in New Jersey experience telecommunications competition and are being given choice in certain telecommunications technologies, such as wireless and data services (Internet). Changing and developing technology affords New Jersey customers choice, both in wireless and Internet Provider services; local, local toll and long distance calling is occurring.

Both the industries have begun to compete for segments of the local and long distance telephone market with rates as low as 10 cents a minute in wireless telephone and 5 cents a minute in Internet long distance.

But, the traditional land line communications market for residential customers has not seen the same ability for customers to choose local telecommunications services since deregulation of that market 2 ½ years ago. This report will look at why and propose corrective steps ("Action Steps") to jump-start local telecommunications choice for residential and small business customers.

# # #

New Jersey Board of Public Utilities

Status of Local Telephone Competition:

Report and Action Plan

Docket No. TX98010010

INTRODUCTION

The Federal Telecommunications Act of 1996 (the "Telco Act" or the "Act") was signed into law on February 8, 1996. It promised to open competition in the local land line telephone market to business and residential customers. The Telco Act gave individual states a broad "blueprint" to establish rules and rates for Competitive Local Exchange Carriers ("CLECs") including AT&T, MCI, Sprint and others to compete against the Incumbent Local Exchange Carriers ("ILECs"), Bell Atlantic, Ameritech, Bell South, SBC, and US West in the residential and business local land line telephone markets. To date, all states, including New Jersey, have established rules and rates for local land line "resale" and local land line "facilities based" competition. Additionally, the Federal Communications Commission (the "FCC") has set rules for land line telephone competition.

The New Jersey Board of Public Utilities (the "Board") has been at the leading edge, nationally, of promoting land line competition in the telephone market. The Board has certified telecommunications companies to compete in the local land line market, has approved interconnection and resale agreements between ILECs and CLECs, has established resale rates and interconnection rates and has approved tariff filings submitted by CLECs. Yet, almost two and a half years after the effective date of the Telco Act, in July 1998, the Board finds that there has not been any significant statewide "resale based"[1] or "facilities based"[2] local land line residential or small business telephone offerings to or the switching of customers to CLECs from ILECs in New Jersey or the nation.

The Board held this legislative proceeding in April 1998 on its own motion because of the perceived lack of competitive local phone service offerings being made by CLEC's for land line phone service to residential customers. The proceeding was designed to determine the status of local land line residential competition and to determine to what degree "barriers to competition" exist in the local residential and small business land line telephone market. This report on the proceedings identifies two (2) significant barriers to local land line telephone competition in New Jersey. Furthermore, this report outlines an "action plan" the Board will undertake over the next twelve (12) months to overcome these "barriers to competition" and to resolve other technical issues which the Board identifies as "impediments" to local telephone competition.

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[1] In New Jersey, as of this writing, information submitted by the CLECs shows that approximately 10,000 of the 4 million local residential lines (or less than 1/4 of 1%) are served by CLECs on a resale basis and approximately 800 of the 2 million local business lines (or less than 1/10 of 1%) are served by CLECs on a resale basis. Nationally, information submitted by the CLECs shows that approximately 500,000 of 108 million local residential lines (or less than ½ of 1%) are served by CLECs on a resale basis and approximately 33,000 of 52 million local business lines (or less than 1/10 of 1%) are served by CLECs on a resale basis.

[2] In New Jersey, as of this writing, information submitted by the CLECs shows that local land line residential customers are not being served on a "facilities basis" and approximately 6,700 of the 2 million local business lines (or less than ½ of 1%) are served by CLECs on a facilities basis. Nationally, information submitted by the CLECs shows that approximately 2,500 of the 108 million local residential lines (or significantly less than 1/10 of 1%) are served by CLECs on a facilities basis and approximately 400,000 of the 52 million local business lines (or approximately 7/10 of 1%) are served by CLECs on a facilities basis.

