



Roger K. Toppins  
General Attorney &  
Assistant General Counsel

SBC Communications Inc.  
One Bell Plaza, Room 3000  
Dallas, Texas 75202  
Phone 214 464-4244  
Fax 214 464-4936  
Cellular 214 549-6100  
Pager 888 270-1513  
Email: rt6470@txmail.sbc.com

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March 22, 2000

**BY HAND**

Magalie Roman Salas, Secretary  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S.W.  
12th Street Lobby, TW-A325  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION

Re: Errata In the Matter of Inquiry Concerning Deployment of Advanced  
Telecommunications Capability To All Americans in a Reasonable and Timely  
Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706  
of the Telecommunications Act of 1996  
CC Docket No. 98-146

Dear Ms. Salas:

On March 20, 2000, the Comments of SBC Communications Inc. were timely filed in the above-referenced docket. Unfortunately, a draft of the Comments, instead of the final version of the document, was submitted electronically to the Commission. Attached please find a corrected version of the Comments. We respectfully request that the filed version of the Comments be withdrawn and that all publicly available electronic and paper copies be replaced with the corrected version attached hereto. We have included a notation on the top of the first page of the document indicating that it is a corrected version in order to avoid confusion for the public. The correct version was served on the parties to the proceeding. We apologize for any inconvenience this may have caused.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Roger K. Toppins

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cc: John Berresford, Esq. (By Hand)  
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\*\*\* CORRECTED VERSION\*\*\*

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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To Section 706 of the Telecommunications )  
Act of 1996 )

CC Docket No. 98-146

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**COMMENTS OF SBC COMMUNICATIONS INC.**

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James D. Ellis  
Alfred G. Richter, Jr.  
Roger K. Toppins  
Mark P. Royer  
1401 Eye St. NW, 11<sup>th</sup> Floor  
Washington, D.C. 20005  
(202) 326-8898

Its Attorneys

March 20, 2000

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## SUMMARY

The Commission's deregulatory approach to the Internet and to the provision of enhanced and information services has contributed to the medium's explosive growth. SBC Communications Inc. (SBC) recommends that the Commission adopt a similar "hands-off" approach to the regulation of advanced telecommunications capabilities and advanced services.

The Commission should not prefer or disadvantage the deployment of any particular advanced service or technology in the way it defines advanced telecommunications capability. The Commission should be flexible and should recognize that some advanced services will utilize different (*i.e.*, asymmetrical) upstream and downstream speeds. The Commission should not mandate that a particular provider, service, or technology be used to serve a specific area or areas.

Deployment of advanced services is still in its initial phase. It is too early to tell whether or not such deployment has been on a "reasonable and timely" basis although it is proceeding apace. Three to five years more experience will give the Commission a better basis on which to determine whether such deployment has been "reasonable and timely."

SBC has approximately 170,000 subscribers to its Asymmetrical Digital Subscriber Line (ADSL) services, and expects to have a million ADSL subscribers by the end of the year. SBC has upgraded 722 central offices in its region to make them Digital Subscriber Line (DSL) capable and, within SBC's region, ADSL service is now available to over 12 million homes and businesses. SBC's goal is to make DSL capability available to 80 percent of its wireline customers by the end of 2002, and ultimately to

make the service available to 77 million Americans (which is more than a quarter of the entire U.S. population).

The Commission has already taken steps and made rulings that have had the effect of accelerating the growth and deployment of advanced services. SBC's \$6 billion "Project Pronto" and 30-market "National/Local" initiatives are prime examples of those results. By continuing and enhancing its "deregulatory" approach to the provision of advanced services, the Commission can accelerate deployment and spawn further market growth.

No single provider, service, or technology has an inherent advantage in the market for advanced services. For this reason, traditional (*i.e.*, legacy-based) regulation of advanced services is ill-advised and should be rejected in favor of a market-based approach. Specifically, the Commission should:

- Interpret section 706 of the Telecommunications Act of 1996 broadly to remove regulation of both new and old technologies used in the provision of advanced services;
- Identify and eliminate regulations which result in disparate regulation among providers of advanced services so that all such providers are regulated on the same or an equivalent basis;
- Refrain from imposing price regulation on the provision of advanced services;
- Remove restrictions on the bundling of customer premise equipment (CPE) with advanced, enhanced, or information services;
- Remove ownership limits and eligibility requirements for broadband radio licenses;
- Decline at this time to make advanced services subject to universal service funding.

By acting in this manner and adopting these measures, the Commission can fulfill its statutory mandate, stimulate investment, and promote the Congressional goal of encouraging “the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.”

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

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**COMMENTS OF SBC COMMUNICATIONS INC.**

SBC Communications Inc. (“SBC”) submits these comments in response to the Commission’s *Notice of Inquiry* (“*NOI*”) released February 18, 2000 in this proceeding. The *NOI* seeks comments on the definition of “advanced telecommunications capability;” whether advanced telecommunications capability is being deployed to “all Americans;” whether overall deployment is “reasonable and timely; ” and comments on what actions will “accelerate deployment” of advanced telecommunications capability.

I. Overview

SBC welcomes the opportunity to provide the Commission with its views and information on the deployment of advanced services’ capabilities. The deployment of advanced telecommunications capabilities is at an early stage and it is too soon to draw firm conclusions regarding the reasonableness or timeliness of such deployment. Advanced services are being deployed today by a number of providers using a number of different technologies and, again, it is too soon to reach firm views regarding any particular provider or technology.

However, SBC believes that there are ways in which the Commission can carry out its section 706 responsibilities, and that the Commission's "hands-off" approach to regulation of the Internet can serve as an efficient model for encouraging the deployment of advanced services and capabilities. By not regulating the Internet and, for the most part, the provision of information or enhanced services, the Commission contributed to what has now become explosive growth in subscribership and investment. In 1993, when the first commercial web browser hit the market, there were 1.3 million computers linked to the Internet. Four years later, that number jumped to over 16 million, and an estimated 80 million Americans are online today. In 1999, there were over 6,000 Internet Service Providers (ISPs) offering dial-up service to the Internet, and over 95% of Americans have access to at least four local ISPs. The "Internet economy" is now a \$300 billion industry, and it generated 1.2 million jobs in this country in 1998.<sup>1</sup>

SBC believes that the Commission can achieve similar results in the deployment and growth of advanced services by adopting a similar deregulatory, "hands off" approach. The approach should be flexible in defining advanced services, and should not favor or disfavor any particular advanced service provider or technology. The Commission should recognize the newness of the advanced services market; that there will be multiple providers of advanced services; that they will be building and using new networks; and that regulatory parity among those providers, with little or no regulation being applied to their services, is the best way to encourage investment and market growth.

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<sup>1</sup> Jason Oxman, Counsel for Advanced Communications Office of Plans and Policy, "The FCC and The Unregulation Of The Internet," OPP Working Paper No. 31, 1999 FCC LEXIS 3370 (1999).

