

4. *Customer Service and Consumer Protection*

NLC believes cities should exercise their power to enact and enforce more rigorous cable customer service standards than the minimum federal standards in communities where conditions warrant, and should recommend additional national standards to the FCC, where appropriate.

5. *Technical, Equipment and Signal Standards*

NLC supports federal law that allows municipalities, as franchise authorities, to include facilities and equipment requirements in negotiated franchise agreements. NLC believes federal law that prevents municipalities from prohibiting, conditioning, or restricting the use of any type of equipment used by a cable provider or other video providers should be repealed.

a. *Minimum Standards:*

NLC supports minimum national signal quality technical standards established by the FCC and updated periodically to reflect improvements in cable technology. A franchising authority may enforce the FCC's standards or may apply to the FCC for a waiver to impose more stringent standards. NLC also believes that the FCC must establish standards to ensure compatibility between cable system services and consumer electronics equipment, and to ensure that cable viewers have access to the same emergency information as is offered by the emergency broadcast system.

b. *Joint Agreement:*

The NLC is committed to the positive and cooperative joint enforcement of the joint agreement on technical standards concluded in 1992 between the FCC and representatives of the NLC, NATOA, the U.S. Conference of Mayors, the National Association of Counties, the National Cable Television Association and the Community Antenna Television Association ("Joint Agreement"). The FCC should consult with all parties to the Joint Agreement to seek their recommendations for future revisions, when warranted by changes in circumstances and in technology.

c. *Signal Compatibility:*

NLC believes cable television operators, telephone companies or their affiliates, and operators of other multi-channel video programming systems should be required to ensure that their signals are compatible with consumer electronic equipment, such as television tuners, receivers, and video recorders, and remote control devices. Equipment manufacturers should employ cable-ready technology compatible with cable systems and other

multi-channel video programming systems in television tuners, receivers and video recorders. Moreover, cable television subscribers and subscribers to other multi-channel video programming systems should not be required to use converter or subscriber terminals which in any way defeat or otherwise inhibit unreasonably any normal function of the television tuner, receiver, or video recorder, other than to interdict those programming services not desired by subscribers. Such equipment requirements should be established through an FCC advisory committee which includes local franchising authorities, and should take into account technical and economic feasibility and the cost and benefit to consumers of compatibility requirements.

6. *Must-Carry Requirements*

NLC feels that federal "must-carry" requirements serve important goals, such as promoting the viewership of public broadcasting systems and preserving the nation's system of free over-the-air broadcast service.

NLC supports federal law that prohibits broadcasters from using available PEG channels to transmit must-carry signals without a city's approval. Such approval should be obtained in advance of the use of unused PEG channels and such use of PEG channels should be temporary. Federal must-carry rules for television broadcast stations include a retransmission consent provision which permits television broadcasters to negotiate compensation for carriage of their signals by cable systems as an alternative to "must-carry".

7. *Channel Placement and Numbering for Cable*

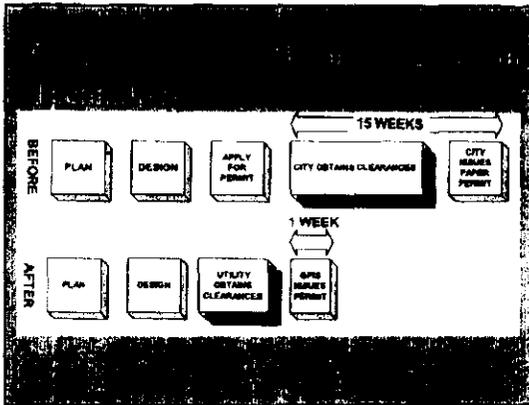
NLC believes cable franchising authorities should regulate, or reach an agreement with a cable operator, on the placement and numbering of access channels to better protect consumers. Franchising authorities should also be authorized to prohibit any changes in channel assignments on tiers subject to rate regulation unless approved by the franchising authority.

Changes in alignment for services not subject to rate regulation (e.g., pay-per-view and premium programming) should be preceded by reasonable notice to the franchising authority and subscribers.

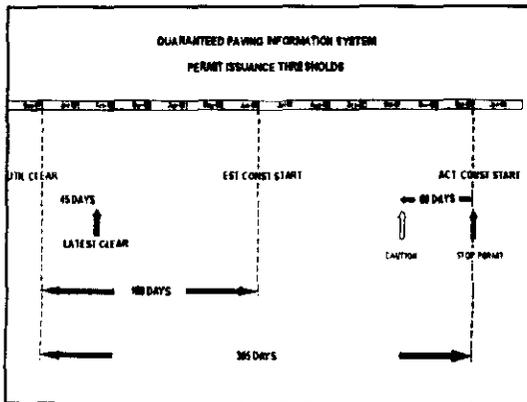
8. *Vertical Integration and Concentration of Ownership*

a. *Minority Opportunities in Communications:*

NLC generally opposes non-competitive broadcast ownership caps that may facilitate concentrated ownership by a limited number of individuals. NLC will work to protect diversity in broadcast ownership which, in turn,



- Guaranteed Paving Information System
- Web-based Utility and Street Maintenance Coordination
- Project Management System
- Electronic Permitting System



demonstrate that its franchise fees are insufficient to cover the cost of rate regulation.

d. Rate Structure and Service Options:

NLC believes that all communications systems should offer a uniform rate structure throughout a franchise area on a nondiscriminatory basis regardless of whether they are subject to rate regulation. Uniform rates help ensure the availability of a minimum level of service to low-income, handicapped and elderly persons. At the option of the franchiser, cable operators should be required to provide lifeline service at regulated rates or to offer discounts on its services to such persons.

Related, NLC believes that franchise authorities should work with communications services providers to develop a tiered-service option plan for consumers. Those options must be realistic in terms of cost and coverage for both consumers and providers, with the basic tier option including PEG service. When negotiating franchise agreements, NLC also recommends that franchise authorities consider the successful 1995 efforts of a Minnesota franchise authority that secured free cable installation and universal PEG service to all residents regardless of subscription to the provider's service.

e. Rate Complaints:

NLC opposes current federal requirements that restrict the ability of any individual subscriber from filing complaints directly with the FCC about expanded basic tier rates.

f. Late Fees for Consumers:

NLC opposes excessive late payment charges to consumers by communications services providers and urges the federal government to establish guidelines that establish fair and reasonable rates. Providers retain remedies and recourse to terminate service on repeatedly delinquent accounts; however, excessive late charges place a disproportionate financial burden on low- and moderate-income consumers. In general, NLC feels late charges per residential customer should not exceed a flat rate of \$1.50 per payment cycle even if the law allows for a higher fee, and that such fees not be imposed until after an account is more than 30 days delinquent.

2. *Public Access Requirements*

a. Public, Educational, and Government (PEG):

NLC believes federal law should require cable systems and other multi-channel video programming providers, regardless of the means of distribution, to meet PEG access obligations as determined by franchising authorities. (See related policy at Section 7.0 (B)(4)

Federal/Local Jurisdiction Over Cable, and 7.0 (C)(1)(d) Rate Structure and Service Options.)

Federal law should (i) authorize franchising authorities to require cable system providers and multi-channel video programming providers to provide both operating and capital support for access facilities, equipment, staffing, and maintenance at levels sufficient to ensure the viability of access without any limitations or credits against franchise fees; (ii) not limit franchising authorities ability to designate entities to provide access services; and (iii) continue to provide liability protection wherever a franchising authority, access entity, or cable operator does not exercise editorial control over content.

b. Institutional Networks:

NLC also believes telecommunications policies on the national, state and municipal levels should encourage and support cities in the development and operation of Institutional Networks ("I-Nets"). I-Nets are an integral part of the local telecommunications infrastructure, providing valuable alternative video, voice, and data services to local governments, schools, hospitals, other public institutions, and the public. Furthermore, they can serve as a critical gateway to other telecommunications networks. The creation of innovative services on I-Nets can be a catalyst for the broader deployment of advanced telecommunications services within the community.

