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FEDERAL TELECOMMUNICATIONS LAW:

A LEGISLATIVE HISTORY OF

THE TELECOMMUNICATIONS ACT OF 1996

PUB. L. NO. 104-104, 110 STAT. 56 (1996)

INCLUDING

THE COMMUNICATIONS DECENCY ACT

Volume 14
Document Number
180

BY

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SUMMARY TABLE OF CONTENTS

Master Table of Documents . . . . . Vol. 1

Selected Bibliography . . . . . Vol. 1

Section I: Law as Enacted . . . . . Vol. 1 (Doc. No. 1)

Section II: Reports on the Law . . . . . Vol. 1 (Doc. Nos. 2 - 6)

Section III: Hearings on the Law . . . . Vol. 2 (Doc. Nos. 7 - 9)

Section IV: Congressional Record . . Vol. 3 (Doc. Nos. 10 - 87)

Section V: Presidential and Vice Presidential Statements . . . . Vol. 3 (Doc. Nos. 88 - 95)

Section VI: Past Bill Versions . . . . Vol. 4 (Doc. Nos. 96 - 101)

Section VII: Related Bills . . . . . Vol. 5 (Doc. Nos. 102 - 115)
Vol. 6 (Doc. Nos. 116 - 120)

Section VIII: Congressional Record - Related Bills . . . . . Vol. 6 (Doc. Nos. 121 - 162)

Section IX: Past Reports . . . . . Vol. 7 (Doc. Nos. 163 - 170)

Section X: Past Hearings . . . . . Vol. 8 (Doc. Nos. 171 - 172)
Vol. 9 (Doc. No. 173)
Vol. 10 (Doc. No. 174)
Vol. 11 (Doc. No. 175)
Vol. 12 (Doc. Nos. 176 - 177)
Vol. 13 (Doc. Nos. 178 - 179)
Vol. 14 (Doc. No. 180)
Vol. 15 (Doc. Nos. 181 - 184)
Vol. 16 (Doc. No. 185)
Vol. 17 (Doc. No. 186)
Vol. 18 (Doc. Nos. 187 - 188(A&B))
Vol. 19 (Doc. Nos. 188(C) - 189)
Vol. 20 (Doc. Nos. 190 - 191)
Vol. 21 (Doc. Nos. 192 - 201)

Section XI: Final Report . . . . . Vol. 21 (Doc. No. 202)

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INTRODUCTION

AN OVERVIEW OF THE TELECOMMUNICATIONS ACT OF 1996

The "Telecommunications Act of 1996," signed into law on February 8, 1996, opens up competition between local telephone companies, long-distance providers, and cable companies; expands the reach of advanced telecommunications services to schools, libraries, and hospitals; and requires the use of the new V-chip technology to enable families to exercise greater control over the television programming that comes into their homes. This Act lays the foundation for the investment and development that will ultimately create a national information superhighway to serve both the private sector and the public interest.

President Clinton noted that the Act will continue the efforts of his administration in ensuring that the American public has access to many different sources of news and information in their communities. The Act increases, from 25 to 35 percent, the cap on the national audience that television stations owned by one person or entity can reach. This cap will prevent a single broadcast group owner from dominating the national media market.

Rates for cable programming services and equipment used solely to receive such services will, in general, be deregulated in about three years. Cable rates will be deregulated more quickly in communities where a phone company offers programming to a comparable number of households, providing effective competition to the cable operator. In such circumstances, consumers will be protected from price hikes because the cable system faces real competition.

This Act also makes it possible for the regional Bell companies to offer long-distance service, provided that, in the judgment of the Federal Communications Commission (FCC), they have opened up their local networks to competitors such as long-distance companies, cable operators, and others. In order to protect the public, the FCC must evaluate any application for entry into the long-distance business in light of its public interest test, which gives the FCC discretion to consider a broad range of issues, such as the adequacy of interconnection arrangements to permit vigorous competition. Furthermore, in deciding whether to grant the application of a regional Bell company to offer long-distance service, the FCC must accord "substantial

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weight" to the views of the Attorney General. This special legal standard ensures that the FCC and the courts will accord full weight to the special competition expertise of the Justice Department's Antitrust Division--especially its expertise in making predictive judgments about the effect that entry by a bell company into long-distance may have on competition in local and long-distance markets.