Advanced services will blur the distinction between traditional telecommunications and information media and, as the media converge, the greatest challenge for the Commission will be looking at new ways to deregulate both. The Commission can start by examining the market as it develops and grows over the next three to five years, and by removing legacy-based regulations - which if applied to advanced services would inhibit market growth - the Commission can achieve many important public policy objectives including those set forth in section 706 of the Telecommunications Act of 1996 (Act) "to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans." The Commission should not impose legacy regulations on new technologies. Instead, the Commission should look toward deregulating the old, and should adopt a fresh approach that minimizes uncertainty and gives each provider an opportunity to flourish and grow. Moreover, the Commission should not interfere in the market at this stage by adopting new regulations governing the conduct of certain carriers, but should adopt a "wait and see" approach to see how the market develops.

## II. SBC's Role in The Deployment of Advanced Services

SBC currently has approximately 170,000 subscribers to its Asymmetrical Digital Subscriber Line (ADSL) services, and expects to have over a million subscribers by year's end. SBC first began offering ADSL service in California in July of 1998. Since that time, SBC has upgraded 722 central offices in its region to make them DSL capable and, within SBC's region, ADSL service is now available to over 12 million homes and businesses. In February 2000 alone, SBC subsidiaries launched ADSL service in 50 new markets, and will add 300 additional markets by year-end. At this deployment pace, SBC

is on track to exceed its initial goal of having 16 million DSL-eligible homes and businesses in its territory by the end of this year.

Overall DSL deployment is growing at a rate of 300 percent annually.<sup>2</sup> SBC's goal is to provide DSL capability to 80 percent of its wireline customers by the end of 2002, and ultimately to make the service available to 77 million Americans (which is more than a quarter of the entire U.S. population). Towards this end, SBC has embarked on "Project Pronto," a \$6 billion initiative, which seeks to bring DSL to 1300 central offices, and to expand DSL's reach by constructing neighborhood broadband gateways. Today, the phone line running from customers' homes to the DSL-equipped central office must be no longer than 3.3 miles, and must meet certain transmission criteria. Project Pronto seeks to eliminate the distance limitation and to dramatically increase service speeds by using fiber and neighborhood broadband gateways to move capabilities, now housed in central offices, closer to customers. Project Pronto involves SBC ordering, constructing, or placing approximately 1,122 fiber miles.

In addition to Project Pronto, SBC has been making investments in, and partnering with, other firms in order to expand its data-reach. SBC is in an alliance with, and has made an equity investment in, Williams Communications. Williams has a state-of-the-art, fiber-based network which is targeted to cover 33,000 miles and to connect 125 cities by year-end. SBC recently acquired Sterling Commerce, a leader in Internet-based, business-to-business e.commerce. Sterling provides Web-based solutions to nearly 50,000 customers worldwide, including 487 of the Fortune 500 companies.

SBC has also formed alliances with Infonet, Network Access Solutions (NAS), and Prodigy. SBC's strategic partnership with NAS, which was made through a joint

investment with Telmex, recognizes the strength of NAS as a provider of broadband and DSL-solutions for businesses. NAS will provide DSL service for SBC out-of-region, helping to accelerate the company's national expansion initiative.<sup>3</sup> Last, but not least, SBC's partnership with Prodigy will make it the third-largest Internet Service Provider in the United States.

### III. DEFINITION OF ADVANCED SERVICES CAPABILITY

In its first *Report* in this docket, the Commission defined advanced telecommunications capability "as having the capability of supporting, in both the provider-to-consumer (downstream) and the consumer-to-provider (upstream) directions, a speed (in technical terms, 'bandwidth') in excess of 200 kilobits per second (kbps) in the last mile."<sup>4</sup> The definition was based upon what the Commission perceived to be residential consumers' current demand for bandwidth. The *NOI* seeks comments on that definition. Specifically, the Commission seeks comments on whether 200 kbps is the appropriate minimum speed for defining advanced services; on whether the originating and receiving paths need to be the same bandwidth; and on the impact of the definition on the deployment and market viability of other high-speed services that fail to meet the definition.<sup>5</sup>

Technology and market demand will ultimately define and shape what are deemed to be "advanced services." As the Commission correctly notes, many residential consumers who currently subscribe to broadband services use upstream speeds of less

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<sup>2</sup> Milton Puryear, *Nova Research*, February 3, 2000.

<sup>3</sup> In fact, SBC recently announced that it would reach its goal of expanding into 30 new markets, a year ahead of schedule, placing it in the 50 biggest U.S. markets.

<sup>4</sup> *Advanced Services Report*, 14 FCC Rcd 2398 ¶¶ 20-25 (1999)

<sup>5</sup> *NOI*, ¶ 8 & ¶ 9

than 200 kbps.<sup>6</sup> In fact, many of the advanced services on the market today utilize upstream speeds of less than 200 kbps. For example, SBC's "basic" ADSL service package offers an upstream speed of 128 kbps.<sup>7</sup> IDSL, which is a symmetrical xDSL technology, utilizes an upstream speed of 144 Kbps. Also, cable operators and satellite data services rely on upstream speeds of less than 200 kbps with some utilizing less than 40 kbps for upstream, consumer-to-provider, transmissions.<sup>8</sup>

Higher speeds are generally used for downstream transmissions. SBC's "basic" ADSL service package, for example, offers downstream speeds of between 384 kbps and 1.5 megabits per second (mbps), and its "premium" ADSL service package offers downstream speeds of between 1.5 mbps and 6 mbps. Satellite data services offer downstream speeds of 400 kbps.<sup>9</sup> Commonly used protocols generally require one acknowledgement packet to be transmitted for every 10 data packets received. Thus, while a minimum 200 kbps speed may capture many of the downstream transmissions on the market that are considered broadband, it may be too high a threshold as a minimum upstream speed to be used in defining advanced services and advanced telecommunications capabilities."<sup>10</sup>

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<sup>6</sup> *NOI*, ¶ 9

<sup>7</sup> SBC's "premium" ADSL service package offers an upstream speed of 384 kbps.

<sup>8</sup> *NOI*, n. 18.

<sup>9</sup> *Id.*

<sup>10</sup> Using 200 kbps as the minimum speed in both directions for advanced services would not be consistent with the definitions used in the SBC/Ameritech and Bell Atlantic/GTE merger conditions. For purposes of the SBC/Ameritech merger conditions, advanced services were defined as "intrastate or interstate wireline telecommunications services, such as ADSL, IDSL, xDSL, Frame Relay, Cell Relay and VPOP-Dial Access Service (an SBC Frame Relay-based service) that rely on packetized technology and have the capability of supporting transmission speeds of at least 56 kilobits in both directions." Section 1, ¶ 2. The Bell Atlantic/GTE merger conditions also used 56 kbps as the definitional threshold speed.

Picking a minimum speed or a guaranteed rate also ignores technologies, such as cable modems and wireless, which operate on the ability to “burst” at a certain rate rather than at a constant, guaranteed rate. In evaluating this market, the Commission should avoid picking “winners” and “losers,” and should not eliminate technologies, like cable modems and wireless, which share a transport medium.