I-Nets promote the full and effective use of local networks while at the same time permitting service providers to offer important benefits to the community in return for the use of public rights-of-way.

3. *Leased Access to Cable Systems*

The FCC is required to establish reasonable rates, terms, and conditions for cable operators to set aside channel capacity for programmers seeking to lease such channel capacity. These provisions promote the goals of competition and diversity in programming. The FCC should require cable operators to make available publicly a tariff specifying reasonable rates, terms and conditions for leased access, and permit franchising authorities to review and approve such rates, terms and conditions. In the exercise of its authority over leased access, the FCC should consider the views of the local franchising authority with regard to community needs and interests.

NLC urges the FCC to (a) require all multi-channel video programming distributors that lease transmission infrastructure from a common carrier, but who themselves do not own or operate such infrastructure, to pay franchise fees to the appropriate franchise authority; and (b) classify such distributors as "cable providers" as defined under federal law.

8. *Municipal Planning and Oversight*

NLC believes cities must maintain a critical role in planning and policy-setting for all telecommunications markets serving customers in local jurisdictions, given the importance of telecommunications to local infrastructures and municipal responsibilities as trustees of public property. In addition, because of the critical importance of public rights-of-way, municipalities must have flexibility to manage access to it, and to direct private providers on related matters including, but not limited to, maintenance, safeguards, and standards of construction and occupancy.

Such markets include any technologies related to the telecommunications services including, but not limited to, cable television, interexchange carriers (IXCs), microwave and satellite programming distributors, wireless communications, teleport facilities, video dialtone services, alternative or competitive access providers (sometimes called Metropolitan Area Networks, Alternative Access Vendors or Alternative Local Transport Providers), wireless and hybrid communications services (i.e., MMDS or multichannel multipoint distribution services, ITFS {instructional televised fixed services}, DBS {direct broadcast satellites}, PCNs {personal communications network}, etc.) infrastructure companies, and local exchange carriers.

In its planning and oversight role, local government should consider fee and compensation requirements, facilities, standards, siting and design, service availability, public rights-of-way availability, and other applicable local requirements, including franchising requirements, where appropriate. Such a role should be developed in conjunction with local government telecommunications planning and needs analysis.

9. *Local Authority Over Programming*

NLC believes cities should be permitted to enforce programming and programming-related requirements contained in franchise agreements including, for example, the number of channels that must be carried on any tier, requirements for PEG channel capacity, and a lifeline service tier requirement, to the extent consistent with the U.S. Constitution. (See also Section 7.0 (B) (4) Federal/Local Jurisdiction Over Cable and Telecommunications Services, 7.0 (B) (11) Equal and Fair Access.)

10. *Local Authority Over Radio Frequency Radiation Emissions*

The Federal Government should recognize the necessity of state and local governments to regulate radio frequency radiation emissions. Recognizing that the federal

government has established standards for radio frequency emissions, local governments must be permitted to evaluate, enforce, and monitor these minimum standards based upon local needs and interests.

C. **Services**

1. *Rate Regulation*

a. **Defining "Effective Competition" for Cable Systems:**

A cable system should be considered subject to "effective competition" under federal law and thereby free from rate regulation if and only if it faces direct and meaningful competition. NLC believes such competitors should be considered to offer "effective competition" only if it is available to at least 80 percent of the households, and actually subscribed to by 30 percent of the households in those portions of the cable community to which the cable system's service is also available. Competitors may include, for instance, telephone companies or their affiliates, and independent multi-channel video programming distributors (other than a satellite dish programming distributor, a satellite master antenna television ("SMATV") system, or multi-channel video programming distributor using similar technology) offering approximately the same number and type of programming services.

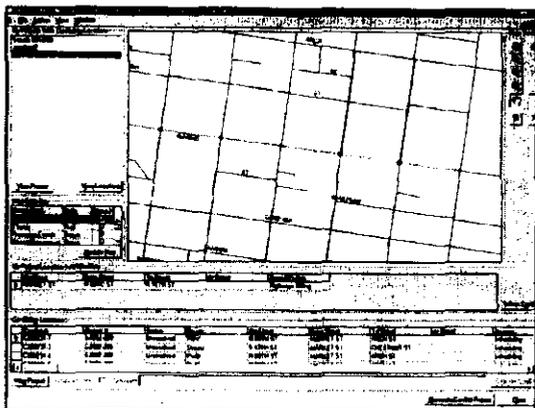
b. **Local Authority:**

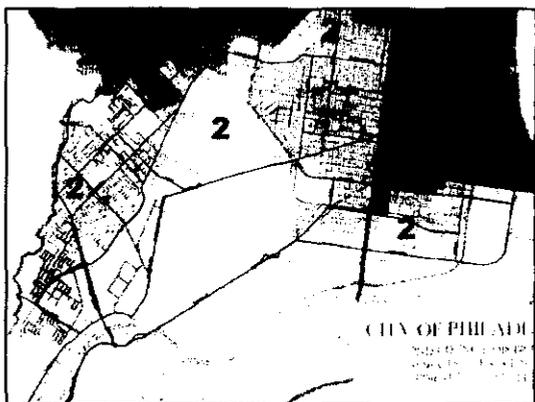
NLC believes franchising authorities should regulate the rate and charges for basic and any other communications or programming services (including charges for cable installation, equipment, and other related services), except for programming offered on a per-channel or per-program basis that is not supported by revenues from advertisements.

NLC further believes that the manner in which rates and charges are regulated should be left to local determination. A state should not preempt the rights of cities to regulate rates. Federal rate regulations should permit franchising authorities sufficient latitude to enable all local circumstances to be taken into account in regulating rates and should permit a city to apply the rate methodology (benchmark or cost-of-service) that the city determines produces the most reasonable rate.

c. **FCC's Role in Cities With Limited Resources:**

A city without the resources to regulate rates should have the right to request the FCC to do so, and the FCC should not establish as a condition that a franchising authority





- Proprietary Policies of Utility
- Several Stops at Same Location
- Different Contractor
- Multiple Permits Delay Completion

- promotion of minority and female business enterprises, equal employment opportunity, and affirmative action;
- programming diversity in response to community needs and interests which is consistent with appropriate constitutional principles;
- ensuring the provision of facilities, equipment and financial support for PEG access organizations;
- consumer protection and enforcement of meaningful customer service standards, consumer choice, competitive consumer pricing;
- continuity of service in cases of abandonment or termination of franchises;
- prior approval or disapproval of transfers;
- the construction and operation of cable systems;
- the use of municipally-owned/controlled facilities, including, but not limited to poles & conduits (and the fees for such use);
- universal, nondiscriminatory service availability to subscribers;
- the inspection of books and accounts, the conduct of audits;
- determining the use of franchise fees;
- enforcement of signal quality standards; and
- development of long-range plans, strategies, policies and procedures for telecommunications implementation.

5. *FCC Authority*

The Federal Communications Commission ("FCC") should be barred from regulating or preempting traditional state and local authority in any area where not expressly directed to act by federal statute.

