

# Public Service Commission of the District of Columbia

450 5TH STREET, N.W.  
WASHINGTON, D.C. 20001  
(202) 626-5100



IN REPLY REFER TO:

July 21, 1989

Mr. Dan Wedderburn  
Chairman  
Consumer Utility Board  
3539 T Street, N.W.  
Washington, D.C. 20007

Dear Mr. Wedderburn:

This is to advise you of recent developments in telecommunications which will affect ratepayers in the District of Columbia.

First, on April 13, 1989 the Commission filed a petition for reconsideration of the Federal Communications Commission (FCC's) decision concerning the 1989 interstate access charges. That decision found the costs supporting the 1989 interstate access charges excessive and directed the local exchange carriers to reduce their access charges other than subscriber line charges (SLCs). Our petition requested the FCC to direct Bell Atlantic to reduce its SLC for the District of Columbia, to the same extent as it had directed reductions for other rate elements. The FCC has now announced that effective August 1, 1989 the SLC in the District of Columbia has been reduced from \$3.14 per line per month to \$3.04 per line per month. While this amount may seem minor, the victory is important because it has triggered an investigation into SLC charges in other jurisdictions. Thus, nationwide reductions are possible.

Second, please find enclosed recently introduced federal legislation which would lift some of the restrictions on the Bell operating companies (BOCS). As you are aware, the Modified Final Judgment prohibited BOC participation in the manufacturing of telecommunications equipment, the provision of long distance services and the provision of information services. The enclosed legislation would allow the BOCS to manufacture telecommunica-

tions equipment and provide information services.

The D.C. Public Service Commission has serious concerns about allowing the BOCS to be involved in these activities without adoption of appropriate regulatory safeguards to prevent discrimination, cross-subsidization and predatory pricing. It is imperative that we orchestrate an effort to bring these concerns before the House Subcommittee on Telecommunications and Finance (the Subcommittee) which has the proposed bill under consideration. To that end, I have enclosed a copy of the legislation and the Commission's comments which were filed with the Subcommittee.

I am available to meet with you and other members of the C.U.B. to discuss coordinating our efforts in this matter.

Sincerely,

*Patricia M. Worthy*

Patricia M. Worthy  
Chairman

UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON ENERGY AND COMMERCE  
SUBCOMMITTEE ON TELECOMMUNICATIONS AND FINANCE

COMMENTS OF THE  
PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA  
ON  
H.R. 2140 THE "CONSUMER TELECOMMUNICATIONS SERVICES ACT OF 1989"  
JUNE 23, 1989

The Public Service Commission of the District of Columbia (D.C. PSC) hereby submits these comments on H.R. 2140, the "Consumer Telecommunications Services Act of 1989" (the "Bill"). The Bill proposes to remove the restrictions on the provision of information services and manufacturing of telecommunications equipment from the Bell Operating Companies (BOCs) and their affiliates. The D.C. PSC is opposed to the Bill in that it relies on the current federal regulatory environment to guard against the possibility of anti-competitive conduct. To that end, the D.C. PSC notes that the ability to rely on such regulatory safeguards, and the ability of the Federal Communications Commission (FCC) and the State Commissions to monitor the activities of the BOCs and their affiliates, are insufficient to assure that the negative effects that could result from passage of the Bill are curtailed.

The Bill, in order to avoid cross-subsidies, relies on existing FCC initiatives in the area of cost accounting known as "non-structural safeguards." See generally Bill, proposed Sec. 225 at (e). Further, with regard to information services, the Bill relies upon: (1) an as yet uncompleted FCC proceeding regarding "Open Network Architecture"; and (2) any future FCC regulation enacted in, or related to, this area. Id. at (b)(2). The D.C. PSC

notes, however, that the ability of the FCC to effectively oversee such cost-accounting, non-structural safeguards has been the subject of considerable debate.<sup>1/</sup> Further, and although subject to appellate action in the United States Court of Appeals for the Ninth Circuit, the FCC is attempting to dictate the use of non-structural safeguards by the States through its Computer III proceeding. See People of the State of California v. FCC, Case No. 87-7230, et al. (9th Cir.).

This Subcommittee should raise a critical eye to the advocates of such non-structural safeguards before it. What is at stake is clear -- the interests of ratepayers to enjoy local rates which are not inflated by the potential for a BOC to cross-subsidize its competitive ventures with its regulated operations. The D.C. PSC submits that it is no argument that such accounting safeguards protect the ratepayers because of the "audit" requirements. See

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<sup>1/</sup> For example, the General Accounting Office (GAO) previously has raised questions concerning the ability of the FCC to control cross-subsidy between regulated and competitive services through its joint cost accounting measures. See Telephone Communications Controlling Cross-Subsidy Between Regulated and Competitive Services, GAO/RCED-88-34 (October 1987) (GAO Report).

Overall, the level of oversight [that GAO sees] FCC prepared to provide will not, in [GAO's] opinion, ultimately provide telephone ratepayers or carrier competitors positive assurance that FCC's joint cost rules will guard against cross-subsidy. Such assurance is important in the future with the growth in carriers' competitive ventures, the loosening of restrictions on their entry into more of these ventures, and the increased potential for undetected cross-subsidy in the absence of structural separation requirements.

GAO Report at 54-55.

Bill, proposed Sec. 225 at (f)(2). In a similar instance, the GAO Report has also questioned the FCC's ability to assure comprehensive reviews even with the use of independent auditors as the Bill proposes.

FCC's requirement that each CPA attestation report provide a "positive" level of assurance rather than a "negative" level of assurance will provide FCC a greater degree of assurance. However, FCC's own oversight of the cost allocation program will provide only a "negative" assurance that cross-subsidy is not occurring because of the limited FCC staff available to examine carrier books and records.