As stated previously, the Commission defines “advanced services” as having the capability to transmit at the same speeds in both directions, upstream and downstream.<sup>11</sup> The market imposes no such requirement. In fact, the current milieu of advanced services includes services which transmit at vastly different speeds in each direction (*see* ADSL and satellite data examples, *supra*). In some residential applications (*e.g.*, Internet use), consumers place far greater importance on the downstream speeds than on the upstream speeds because the majority of the transmissions (*e.g.*, downloading data) occur downstream. Moreover, packet switching protocols contemplate different speeds in order to fully utilize the downstream capability and, to do that, contemplate an upstream rate that is around only 10 percent or more of the downstream rate.

Technical limitations and economics also play a role in the deployment and engineering of the various advanced services technologies, such that it is not always feasible, much less necessary, to design an advanced service that operates at the same speed in both directions. Indeed, many of the DSL technologies were originally designed to handle video transmissions, which require very little in terms of a high-speed upstream rate for “control” messages (*e.g.*, start, stop, rewind, pause, etc.), while video streaming at a high rate is needed in the downstream direction. Although same speed transmissions in both directions may be desired in some instances (for example, to provide certain

applications or services to persons with disabilities), the Commission should not make same speed capability a requirement because it is not always necessary or desired by subscribers of advanced services.<sup>12</sup>

The Commission correctly acknowledges that advanced services are available from a number of different service providers using a variety of different serving technologies.<sup>13</sup> Most of the advanced service providers and their services are unregulated, and those providers are free to design and deploy advanced services according to the market and their own business plans.

The *NOI*, by focusing on the provision of *advanced telecommunications capability* and seeking to define that capability,<sup>14</sup> risks limiting or unduly burdening that particular type of advanced services capability, even though it is not the dominant or even the most prevalent advanced services' product or technology in the market at this time.<sup>15</sup> If the Commission defines advanced telecommunications capability as involving minimum speeds that are not similarly imposed on other media and that are not used by other media (*e.g.*, satellite, cable, and wireless), it could be interfering in the market and

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<sup>11</sup> *NOI*, ¶ 8

<sup>12</sup> If the Commission does decide to impose a *symmetrical* bandwidth requirement, it should do so at something lower than 200 kbps (*e.g.*, 56 kbps to 64 kbps) in order to accommodate the advanced services and technologies and upstream speeds that are currently on the market and in use today. On the other hand, if the Commission decides to change its definition to include only a minimum downstream speed and not the same speed in both directions, then it may not be as problematic to use 200 kbps as the minimum downstream rate.

<sup>13</sup> *NOI*, ¶ 12 (citing the availability of advanced services from cable television companies, incumbent local exchange carriers, competitive local exchange carriers, satellite companies, utility firms and wireless concerns, using cable modems, xDSL, satellite and fixed-wireless technologies).

<sup>14</sup> *NOI*, ¶¶ 1-9

<sup>15</sup> *Advanced Services Report*, ¶ 53-58 (recognizing that cable modems have outpaced wireline deployment of advanced services). Year-end 1999, cable modems passed 52

favoring or disfavoring (depending upon the result) the use of a particular service or technology. Doing so could subject wireline carriers to higher costs and greater burdens than are imposed on other providers and firms. It would also violate the section 706 mandate of technological neutrality.

Indeed, defining advanced telecommunications capability, as proposed, could actually deter the deployment of advanced services in certain areas. For example, it may well be more efficient to deploy advanced services in rural areas using a wireless alternative with the telephone network as the up-link with a 33.6 kbps speed in the upstream direction, or by using a satellite-data alternative. Defining advanced services as involving a minimum upstream speed of 200 kbps and requiring that such services be deployed at that speed in rural areas could result in higher costs than are necessary to provide advanced services in those areas and could lead to deployment, if at all, in those areas only through costly and inefficient means. Defining advanced services in that manner may actually discourage wireline deployment of the advanced service in such areas because of the higher economic costs.<sup>16</sup>

#### IV. ADVANCED SERVICES AVAILABILITY

The *NOI* seeks information on the actual and planned deployment of advanced services, both local and nationwide.<sup>17</sup> The Commission seeks to determine the extent to which advanced service capability is being offered to “all Americans.” In particular, the

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percent of U.S. homes compared to only 23 percent for DSL. (*Source: McKinsey Report*, p. 9)

<sup>16</sup> Fixed-wireless and satellite-data alternatives will be less likely to flourish in rural areas if they are required to compete with wireline offerings with higher, mandated speeds. Consequently, the definition of wireline advanced telecommunications services could very well influence deployment efforts and could produce market-hampering and dampening effects.

<sup>17</sup> *NOI*, ¶ 11.

Commission expresses an interest in determining the extent to which advanced services have been deployed in inner city areas, to elementary and secondary schools and classrooms, to rural areas, and to persons with disabilities.<sup>18</sup> The Commission also seeks comments on whether lower quality Plain Old Telephone Service ("POTS") has been an impediment to the deployment of advanced services in certain low income and inner city areas.<sup>19</sup>

#### A. Actual Deployment Data

As previously noted, SBC has already equipped 722 of the central offices in its region to be DSL- capable, and it currently has the capability to serve 12 million customers with ADSL. SBC's scheduled roll-out of ADSL service has progressed on different schedules by SBC company and by SBC State with Pacific Bell and California being the first to deploy ADSL in mid-1998.

As of the end of 1999, ADSL was available to approximately 34% of the households and businesses in SBC's territory throughout its thirteen States. The same approximate numbers, by SBC wireline-company territory, on that date were: 62% Pacific; 30% Southwestern Bell Telephone (SWBT); 27% Southern New England Telephone (SNET); and 18% Ameritech (AIT). The numbers do not reflect deployment on a targeted-wire center basis,<sup>20</sup> and simply reflect the number of in-region, and total by wireline territory, of the SBC households and businesses passed that are ADSL capable.<sup>21</sup>

#### B. Geographical and Demographic Deployment Data

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<sup>18</sup> *NOI*, ¶¶ 26-37

<sup>19</sup> *NOI*, ¶¶ 34-36.

<sup>20</sup> Those numbers are "proprietary," and are not available for public release at this time.

<sup>21</sup> In addition, SBC's web-site contains "Project Pronto" projected deployment information broken down by wire center. It also contains projected deployment information concerning "Pronto" remote terminals and neighborhood broadband gateways.

SBC either does not have or was unable to compile the requested geographic and demographic data in time for submission with these comments. However, as noted earlier, DSL availability is often a function of the distance of the end user premise from the serving central office and the electronics or range-extenders on any individual line used to provide analog voice service to the customer. In many cases, because of these limitations, SBC is unable to provide ADSL to customers located in the high income suburban communities, and more able in many cases to serve customers located in the inner cities. Also, SBC is required by quality of service rules adopted by a number of its State Commission to provide the same level of service (POTS) in all of its serving areas whether they are classified as urban or rural, inner city or in the suburbs.