6. *Franchise Renewals for Cable and Telecommunications Services*

Current federal law contains complex and ambiguous renewal provisions which favor incumbent communications services providers and cable operators, and it is inconsistent with normal city franchising practices. These provisions are difficult for cities to

implement in a manner which protects community needs and interests and should be deleted entirely or revised.

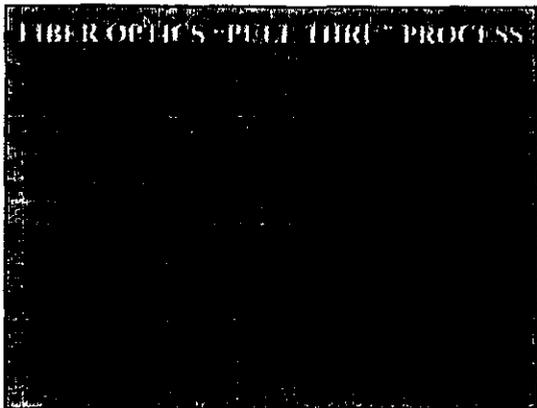
NLC believes, cable and other related franchise renewals should be handled in accordance with applicable local law. At a minimum, federal law should be revised to:

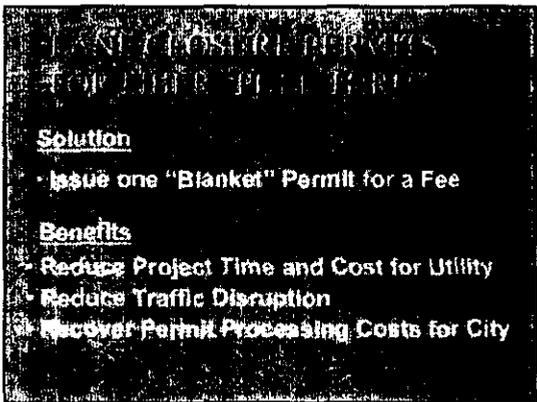
- allow franchising authorities to consider competitive renewal proposals at the time of renewal and to grant the franchise to a competitor that will better serve the community, provided that a franchising authority is not required to grant an incumbent's bid;
- provide franchising authorities with broadened authority to review all elements of the operators past performance without regard to transfers of ownership during the franchise term;
- limit administrative and procedural complexities and establish an "arbitrary and capricious" standard for judicial review of a franchising authority's renewal decision;
- expand the time periods for making a renewal decision; and
- permit franchising authorities to deny renewal requests if a cable operator is not in substantial compliance with material franchise requirements or has provided inadequate service, regardless of whether a franchising authority had notice of, or provided a cable operator notice of, franchise violations and inadequate service.

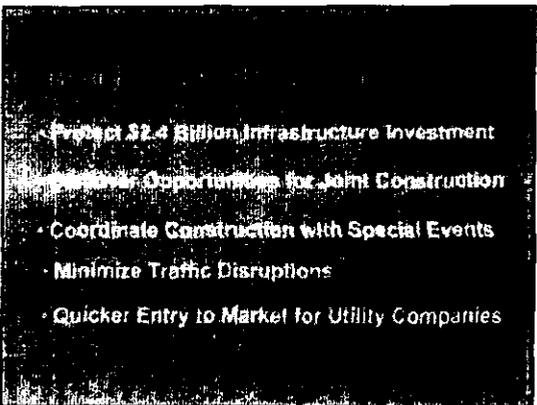
7. *Franchise Transfers for Cable and Telecommunications Services*

Federal law allows a franchising authority 120 days from the date of notice to review a transfer request that is accompanied by information required by the FCC and by the franchise or state or local law.

NLC believes neither federal nor state law should limit franchising authorities' existing right to disapprove a proposed transfer upon any reasonable grounds, including, but not limited to, (a) a finding of past failure to comply with the franchise; (b) a refusal by the transferee to agree to reasonable business terms or comply with the terms of the franchise in the future; or (c) a finding of economic non-viability (as reflected in the purchase price and the economic impact of these acquisition costs on the community). Federal and state law should not limit a franchising authority's ability to collect all information necessary to fully review a buyer's qualifications, and should not place a time limit on such review.







employed to meet the needs of the municipality, which may not necessarily be in the form that a requester desires.

- Municipalities should develop policies and procedures for the release of public information that comports with applicable federal and state freedom of information requests and ensures the ability of local governments to protect their communities' interests and investments, with regard to information assets.
- Municipalities should work with other local government organizations and state level institutions to defeat legislative initiatives to curtail these essential rights.

2. *First Amendment*

The National League of Cities should participate as a "friend of the court", or as a party, in lawsuits where cable operators, or other communications and information services providers, challenge government regulation on First Amendment or other constitutional grounds. NLC should encourage the courts to recognize and adopt the following propositions:

- current cable television distribution facilities are predominantly a natural monopoly;
- most cable service providers make permanent and extensive use of the public's rights-of-way;
- public, educational, and governmental ("PEG") access promotes the First Amendment interests of the public;
- universal service promotes the First Amendment interests of the public;
- the First Amendment interests of the public and franchising authorities in assuring programming diversity and a vigorous marketplace of ideas outweigh the cable operators' First Amendment interest in providing cable service; and
- cable television and other communications information services are a unique media of expression that requires a different First Amendment standard from that applied to the print medium, but similar to that applied to the broadcast medium. Further these unique media of expression are evolving and should be routinely monitored.

3. *Damages Immunity*

Some local governments have been threatened with extraordinary monetary judgments in lawsuits by communications services operators and providers that challenge the fundamental right to exercise regulatory jurisdiction authorized by federal, state or local laws or regulations. NLC supports the damages immunity provisions in the federal cable act. To the extent that local government damages immunity provisions are not clearly set forth in other sections of the *Federal Telecommunications Act of 1996*, they should be clarified.

4. *Federal/Local Jurisdiction Over Cable and Telecommunications Services*

NLC believes federal jurisdiction should be limited to matters expressly and unambiguously designated by statute as federal matters. All other matters should be left to state and local control, and cities should have primary authority over local and other related intrastate matters. Federal and state laws and regulations should recognize, respect and not restrict local government authority. Municipalities must not be prevented from installing municipally owned cable or telecommunications systems. Further, states should not establish limitations on local regulation which are more restrictive than the limitations of federal law.

Municipal regulation of cable television is essential for several reasons: (1) to prevent cable's misuse of its predominantly-natural monopoly position; (2) to manage cable's use of the valuable and limited public rights-of-way; (3) to protect consumer interests; (4) to foster public, educational, and government ("PEG") use of the system; and (5) to protect the community's cable-related needs and interests for which their rights-of-way are being occupied.

As authorities exercising police power to promote public health, safety and welfare, municipalities, should be responsible for local matters such as:

- management and control of the public rights-of-way;
- franchise awards, modifications, transfers, renewals, revocations, enforcement and administration;
- ownership structure (e.g., municipal or private) including the extent of public participation and minority ownership and contracting opportunities;
- design of telecommunications system facilities, equipment, and other communications services;

- Draft Master ROW Ordinance
- Establish Utility Coordination Committee
- Modernize Regulations
- Invest in ROW Inspection
- Develop System to Record As-Builts

www.apwa.net

granting of franchises and licenses, the promulgation of construction, restoration and maintenance standards, the levying of taxes, the charging of fees, the levying of rental charges and the issuance of permits. The federal government should take no actions which restrict the authority of municipalities in this area.

As telecommunications and other services (that utilize public rights-of-way) are offered by different providers and as services are bundled together or separated (segmented) in different ways, cities need the ability to adjust their regulations to the new provider environment. The federal government should remove federal barriers to this adjustment process by cities. Federal law should not preempt municipal regulations which require advance notification to the municipality of the offering of new services (using the right-of-way) or when the use of existing facilities within the right-of-way are converted to new uses. In addition service providers should be encouraged to deploy new technologies and not withhold implementation to the detriment of a community.