Title V of the Act is entitled the "Communications Decency Act of 1996." This section is specifically aimed at curtailing the communication of violent and indecent material. The Act requires new televisions to be outfitted with the V-chip, a measure which President Clinton said, "will empower families to choose the kind of programming suitable for their children." The V-chip provision relies on the broadcast networks to produce a rating system and to implement the system in a manner compatible with V-chip technology. By relying on the television industry to establish and implement the ratings, the Act serves the interest of the families without infringing upon the First Amendment rights of the television programmers and producers.

President Clinton signed this Act into law in an effort to strengthen the economy, society, families, and democracy. It promotes competition as the key to opening new markets and new opportunities. This Act will enable us to ride safely into the twenty-first century on the information superhighway.

We wish to acknowledge the contribution of Loris Zeppieri, a third year law student, who helped in gathering these materials.

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St. John's University
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April 1997

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TABLE OF DOCUMENTS

VOLUME 14

Section X: Past Hearings (Continued from Volume 13)

Doc. No. 180 - Telecommunications Policy Act (Parts 1 & 2) - Hearings before the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce, House of Representatives, 101st Congress, 2d Session, Serial No. 101-137 and Serial No. 101-142 (March 7, April 18 and 26, and May 10, 1990).

For ***Master Table of Documents*** of this set, please refer to ***Volume 1.***

HeinOnline -- 14 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act vii 1997

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TELECOMMUNICATIONS POLICY ACT
(Part 1)

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
TELECOMMUNICATIONS AND FINANCE

OF THE

COMMITTEE ON
ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

MARCH 7 AND APRIL 18, 1990

Serial No. 101-137

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CONTENTS

Hearings held on: Page
March 7, 1990 1
April 18, 1990 407
Testimony of:
Biddle, Stephanie, vice president, Computer & Communications Industry Association 498
Firestone, Richard, Chief, Common Carrier Bureau, Federal Communications Commission 85
Gunter, John R., vice president, Information Services and Market Plans, BellSouth Corp 454
Johnson, Robert M., president, Newsday, on behalf of The American Newspaper Publishers Association 462
McCall, Charles W., president, CompuServe Inc 504
McLaughlin, John F., executive director, Program on Information Resources Policy, Harvard University 555
Ouchi, William G., Professor of Management, UCLA 564
Sikes, Alfred C., Chairman, Federal Communications Commission 85
Tribe, Laurence H., professor, Constitutional Law, Harvard Law School 410
Wiley, Richard E., attorney, Wiley, Rein and Fielding 426
Worthy, Patricia M., chairman, District of Columbia Public Service Commission, on behalf of the National Association of Regulatory Utility Commissioners 115
Material submitted for the record by:
American Association of Retired Persons and Consumer Federation of America: Report entitled "Expanding the Information Age for the 1990's 220
Association of North American Directory Publishers: Letters to Telecommunications Subcommittee with position paper 628
BellSouth: Letter dated June 4, 1990 to Chairman Markey re response to Department of Labor study "Labor's Stake in MFJ Relief" 376
Centigram Corp.: Letter from George Sollman, president, to Chairman Markey, December 7, 1989 402
Federal Communications Commission: Letter dated April 17, 1990 with accompanying data and responses to subcommittee questions requested. 137
Hofstra University, Hempstead, NY: news release dated March 8, 1990, and National Survey on Telephone Services and Products: The Views of Disabled and Older Americans 592
Independent Data Communications Manufacturers Association, North American Telecommunications Association, Telecommunications Industry Association: Report entitled "The Post-Divestiture U.S. Telecommunications Equipment Manufacturing Industry: The Benefits of Competition" 159
Pacific Telesis: Letters dated April 25 and June 7, 1990 to Telecommunications Subcommittee with accompanying responses to allegations contained in Appendix 1 of ANPA statement 649
Prodigy Services Co.: Letter to Chairman Markey, April 27, 1990 654
Small Business Alliance For Advanced Products Development With BOC's: Letter dated Oct. 31, 1989 to Chairman Markey 398
Superior TeleTec, Inc.: Letter from James R. Kanely, chairman, to Chairman Markey, December 19, 1989 401