After reviewing preliminary data, it does appear that DSL is not as widely available in the areas served that would be classified as rural.<sup>22</sup> As part of the SBC/Ameritech merger conditions, however, SBC made a commitment to deploy advanced services in certain rural and low income areas, and it is working to meet those commitments. In any event, it is possible that those rural areas could be served better by other means (i.e., fixed-wireless or satellite-data technologies). For example, DirectPC is a service which requires an 18-inch satellite dish and has the capability of providing 400 kbps access downstream. The end user must still use a landline modem to upload, but DirectPC claims it will have two-way operational capability in the next few months.<sup>23</sup>

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<sup>22</sup> SBC classifies as "rural," those wire centers having 15,000 access lines or less, except in the areas served by Southwestern Bell Telephone where the classification is 10,000 access lines or less.

<sup>23</sup> BROADBAND NETWORKING NEWS, "GM Hughes Re-Positions As Broadband Company," Vol. 10, No. 2 (January 18, 2000)

Although SBC does not have specific data for its serving areas, it was recently reported that, while only 63% of the nation's schools were wired to the Internet in 1994, that number is now 98%.<sup>24</sup>

#### V. DEPLOYMENT ON A REASONABLE AND TIMELY BASIS

The *NOI* seeks comments on whether overall deployment of advanced services and advanced telecommunications capability has occurred on a reasonable and timely basis.<sup>25</sup> The short answer, quite frankly, is that it is too early to tell. Wireline telephone companies and their affiliates are only in the early stages of deploying advanced telecommunications capabilities and much more will be known over the next three to five years.

The same is true of other types of advanced service technologies. Cable modem deployment is currently ahead of and more widely available than wireline-provided DSL, yet cable modem service itself has less than 2 million subscribers. Fixed-wireless and satellite-provided advanced service technologies have only recently come on the market, and have only "scratched the surface" of what many believe will be a growth opportunity.<sup>26</sup>

To be sure, there is no shortage of industry players or of competing technologies, and most everything these days seems to be e-commerce or Internet-based. What is becoming available now are alternative forms of Internet access and access at much faster speeds, particularly in the downstream direction.

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<sup>24</sup> *CBS News Sunday Morning*, March 19, 2000

<sup>25</sup> *NOI*, ¶¶ 39-41

<sup>26</sup> PC/Computing, "Broadband Web Access; Internet/Web/Online Service Information", p. 84 (April 1, 2000)

Current advanced service deployment levels notwithstanding, it would be premature at this time to assess whether such deployment has been either reasonable or timely. Since the deployment of advanced services is in its incipient phase, the Commission would be better off postponing its “reasonable and timely” determination, and making it at a later date.

## **VI. ACTIONS DESIGNED TO ACCELERATE DEPLOYMENT**

The Commission is required by section 706 of the Telecommunications Act of 1996 to take action to accelerate the deployment of advanced telecommunications capability, including removing barriers to infrastructure investment and adopting regulatory forbearance measures that promote competition in the local telecommunications market. The Commission seeks comments on the actions it can take to accelerate deployment in this area.<sup>27</sup>

The Commission has already taken certain steps and made a number of rulings that are designed to accelerate, or which are likely to have the effect of accelerating, the deployment of advanced services and advanced telecommunications capabilities in the United States. The Commission’s “hands-off” approach to regulation of the Internet and Internet-commerce has spawned the growth of advanced service providers and capabilities.<sup>28</sup> The Commission has approved a number of telecommunications and

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<sup>27</sup> *NOI*, ¶ 43

<sup>28</sup> *First Computer Inquiry, Tentative Decision*, 28 FCC 2d ¶ 20; Oxman, *supra*, n. 1. Confronted with the convergence of communications and information capabilities brought on by computer technology, the Commission established a national framework for the provision of enhanced services. The Commission defined enhanced services as not being common carrier services, excluding them from Title II regulation. At the same time, the Commission did not totally forsake jurisdiction over those services, but retained its ancillary jurisdiction over them under Title I of the Communications Act. Because of the interstate nature of such services and the importance of their provision to

media mergers that will give the merged firms the size and scope to invest in and deploy various state-of-the-art advanced services.<sup>29</sup>

The Commission has adopted a deregulatory approach in its issuance of radio licenses by not restricting the use of or the services that can be provided using those licenses.<sup>30</sup> The Commission has encouraged investment in and the deployment of advanced services by declining in certain circumstances to require their unbundling and discounted resale.<sup>31</sup>

The Commission's willingness to consider market-based alternatives to outmoded and market-limiting restrictions on the provision of advanced services has set the stage for unprecedented levels of investment in the provision of those services. Moreover, the market for advanced services is unique. As the Commission recognized in its last *Advanced Services Report*, no provider has any inherent advantage in this market, and it

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the Commission's goals and priorities, it preoccupied the field and preempted inconsistent State regulation. Similarly, the Commission recognized the importance to competition of companies being able to attach non-telephone company- provided Customer Premise Equipment (CPE) to the Public Switched Telephone Network (PSTN). Here, again, the Commission deregulated the provision of such equipment and preempted inconsistent State regulation. Today, no one would question the wisdom of these decisions, since they created a national framework that fostered in an era of entrepreneurial and explosive market growth.

<sup>29</sup> Re Applications of Pacific Telesis Group and SBC Communications, *Memorandum Opinion and Order*, 12 FCC Rcd 2624 (1997); Re Applications of Ameritech Corp. and SBC Communications, *Memorandum Opinion and Order*, 14 FCC Rcd 14712 ¶ 470 (1999); Re Applications from Tele-Communications, Inc. For Transfers To AT&T Corp., *Memorandum Opinion and Order*, 14 FCC Rcd 3160 (1999).

<sup>30</sup> "FCC Revisits Licensing and Service Rules for 39 Ghz Band,": News Release (rel. July 14, 1999) available at <http://www.fcc.gov/Bureaus/Wireless/NewsReleases/1999/nrw19029.html>; Oxman, *supra*, n. 56.

<sup>31</sup> In the Matter of the Deployment of Wireline Services Offering Advanced Telecommunications Capability, *Memorandum Opinion and Order, and Notice of Proposed Rulemaking*, 13 FCC Rcd 24011 (1998); *Id.*, *Second Report and Order*, 14 FCC Rcd 19237 (1999).

will involve the deployment of substantially new networks, technologies, and services.<sup>32</sup> Packet technology has become the market equalizer such that new networks can compete with traditional telecommunications networks. There are no constraints on access to capital or the technology to build packet switched networks. Firms exist with the size and scope to invest in and deploy various state-of-the-art advanced services and technologies. Thus, it is important for the Commission to be flexible, and to be receptive to considering this market as ripe for a dynamically new type of regulatory approach.