GAO Report at 50-51. Apparently, staffing levels at the FCC are still a concern, as expressed recently by the FCC's Chairman to Congress. See Statement of Dennis R. Patrick, Chairman, Federal Communication Commission before the Subcommittee on the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies of the House Appropriations Committee (March 7, 1989). Further, the D.C. PSC's efforts to gather information concerning the affiliate transactions between Bell Atlantic, the parent corporation, and its subsidiaries, including The Chesapeake and Potomac Telephone Company in Washington D.C. (C&P), have been frustrated. Only C&P is subject to the D.C. PSC's jurisdiction, not Bell Atlantic. Therefore, there remains the question as to a State Commission's ability to require such information from the parent corporation in those States which do not have affiliate interest legislation.

This Subcommittee, likewise, should note that Judge Greene has questioned the ability of the FCC to effectuate these accounting

safeguards. In his September 10, 1987 decision, he questioned the ability of the FCC to oversee such safeguards based on its reduced staff. United States v. Western Electric Co., 673 F.Supp. 525, 570-71 (D.D.C. 1987). Further, in the context of discussing the FCC's decision to use joint cost accounting rules to oversee Regional Holding Company allocation of joint and common costs between regulated and nonregulated offerings, Judge Greene indicated

cross-subsidization is easy to achieve by firms engaged in both regulated and unregulated business but difficult to detect and to remedy. If regulations are to have any hope of success, they must facilitate such detection to the maximum extent possible. The [FCC's] Joint Cost order is not likely to accomplish this objective. To the contrary, it complicates the process of detection by allowing each Regional Company (1) to adopt a manual different from the others; (2) to choose its own cost allocation procedures, (3) to select its own accountants to review and certify the manual, and (4) to use its own reporting categories and terminology. In short, there will be no common denominator. Additionally, the rules will apply only to interstate services, while much of the Regional Company business, mixed and interrelated though it is, is technically intrastate in nature.

Id. at 573 (footnotes omitted).

In sum, the D.C PSC submits that the Bill's reliance on accounting safeguards and monitoring efforts, such as through audits, would not protect the public interest. The movement to loosen the restrictions on the provision of information services by the BOCs and their affiliates, therefore, is premature.

The other major focus of the Bill is the elimination of the manufacturing restriction. This portion of the Bill also raises severe challenges to the public interest. The points made above

regarding the inability of cost accounting safeguards to protect the interest of the ratepayer are equally true here. However, an additional point bears noting. One of the underlying reasons supporting the restriction against manufacturing of telecommunications equipment was the concern that a vertically integrated firm could engage in preferential procurement policies favoring their manufacturing affiliate. See United States v. American Telephone & Telegraph Co., 524 F.Supp 1336 (D.D.C. 1981). Permitting BOC manufacturing could raise similar concerns. While the BOC may have a choice among, for example, switch manufacturers, this choice may not be a "free" choice. For a decision subject to the business judgment of the individual company, the BOC could cite some quality or design characteristic to justify the purchase of its own manufactured switch, rather than a purchase of an almost identical, but less expensive, switch from another vendor. The burden of policing such a transaction, and deciding whether the business judgment was correct, falls upon the regulators.<sup>2/</sup>

As indicated above, policing such transactions may be hampered by the lack of information concerning the transaction flowing to

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<sup>2/</sup> Prior to divestiture, the D.C. PSC had to pass on what then were termed "licensed contracts" between AT&T and its then local telephone companies, and later on similar types of expenses incurred by the BOC as a result of services rendered by BellCore. The appropriateness of these expenses, and the ability to pass on their reasonableness concerned the Commission due to the lack of specificity of how the expenses were incurred. See, e.g., Chesapeake and Potomac Telephone Company, 56 P.U.R.4th 53, 87-88, 4 D.C.P.S.C. 267, 300-01 (1983). Should the restriction on manufacturing be lifted, the questions concerning the reasonableness of centralized expenses could increase.

the appropriate regulatory authority. On the other hand, retention of the current manufacturing prohibitions provide the BOCs with the incentive to purchase the least cost switch. Therefore, the D.C. PSC contends that the risks associated with removing the ban on manufacturing -- possible increased costs reflected in increased rates -- are not in the public interest.

In conclusion, the D.C. PSC opposes the Bill due to its reliance on the non-structural safeguards and audits to guard against the possibility of anti-competitive conduct.



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PAUL RODGERS  
*Administrative Director*

**RECEIVED**

GAILE ARGIRO  
MAY 5 1989

May 1, 1989

CHAIRMAN WORTHY

To: Chairmen, State Commissions Engaged  
in Regulation of Telecommunications  
Members, NARUC Committee on Communications

Re: H.R. 2140, a bill proposing to lift  
the MFJ restrictions on information  
services and manufacturing

Dear Commissioners:


Last week the long-awaited MFJ relief bill was introduced. The first in a series of hearings on this issue before the House Subcommittee on Telecommunications and Finance will be held this week. This bill is the first piece of major telecommunications legislation in many years that has a good chance of moving out of subcommittee. Members of Congress increasingly are feeling they must assert their policymaking authority in this area. It will be a long process, however, and the Hill is likely to look to State regulators for guidance in the area of consumer safeguards in particular.

The NARUC Executive Committee recently adopted a resolution on MFJ Relief which is enclosed. The Resolution is primarily concerned with preserving State regulatory authority over the terms by which these new services will be provided, which the bill does not do.

A summary and the text of the bill are enclosed with the Resolution and the membership list of the Committee on Energy and Commerce. Please communicate any comments you may have to your delegations and provide our office with copies of your correspondence. We will keep you informed of any developments.