The Telco Act contemplates three market entry strategies for CLECs to compete against ILECs for the provision of local land line telephone service to residential and business customers. The three market entry strategies are: (1) resale of an ILEC's tariffed retail telecommunications services (the "resale" market entry strategy)[3]; (2) purchase of an ILEC's unbundled network elements (the "UNE" market entry strategy)[4]; and (3) newly constructed facilities (the "facilities based" market entry strategy)[5]. The Board finds that it has taken numerous steps to help develop land line telephone competition in the residential market pursuant to the requirements and mandates of the Telco Act.[6]

The Board has certified nineteen (19) companies to provide service through the use of their own land line facilities. Twelve (12) of these companies are serving business customers on a facilities basis, without first using resale. However, the other seven (7) companies, while requesting

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[3]Under a resale market entry strategy, an ILEC's retail telecommunications tariffed services are made available to a CLEC at a discounted price set by the Board. Tariffed retail telecommunications services are telephone services provided to a company's customers including, for example, dial tone and features like three-way calling, call waiting and ISDN.

[4]Under an unbundled network elements market entry strategy, parts of the telephone network consisting of facilities, lines and switches, as well as the computer systems needed to make those facilities work and the directory assistance database are available to a CLEC at a price set by the Board for use in providing services to the CLEC's customers.

[5]Under a facilities based market entry strategy, CLEC constructed new infrastructure, such as lines, switches and other facilities, are connected to the CLEC's customers so that the CLEC is not dependent on the ILEC's infrastructure to provide service to the CLEC's customers.

[6]The Board's actions are contained in several carrier specific and one generic order. The Board's generic local order (the "Local Order"), IMO The Investigation Regarding Local Exchange Competition For Telecommunications Services, TX 95120631 (December 2, 1997) set generic resale rates for local resale competition and set generic rules and rates for local UNE competition.

facilities authority, have chosen to serve primarily business customers on a "resale basis" only at this time. Some of these CLECs have indicated that they may eventually serve both business and residential customers. However, those CLECs have not yet defined their plans to provide facilities based land line residential local service in New Jersey.

Three Board approvals are required to provide facilities based land line telephone service in New Jersey. The three (3) approvals are: (1) a certification to provide telecommunications service which allows, but does not require, a company to provide local telephone service throughout the state to all customers; (2) a Board approved Facilities Interconnection Agreement; and (3) a Board approved tariff. Four (4) CLECs have completed all three steps necessary to provide facilities based local service in New Jersey. Those four CLECs are major national carriers. Three of these major carriers are currently serving the long distance residential marketplace in New Jersey and nationally: (1) AT&T; (2) MCI; and (3) WorldCom (formerly MFS Intelenet). US West[7] is the fourth CLEC that has completed all three steps necessary to provide facilities based local service in New Jersey. All four companies initially have targeted the high-speed voice and data transmission market for large business customers and have, up to now, not entered the local land line residential or small business telephone market in New Jersey.

In addition to these four CLECs' approvals, nine (9) CLEC local tariff filings are pending before the Board: (1) LCI; (2) Metromedia Fiber Network Services; (3) Hyperion

[7]US West serves as an ILEC with service areas in the following states: Arizona, Colorado, Iowa, Idaho, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming.

Telecommunications of New Jersey; (4) Level 3 Communications; (5) TCG; (6) Focal Communications; (7) RCN; (8) NextLink; and (9) Cablevision Lightpath-NJ, Inc. ("CLI"). Of these companies, only RCN has requested approval to provide residential service on a land line facilities basis and has an approved interconnection agreement.[8] Focal has proposed to serve the residential market on a resale basis as an interim step, and its tariff filing anticipates eventual land line facilities based market entry.

The Board finds that a vast majority of the CLECs that are pursuing the land line facilities based entry strategy have only targeted business customers, at this time. Twelve (12) of the nineteen (19) companies plan to provide local service on a land line "facilities basis" and have targeted business customers. The other seven certified companies identified earlier are employing the resale strategy as their initial market entry strategy, and those companies may be serving residential and business customers, but they are not required to do so. The Board also finds that the major CLECs mentioned before are not serving the land line residential market on either a "facilities basis" or a "resale basis" in New Jersey.

The Board has also approved twenty-nine (29) interconnection agreements for the provision of local land line telephone service to both business and residential customers. Of these twenty-nine (29) agreements, fifteen (15) are for carriers which have plans to provide service on a land line facilities basis for business customers only, and fourteen (14) are for resellers which have the potential for serving business and residential customers, although they are not required to serve

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[8]CLI has also requested approval to provide residential service on a land line facilities basis, however, the company does not yet have an approved interconnection agreement.

residential customers.