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Material submitted for the record—Continued Page
Telecommunications and Finance Subcommittee:
Comparison of FCC audit resources, tables 132
Letter dated March 1, 1990 to Roderick A. DeArment, Deputy Secretary, Department of Labor and Staff Study by Department of Labor 169
Staff Discussion Draft dated February 8, 1990 and section-by-section analysis 3
Telecommunications for the Deaf, Inc., letter to various legislators re position paper 591
US Videotel: Letter to Chairman Markey, May 1, 1990, transmitting response to Hon. Mike Synar 665

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TELECOMMUNICATIONS POLICY ACT

WEDNESDAY, MARCH 7, 1990

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS AND FINANCE,
Washington, DC.

The subcommittee met, pursuant to notice, at 9 a.m., in room 2123, Rayburn House Office Building, Hon. Edward J. Markey (chairman) presiding.

Mr. MARKEY. Good morning, ladies and gentlemen. We thank the members and the public and our witnesses for their cooperation in helping to accommodate the change in the schedule. The change is tied to the Clean Air markup scheduled for later today in the Energy Subcommittee and there is an overlap between our membership to some extent. In order to accommodate the desire of the members to participate in both, we felt it would be better if we started a little early today.

We very much appreciate your cooperation.

I would also like to thank Assistant Secretary Janice Obuchowski for her cooperation in rescheduling so that we would be able to give a full hearing today to the Federal Communications Commission [FCC] and the State regulatory commissioners who play a pivotal role in this legislation. We will take Assistant Secretary Obuchowski's testimony at a hearing in the very near future. We thank her for her cooperation.

Today we will begin the subcommittee's consideration of the proposed "Telecommunications Policy Act of 1990." This legislative draft was prepared by majority and minority staff and presented to address the myriad and often disparate comments, concerns, and recommendations submitted to the subcommittee by industry, labor, Federal and State officials, and consumers during the past 14 months.

On behalf of the members, I would like to commend the gentlemen, Mr. Leach, Mr. Haines, and Mr. Salemme, for their efforts to establish a framework for our future deliberations of this difficult set of issues and complex technologies.

For the past century, America has held the title of undisputed world champion in telecommunications. Our telecommunications system has been the unrivaled model for the rest of the world.

But as we begin an area when telecommunications will contribute significantly to our economic success, America's leadership is threatened by Japan, Germany, France, and others. As we speak, our competitors are implementing integrated national strategies

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designed to deliver sophisticated telecommunications products and services to businesses and homes throughout their countries.

While our competitors marshal their resources, the U.S. telecommunications industry is mired in a regulatory and legal quagmire that often discourages investment in new technology and stunts innovation. Since the breakup of AT&T, U.S. consumers and industry have been forced to wade through a morass of often contradictory policies developed separately by the FCC and the Federal district courts. Often segments of the telecommunications industry have taken advantage of this "ad hoc" policymaking to gain short-sighted regulatory advantages for themselves at the expense of the long-term interests of the industry and the Nation.

In the past, these same industry interests repeatedly have derailed Congressional efforts to establish telecommunications policy. Now, however, the formulation of a comprehensive telecommunications policy is too important to be held hostage by the intransigence of these entrenched industry interests. It is time for them either to move aside or to work constructively with the subcommittee to fashion the best policy we can for the Nation.

In creating this draft, the staff has endeavored to craft a series of compromises that attempt to accommodate the legitimate concerns expressed in the extensive subcommittee record. Throughout these hearings there will be an opportunity to discuss, negotiate, and refine the compromises reflected in the draft.