Sincerely,

  
Paul Rodgers  
General Counsel

  
Caroline M. Chambers  
Director, Congressional  
Relations

Enclosures

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\*Member of the Executive Committee of the Association

**SUMMARY OF H.R. 2140  
"CONSUMER TELECOMMUNICATIONS ACT OF 1989"**

H.R. 2140 (which is similar to H.R. 2030 from the last Congress) was introduced by Congressman Al Swift (D-Washington) and Tom Tauke (R-Iowa) on April 27, 1989 and was referred to the Committee on Energy and Commerce.

H.R. 2140 would lift the current restrictions contained in the Modified Final Judgment against Bell operating company provision of information services (including electronic publishing) and manufacturing of telecommunications equipment, with some conditions.

**Information Services**

In order for a BOC or one of its affiliates to provide information services, the BOC must provide comparable interconnection to competing information service providers and comply with the Federal Communications Commission's Open Network Architecture Order.

The FCC must determine that there is a competitive information services market in a State before a BOC in that State may provide electronic publishing using its exchange service facilities. To reach that determination, the FCC must satisfy one of two tests: (A) the FCC must find that 1) the BOC has established an information services gateway; 2) the BOC has complied with the interconnection and ONA requirements above; and 3) the customers in that State "have access to a competitive market for information services;" or (B) the FCC must find that the BOC does not exercise monopoly control over the provision of business or residential exchange service. BOCs would be limited to updating electronic yellow pages advertising once a month for the first two years it (or its affiliate) provides such service using an information services gateway.

**Manufacturing**

In order for a BOC or one of its affiliates to manufacture equipment, the BOC must provide competing manufacturers opportunities to sell equipment to the BOC or its affiliates comparable to those they provide to themselves. BOCs must also comply with any FCC regulations established to preserve competition in the manufacturing market or to protect exchange service customers.

**Customer Proprietary Network Information**

The BOCs would be required to comply with any regulations prescribed by the FCC governing the disclosure of CPNI to BOC information services personnel or one of its affiliates. They would also be required to disclose CPNI to an information services provider at a customer's request. Finally, if a BOC provides aggregate information based on CPNI to its information services personnel or one of its affiliates, it must provide that

information to any other information services provider on the same terms.

### **Cost Allocations**

In order to engage in equipment manufacturing or information services, a BOC must develop a cost allocation system which prevents those lines of business from subsidizing or being subsidized by telephone exchange service. The FCC is given authority to determine the just and reasonable allocation of costs incurred by a BOC in the new lines of business or in the provision of telephone exchange service. In determining the allocation of joint and common costs, the FCC must consider any "significantly beneficial capacities or characteristics" gained by exchange service customers.

The FCC would be required to establish regulations to insure that exchange service customers would be insulated from a failed venture into the new lines of business, although investment assigned to such a failed venture could be reassigned to exchange service upon a showing that customers of exchange service would benefit. Also, any BOC affiliate engaging in a new line of business may not obtain credit under terms that would give the creditor recourse to a BOC's assets. Finally, the FCC is required to establish rules governing the transfer of assets between BOCs and their affiliates.

### **Administration**

If a BOC itself engages in information services or manufacturing, it would be required to provide annually to the FCC and relevant State commissions the results of an independent audit conducted for the purpose of determining whether the BOC has complied with cost allocation regulations. The auditors would be given access to the accounts and records of the BOC and those of its affiliates necessary to verify transactions with the BOC.

The FCC would also be required to adopt rules governing the investigation of complaints alleging discriminatory interconnection and to provide for expedited review of such complaints.

The bill explicitly states that it does not alter the telephone company/cable television cross-ownership restriction or the restriction on interexchange service.

The bill also states that it should not be construed as to alter State regulatory authority over intrastate communications.

Caroline Chambers  
NARUC  
May 1, 1989

101st CONGRESS

1st SESSION

H.R. 2140

(Original signature of Member)

HLC

Insert  
title  
here

Mr. SWIFT (for himself, Mr. TAUKE [insert attached list of cosponsors]) introduced the following bill; which was referred to the Committee on \_\_\_\_\_

DISTRIBUTED  
BY NARUC  
GENERAL COUNSEL

IN THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_, 19\_\_\_\_

Insert  
number's  
here

To bring new and innovative consumer services to the American public by allowing the telephone operating companies and their affiliates to provide information services and to manufacture telecommunications equipment and customer premises equipment.

## A BILL

1 Be it enacted by the Senate and House of Representatives of the United  
2 States of America in Congress assembled,

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the ``Consumer  
3 Telecommunications Services Act of 1989``.

4 SEC. 2. FINDINGS.

5 The Congress finds that--

6 (1) the Federal Communications Commission is the  
7 appropriate Federal entity for overseeing and regulating  
8 the telecommunications industry;

9 (2) universally available basic telephone service at  
10 affordable rates has long been an accepted national  
11 policy;

12 (3) advancements in technology have brought the  
13 society to the threshold of the information age;

14 (4) the national welfare will be greatly enhanced by  
15 bringing about universal availability to the American  
16 people of the innovative technologies of the information  
17 age;

18 (5) the provision of information services, including  
19 electronic publishing, by the Bell operating companies,  
20 their affiliates, and other local exchange operating  
21 companies will stimulate and encourage the competitive  
22 development and use of information age technology by the  
23 American people;

24 (6) the revision of the current line of business  
25 restrictions on the Bell operating companies and their

1 affiliates will serve national policy by enhancing the  
2 capacity of the United States to better compete in the  
3 global information and high technology marketplace; and

4 (7) continued economic growth and the international  
5 competitiveness of American industry are dependent upon--

6 (A) permitting the Bell operating companies and  
7 their affiliates to conduct research and to design,  
8 develop, manufacture, and market software,  
9 telecommunications equipment and customer premises  
10 equipment for American residential and business  
11 telecommunications users;

12 (B) the rapid introduction of new and innovative  
13 telecommunications services for American consumers,  
14 and

15 (C) the continued development of an efficient,  
16 reliable and state-of-the-art public  
17 telecommunications network to serve the needs of the  
18 people of the United States.