Unlike regulation of traditional legacy systems and services, given the newness and evolving nature of the advanced services market, regulation (to the extent it is deemed necessary) should be technology neutral so as to encourage innovation and the widest deployment of advanced services. The Commission should take care not to favor or disfavor any particular provider, service, or technology. The Commission should not take any steps which will directly or indirectly mandate the use of a particular technology - be it wireline DSL, satellite, fixed-wireless, cable modems, etc. - nor should the Commission mandate that any one provider or type of provider serve a particular area or areas.

While the Commission should monitor deployment and market developments, it should not impose legacy regulation on new technologies and, as technologies and media converge, the Commission should take steps to examine, consistent with its section 706 mandate, and eventually (if not immediately) forebear from regulating all technologies that are used in the provision of advanced services.<sup>33</sup>

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<sup>32</sup> 14 FCC Rcd 2398 ¶ 48 (1999)

<sup>33</sup> SBC recommends that the Commission take such action, notwithstanding the fact that it is too early to tell at this time whether or not the deployment of advanced services has

The Commission should be particularly interested in ensuring that there is parity in the regulation of providers of advanced services.<sup>34</sup> Towards that end, the Commission should undertake an investigation into the areas where disparate regulation among advanced service providers and their affiliates exists, and should move quickly to remove and eliminate those disparities. As part of this process, the Commission should establish a national paradigm which is applicable to everyone's provision of advanced services. A national paradigm is necessary to provide regulatory certainty, which will encourage innovation and investment, and to avoid State regulation that could be inconsistent with achieving the goals of the federal program to accelerate the provision and deployment of advanced services.

A scheme of disparate regulation will distort competition and preclude technology and service innovation by treating one or more of the available providers able to serve the mass market differently from other providers. Section 706, by endorsing forbearance and technological neutrality, seeks to avoid that result. The Consumer Energy Council of America (CECA) recently issued findings at the Broadband Access summit and concluded that the whole question of regulatory asymmetry:

“...is a good candidate for a generic rule in favor of adopting policies that impose symmetrical burdens and benefits on all

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occurred on a "reasonable and timely" basis. Only after making that determination, and answering it in the negative, is the Commission obligated to take any affirmative action under section 706. Nevertheless, SBC believes that section 706 does not preclude the Commission from acting in the interim and adopting measures that, in its opinion, will accelerate the deployment of advanced services and advanced telecommunications capabilities.

<sup>34</sup> There are currently two primary providers of broadband capability to the mass market - cable TV companies and wireline telephone companies and their affiliates. Although the telephone companies trail the cable operators in the deployment of advanced services, the telephone companies have been subjected to a more stringent set of unbundling and nondiscrimination obligations, while there is essentially no regulation or any "like" regulation of cable operators.

broadband providers. Recognizing the challenge imposed on policy makers by this recommendation, regulatory symmetry, in general, is important to ensuring fair competition and optimizing consumer benefits from broadband technology.”<sup>35</sup>

The Commission should reconsider the extent of its authority under section 706 of the Act and should broadly interpret that authority, as a grant of authority to override other provisions of the Act and existing Commission regulations, to the extent that the Commission determines that such an interpretation is in the public interest and will promote the Congressional goal of accelerating the deployment of advanced services in the United States. A fundamental tension exists between the Commission’s implementation of the “necessary and impair” standard of section 251(d)(2) for ILECs, and a cable TV facility operator’s control over third party access to and use of its facility. Such distinctions do not promote fairness or symmetry. Nor do they, as CECA notes, result in “optimizing consumer benefits from broadband technology.” Moreover, applying disparate regulation of this type is fundamentally at odds with the approach that the Commission has taken on other issues.<sup>36</sup> By addressing such issues up front and, where they exist, eliminating regulatory disparities, the Commission can take on a visionary role and foster in a new era of competitive neutrality, which more than anything, will help accelerate and promote the deployment of advanced services.

Specifically, the Commission should refrain from regulating the pricing of advanced services. Competitive market forces are already affecting those prices and

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<sup>35</sup> Findings of the Consumer Energy Council of America, p. 65

<sup>36</sup> For example, in deregulating CPE, the Commission did so for carriers and non-carriers, alike, and few question the benefits that resulted from that decision. There, as here, the Commission was under pressure not to so by special interest groups, but it stood firm and made what is now in almost everyone's minds (consumers in particular) the correct decision.

driving them downward,<sup>37</sup> and there is no need for regulatory intervention in this area. On a practical level, given the competitiveness of the market for advanced services, it is difficult to identify why there is any need for price regulation of any advanced service provider.

The Commission should not apply many of its legacy rules to companies and their affiliates that are providing advanced services. For example, the Commission should remove restrictions placed on certain carriers that inhibit their ability to bundle customer premise equipment (CPE) with the provision of advanced and other telecommunications or information services. In this manner, the Commission will be giving consumers more options and a greater ability to economically obtain reasonably priced packages of all the components needed in order to fully enjoy their advanced services. Cable companies are not restricted in their ability to market cable modems with their high speed access services, and wireline companies and their affiliates should be allowed to also market CPE with their advanced service offerings. Consumer acceptance and desire for advanced services should not be hindered by unnecessary restrictions on bundling, particularly in light of the competitive nature of advanced services.

The Commission has imposed limits on the amount of radio spectrum various carriers can obtain in a given market. Those limits can hinder investment and preclude broadband deployment in areas where wireless may be a viable market alternative. Similarly, the Commission has adopted eligibility restrictions on the licensing of radio spectrum. Those restrictions can also have the effect of chilling investment and limiting the number of broadband deployment options. Consistent with the objectives of section

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<sup>37</sup> On February 14, 2000, SBC announced that it would begin offering its "basic" ADSL service for \$39.95 a month with free equipment and installation, saving customers \$300.

706 and with the concept of regulatory symmetry implemented in a way that is technology neutral, it would be appropriate for the Commission to remove those restrictions for wireless technologies that can be used in the provision of advanced services.

The Commission can adopt other stimuli to promote and accelerate the deployment of advanced services and advanced telecommunications capabilities. The Commission can forebear from requiring any section 214 applications with regard to facilities that will be deployed and used, in whole or in part, to provision advanced services. The Commission can incent incumbent local exchange carriers (ILECs) to invest in and deploy such new or additional facilities by declaring them exempt from Total Element Long Run Incremental Cost (TELRIC) pricing.

The Commission should not allow universal service funds to be used at this time to support the provision of advanced services. SBC believes that it is not necessary to make that decision at this stage of deployment.<sup>38</sup>

## **VII. CONCLUSION**

The Commission should adopt a “hands-off” approach to the deployment of advanced services and advanced telecommunications capabilities. Technology and market demand should ultimately define and shape what are determined to be “advanced services” and “advanced telecommunications capabilities.”

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<sup>38</sup> This is true, particularly since there are limits on the amount of universal service fund taxation that can be imposed on carriers and their end users and because of the uncertainty in exactly how much it would cost to promote the deployment of advanced services through the universal service fund.

The Commission should not favor or disfavor any particular advanced service provider or technology, and should take steps to ensure that all such providers are regulated on the same or an equivalent basis.