In summary, the Board has approved four (4) CLEC tariff filings to provide land line facilities based local business service that were filed by AT&T, MCI Metro, WorldCom and US West. The Board has pending nine (9) tariff filings to provide land line facilities based local service. To date, only the four (4) above-mentioned CLECs have completed all three steps necessary to provide facilities based local service in New Jersey and, initially, they are serving business customers. Fourteen (14) companies have authority to provide "resale" local telephone service in New Jersey, which is the only necessary approval step. The Board has twenty-five (25) recently filed resale agreements pending approval from the smaller CLECs.[9]

The quickest way, currently, for CLECs to enter the local telephone service market is through the "resale strategy" because a reseller is only required to obtain one Board approval for its Resale Interconnection Agreement. Also, the resale market entry strategy does not require the investment of significant capital or technical resources. Nationally, for the past two years the "resale" strategy was certainly the "preferred" strategy for entry into a state's local market for the major carriers like AT&T and MCI. Recently, however, that strategy for the residential market was abandoned by these national carriers because they claim that they could not earn a sufficient profit.

[9]The pending resale agreements are as follows: Access Network Services; American Network Exchange; CanCall Cellular Communications; CAT Communications Inc.; CRG International; Direct-Tel Inc.; Essex Communications Inc.; EZ Talk Communications; Interactive Communications Inc.; Jerry LaQuiere; Momentum Telecom; NuStar Communications; PATH Enterprises; Spartan Debt Services Corp.; Talk Time Communications Limited; TeleCarrier Services Inc.; US Dial Tone; US Mobile Services; US Telecommunications Inc.; Tel-Link, L.L.C.; USN Communications Atlantic; International Telephone Group Inc.; Travelers Cable TV Inc.; COMAV Telco Inc.; and Cellular Rentals Inc.

Over the past two years in states other than New Jersey, the resale strategy was pursued by major CLECs such as AT&T and MCI. Although, the "resale strategy" permits CLECs to enter the market quickly, this strategy suffers from certain constraints in pricing and innovation for CLECs. The services that can be resold are limited to those services provided by the ILEC and, as shown on the attached chart, the discount rate[10] is fixed in the range of 17% to 23%, generally, both in New Jersey and across the nation. In New Jersey, the Board established discounts of 17.04% and 20.03%.[11] One major CLEC spent over $4 billion to provide local service on a resale basis for approximately 400,000 residential customers in eight states other than New Jersey. The resale discount rates in those eight (8) states were set as follows:

State	**Discount Rate**	**State**	**Discount Rate**
New York	19.1% and 21.7%*	California	17%
Connecticut	17.8%	Illinois	8% to 68%**
Michigan	19.9% and 21.55%*	Texas	21.6%
Alaska	23%	Georgia	17.3% and 20.3%

* The lower percentage reflects the discount for CLEC's using the ILEC's operator services, while the higher percentage reflects the discount without the use of the ILEC's operator services.

** These discount rates vary based upon the service selected for resale.

Even though New Jersey's discount rates were set at levels greater than the discount rates set

[10]This discount percentage was identified by the Telco Act to be the tariff retail rate of a service less any costs avoided by the ILEC by having the CLEC provide the service.

[11]The Board established two discount percentages. The first at 17.04% for those CLECs that elect to use ILEC operator services and the second at 20.03% for those CLECs that choose not to use ILEC operator services.

in Connecticut and California, the major CLEC still chose states other than New Jersey to pursue the "resale" strategy. The decision to serve eight (8) states other than New Jersey was made by that major CLEC despite the Board's order that opened up the "local toll" (or "intraLATA toll") market to competition in 1994, prior to the passage of the Telco Act, in 1996[12].

In July 1994, the Board initiated the opening of the "intraLATA" or local toll market to competition.[13] The New Jersey local toll market is considered to be the third richest in the nation at approximately $700 million per year for land line residential and business customers. New Jersey's local toll market also produces one of the highest profit opportunities for local toll in the nation. Moreover, New Jersey was one of only fifteen states that opened its local toll market to competition prior to the passage of the Telco Act. Despite the Board's opening up this market in 1994 on a 10XXX and then in May 1997 on a presubscription basis, the major CLECs did not pursue a land line "resale strategy" for local residential customers in New Jersey.