19 SEC. 3 AMENDMENTS TO COMMUNICATIONS ACT OF 1934.

20 (a) AMENDMENT.--Title II of the Communications Act of  
21 1934 is amended by inserting after section 224 (47 U.S.C.  
22 224) the following new section:

23 "REGULATION OF INFORMATION SERVICES AND MANUFACTURING

24 "SEC. 225. (a) AUTHORITY TO PROVIDE INFORMATION SERVICES  
25 AND ENGAGE IN MANUFACTURING.--Subject to the requirements of

1 this section and the regulations prescribed thereunder, a  
2 telephone operating company, its affiliates, and any  
3 organization or entity in which such company or affiliates  
4 have any financial or management interest may--

5       “(1) provide information services, including  
6 electronic publishing, and

7       “(2) manufacture and provide telecommunications  
8 equipment and customer premises equipment,  
9 notwithstanding any restriction or obligation imposed before  
10 the date of enactment of this section pursuant to the  
11 antitrust laws on the lines-of-business in which a telephone  
12 operating company and its affiliates may engage.

13       “(b) INFORMATION SERVICES RESTRICTIONS.--

14       “(1) NONDISCRIMINATORY INTERCONNECTION.--If a  
15 telephone operating company or any of its affiliates is  
16 engaged in the activities described in subsection (a)(1),  
17 it shall be unlawful for such telephone operating  
18 company--

19       “(A) to fail to provide, to other information  
20 service providers, opportunities for interconnection  
21 (for information services) to the telephone exchange  
22 service facilities of such company which--

23       “(i) are comparable to the interconnection  
24 (for information services) provided by such  
25 company to itself or to any of its affiliates;



1 and

2 "(ii) comply with regulations prescribed by  
3 the Commission for purposes of ensuring such  
4 comparability; or

5 "(B) to fail to provide common carriage for the  
6 delivery of information services in accordance with  
7 the requirements of title II and such regulations as  
8 the Commission shall prescribe to carry out this  
9 subparagraph.

10 "(2) OBLIGATION TO MAKE AVAILABLE NECESSARY  
11 INTERCONNECTION FUNCTIONS.--The regulations prescribed by  
12 the Commission under paragraph (1) of this subsection  
13 shall not relieve a telephone operating company of the  
14 obligation to comply with--

15 "(A) the order of the Commission entitled  
16 'Filing and Review of Open Network Architecture  
17 Plans,' CC Docket 88-2, Phase I, released December  
18 22, 1988, and any amendment or revision thereof;

19 "(B) such additional regulations and orders as  
20 the Commission may from time to time prescribe  
21 concerning open network architecture plans and  
22 related requirements.

23 "(3) ESTABLISHMENT OF COMPETITIVE INFORMATION  
24 SERVICES MARKET REQUIRED BEFORE ENTRY INTO ELECTRONIC  
25 PUBLISHING.--A telephone operating company and its

1 affiliates may not engage in electronic publishing in any (   
2 State using such company's exchange service facilities   
3 unless the Commission determines that such company and   
4 its affiliates do not exercise monopoly control over   
5 electronic publishing services in that State. For the   
6 purposes of making such determinations, a telephone   
7 operating company and its affiliates do not exercise   
8 monopoly control over electronic publishing services in a   
9 State if the Commission determines that--

10       "(A)(i) such company has established in such   
11 State an information services gateway system;

12       "(ii) such company complies in full with the   
13 requirements of paragraph (1) and the regulations   
14 prescribed thereunder; and

15       "(iii) the customers in such State have access   
16 to a competitive market for information services; or

17       "(B) such company does not exercise monopoly   
18 control, within such geographic area as the   
19 Commission determines to be relevant, over the   
20 business or residential markets for exchange   
21 services, as measured by the number of customer   
22 premises serviced.

23       "(4) LIMITATIONS ON ADVERTISING SERVICES DURING   
24 DEVELOPMENT OF COMPETITIVE MARKET.--A telephone operating   
25 company and its affiliates which have been permitted to

1 commence electronic publishing pursuant to a  
2 determination by the Commission under paragraph (3) shall  
3 not update information provided by any electronic yellow  
4 pages service in any State more frequently than once per  
5 month during the first 2 years after such company or  
6 affiliate--

7       “(A) establishes an information services gateway  
8 system in such State; and

9       “(B) commences providing electronic yellow pages  
10 services using such gateway system.

11       “(5) EXEMPTIONS FROM PROHIBITIONS.--Nothing in  
12 paragraph (3) or (4) shall be construed to prohibit a  
13 telephone operating company or its affiliates--

14       “(A) from continuing to provide information  
15 services (including electronic publishing) which such  
16 company or affiliate was authorized to provide on the  
17 date of enactment of this section;

18       “(B) from updating the information provided by  
19 an information service described in subparagraph (A)  
20 without regard to the limitations contained in  
21 paragraph (4) of this subsection; or

22       “(C) from providing network management services.

23       “(6) STANDARDS FOR REGULATIONS.--In prescribing  
24 regulations to carry out this subsection, the Commission  
25 shall--

1           “(A) take into consideration the need to foster  
2           the development of competition in electronic  
3           publishing;

4           “(B) ensure that the provision of information  
5           services by the telephone operating company will not  
6           (i) impede customers for information services from  
7           having access to a competitive market for such  
8           services, or (ii) harm customers of telephone  
9           exchange service, and

10           “(C) ensure that the methods by which such  
11           information services are provided by telephone  
12           operating companies are otherwise consistent with the  
13           public interest.’