The draft we are considering today is a critical first step in taking telecommunications policy out of the courtrooms and putting it back into the hands of Congress and the administration where a comprehensive approach can be developed. Our objective is to forge a strategy that promotes long-term economic growth while protecting consumers and upholding the principles of universal service, diversity, and localism—the cornerstones of the 1934 Communications Act and the foundation on which the world's greatest telecommunications system was built.

Let us begin this morning together to refine this draft and to craft a final piece of legislation that will enrich consumers' lives and increase economic prosperity.

[Testimony resumes on p. 68.]

[The draft referred to and section-by-section analysis follow:]

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SAC252

HLC

Staff Discussion Draft
February 8, 1990*

101ST CONGRESS
2D SESSION

H. R. ____

IN THE HOUSE OF REPRESENTATIVES

Mr. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To encourage the continued growth of a competitive telecommunications marketplace, to promote the development of advanced public telecommunications networks, and to foster the wide availability of new and innovative consumer services and products.

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

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SAC252

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.--This Act may be cited as the ``Telecommunications Policy Act of 1990''.

(b) TABLE OF CONTENTS.--

Section 1. Short title; table of contents.
Sec. 2. Findings.

TITLE I--ESTABLISHMENT OF COMMISSION AUTHORITY TO REGULATE ENTRY OF TELEPHONE OPERATING COMPANIES INTO NEW LINES OF BUSINESS

Sec. 101. Amendments to Communications Act of 1934.

``PART II--REGULATION OF ENTRY OF TELEPHONE OPERATING COMPANIES INTO NEW LINES OF BUSINESS

``Sec. 251. Definitions.
``Sec. 252. Authority for expansion of information services.
``Sec. 253. Authority for entry into manufacturing.
``Sec. 254. General requirements and conditions for entry into new lines of business.
``Sec. 255. Prohibition on entry into interexchange service.
``Sec. 256. Termination of certain restrictions; inquiries, reports, and rulemaking by Commission.
``Sec. 257. Administration and enforcement.
``Sec. 258. Whistleblower protection.
``Sec. 259. Authorization of appropriations.
``Sec. 260. Rules of construction; effective date.''.
Sec. 102. Telecommunications employees' protection.

TITLE II--TERMINATION OF ANTITRUST JURISDICTION WITH RESPECT TO MATTERS SUBJECT TO COMMISSION REGULATION

Sec. 201. Override of line of business restrictions.
Sec. 202. Definitions.

SEC. 2. FINDINGS.

The Congress finds that--

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

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SAC252

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

(3) advancements in telecommunications technology will continue to be a prime factor in shaping the economy and society of the United States;

(4) the national welfare will be greatly enhanced by fostering the development of advanced public telecommunications networks capable of ensuring that innovative technologies will be universally available to the American people, at affordable rates;

(5) competition in the provision of information services will stimulate and encourage the development and use of advanced telecommunications technologies by the American people;

(6) the entry by the Bell operating companies and their affiliates into new lines of business, including information services and manufacturing, with appropriate safeguards, will serve national policy by enhancing the capacity of the United States to better compete in the global information and high technology marketplace; and

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

(A) the full participation of the entire telecommunications industry in bringing

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telecommunications products and services to the domestic and global marketplaces;

(B) the rapid introduction of new and innovative telecommunications services for American consumers; and

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

TITLE I--ESTABLISHMENT OF COMMISSION AUTHORITY TO REGULATE ENTRY OF TELEPHONE OPERATING COMPANIES INTO NEW LINES OF BUSINESS

SEC. 101. AMENDMENTS TO COMMUNICATIONS ACT OF 1934.

Title II of the Communications Act of 1934 is amended--

(1) by inserting before the heading of section 201 the following:

``PART I--REGULATION OF COMMON CARRIER PROVISION OF INTERSTATE AND FOREIGN COMMUNICATIONS''; and

(2) by adding at the end thereof the following new part:

``PART II--REGULATION OF ENTRY OF TELEPHONE OPERATING COMPANIES INTO NEW LINES OF BUSINESS

``SEC. 251. DEFINITIONS.