It is too early to determine the reasonableness and timeliness of the deployment of advanced services and technologies. The Commission should postpone that determination for another three to five years.

A “hands-off” deregulatory approach is the best way to encourage and to accelerate the deployment of advanced services and advanced telecommunications capabilities to all Americans.

Respectfully submitted,

SBC COMMUNICATIONS INC.



By: /s/ Mark Royer

James D. Ellis

Alfred G. Richter, Jr.

Roger K. Toppins

Mark P. Royer

1401 Eye St. NW, 11<sup>th</sup> Floor

Washington, D.C. 20005

(202) 326-8898

Its Attorneys

CERTIFICATE OF SERVICE

I, Mark P. Royer, hereby certify that a true and correct copy of the above and foregoing comments were served on this 20<sup>th</sup> day of March, 2000, to the following individuals:

---

Mark P. Royer

ITS INC  
1231 20TH STREET, NW  
WASHINGTON, D.C. 20036

CAROL C HENDERSON  
EXECUTIVE DIRECTOR  
AMERICAN LIBRARY ASSOCIATION  
WASHINGTON OFFICE  
1301 PENNSYLVANIA AVE NW  
SUITE 403  
WASHINGTON DC 20004

DAVID A IRWIN  
MOULTRIE INDEPENDENT TELEPHONE COMPANY  
IRWIN CAMPBELL & TANNENWALD  
1730 RHODE ISLAND AVENUE NW  
SUITE 200  
WASHINGTON DC 20036-3101

HENRY GOLDBERG  
W KENNETH FERREE  
GOLDBERG OODLES WIENER & WRIC  
COUNSEL FOR OPTEL INC  
1229 NINETEENTH ST NW  
WASHINGTON DC 20036

LAWRENCE G MALONE  
GENERAL COUNSEL  
PUBLIC SERVICE COMMISSION OF THE STATE OF  
NEW YORK  
THREE EMPIRE STATE PLAZA  
ALBANY NY 12223

L MARIE GUILLORY  
NATIONAL TELEPHONE COOPERATIVE  
ASSOCIATION  
2626 PENNSYLVANIA AVE NW  
WASHINGTON DC 20037

RICHARD A BEVERLY  
GENERAL COUNSEL  
PUBLIC SERVICE COMMISSION OF THE DISTRICT  
OF COLUMBIA  
717 FOURTEENTH S T NW  
WASHINGTON DC 20005

RUSSELL M BLAU  
KATHLEEN L GREENAN  
SWIDLER BERLIN SHEREFF FRIEDMA  
3000 K STREET NW SUITE 300  
WASHINGTON DC 20007

M ROBERT SUTHERLAND  
MICHAEL A TANNER BELLSOUTH CORPORATION  
1155 PEACHTREE ST NE  
SUITE 1700  
ATLANTA GA 30309

HOWARD J SYMONS GIL M STOBEL  
MINTZ LEVIN CORN FERRIS GLOVSK  
AND POPEO  
COUNSEL FOR CABLEVISION SYSTEM  
701 PENNSYLVANIA AVE NW STE900  
WASHINGTON DC 20004-2608

ANDREA D WILLIAMS  
CELLULAR TELECOMMUNICATIONS  
INDUSTRY ASSOCIATION  
1250 CONNECTI CUT A VE NW  
WASHINGTON DC 20036

DONALD WEIGHTMAN  
COALITION OF UTAH INDEPENDENT  
SERVICE PROVIDERS  
510 C STREET NE  
WASHINGTON DC 20002

RONALD L PLESSER  
MARK J OCONNOR  
PIPER & MARBURY LLP COUNSEL FOR  
COMMERCIAL INTERNET eXchange  
ASSOCIATION  
1200 NINETEEN ST NW  
WASHINGTON DC 20036

CHRISTOPHER W SAVAGE  
COLE RAYWID & BRAVERMAN  
COUNSEL FOR COMCAST  
1919 PENNSYLVANIA AVE NW  
WASHINGTON DC 20006

GAILLPOLIVY  
GTE SERVICE CORPORATION  
1850 M STREET NW SUITE 1200  
WASHINGTON DC 20036

SUSAN M BID  
DAVID RUBASHIGN  
MEDIAONE GROUP INC  
1919 PENNSYLVANIA AVE NW  
SUITE610  
WASHINGTON DC 20006

BRIAN CONBOY  
THOMAS JONES  
WILLKIE FARR & GALLAGHER  
COUNSEL FOR TIME WARNER CABLE  
THREE LAFAYETTE CENTRE  
WASHINGTON DC 20036

ROBERT B MCKENNA  
U S WEST INC  
1020 19TH STREET NW  
WASHINGTON DC 20036

STEVEN GOROSH  
VICE PRESIDENT & GENERAL COUNSEL  
NORTHPOINT COMMUNICATIONS INC  
222 SUTTER STREET  
SAN FRANCISCO CA 94108

STEPHEN N BROWN  
DIRECTOR OF PUBLIC & TECHNOLOGICAL  
NEW WORLD PARADIGM LTD  
4012TH STREET SOUTH STE 1421  
ARLINGTON VA 22202

JONATHAN JACOB NADLER  
BRIAN J MCHUGH  
SQUIRE SANDERS & DEMPSEY LLP  
COUNSEL FOR THE INFORMATION  
TECHNOLOGY ASSOCIATION OF AMERICA  
1201 PENNSYLVANIA AVE NW  
WASHINGTON DC 20044

JEFFRY H SMITH  
GVNW INC/MANAGEMENT  
8050 SW WARM SPRINGS STREET SUITE  
TUALATIN OR 97062

EMILY C HEWITT  
GENERAL COUNSEL  
GENERAL SERVICE ADMINISTRATION  
1800 F STREET NW ROOM 4002  
WASHINGTON DC 20405

KECIA BONEY  
DALE DIXON  
MCI COMMUNICATIONS CORPORATION  
1801 PENNSYLVANIA AVE NW  
WASHINGTON DC 20006

CATHERINE R SLOAN  
DAVID N PORTER  
RICHARD L FRUCHTERMAN III  
WORLD COM INC  
1120 CONNECTICUT AVE NW STE 400  
WASHINGTON DC 20036

MICHAEL S SLOMIN  
BELL COMMUNICATION RESEARCH I  
445 SOUTH STREET MCC-1 J30R  
MORRISTOWN NJ 076960

MARK c ROSENBLUM  
AVA B KLEINMAN  
AT&T CORP  
295 NOR TH MAPLE A VENUE  
ROOM 3252J1  
BASKING RIDGE NJ 07920

BRAD E MUTSCHELKNAUS  
J O HN J HEITMANN  
KELLY DRYE & WARREN LLP  
COUNSEL FOR e.spire COMMUNICATIONS INC  
1200 19TH STREET NW  
FIFTH FLOOR  
WASHINGTON DC 20036