3. *Intergovernmental Issues*

The continuing changes in telecommunications require a permanent mechanism to facilitate dialog between the federal government, state governments and municipalities. High level forums need to be created to formulate public policy that responds to this change in ways that are sensitive to intergovernmental issues. Mechanisms such as the Local and State Government Advisory Committee to the Federal Communications Commission provide such forums and foster this type of dialog.

NLC wishes to see the rapid universal deployment of advanced telecommunications and other information technologies, but it remains an underlying core principle of NLC that the federal government should preserve existing local government authority to regulate cable television and telecommunications entities and to secure the historic police powers of local government as reflected in NLC policies.

4. *Convergence*

Telecommunications services are no longer bound to a single, exclusive engineering or physical delivery mechanism. Convergence refers to delivering services over non-traditional platforms, utilizing multiple technologies to deliver a particular service, and delivering multiple services over a single platform. A common example is telephone (voice) and data delivered by cable.

Past regulatory regimes tied to specific communications services delivered via specific technologies will be irrelevant and unworkable in a market where "cable companies," "phone companies," and their competitors

deliver packages of comparable services via different technologies. Likewise, traditional "special privileges", such as perpetual free occupancy of rights-of-way granted to the "baby bells" corporate ancestors in the 1890's are neither appropriate nor fair in a deregulated competitive market.

The impact of commercial communications infrastructure upon public property, public health and safety, reasonable compensation for commercial use of public property and wireless frequency spectrum, are among legitimate components of a new regulatory recipe for communications systems experiencing technological convergence.

The federal government should ensure that laws governing telecommunications recognize converging technologies in a way that preserves and strengthens the ability of local governments to advance community interests.

B. **Local Authority**

1. *Electronic Access to Local Government Data*

NLC believes local governments have an important role as collectors and caretakers of vital information about the people and communities they govern. This information is a unique resource used by governments to plan and deliver services and, under state and local guidelines, by citizens and the private sector to enhance educational, social and economic objectives.

Federal law or regulation should not require the electronic availability of public information gathered by municipal governments.

NLC opposes any federal law or regulation, which would limit a municipality's discretion in determining what information, held by a municipality, should be made available on-line.

A municipal government should have no legal exposure under federal law or regulation if a municipality makes information, which is public under its state law, available to any member of the public.

To safeguard municipal interests and promote expanded use of innovative information technologies:

- Municipalities should never be required to provide data electronically, or in an electronic format that involves a significant development cost without reasonable compensation for, at minimum, the marginal cost of providing the service. Cities should be allowed to provide information in the format that is generally

NLC

b. Matching grants to provide additional sites for telecommunications access by the public in municipal facilities, including, but not limited to city buildings, community centers, housing authorities, parks and recreation sites and other community facilities.

c. Technology grants for municipal governments without financial resources for technology acquisition. These modernization grants should be targeted to bring cities to a basic level of municipal service with eligibility based on a number of factors including size and per capita income. It should particularly address needs of small cities with low income populations.

d. Tax credits to providers that deploy high-speed (broad-band) telecommunications services in areas that are documented as underserved.

e. Tax credits for donations of technology by individuals and other entities.

f. Aid to entities that refurbish, distribute and provide technical support for donated technology equipment to underserved populations.

g. Classification of a greater range of advanced telecommunications services as essential (basic), eligible for subsidization.

h. Classification of cable modem service as a "cable" service, thereby subjecting the service to municipal oversight in regard to many aspects of universal service.

i. Technology-neutral eligibility for subsidies to advance universal service. Services provided with wires, cables, wireless or any other means which can meet defined performance criteria should be eligible for support programs.

While federal policies should be designed to maximize the availability of all services throughout the country, NLC believes that federal programs to support affordable access to the following services should be a priority:

- a. Capacity for all residences to be connected to the Internet
- b. All schools, should have the capacity of high speed connection to the Internet
- c. Every public library should have a connection to the Internet
- d. All households should have a connection to 911 services.

e. A lifeline package of affordable telecommunications services should be available to all households.

Financing of Universal Availability

All providers of telecommunications (information technology service providers) should contribute to programs of universal telecommunications service on an equitable and non-discriminatory basis. Programs to support universal service should be predictable and sufficient to meet documented and projected needs. Such programs should be accorded resources and a priority in federal policy consistent with their status as a basic, essential service.

2. *Protecting Public Health and Safety*

Municipalities have a fundamental responsibility to protect the public health, welfare and safety through the exercise of police powers vested in them by action of their residents or the operation of state law. Through such mechanisms as: direct provision of services, regulation of basic telecommunications, cable and advanced telecommunications services, franchising and licensing, city governments maintain and have oversight of multiple systems including telecommunications, essential to the public health and welfare of their residents and to further the economic health of their communities.

Public rights-of-way are properties controlled by municipalities for the benefit of the public, essential for transportation of people, goods and services and for utilities including power, clean water, stormwater, sanitary sewer and telecommunications. Municipal governments engage in a variety of activities related to rights-of-way to protect the public safety and welfare, to minimize service disruptions to the public, to protect public investments in rights-of way, to assure the proper placement of service lines, to regulate the placement of service facilities and to realize the value of this public asset. Underlying these municipal roles and control is the fact that the use of publicly-owned rights-of-way is a privilege, not a right. Use of municipal rights-of-way are not entitlements flowing from the Federal Telecommunications Act. Local governments are legally and ethically obligated to control and charge for the use of rights-of-way. Moreover, the federal government must not mandate to local governments that the various users of rights-of-way (sewer, electricity, cable etc.) be treated in precisely the same fashion, given that these industries place dissimilar demands and risks on the rights-of-way.

Municipalities authorized to manage and receive compensation for commercial use of the public rights of way may conduct a number of activities to achieve their management goals including, but not limited to the

2002 INFORMATION TECHNOLOGY AND COMMUNICATIONS

7.00 Communications and Information Services

A. Principles

NLC believes that infrastructure for communications and information technology is developing as an essential service, as important as water, power, sanitation, and transportation. Human and economic development directly or indirectly depend on information technology and communications. Communications and information technology have proved to be integral to providing, efficient, equitable, and affordable health care, social services, public safety, education and job training, transportation and other life-line services. NLC believes that essential utilities should be universally available to all citizens, and that infrastructure should not be developed in a manner that bypasses neighborhoods of cities or cities, nor should service bundling and pricing preclude affordable access. NLC considers communications systems the major vehicle for rapid dissemination of information. For local communities, the existence of an affordable and modern communications infrastructure means efficient access to information, increased productivity, new economic development opportunities, and an improved quality of life.

NLC believes that our nation's communications and information services policy should (1) ensure the provision of high quality basic services that meet local needs and are available at affordable rates to all consumers; (2) preserve state and local authority to regulate and manage public rights-of-way, zoning, collect just and fair compensation, and protect public safety and welfare; (3) confine deregulation to fully competitive communications markets; (4) eliminate monopolistic and anti-competitive pricing and related practices; (5) encourage technological innovation and implementation of new services; (6) protect citizens from intrusive and unnecessary violations of their privacy while allowing local government to determine that certain public information should not be included in online information for the safety of those concerned; and (7) enable the American telecommunications industry to compete in the global market.

In this chapter, unless specifically noted otherwise, the word telecommunications shall include voice, video, data, and all other services delivered over cable, telephone, fiber-optic, wireless and all other platforms.