As used in this part--

``(1) ADVANCED NETWORK SERVICES.--The term `advanced

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network services' means services made available using the telephone exchange service facilities of a telephone operating company that provide one or more of the following functions: the translation, manipulation, processing, conversion, storage, or retrieval of information which may be conveyed via telecommunications.

``(2) AFFILIATE.--The term `affiliate' means any organization or entity that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, a telephone operating company. For the purposes of this paragraph, the terms `owns', `owned', and `ownership' mean a direct or indirect equity interest (or the equivalent thereof) of more than 10 percent of an organization or entity.

``(3) CUSTOMER NETWORK MANAGEMENT SERVICES.--The term `customer network management services' means--

``(A) provision of customized electronic reports to customers on their use of the telephone network; and

``(B) provision of electronic analysis of customer's telephone systems to detect operating or design flaws.

``(4) CUSTOMER PREMISES EQUIPMENT.--The term `customer premises equipment' means equipment employed on the premises of a person (other than a carrier) to

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SAC252

originate, route, or terminate telecommunications, but does not include equipment used to multiplex, maintain, or terminate telephone exchange service.

``(5) CUSTOMER PROPRIETARY NETWORK INFORMATION.--The term `customer proprietary network information' means--

``(A) information which (i) relates to the quantity, location, type, and amount of use of telephone exchange service subscribed to by any customer of a telephone operating company, and (ii) is available to the telephone operating company by virtue of the telephone company-customer relationship; and

``(B) information contained in the bills for telephone exchange service received by a customer of a telephone operating company.

``(6) ELECTRONIC PUBLISHING.--The term `electronic publishing' means the provision of any information service--

``(A)(i) which a telephone operating company or its affiliate has, or has caused to be, originated, authored, compiled, collected, or edited; or

``(ii) in which a telephone operating company or its affiliate has a direct or indirect financial or proprietary interest; and

``(B) which is disseminated to an unaffiliated

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SAC252

person through some electronic means.

``(7) ELECTRONIC YELLOW PAGES SERVICE.--The term `electronic yellow pages service' means an electronic publishing service that only provides, by general product and business categories, the names, telephone numbers, addresses, trademarks or service marks of product or service providers, and related product or service information.

``(8) EXCHANGE AREA.--The term `exchange area' means a geographic area as established by a telephone operating company as of January 1, 1990, and as modified with the approval of the Commission in accordance with the following criteria:

``(A) Any such area shall encompass one or more contiguous local exchange areas serving common social, economic, and other purposes, even where such configuration transcends municipal or other local governmental boundaries.

``(B) Every point served by a telephone operating company within a State shall be included within an exchange area.

``(C) No such area which includes part or all of one standard metropolitan statistical area (or a consolidated statistical area, in the case of densely populated States) shall include a substantial part of

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any other standard metropolitan statistical area (or a consolidated statistical area, in the case of densely populated States).

``(D) Except with the approval of the Commission, no exchange area located in one State shall include any point located within another State.

``(9) INFORMATION.--The term `information' means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or other symbols.

``(10) INFORMATION SERVICES.--The term `information services' means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information which may be conveyed via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

``(11) INFORMATION SERVICES GATEWAY SYSTEM.--The term `information services gateway system' means an information service system that offers or makes available each of the following functions: data transmission, address translation, billing information, protocol conversion, and introductory information content (as such

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SAC252

terms are defined by regulations prescribed by the Commission).

``(12) INTEREXCHANGE.--The term `interexchange', when used with respect to telecommunications or information services, means telecommunications or information services between a point or points located in one exchange area and a point or points located in one or more other exchange areas or a point outside an exchange area.

``(13) TELECOMMUNICATIONS.--The term `telecommunications' means the transmission, between or among points specified by the customer, of information of the customer's choosing, without change in the form or content of the information as sent and received, by means of an electromagnetic transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) essential to such transmission.