14           “(7) CONSULTATION; EXCLUSIVITY.--In prescribing  
15           regulations under this subsection, the Commission shall  
16           consult with the Secretary of Commerce and with the  
17           Attorney General, but the Commission shall have exclusive  
18           authority to prescribe regulations to carry out this  
19           subsection. Such regulations shall supersede any  
20           restrictions or obligations imposed before the date of  
21           enactment of this section pursuant to the antitrust laws  
22           with respect to the provision of information services by  
23           telephone operating companies or their affiliates.

24           “(c) MANUFACTURING RESTRICTIONS.--

25           “(1) NONDISCRIMINATORY PROCUREMENT.--If a telephone

1 operating company or any of its affiliates are engaged in  
2 an activity described in subsection (a)(2)--

3 "(A) it shall be unlawful for such telephone  
4 operating company to fail to provide, to other  
5 telecommunications equipment manufacturers,  
6 opportunities to sell such equipment to such  
7 telephone operating company which are comparable to  
8 the opportunities which such telephone operating  
9 company provides to itself or any affiliate of such  
10 telephone operating company; and

11 "(B) such telephone operating company shall  
12 comply with regulations prescribed by the Commission  
13 pursuant to paragraph (2).

14 "(2) STANDARDS FOR REGULATIONS.--In prescribing  
15 regulations to carry out paragraph (1) of this  
16 subsection, the Commission shall ensure that--

17 "(A) manufacturing by the telephone operating  
18 company will not (i) harm competition among  
19 manufacturers of telecommunications equipment in the  
20 United States, or (ii) harm customers of telephone  
21 exchange service, and

22 "(B) the methods by which such companies are  
23 required to provide comparable opportunities to other  
24 telecommunications equipment manufacturers to sell  
25 such equipment to such company are consistent with

1 the public interest.

2 "(3) CONSULTATION; EXCLUSIVITY.--In prescribing  
3 regulations under this subsection, the Commission shall  
4 consult with the Secretary of Commerce and with the  
5 Attorney General, but the Commission shall have exclusive  
6 authority to prescribe regulations to carry out this  
7 subsection. Such regulations shall supersede any  
8 restrictions or obligations imposed before the date of  
9 enactment of this section pursuant to the antitrust laws  
10 on the manufacture or provision of telecommunications  
11 equipment by telephone operating companies or their  
12 affiliates.

13 "(d) PRIVACY.--A telephone operating company--

14 "(1) shall comply with such regulations as the  
15 Commission shall prescribe concerning limitations on the  
16 disclosure of customer proprietary network information to  
17 any information service personnel of such company or any  
18 affiliate of such company;

19 "(2) shall disclose such information, upon request  
20 by the customer, to an information service provider  
21 designated by the customer; and

22 "(3) if such company provides any aggregate  
23 information based on customer proprietary network  
24 information to any information service personnel of such  
25 company or any affiliate of such company, shall provide

1 such aggregate information on the same terms and  
2 conditions to any other information service provider upon  
3 reasonable request therefor.

4 "(e) PREVENTION OF CROSS SUBSIDIES.--

5 "(1) GENERAL PROHIBITION.--It shall be unlawful for  
6 any telephone operating company that is engaged in any  
7 activity described in subsection (a)(1) or (a)(2) to fail  
8 to establish and administer, in accordance with the  
9 requirements of this subsection and the regulations  
10 prescribed thereunder, a cost allocation system that  
11 effectively prevents--

12 "(A) any cost of providing telephone exchange  
13 service from being subsidized by activity described  
14 in subsection (a)(1) or (a)(2); or

15 "(B) any cost of engaging in an activity  
16 described in subsection (a)(1) or (a)(2) from being  
17 subsidized by telephone exchange service.

18 "(2) COST ASSIGNMENT AND ALLOCATION  
19 REGULATIONS.--The Commission shall establish regulations  
20 to require the just and reasonable assignment and  
21 allocation of all costs which are in any way incurred by  
22 a telephone operating company in any line of business  
23 described in subsection (a)(1) or (a)(2) or in the  
24 provision of telephone exchange service. Such regulations  
25 shall require that--

1           “(A) to the extent a cost is caused solely by  
2 one or more lines of business described in subsection  
3 (a)(1) or (a)(2), such cost shall not be assigned to  
4 telephone exchange service, and

5           “(B) to the extent that any line of business  
6 described in subsection (a)(1) or (a)(2) shares costs  
7 jointly or in common with telephone exchange  
8 service--

9           “(i) so much of the costs as are caused by  
10 or attributable to a line of business described  
11 in subsection (a)(1) or (a)(2), shall not be  
12 assigned to telephone exchange service, and

13           “(ii) so much of the costs as cannot be  
14 directly assigned to lines of business described  
15 in subsection (a)(1) or (a)(2) or to telephone  
16 exchange service, shall be allocated, in  
17 accordance with the requirements of such  
18 regulations, in a manner that the Commission  
19 determines will provide for a just and reasonable  
20 allocation between--

21           “(I) such lines of business, on an  
22 aggregated basis, and

23           “(II) telephone exchange service.

24           “(3) JOINT AND COMMON COST ASSIGNMENT AND ALLOCATION  
25 CRITERIA.--The assignment and allocation criteria



1 established under paragraph (2)(B) shall, taking into  
2 consideration the extent to which the capacity or  
3 characteristic provides additional durability,  
4 reliability, efficient interconnection, or other  
5 significantly beneficial capacities or characteristics to  
6 customers of telephone exchange service, include the  
7 assignment or allocation of--

8       “(A) the cost of capacity or special  
9 characteristics jointly or commonly required for  
10 telephone exchange service and for any line of  
11 business described by subsection (a)(1) or (a)(2);

12       “(B) investment and associated costs (including  
13 depreciation and maintenance) jointly or commonly  
14 needed to provide plant availability to meet demand  
15 for telephone exchange service and for any line of  
16 business described by subsection (a)(1) or (a)(2);  
17 and

18       “(C) the costs of plant and facilities jointly  
19 or commonly used for telephone exchange service and  
20 for any line of business described by subsection  
21 (a)(1) or (a)(2).