1. *Universal Availability of Telecommunications*

Implementing the principles of universal availability requires participation from the private, non-profit and

governmental sectors. The private sector's role is to meet consumer demands by innovation and engaging actively in the market through product and service development and support. The non-profit sector may provide support for individuals that are not adequately served by the market or government programs.

Governmental programs are required in this area because the market cannot fully meet local, state and national objectives. Barriers of geography, technology, settlement patterns, poverty and other factors stand in the way. All levels of government have a role in ensuring universal availability. Despite the move to de-regulate services, states through their public utility regulatory structures have significant and changing roles in this area. Municipal and other local governments can make significant contributions to universal availability through community needs analysis, regulation, financing, franchising, direct provision of services, progressive management of city properties including right-of-ways and a variety of other means. The federal government must not preempt municipal authority to act in the interest of their citizens, especially where fully competitive and affordable services do not exist.

The federal government, because of its scale and geographic scope, has a unique role in providing redistribution of service costs so that a national system of universal affordable access exists. These roles are critical in order to bridge gaps between universal service and what the private sector provides in response to the market.

In order to carry out this central role in ensuring affordable access, the federal government should encourage the provision of universal availability through regulation, tax policies, incentives or other means. Such programs could include financial and technical assistance to local governments.

Among the specific actions and programs that the federal government should implement to promote universal access are the following:

a. The e-rate program providing communications assistance to schools (k-12, adult services) and libraries operated by the federal Communications Commission and funded by universal service fund contributions.



James K. Smith
Executive Director-
Federal Regulatory

SBC Telecommunications, Inc.
1401 I Street, N.W.
Suite 1100
Washington, D.C. 20005
Phone 202 326-8883
Fax 202 408-4801

ORIGINAL

EX PARTE OR LATE FILED

March 25, 2002

RECEIVED

MAR 25 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
445 12th Street, SW
TW-A-325-Lobby
Washington, DC 20554

Re: Ex Parte Statement
CC Docket Nos. 01-338, 96-98, 98-147

Dear Mr. Caton:

On March 22, 2002 James K. Smith, Christopher T. Rice, Gary L. Phillips, and Bruce R. Byrd on behalf of SBC Communications, Inc. met with Dorothy Attwood, Scott Bergmann, Michelle Carey, Jeff Carlisle, Brent Olson, and Tom Navin of the FCC. The purpose of the meeting was to discuss the infrastructure implications of unbundling loops as set forth in the attachment hereto.

Sincerely,

Attachment

Cc: Dorothy Attwood
Scott Bergmann
Michelle Carey
Jeff Carlisle
Brent Olson
Tom Navin

No. of Copies rec'd cr12
List ABCDE

Result: Less Competition, Less Choice

- ▲ **Driving these additional costs into BPON deployment necessarily will chill investment in BPON and other FTTH solutions, which are risky investments regardless of regulatory hurdles.**
- ▲ **The end result will be lost opportunity – for customer choice and competition, as cable modem service providers become more dominant and monopoly-entrenched in the provision of advanced and video services.**
- ▲ **There is significant demand for BPON-like FTTH complete solutions for voice, data and video, but SBC cannot commit to the investment necessary to offer vibrant competition for this demand due to regulatory uncertainty.**

***BPON - Fiber to the Home
(FTTH)
Impacts of CLEC Access***

March 22, 2002

CLEC Access Significantly Increases Infrastructure Costs

- ▲ **For SBC, providing CLEC access as described will increase initial infrastructure costs alone by at least 20%.**
 - This figure accounts for SBC's use of OCDs already deployed in connection with Project Pronto.

- ▲ **The cost ramifications for other providers considering deploying BPON are more significant, as they have not already deployed OCDs in their networks.**
 - As a result, BPON infrastructure costs for these other providers will increase by 30% to 50% over the already high costs of such all-fiber architectures.

Background

▲ Industry Dynamics

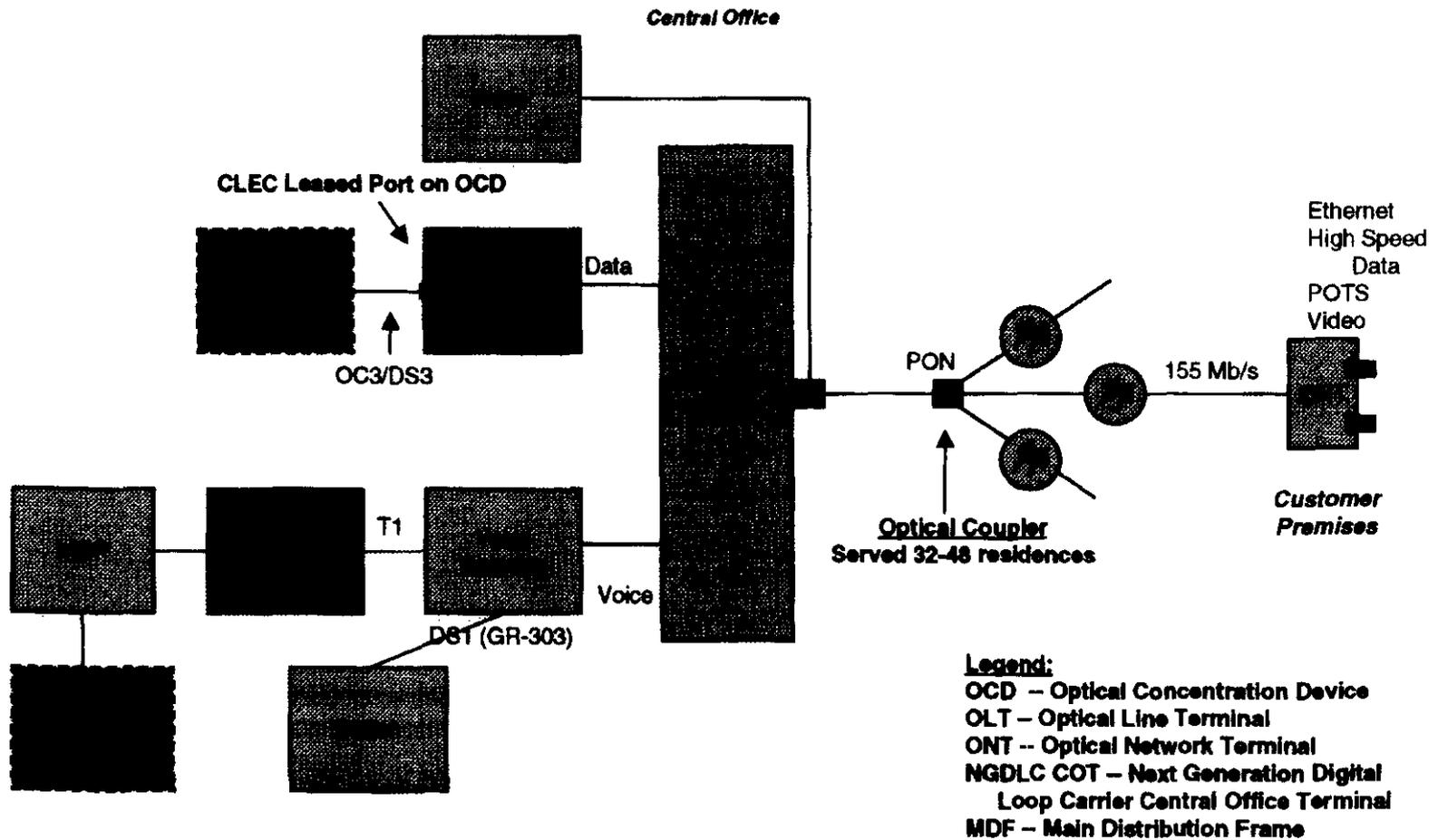
- **Broadband mass market is driven primarily by competition among various technologies that provision similar retail services, e.G., Cable modem, DSL, fixed wireless, satellite**
- **Broadband mass market is particularly price-sensitive**