At the beginning of 1998, the major CLECs began to announce publicly their abandonment

[12]The telecommunications market is generally considered to comprise three markets-local, local toll, and long distance. CLECs, like AT&T and MCI, have access to the long distance market. ILECs, like Bell Atlantic New Jersey and United Telephone Company, have access to the local and local toll markets. By opening up the local toll market to CLECs, the Board continued the process for competitive entry into all three markets. The Telco Act requires, as a condition for ILEC entry into the long distance market, competition in the local market for both residential and business customers. Local toll is the middle market, so that eventually CLECs or ILECs could serve all three markets.

[13]In 1994, the Board began to open the local toll market to competition. The Board allowed competition in the local toll service market first on a 10XXX or dial to carrier basis, i.e. callers dial an access code to reach a preferred carrier and then make their call. In early 1997, local service was offered on a presubscription, or direct dial basis, eliminating the need to dial an access code.

of the "resale market entry strategy" for residential customers nationally. During this proceeding one major CLEC described the resale strategy for residential customers as a "fools errand." Despite that characterization of resale, there are at least five (5) smaller CLECs actively engaged in the New Jersey residential market on a resale basis. The five companies are: (1) TCS of N.J.; (2) First Line Communications; (3) NY Teleconnect; (4) Integrated Telephone Services ("ITS"); and (5) RCN.

Since the major CLECs have now abandoned the "resale strategy," their focus has shifted to the UNE[14], specifically the UNE-P[15], for market entry to provide local land line residential phone service. The UNE market entry strategy permits a CLEC to enter the market by renting the portions of the ILEC's land line network that the CLEC needs to offer services. These portions, called "elements" include, but are not limited to, local land lines ("loops"), switching, and computer support systems. Under the UNE market entry strategy, CLECs are not subject to the 17.04% and 20.03% resale discount rate set by the Board. Under the UNE market entry strategy, the CLEC would likely price a service based on its cost to provide the service, plus whatever profit margin the market will bear. In addition to this pricing difference, the CLEC does not pay access charges[16] to the ILEC for its customers, and the CLEC is allowed to retain the FCC imposed subscriber line charge of between

[14]The ILECs have argued that UNEs may require a CLEC to purchase unbundled elements separately with the CLEC recombining the elements through its own facilities that are "collocated" within the ILECs central office.

[15]UNE-P provides unbundled elements in a combined form or platform where the elements are combined by the ILEC and offered to the CLEC in a bundled format without the need for the CLEC to build its own facilities in the ILECs central office.

[16]Access charges are fees paid by a carrier for the use of the ILEC's network to originate or terminate a call.

$ 3.50 and $5.98 per line, to offset further the cost of providing service.

Two and a half years after the enactment of the Telco Act, information submitted by the CLECs shows that approximately 10,000 of the 4 million local residential lines (or less than 1/4 of 1%) are served by CLECs in New Jersey on a resale basis and approximately 800 of the 2 million local business lines (or less than 1/10 of 1%) are served by CLECs in New Jersey on a resale basis. Nationally, information submitted by the CLECs shows that approximately 500,000 of 108 million local residential lines (or less than ½ of 1%) are served by CLECs on a resale basis and approximately 33,000 of 52 million local business lines (or less than 1/10 of 1%) are served by CLECs on a resale basis. Information submitted by the CLECs also shows that no New Jersey land line residential customers are being served on a "facilities basis" and approximately 6,700 of the 2 million local business lines (or less than ½ of 1%) are served by CLECs in New Jersey on a facilities basis. Nationally, information submitted by the CLECs shows that approximately 2,500 of the 108 million local residential lines (or significantly less than 1/10 of 1%) are served on a "facilities basis" by CLECs and approximately 400,000 of the 52 million local business lines (or approximately 7/10 of 1%) are served on a facilities basis by CLECs. Based on the foregoing, the Board finds that both in New Jersey and nationally, mass market offerings of CLEC local land line services, to both residential and business customers, both on a resale basis and a facilities basis do not exceed one percent of the total local land line telephone market.