22       “(4) INSULATION OF RATEPAYERS FROM FAILED  
23 VENTURES.--

24       “(A) ASSETS.--The Commission shall, by  
25 regulation, ensure that economic risks of lines of

1 business described by subsection (a)(1) or (a)(2) are  
2 not borne by telephone exchange service ratepayers in  
3 the event of a business failure, and investment  
4 assigned to such line of business shall not be  
5 reassigned to the telephone exchange service except  
6 upon a showing that the customers of telephone  
7 exchange service will benefit.

8 "(B) DEBT.--Any telephone operating company  
9 affiliate--

10 "(i) which is engaged in a line of business  
11 described by subsection (a)(1) or (a)(2), and

12 "(ii) which is structurally separate from an  
13 affiliate engaged in the provision of telephone  
14 exchange services,

15 shall not obtain credit under any arrangement that  
16 would permit a creditor, upon default, to have  
17 recourse to the assets of the telephone operating  
18 company.

19 "(5) TRANSFERS OF ASSETS BETWEEN AFFILIATED  
20 COMPANIES.--The Commission shall prescribe regulations  
21 governing the accounting for the transfer of assets  
22 between a telephone operating company and its affiliates..  
23 Such regulations shall protect the interests of  
24 ratepayers of telephone exchange service.

25 "(F) ADMINISTRATION AND ENFORCEMENT.--

1           “(1) USE OF GENERAL AUTHORITY AND REMEDIES.--For the  
2 purposes of administering and enforcing the provisions of  
3 this section and the regulations prescribed thereunder,  
4 the Commission shall have the same authority, power, and  
5 functions with respect to any telephone operating company  
6 as the Commission has in administering and enforcing the  
7 provisions of this title with respect to any common  
8 carrier subject to this Act. Any violation of this  
9 section by any telephone operating company shall be  
10 subject to the same remedies, penalties, and procedures  
11 as are applicable to a violation of this Act by a common  
12 carrier.

13           “(2) ANNUAL AUDITING REQUIREMENT.--Each telephone  
14 operating company that engages in any line of business  
15 authorized by this section shall provide annually to the  
16 Commission, and to the State commission of each State  
17 within which such company provides telephone exchange  
18 service, a report on the results of an audit by an  
19 independent auditor conducted for the purpose of  
20 determining whether the company has complied with the  
21 cost assignment and allocation regulations prescribed  
22 under this section. For purposes of conducting such  
23 audit, the auditor shall have access to the accounts and  
24 records of the telephone operating company and to those  
25 accounts and records of its affiliates necessary to

1       verify transactions conducted with the telephone  
2       operating company.

3       “(3) EXPEDITED REVIEW OF COMPLAINTS CONCERNING  
4       DISCRIMINATORY INTERCONNECTION.--The Commission shall  
5       adopt rules setting forth deadlines for the telephone  
6       operating companies to satisfy or answer, and the  
7       Commission to investigate and issue rulings on complaints  
8       alleging discriminatory interconnection submitted in  
9       accordance with section 208 of this Act. In the case of a  
10      complaint that states sufficient facts to show that the  
11      complainant has been subjected to discriminatory  
12      practices and that there is substantial possibility that  
13      such practices will result in irreparable harm to present  
14      areas of business of the complainant, the Commission's  
15      rules shall provide a means for expedited review. The  
16      period of expedited review shall not exceed 45 days and  
17      shall not be extended, except that the Commission may  
18      grant extensions of up to 60 days upon showing of good  
19      cause. At the end of the period for expedited review, the  
20      Commission shall, based upon its findings, either issue a  
21      ruling ordering the telephone operating company to cease  
22      its discriminatory practices or dismiss the complaint. In  
23      accordance with the Commission's rules, the Commission  
24      may impose penalties or fines, or both, in addition to  
25      issuing an order to cease discriminatory practices.

1       Notwithstanding section 405, a party whose complaint has  
2       been dismissed as a result of expedited review shall be  
3       deemed to have exhausted its administrative remedies,  
4       unless it elects to petition for reconsideration. A cease  
5       order issued by the Commission shall remain in effect  
6       pending the outcome of any judicial review of the  
7       Commission's findings. Judicial review shall be limited  
8       to a determination of whether the Commission's decision  
9       was arbitrary, capricious, or in excess of authority. The  
10      filing of frivolous complaints shall be unlawful, and the  
11      Commission's rules shall set forth penalties or fines, or  
12      both, for filing such complaints.

13      "(g) RULES OF CONSTRUCTION.--

14      "(1) NO EFFECT ON CABLE TELEVISION  
15      RESTRICTIONS.--Nothing in this section shall be construed  
16      to amend, supersede, or limit the applicability of any  
17      provision of title VI of this Act.

18      "(2) NO EFFECT ON STATE LAW.--Nothing in this  
19      section shall be construed to alter, limit, or supersede  
20      the authority of any State with respect to the regulation  
21      of intrastate communication service.

22      "(3) NO EFFECT ON INTEREXCHANGE RESTRICTION.--Nothing  
23      in this section shall be construed to alter, limit, or  
24      supersede the restrictions or obligations imposed before  
25      the date of enactment of this section pursuant to the

1 antitrust laws with respect to the provision of  
2 interexchange service by telephone operating companies.