▲ BPON

- **Under the proper circumstances, the BPON architecture more cost effectively extends fiber deeper into the network, indeed, right to the customer premises**
- **More fiber = more bandwidth = more robust services for end users**
- **BPON can greatly enhance and expand the overall internet economy, both now and in the future, as it is a highly scalable architecture with bandwidth limited only by the electronics placed at each end of the fiber**
- **BPON also ultimately will enable telecommunications providers to compete in the video market with existing incumbent cable providers**

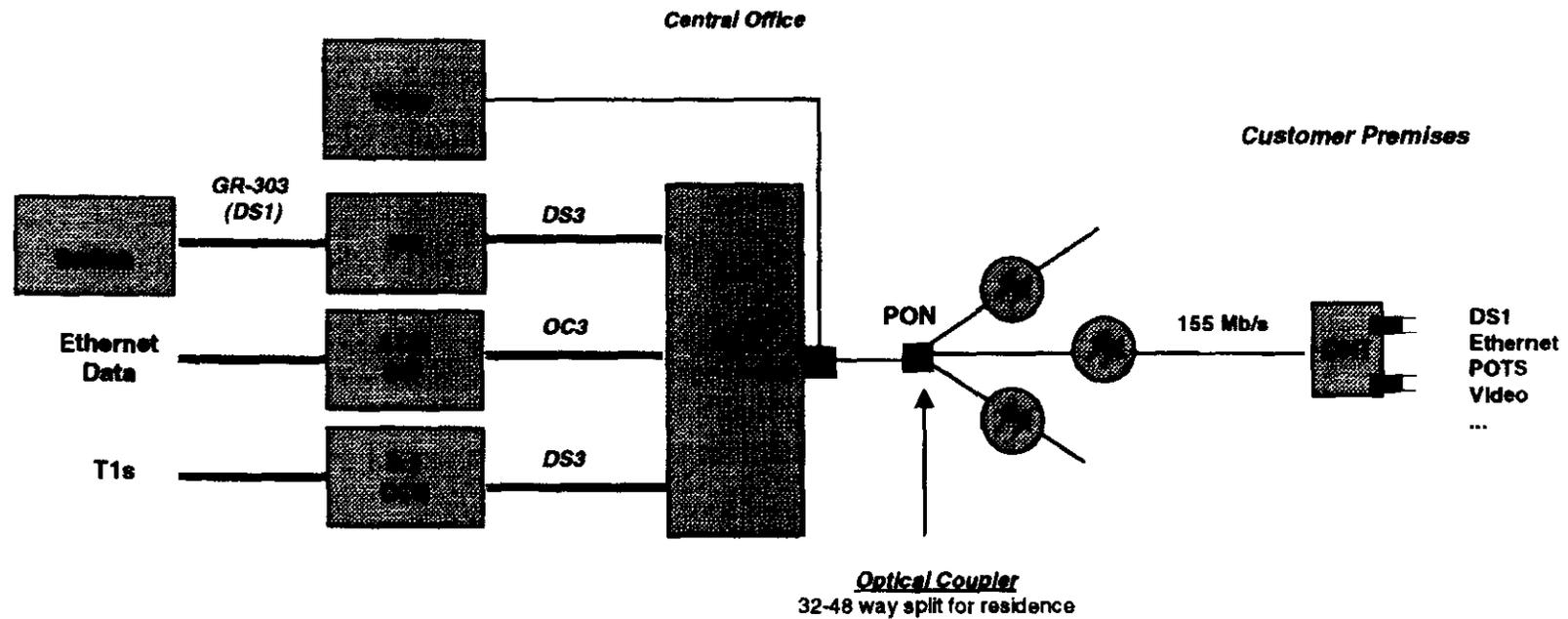
BPON FTTH - - Prospective Regulatory Impacts

BPON - With CLEC Access



Background

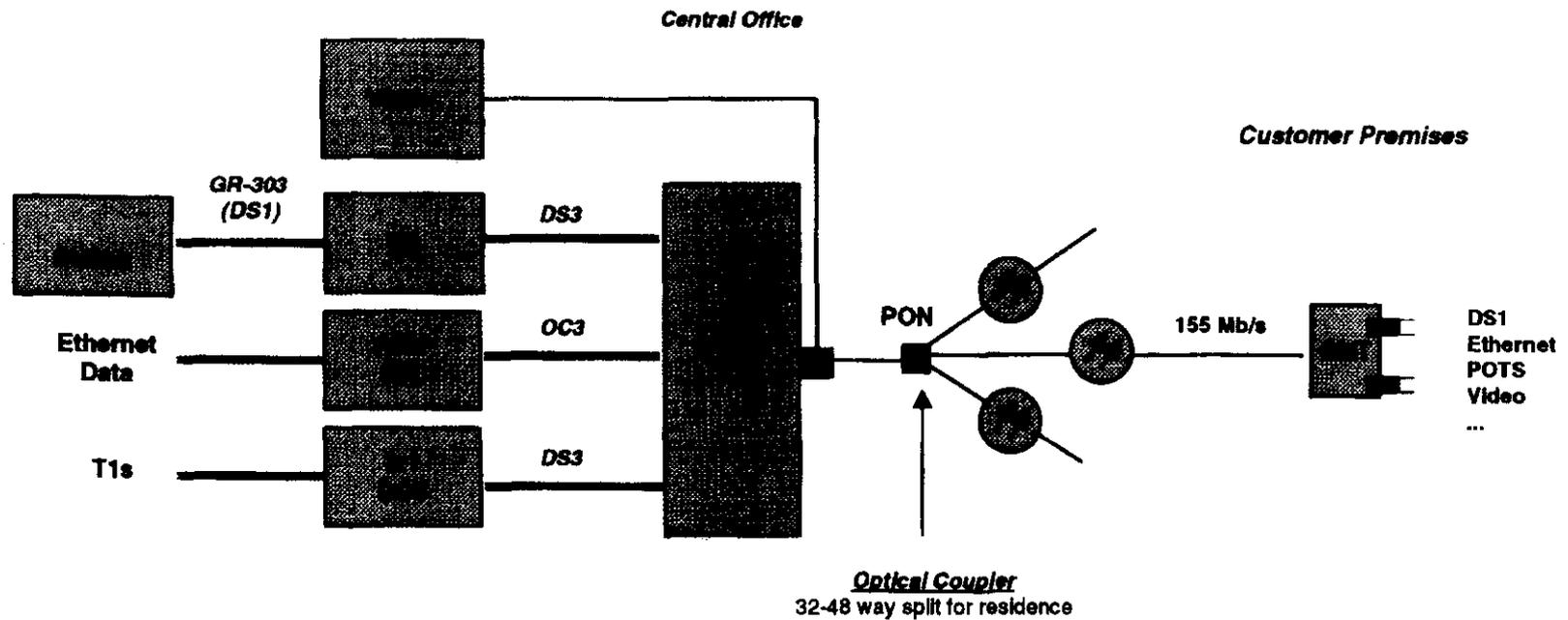
BPON - Without CLEC Access



- Legend:**
- ATM SW – ATM Switch
 - DCS – Digital Cross-connect System
 - OLT – Optical Line Terminal
 - ONT – Optical Network Terminal
 - VG – Voice Gateway