Over the next twelve (12) months the Board's goal will be to "jump start" UNE based and new facilities based land line telephone service offerings by CLECs in the residential market in New Jersey. However, the Board's approach will be to take steps which will help to promote more land line competition in both the residential and business marketplaces by setting rules and providing Board and Staff assistance to achieve land line competition through all three strategies contemplated by the Telco Act: "facilities" based, "UNE" based and "resale" based.

INTRODUCTORY FINDINGS OF THE BOARD

Through this proceeding, the Board finds two (2) major barriers to local land line telephone competition in New Jersey. First, the Board finds that the most significant barrier to competition is the lack of standardized Operations Support Systems ("OSS") that allow CLECs an "application to application electronic interface"[17] to serve local land line residential customers. The Board's conclusion on the significance of OSS as a barrier to competition is supported by findings made by the FCC in the context of ILEC applications to provide long distance service or "271 filings."[18] The FCC has not approved any of the four ILECs' applications to enter the long distance market because the FCC has found that all four ILECs that applied could not provide adequate OSS. Specifically,

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[17]Application to application interfaces provide the through capability for the five OSS functions from pre-ordering to billing. This type of interface allows for automated access which enables information to be exchanged between a CLEC and an ILEC without the need for manual intervention. It allows customer interaction with a CLEC to be indistinguishable from customer interaction with an ILEC. That is, CLECs can access pre-ordering, ordering, provisioning, maintenance/repair and billing systems directly without the need for ILEC interaction.

[18]The Telco Act requires ILECs to open up the local telephone market to local competition for residential and business customers before an ILEC can obtain FCC approval of a "271 application" for entry into the long distance market. The FCC must consult with the states before it determines that an ILEC has met a fourteen point checklist to permit the ILEC's entry into long distance. The key step is the presence of local business and residential competition within the ILEC's region.

in one case, the FCC concluded that Ameritech had not demonstrated that it provided CLECs with OSS access equivalent to the access that it provided to itself, and that Ameritech failed to provide the empirical data (i.e. testing results) necessary to analyze whether Ameritech was providing non-discriminatory access to OSS as required by the Act. Similarly, in Oklahoma, South Carolina and Louisiana, the ILEC applicants could not demonstrate and/or support with empirical data that the OSS access they provided to CLECs was equivalent to their own access to OSS processes.

A second indicator of the significance of OSS as a "barrier" to competition is the connection between the wide range of pricing for "local loop rates," "port charges" and "switching charges" that have been set by Public Utility Commissions around the country and the failure of any pricing level to generate any significant level of competition in the residential or small business market on a "resale" or "facilities" basis.[19] As part of this proceeding the Board requested information from around the nation regarding UNE local loop, port and switching charges. The Board found that in the Ameritech region [20] the "loop rates" range from $3.72 in urban Illinois to $14.86 in rural Michigan. The lowest urban rate in the SBC region[21] was set at $12.14 for urban Texas areas. The Arkansas rural rate, (also in the in the SBC region) was set at $79.90, the highest in the SBC region. The next highest SBC rate set in the region was the Kansas rural rate of $70.30, which is followed

[19]As noted above, CLECs are not serving more than one percent (1%) of the local marketplace in the nation.

[20]The Ameritech region consists of part of the following states: Illinois, Indiana, Michigan, Ohio, Wisconsin.

[21]The SBC region consists of parts of the following states: Arkansas, Kansas, Missouri, Oklahoma, Texas, California, Nevada.

by the Oklahoma rate of $49.30. For the US West region[22] the rates were set in the range of $11.33 in Washington to $27.41 in Montana. In the Bell South region[23], the rates were set in the range between $16.51 in Georgia to $25.24 in Mississippi. Comparatively, in the Bell Atlantic region,[24] loop rates were set in a range from $7.54 for urban Massachusetts to $43.44 in rural West Virginia. New Jersey's rates were set in a range from $11.95 urban to $20.98 rural. Attachment A contains a chart showing loop, port and switching rates around the country. The Board finds that, even with the wide variety of UNE rates throughout the country, no significant land line facilities based competition is occurring anywhere in the nation for residential or business customers. Therefore, the Board finds that inadequate OSS processes rather than loop, port, and switching rates are the primary reason facilities based land line competition in the residential market has not taken hold and has not exceeded one percent (1%) of the market nationally. The Board further finds that without fully functioning OSS, large volumes of customers cannot get switched and receive service from CLECs, within a reasonable time, in a competitive market.