3 "(h) EFFECTIVE DATES; SCHEDULE FOR PROMULGATION OF  
4 REGULATIONS.--

5 "(1) COMMISSION AUTHORITY AND SCHEDULE.--The  
6 authority of the Commission to prescribe regulations to  
7 carry out this section is effective on the date of  
8 enactment of this section. The Commission shall prescribe  
9 such regulations in final form within 120 days after such  
10 date of enactment.

11 "(2) GENERAL EFFECTIVE DATE.--Except as provided in  
12 paragraph (1), the provisions of this section shall be  
13 effective on the later of--

14 "(A) 60 days after the date such regulations are  
15 prescribed in final form; or

16 "(B) 180 days after the date of enactment of  
17 this section.

18 "(1) DEFINITIONS.--As used in this section:

19 "(1) The term 'affiliate' means any organization or  
20 entity (A) that is under direct or indirect common  
21 ownership with a telephone operating company, or directly  
22 or indirectly owns a telephone operating company, (B)  
23 that is under direct or indirect control by a telephone  
24 operating company, or directly or indirectly controls a  
25 telephone operating company, or (C) in which a telephone

1 operating company or its other affiliates directly or  
2 indirectly (i) have an equity interest (or the equivalent  
3 thereof) of more than 20 percent, or (ii) exercise  
4 substantial management influence. For the purposes of  
5 this paragraph, the terms 'ownership' and 'owned' mean a  
6 direct or indirect equity interest (or the equivalent  
7 thereof) of more than 50 percent of an entity.

8 "(2) The term 'antitrust laws' has the meaning given  
9 such term by subsection (a) of the first section of the  
10 Clayton Act (15 U.S.C. 12(a)).

11 "(3) The term 'customer premises equipment' means  
12 equipment employed on the premises of a person (other  
13 than a carrier) to originate, route, or terminate  
14 telecommunications, but does not include equipment used  
15 to multiplex, maintain, or terminate telephone exchange  
16 service.

17 "(4) The term 'customer proprietary network  
18 information' has the meaning given such term in  
19 regulations prescribed by the Commission.

20 "(5) The term 'electronic publishing' means the  
21 provision of any information which a telephone operating  
22 company or its affiliate has, or has caused to be,  
23 originated, authored, compiled, collected, or edited, or  
24 in which it has a direct or indirect financial or  
25 proprietary interest, and which is disseminated to an





1

2

1 unaffiliated person through some electronic means.

2 `` (6) The term 'electronic yellow pages' means an  
3 information service that provides (A) by general product  
4 and business categories, the names, telephone numbers,  
5 addresses, and trademarks or service marks of product or  
6 service providers, and (B) other product or service  
7 advertising.

8 `` (7) The term 'information services' means the  
9 offering of a capability for generating, acquiring,  
10 storing, transforming, processing, retrieving, utilizing,  
11 or making available information which may be conveyed via  
12 telecommunications, except that such service does not  
13 include any use of any such capability for the  
14 management, control, or operation of a telecommunications  
15 system or the management of a telecommunications service.

16 `` (8) The term 'information services gateway system'  
17 means an information service system that offers or makes  
18 available to the customer--

19 `` (A) each of the following functions: data  
20 transmission, address translation, billing  
21 information, and introductory information content (as  
22 such terms are defined by regulations prescribed by  
23 the Commission); and

24 `` (B) protocol conversion (as such term is  
25 defined by such regulations), to the extent that the

1 Commission determines that protocol conversion is  
2 necessary to provide a reasonable opportunity for  
3 interconnection by a competing information service  
4 provider.

5 "(9) The term 'manufacturing' has the same meaning  
6 as such term has in the Modification of Final Judgment  
7 entered August 24, 1982, in *United States v. Western*  
8 *Electric*, Civil Action No. 82-0192 (United States  
9 District Court, District of Columbia).

10 "(10) The term 'network management services' means  
11 services provided at the request of a customer and  
12 offering the compilation, collection, editing, or  
13 processing of information gathered by a telephone  
14 operating company in the course of providing  
15 communications service to that customer.

16 "(11) The term 'telecommunications' means the  
17 transmission, between or among points specified by the  
18 customer, of information of the customer's choosing,  
19 without change in the form or content of the information  
20 as sent and received, by means of an electromagnetic  
21 transmission medium, including all instrumentalities,  
22 facilities, apparatus, and services (including the  
23 collection, storage, forwarding, switching, and delivery  
24 of such information) essential to such transmission.

25 "(12) The term 'telecommunications equipment' means

1 equipment, other than customer premises equipment, or  
2 telecommunications products used by a carrier to provide  
3 telecommunications services.

4 "(13) The term 'telecommunications service' means  
5 the offering for hire of telecommunications facilities,  
6 or of telecommunications by means of such facilities.

7 "(14) The term 'telephone operating company' means  
8 those companies listed in appendix A of the Modification  
9 of Final Judgment entered August 24, 1982, in *United*  
10 *States v. Western Electric*, Civil Action No. 82-0192  
11 (United States District Court, District of Columbia), and  
12 includes any successor or assign of any such company, but  
13 does not include any affiliate of any such company."

14 (b) CONFORMING AMENDMENT.--Section 2(b) of the  
15 Communications Act of 1934 is amended by striking "section  
16 224" by inserting "sections 224 and 225" .