Broadband Passive Optical Network -- Fiber to the Home

BPON - Without CLEC Access



- Legend:**
- ATM SW -- ATM Switch
 - DCS -- Digital Cross-connect System
 - OLT -- Optical Line Terminal
 - ONT -- Optical Network Terminal
 - VG -- Voice Gateway

Background

▲ **Broadband technology is expensive to deploy**

- **BPON economics are best viewed in terms of an incremental investment per home passed over pronto**
- **This incremental investment nearly doubles the pronto costs**
- **To recover these costs, SBC must conceive and develop new and enhanced applications and services to provision over the BPON architecture. Recovery of these costs is in no way certain**
 - **No guarantee of consumer acceptance**
 - **Will likely sell these services in a hotly competitive environment**

▲ **Regulation can have a significant impact on costs**

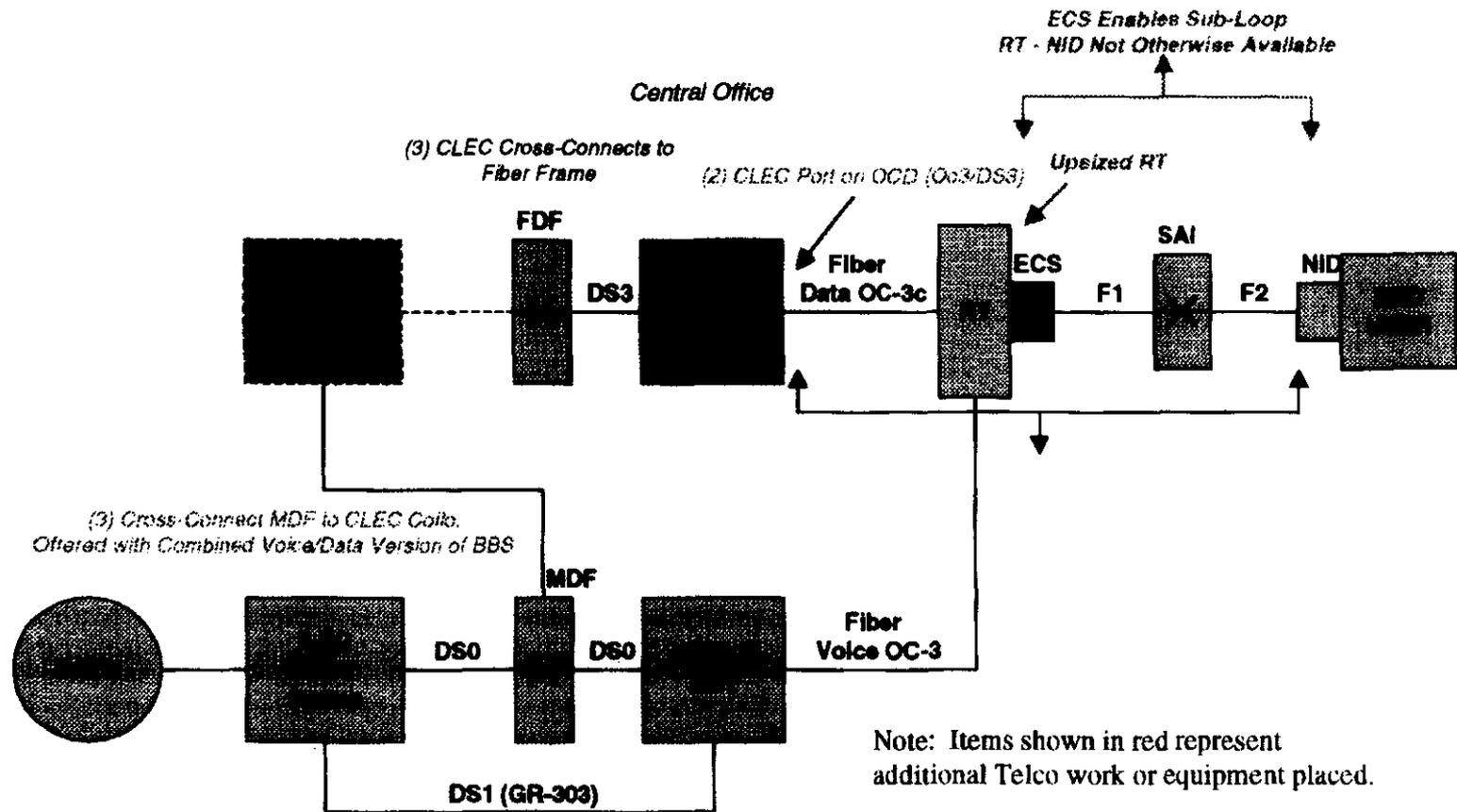
- **CLEC access to fiber architecture is inherently more expensive than access to copper plant, which itself is quite costly**

▲ **Regulation that drives additional costs into these architectures will increase an already material risk and ultimately eliminate incentives for providers to deploy these technologies and develop new services**

Base "Pronto" Architecture - CLEC Access

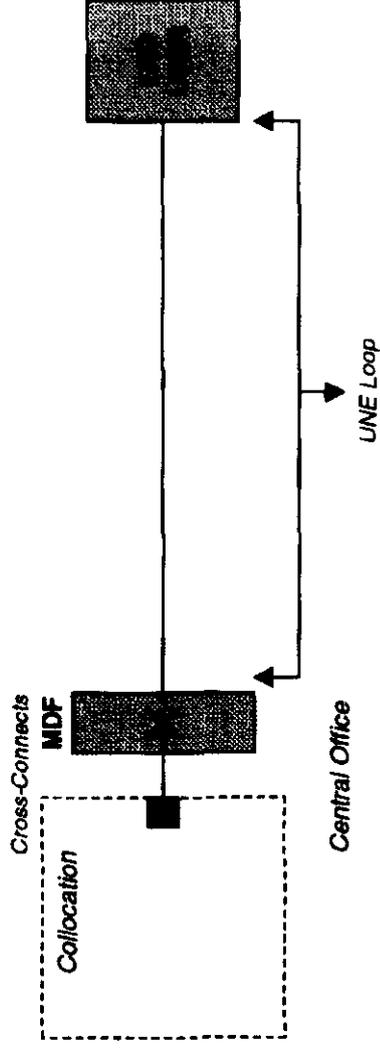
▲ Financial Impacts of Access-related requirements imposed by FCC in Pronto Waiver Order - \$200M to SBC.