RILEY M MURPHY  
EXECUTIVE VICE PRESIDENT  
AND GENERAL COUNSEL  
e.spire COMMUNICATIONS INC  
133 NATIONAL BUSINESS PARKWAY  
SUITE 200  
ANNAPOLIS JUNCTION MD 20701

DAVID ELLEN ESQ  
CABLEVISION SYSTEMS CORP  
ONE MEDIA CROSSWAYS  
WOODBURY NY 11797

WILLIAM J EVANS  
PARSONS BEHLE & LATIMER  
COUNSEL FOR CUIISP  
ONE UTAH CENTER  
201 OUSTH MAIN STREET  
SUITE 1800  
SALT LAKE CITY UT 45898

DONNA N LAMPERT  
YARON DORI  
MINTZ LEVEN COHN FERRIS  
GLOVSKY AND POPEO  
COUNSEL FOR MEDIA FUSION CORPORATION  
WASHINGTON DC 20004-2608

DANA FRIX  
KATHLEEN L GREENAN  
SWIDLER BERIN SHEREFF FRIEDMAN  
COUNSEL FOR PHONES FOR ALL INC  
3000 K STREET NW STE 300  
WASHINGTON DC 20007

TERRENCE J FERGUSON  
SENIOR VICE PRESIDENT AND SPECIAL COUNSEL  
LEVEL 3 COMMUNICATIONS INC  
3555 FARNAM STREET  
OMAHA NE 68131

DAVID F FISHER  
VICE PRESIDENT GENERAL COUNSEL  
AND CORPORATE SECRETARY  
ADC TELECOMMUNICATIONS INC  
12501 WHITEWATER DRIVE  
MINNETONKA MN 55343

ROBERTH GRIFFEN  
BELL ATLANTIC CORP  
1320 NORTH COURT HOUSE ROAD  
EIGHTH FLOOR  
ARLINGTON VA 22201

JOSEPH T GARRITY  
SENIOR DIRECTOR  
QWEST COMMUNICATIONS  
555 17<sup>TH</sup> STREET  
DENVER CO 80202

PETER A ROHRBACK  
LINDA L OLIVER  
HOGAN & HARTSON  
COUNSEL FOR QWEST COMMUNICATIONS  
CORPORATION  
555 THIRTEENTH ST NW  
WASHINGTON DC 20004

MARGOT SMILEY HUMPHREY  
KOTEEN & NAFTALIN LLP  
COUNSEL FOR TDS TELECOMMUNICATIONS  
CORP  
1150 CONNECTICUT AVENUE NW  
SUITE 1000  
WASHINGTON DC 20036

GEORGE VRADENBURG III  
WILLIAM W BURRINGTON  
AMERICA ONLINE INC  
1101 CONNECTICUT AVENUE NW SUITE 400  
WASHINGTON DC 20036

JONATHAN E CANIS  
KELLEY DRYE & WARREN  
COUNSEL FOR INTERMEDIA  
COMMUNICATIONS  
1200 NINETEENTH ST NW FIFTH FLOOR  
WASHINGTON DC 20036

MARGOT SMILEY HUMPHREY  
KOTEEN & NAFTALIN  
COUNSEL FOR NATIONAL RURAL TELECOM  
ASSOCIATION  
1150 CONNECTICUT AVENUE NW SUITE 1000  
WASHINGTON DC 20036-4104

KATHRYN CLODFELTER  
CRAWFORD COUNTY COMMUNITY N  
6341 W NEWTON STEWARD RD  
TASWELL IN 47175

LEON M KESTENBAUM  
JAY C KEITHLEY  
SPRINT CORPORATION  
1850 M STREET NW SUITE 1110  
WASHINGTON DC 20036

JIM WARNER  
UNIVERSITY OF CALIFORNIA  
CATS -COMM BLDG  
SANTA CRUZ CA 95064

CARESSA D BENNET  
GREGORY W WHITEAKER  
BENNET & BENNET  
1019 NINETEENTH ST NW SUITE 500  
WASHINGTON DC 20036

MICHAEL L THEIS  
KIESLING CONSULTING  
6401 ODANA ROAD  
MADISON WI 53719

ANDREW D LIPMAN  
TAMAR E FINN  
SWIDLER BERLIN SHEREFF FRIEDMAN  
3000 K STREET NW SUITE 300  
WASHINGTON DC 20007

JOSEPH W MILLER  
WILLIAM COMMUNICATIONS INC  
ONE WILLIAMS CENTER  
SUITE 4100  
TULSA OK 74102

LAURENCE E HARRIS  
DAVID S TURETSKY  
TELIGENT INC  
8065 LEESBURG PIKE SUITE 400  
VIENNA VA 22182

PHILIP L VERVEER  
GUNNAR D HALLEY  
WILLKIE FARR & GALLASHER  
COUNSEL FOR TELIGENT INC  
THREE LAFAYETTE CENTRE  
1155 21ST STNW  
WASHINGTON DC 20036

JOHN G LAMB JR  
NORTHERN TELECOM INC  
2100 LAKESIDE BOULEVARD  
RICHARDSON TEXAS 75081-1599

STEPHEN L GOODMAN  
HALPRIN TEMPLE GOODMAN & SUGI  
COUNSEL FOR NORTHERN TELECOM  
1100 NEW YORK AVENUE NW  
SUITE 650 EAST TOWER  
WASHINGTON DC 20005

PETER D KEISLER  
MICHAEL DOSS  
SIDLEY & AUSTIN  
COUNSEL FOR AT&T CORP  
1722 EYE STREET NW  
WASHINGTON DC 20006

JAMES BALLER  
SEAN STOKES  
THE BALLER LAW GROUP PC  
1820 JEFFERSON PLACE NW SUITE 200  
WASHINGTON DC 20036

ROBERT W MCCAUSLAND  
VICE PRESIDENT REGULATORY AND  
INTERCONNECTION  
ALLEGIANCE TELECOM INC  
1950 STEMMON FREEWAY SUITE 3026  
DALLAS TX 75207-3118

LAWRENCE E SARJEANT  
LINDA KENT  
UNITED STATES TELEPHONE ASSOCI  
1401 H STREET NW STE 600  
WASHINGTON DC 20005

MITCHELL LAZARUS  
FLETCHER HEALD & HILDRETH  
COUNSEL FOR THE INTERNET SERVI  
PROVIDRES' CONSOR TIUM  
1300 NORTH 17TH ST 111TH FLOOR  
ARLINGTON V A 22209

KATHRYN A KLEIMAN  
INTERNET MATTERS  
PO BOX 25876  
ALEXANDRA VA 22313

WAYNE MOVERS  
VI CE PRESIDENT  
WIRELESS INFORMATION NETWORK  
1200 19TH STREET NW SUITE 300  
WASHINGTON DC 20036-2401

RANDALL B LOWE  
J TODD METCALF  
PIPER & MARBURY  
COUNSEL FOR TRANSWIRE COMMUNICATIONS  
INC  
1200 NINETEENTH ST NW  
WASHINGTON DC 20036