A review of the rates set in New York and Pennsylvania provides another good demonstration of the need for effective OSS. In Pennsylvania, loop rates were established based on

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[22]The US West region consists of parts of the following states: Arizona, Colorado, Iowa, Idaho, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming.

[23]The Bell South region consists of parts of the following states: Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee.

[24]The Bell Atlantic region consists of parts of the following states: Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, DC, West Virginia.

four density cells. The loop rates from highest density to rural density set by the Pennsylvania PUC are: $11.52 (inner city), $12.71(urban), $16.12 (suburban) and $23.11(rural). In New York, two rates were adopted: major cities (urban) were set at $12.49 and all other areas (suburban and rural) were set at $19.24. In New Jersey, rates were set for three zones: urban areas at $11.95, suburban areas at $16.02 and rural areas at $20.98. To date, virtually no land line "facilities based competition" in the residential market has occurred in Pennsylvania and New York since these rates were set. Nonetheless, a review of all rates nationwide and region-wide reveals that New Jersey's rates are in the middle of the range between the highest and lowest rates. Accordingly, the Board finds that more favorable loop rates in other states, rates of $11.00 or less, have not spurred wide-scale land line market entry in the residential local telephone market anywhere in the Bell Atlantic region or in the country on a "facilities basis."

OSS consists of five functions that are needed for CLECs to provide service to their customers. The five functions involved are <u>pre-ordering</u> (customer name, location, phone number, long distance carrier, <u>i.e</u>. customer profile); <u>ordering</u> (services wanted, when); <u>provisioning service</u> (hooking up service); <u>maintaining and repairing service</u> (keeping service working); and <u>billing</u> for service. Without the ability to access this information and add or delete data, service to a customer is not possible. In short, without OSS no matter what the rate of the loop, port, or switch, a competitor cannot ensure, on a mass market basis, that service will be provided to its customers. Only the ILEC (<u>e.g.</u>, BA-NJ, United) possesses the data needed to complete the order, hook up the customer and provide the necessary billing information to the CLEC and thereby allow the CLEC to service the customer.

The Board finds the second "major barrier" to competition is access to "unbundled network elements" ("UNEs"). UNEs are one way to connect customers to the ILEC's land line network. The CLECs and ILECs disagree about whether this connection must be provided through the combination of UNEs known as UNE-P ("the Platform") or through the construction of facilities by the CLEC in the ILEC's central office, called "collocation." Under the Telco Act, ILECs are required to provide CLECs with non-discriminatory access to UNEs. The Board has approved two interconnection agreements, for AT&T[25] and MCI[26], which contain language regarding the UNE-P issue. As will be discussed herein later, the United States Court of Appeals for the Eighth Circuit, in Iowa Utilities Board v. FCC, et al, overturned the FCC's UNE requirements and stated the FCC was without authority to order ILECs to recombine unbundled network elements for CLECs. Thus, the Board is faced with the question of whether it may and should order elements to be provided together in the so called "UNE-P" or whether elements shall only be provided through collocation, (i.e. a CLEC builds its own facilities in the ILEC's central office and thereby connects to the ILEC's network).

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[25]By order dated December 22, 1997, the Board approved the terms of an interconnection agreement between BA-NJ and AT&T. The agreement provides: "BA shall offer each Network Element individually and in combinations (where technically feasible and to the extent required by applicable law), solely in order to permit AT&T to provide telephone exchange and/or exchange access telecommunications services to its subscribers."

[26]By order dated November 20, 1997 in Docket No. TO96080621, the Board approved the terms of an interconnection agreement between BA-NJ and MCI. The agreement provides: "Bell Atlantic shall provide the services in any technically feasible combination requested by MCI, pursuant to the terms of this agreement and in accordance with requirements of applicable law. . . ."