## **Resolution on MFJ Relief**

**WHEREAS**, The Modified Final Judgment (MFJ) administered by United States District Court Judge Harold Greene prohibits the Bell regional holding companies (RHCs) from manufacturing telecommunications equipment and providing information services content; and

**WHEREAS**, Judge Greene has determined that the RHCs should be prohibited from entering these markets as long as they have bottleneck control of the local telephone network; and

**WHEREAS**, The RHCs are seeking relief from the information services and manufacturing restrictions from the United States Congress; and

**WHEREAS**, There is contradictory information regarding the effect the RHCs being restricted from offering the services has on the demand for services; and

**WHEREAS**, The RHCs may have incentives to subsidize their unregulated competitive businesses with revenues from their regulated monopoly business; and

**WHEREAS**, A 1987 study by the United States General Accounting Office of the Federal Communications Commission's cost allocations rules concluded: "The level of oversight the FCC is prepared to provide will not, in GAO's opinion, provide telephone ratepayers or competitors positive assurance that FCC cost allocation rules and procedures are properly controlling cross-subsidy;" and

**WHEREAS**, The FCC's Computer III decision preempts State regulatory authority over Bell operating company (BOC) provision of enhanced services and prevents State regulators from requiring that BOCs provide enhanced services through a separate subsidiary; and

**WHEREAS**, The corporate policy of some RHCs is to pursue on the State and Federal levels deregulatory approaches which may significantly reduce regulatory oversight of BOCs' regulated and unregulated costs; and

**WHEREAS**, The RHCs routinely guarantee the debt of their unregulated subsidiaries, which could increase the cost of capital for their regulated businesses; and

**WHEREAS**, Some RHCs have defied the intent of the AT&T Consent Decree by transferring to unregulated affiliates enterprises which could contribute to revenues available to support basic telephone service--for example, yellow pages--and might therefore attempt to do so again with respect to other services; now, therefore, be it

RESOLVED, That the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), assembled at its 1989 Winter Meeting in Washington, D.C., urges the Congress to include in any statute lifting the MFJ restrictions on RHC provision of information services content and manufacturing of telecommunications equipment the explicit requirement that neither Congress nor any Federal agency should preempt the States' authority to engage in regulatory action that any State deems essential to protect monopoly service customers. The following list illustrates the kinds of actions States may consider taking:

1. States may require that BOCs use subsidiaries separate from their basic telephone service operations to provide enhanced or information services or to manufacture equipment; and
2. States may require access to the accounting records of all affiliates of the BOC providing basic exchange service in their State; and
3. States may determine the appropriate allocation of costs between BOCs' regulated and unregulated intrastate services; and
4. States may require the RHC serving a given State's region to submit the results of annual audits conducted pursuant to standards established by that State's regulatory agency; and
5. States may require that new RHC services must bear all new costs to the telephone network which are not necessary to the provision of basic exchange service and that BOC affiliates must contribute to underlying network costs by sharing any cost savings resulting from economies of scope and scale with basic service ratepayers; and
6. States may require that all purchase agreements between a BOC and an unregulated affiliate must have State agency approval, including authority to require and establish the terms of competitive bidding for BOC contracts; and
7. States may require State agency approval for BOCs to sell telephone customer proprietary network information and to set the terms of the sale so that the regulated telephone business receives appropriate compensation; and
8. States may prohibit BOC affiliates from obtaining credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the telephone service affiliate; and

9. States may disallow, in the course of setting rates for BOCs' regulated services, the costs associated with increases in a BOC's cost of capital due to a failed competitive venture of a BOC affiliate; and be it further

RESOLVED, That network information, services, and telecommunications equipment sold by one RHC subsidiary to another of that RHC's subsidiaries must be made available to any other company on the same basis; and be it further

RESOLVED, That reporting requirements for the FCC's Automated Report Management Information System (ARMIS) must be expanded as necessary in order for the States and the FCC to adequately reconcile cost data and to effectively monitor jurisdictional revenue shifts.

---

Sponsored by the Committee on Communications  
Adopted March 1, 1989

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COMMITTEE ON ENERGY AND COMMERCE  
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Suggested Address:

Honorable \_\_\_\_\_, M.C.  
United States House of Representatives  
Washington, D.C. 20515

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**U.S. House of Representatives**  
**Committee on Energy and Commerce**

**SUBCOMMITTEE ON TELECOMMUNICATIONS AND FINANCE**

**Washington, DC 20515**

**May 9, 1989**

Ms. Caroline M. Chambers  
Director, Congressional Relations  
National Association of Regulatory Utility Commissioners  
1102 Interstate Commerce Commission Building  
Post Office Box 684  
Washington, D.C. 20044-0684

Dear Ms. Chambers:

Thank you for notifying the Subcommittee of your wish to submit written or oral comments on governmental decision-making for the structure of the telecommunications industry.

On May 4, 1989 the Subcommittee held the first of a series of hearings and meetings to examine the telecommunications industry. These sessions will review the process by which key public policy decisions are made, and the effect of these policies on consumer satisfaction, domestic competition, long-term economic growth and international competitiveness as we develop telecommunications policy for the 21st century.

In devising an optimally inclusive process that will encompass the views of all concerned parties, we are requesting respondents to submit, in writing, by June 9, 1989, their specific recommendations for national policy for their sector of the telecommunications industry. In addition, the written statements should include the justification for proposals and draft legislative language to implement your recommendations. These submittals should include, inter alia, comments on the appropriateness of having such policy decided by the judicial branch solely on the basis of antitrust law, rather than by Congress based upon the broad public interest standard of the Communications Act.

As the examination of these issues progresses over the next couple of months, the Subcommittee will hold meetings to analyze, in particular, information services, manufacturing, and interexchange service, as well as other miscellaneous issues within the telecommunications industry. Individual parties who wish to present oral testimony before the Subcommittee within their areas of expertise should contact the Subcommittee by May 23, 1989. All comments should be forwarded to the attention of Kevin Joseph of the Subcommittee staff.

Thank you once again for your assistance in this important policy matter.

Sincerely,

*E. Marky*  
Edward J. Marky  
Chairman