- OCDs = \$182M
- Up-sized Huts and CEVs = \$20M
- No CLEC, other than SBC-ASI, has purchased the SBC Broadband Service



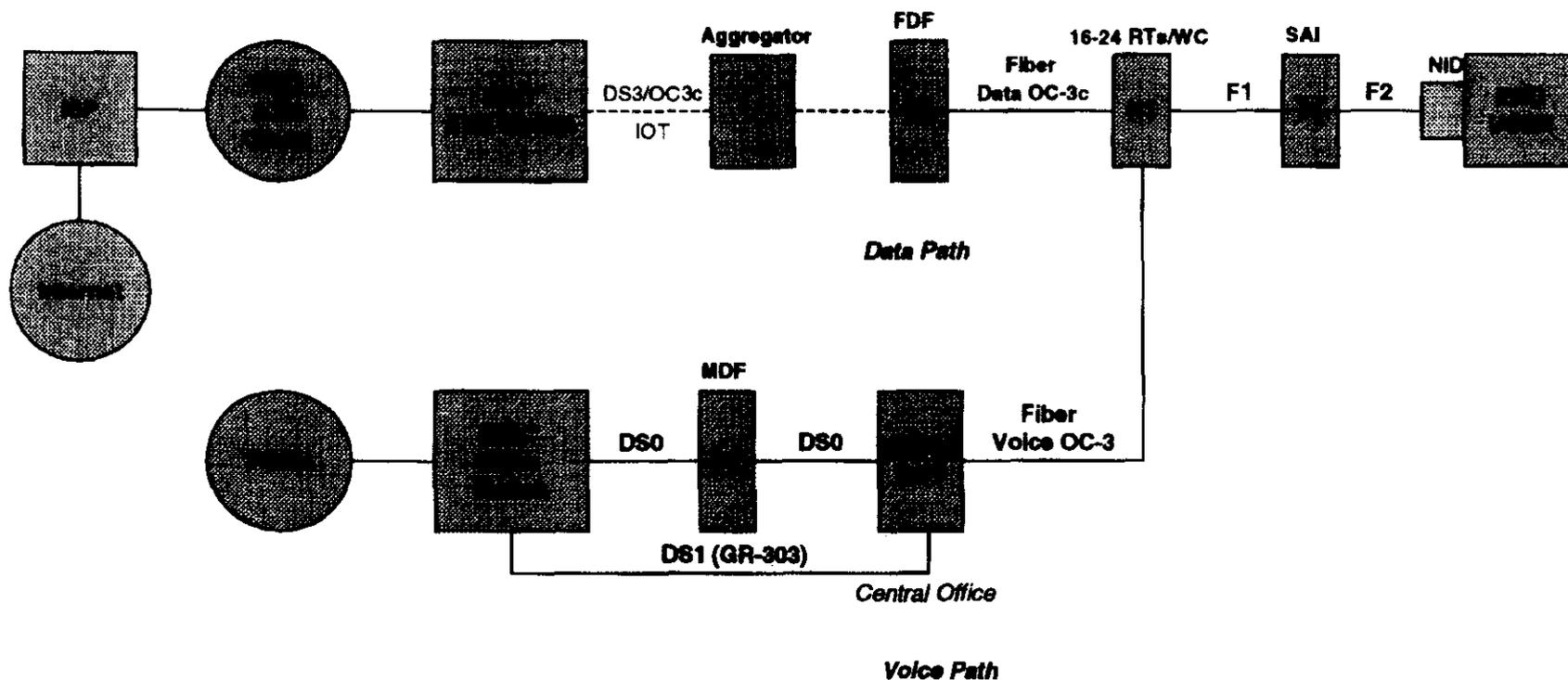
Copper UNE Loop

Traditional Voice UNE Loop, Sub-loops Switching & Interconnection



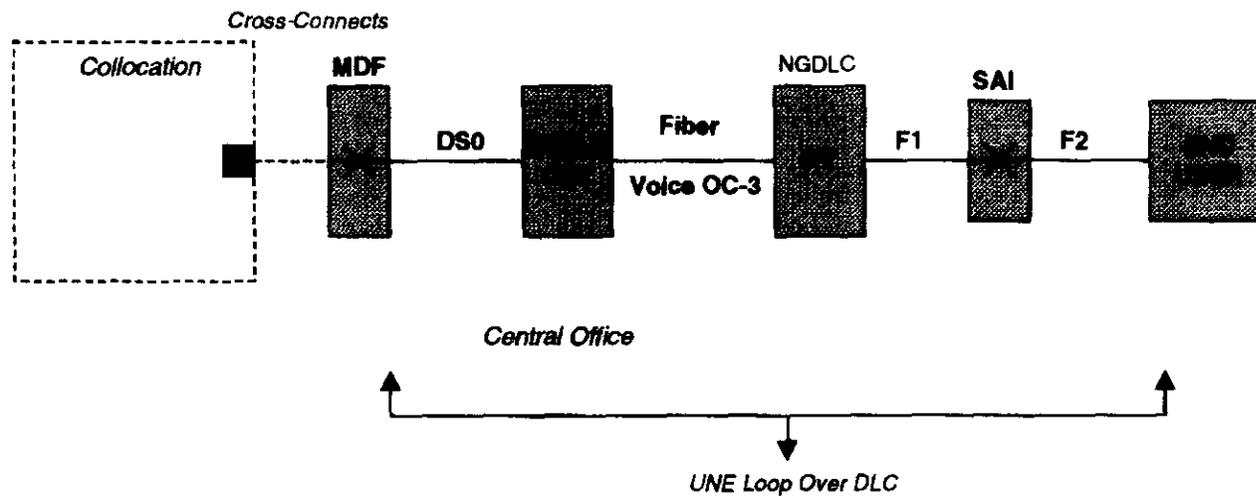
Base "Pronto" Architecture - No CLEC Access

Pronto Architecture - No CLEC Access



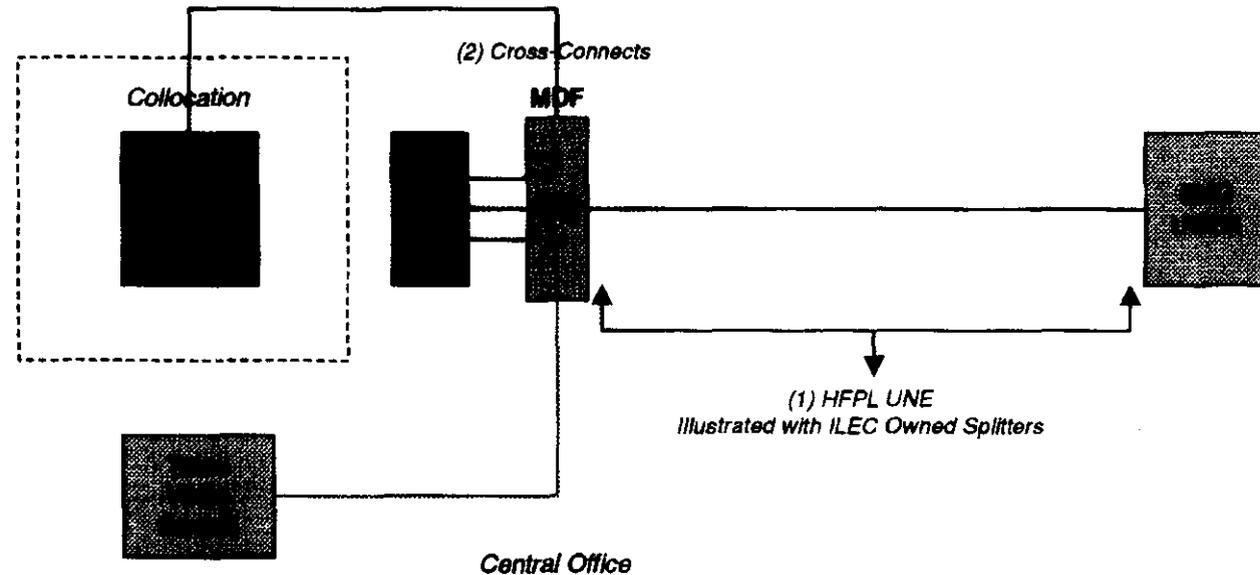
Digital Loop Carrier - UNE Loop

Traditional Voice UNE Loop served on Fiber-fed Digital Loop Carrier



HFPL UNE (Line Sharing)

- ▲ **Financial Impacts of Regulatory Requirements exceed \$450M to SBC**
 - **Line Sharing Splitters = \$107M (14% Utilized to-date)**



Red lines represent the Telco work to enable the CLEC.

Blue Lines represent the CLEC's equipment.