Beyond these two "barriers to competition" there are a wide variety of technical issues like pole attachments, number portability and others which the Board finds are "impediments", but not "barriers" to competition. Resolving these technical issues as well as the OSS and access to UNEs will require some type of intervention by the Board. To this end, the Board believes a Technical Solutions Facilitation Team (the "TSFT") within the Board could assist the parties in reaching closure on OSS, access to UNEs, as well as these technical issues.

The CLECs have also indicated in this proceeding that New Jersey's state policy to keep basic residential service rates affordable has resulted in rates that are an "inhibitor" to competition in the local land line residential market for both resale and facilities based market entry strategies. The rates are currently capped between $4.40 and $8.19 for a majority of the State's residents. The cap on these rate is set to expire with Bell Atlantic New Jersey's Plan for an Alternative Form of Regulation, in December 1999. Since 1985 the rate for Bell Atlantic New Jersey's basic residential service has been no higher than $8.19, which is now the second lowest rate in the country. The major CLECs' testimony on New Jersey's basic service rate indicates that the major CLECs may have a business reason for the limited amount of land line residential competition in New Jersey that could be incongruous with the public policy of this State, which has been to cap the price of basic residential service at the current low and affordable rates. New Jersey's low basic service rate may also underscore the reasons why New Jersey was not one of the eight states selected by a major CLEC to test the resale market entry strategy even after the Board opened New Jersey's lucrative intraLATA toll market in 1994. The cap on New Jersey's low basic service rate likely will be reviewed by the Board beginning in January 1999 because the cap is set to expire, pursuant to the terms of Bell Atlantic's Plan for Alternative Regulation, in December 1999.

CLECs have also alleged that New Jersey's generic rates for loop and UNE pricing are an "impediment" to competition. These rates were discussed earlier in this section and compared nationally. The issue of pricing is currently being challenged in the Federal District Court. The loop rates in New Jersey were set on a forward looking basis. As demonstrated above, loop rates established around the country that were as low as $3.72 have not spawned local land line residential competition on a facilities basis. Accordingly, until OSS and UNE issues have been addressed and are no longer "barriers to competition," the Board cannot find pricing of loop, port, switching and other items to be a "barrier to competition." The Board finds that OSS and UNE access are of such significance that no other issue can be argued to affect mass market entry in the local land line market until OSS and UNE issues are resolved.

In sum, the Board finds that (1) inadequate OSS and (2) access to UNEs are the two "major barriers" to local land line residential market competition, and that (3) a variety of technical issues are "impediments" to competition and need to be addressed by the Board if Board Staff is unable to resolve the issues cooperatively among the parties. Both of the "major barriers to competition" and the technical issues will be the focus of the TSFT which is more fully described in the "action plans" chapter of this report. After the major barriers to competition identified here are addressed, the Board will have "opened the door" for local land line telephone competition in New Jersey. Once these "major barriers" are removed, it will become clear whether the major CLECs' business plans or some other factor, like the capped local service rates of between $4.40 to $8.19 that have been set in accordance with the State's public policy at those levels since 1985, are limiting or having a "chilling" effect on the amount of mass marketing of local telephone service to residential customers in New Jersey that CLECs may undertake.

In 1994 the Board took action that supports its claim at the beginning of this report that it has been at the leading edge of promoting land line telephone competition. The Board's actions in 1994 preceded its efforts to implement the Telco Act and made New Jersey one of only 15 states to open its local toll market to competition, before the enactment of the Telco Act. At the time of those and subsequent hearings, claims of significant market share loss were made. It was also thought, at the time, that opening the local toll market to competition, would lead eventually to local land line market entry. The discussion at the time centered around the ability to enter all three markets (long distance, local toll, local) and to provide one-stop-shopping. As noted above, there is little mass marketing to local residential and small business customers in New Jersey or nationally. Furthermore, in the local toll market, the incumbent has not experienced the market share loss predicted at the time the Board opened that market to competition. In short, the Board has opened and will continue to open the telephone markets to allow competitive entry by willing carriers. It is, ultimately however, up to the carriers to take the opportunity to enter those markets.