JEFFREY L SHELDON  
VICE PRESIDENT & GENERAL COUNS  
UTC  
1140 CONNECTICUT AVE NW  
SUITE 1140  
WASHINGTON DC 20036

MARY MCDERMOTT  
CHIEF OF STAFF AND SENIOR VICE  
PRESIDENT GOVERNMENT RELATIONS  
PERSONAL COMMUNICATIONS INDUSTRY  
ASSOCIATION  
500 MONTGOMERY STREET  
SUITE 700  
ALEXANDRIA VA 22314

KATHLEEN L GREENAN  
SWIDLER BERLIN SHEREFF FRIEDMAN  
FOR WINST AR COMMUNICA TIONS  
3000 K STREET NW  
WASHINGTON DC 20007

TODDATKIN  
6011 W CONTAOORA DR  
WEST VALLEY CITY UT 84128

CHARLES A ELDERING  
PROGRESS AND FREEDOM FOUNDATION  
PRESIDENT  
TELECOM PARTNERS L TD  
900 TOWN CENTER  
NEW BRITAIN PA 18901

JEFFREY A EISENACH  
PRESIDENT  
PROGRESS & FREEDOM FOUNDATION  
1301 K STREET NW SUITE 550 E  
WASHINGTON DC 20005

ALAN MCCOLLOUGH  
PRESIDENT & COO  
CIRCUIT CITY STORES INC  
9950 MAYLAND DRIVE  
RICHMOND V A 23233

JOSEPH A OODLES  
GOLDBERG OODLES WIENER & WRIGHT  
COUNSEL FOR PANAMSAT CORPORATION  
1229 NINETEENTH STREET NW  
WASHINGTON DC 20036

W SCOTT MCCOLLOUGH  
MCCOLLOUGH AND ASSOCIATES  
COUNSEL FOR THE TEXAS INTERNET  
PROVIDERS ASSOCIATI ON  
1801 NORTH LAMAR SUITE 104  
AUSTIN TX 78701

RONALD L PLESSER  
JAMES J HALPERT  
PIPER & MARBURY  
COUNSEL FOR PSINET INC  
SEVENTH FLOOR  
1200 NINETEENTH ST NW  
WASHINGTON DC 20036

HOWARD J SYMONS  
MICHELL M MUNDT  
MINTZ LEVIN COHN FERRIS GLOVSK  
POPEO  
COUNSEL FOR THE NATIONAL CABLE  
TELEVISION ASSOCIATION INC  
701 PENNSYLVANIA AVE NW  
SUITE 900  
WASHINGTON DC 20004

DANIEL L BRENNER  
NEAL M GOLDBERG  
NATIONAL CABLE TELEVISION ASSOCIATION  
INC  
1724 MASSACHUSETTS AVENUE NW  
WASHINGTON DC 20036

CHARLES M BREWER  
CHAIRMAN AND CHIEF EXECUTIVE OFFICER  
MINDSPRING ENTERPRISES INC  
1430 WEST PEACHTREE ST  
SUITE 400  
ATLANTA GA 30309

KEVIN TMPANE  
ESTEHR H ROSENTHAL  
FIRSTWORLD COMMUNICATIONS INC  
9333 GENESEE AVENUE  
SAN DIEGO CA 92121

JEFFREY BLUMENFELD  
GLEN B MANISHIN  
BLUMENFELD & COHEN --TECHNOLOGY  
GROUP  
COUNSEL FOR RHYTHMS NETWORKING  
FIRSTWORLD COMMUNICATIONS INC  
REGIONAL TELECOM  
1615 M ST NW STE 700  
WASHINGTON DC 20036

BRUCE KUSHNICK  
EXECUTIVE DIRECTOR  
NEW NETWORKS INSTITUTE  
826 BROADWAY SUITE 900  
NEW YORK NY 10003

JORDAN CLARK  
PRESIDENT  
UNITED HOMEOWNERS ASSOCIATION  
655 15TH STREET NW SUITE 460  
WASHINGTON DC 20005

CHERYL A TRITT  
CHARLES H KENNEDY  
MORRISON & FOERSTER  
COUNSEL TO VERIO INC  
2000 PENNSYLVANIA AVE NW  
WASHINGTON DC 20006-1888

MAUREEN A LEWIS  
GENERAL COUNSEL  
ALLIANCE FOR PUBLIC TECHNOLOG  
901 15TH STREET NW SUITE 230  
WASHINGTON DC 20038

MARK A GRANNIS  
EVAN R GRAYER  
HARRIS WILTSHIRE & GRANNIS  
1200 EIGHTEENTH STREET NW  
WASHINGTON DC 20036

RI CHARD J METZGER  
EMILY M WILLIAMS  
TELECOMMUNICATIONS SERVICES  
888 17<sup>TH</sup> ST NW SUITE 900  
WASHINGTON DC 20006

CYNTHIA S THOMAS  
DIRECTOR REGULATOR AFFAIRS  
PERSONAL COMMUNICATIONS INDUSTRY  
ASSOCIATION  
500 MONTGOMERY STREET  
SUITE 700  
ALEXANDRIA VA 22314-1561

DOUGLAS E HART  
FROST & JACOBS  
COUNSEL FOR CINCINNATI BELL  
TELEPHONE COMPANY  
201 EAST FIFTH STREET  
CINCINNA TI OH 45202

PAUL JSINDERBRAND  
ROBERT D PRIMOSCH  
JONA THAN V COHEN  
WILKINSON BARKER KNAUER & QUINN  
2300 N STREET NW  
SUITE 700  
WASHINGTON DC 20037

CARL K OSHIRO  
COUNSELOR A T LAW  
UNIVERSAL SERVICE ALLIANCE  
100 FIRS T STREET  
SUITE 2540  
SAN FRANCISCO CA 94 105

PETER B RENN AN  
F AIR TELECOM  
163 THIRD AVENUE SUITE 251  
NEW YORK NY 10003

ASHLEY C SCHANNA UER  
A TTORNEY  
INFORMATION RENAISSANCE  
600 GRANT STREET  
SUITE 2980  
PITTSBURG PA 15219

LAWRENCE J SPIWAK  
GENERAL COUNSEL  
TECHNOLOGY ENTREPRENEUS COALITION  
5335 WISCONSIN AVENUE NW  
SUITE 440  
WASHINGTON DC 20015

PAUL G MADISON  
MICHAEL J FRANCESCONI  
KELLEY D RYE & WARREN  
1200 195TH STREET NW STE 500  
WASHINGTON DC 20036

STUART POLIKOFF  
DIRECTOR OF GOVERNMENT RELATIONS  
OPASTCO  
21 DUPONT CIRCLE NW  
SUITE 700  
WASHINGTON DC 20036

DAVID J NEWBURGER  
NEWBURGER & VOSSMEYER  
COUNSEL FOR CAMPAIGN FOR  
TELECOMMUNICATION ACCESS  
ONE METROPOLITAN SQUARE STE 24  
ST LOUIS MO 63102

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