``(14) TELECOMMUNICATIONS EQUIPMENT.--The term `telecommunications equipment' means equipment, other than customer premises equipment, or telecommunications products used by a carrier to provide telecommunications services.

``(15) TELECOMMUNICATIONS SERVICE.--The term

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SAC252

`telecommunications service' means the offering for hire of telecommunications facilities, or of telecommunications by means of such facilities.

``(16) TELEPHONE OPERATING COMPANY.--The term `telephone operating company'--

``(A) means the following companies: Bell Telephone Company of Nevada, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, New England Telephone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, Northwestern Bell Telephone Company, Pacific Northwest Bell Telephone Company, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, Southwestern Bell Telephone Company, the Bell Telephone Company of Pennsylvania, the Chesapeake and Potomac Telephone Company, the Chesapeake and Potomac Telephone Company of Maryland, the Chesapeake and Potomac Telephone Company of Virginia, the Chesapeake and Potomac Telephone Company of West Virginia, the Diamond State Telephone Company, the Mountain States Telephone and Telegraph Company, the Ohio Bell Telephone Company, the Pacific Telephone and Telegraph Company, and Wisconsin Telephone Company; and

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``(B) includes any successor or assign of any such company, but does not include any affiliate of any such company.

``SEC. 252. AUTHORITY FOR EXPANSION OF INFORMATION SERVICES.

``(a) ENHANCEMENTS TO TELEPHONE NETWORK INFRASTRUCTURE.--Subject to the requirements and limitations of this part and the regulations prescribed thereunder, a telephone operating company, its affiliates, and any organization or entity in which such company or affiliates have any financial or management interest may provide--

``(1) information services (including electronic publishing) which such company, affiliate, organization, or entity was authorized to provide on the effective date of this part;

``(2) advanced network services;

``(3) customer network management services;

``(4) emergency public safety telephone services (as such term is defined by the Commission by regulation), to the extent that provision of such service within a State is approved by the State commission of such State; and

``(5) electronic yellow pages services.

``(b) OUT-OF-REGION INFORMATION SERVICES.--Subject to the requirements and limitations of this part and the regulations prescribed thereunder, a telephone operating company, its affiliates, and any organization or entity in which such

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company or affiliates have any financial or management interest may, outside of the States in which the telephone operating company and its affiliates provide telephone exchange service, provide--

``(1) any information service described in subsection (a); and

``(2) any other information service (including electronic publishing).

``(c) LIMITATIONS ON AUTHORITY.--

(1) IN GENERAL.--A telephone operating company, its affiliates, and any organization or entity in which such company or affiliates have any financial or management interest shall not--

``(A) provide any information service other than a service authorized by subsection (a) or (b) of this section;

``(B) provide any information service pursuant to the authority of subsection (a)(2) that involves the generation or alteration of the content of information by such company, affiliate, organization, or entity; or

``(C) update information that is provided by its electronic yellow pages service in any State more frequently than once per month during the first 24 months after such company or affiliate--

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SAC252

``(i) establishes an information services gateway system in such State;

``(ii) subject to section 255, makes such system equally available to subscribers in each exchange area in such State; and

``(iii) commences providing electronic yellow pages services.

``(2) EXCEPTION TO LIMITATIONS.--The limitations contained in paragraph (1) shall not apply to an organization or entity in which a telephone operating company or its affiliates have a financial interest if such company and its affiliates--

``(A) do not have an equity interest (or the equivalent thereof) of more than 5 percent in such entity or organization; and

``(B) do not exercise operational control of, or have a management interest in, such entity or organization.

``(d) COMPLIANCE WITH ONA PLANS REQUIRED.--

``(1) IN GENERAL.--A telephone operating company may not engage in any line of business authorized by paragraphs (2) through (5) of subsection (a) unless--

``(A) the Commission has approved such company's plan to attain compliance with the order of the Commission entitled `Filing and Review of Open

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Network Architecture Plans,' CC Docket 88-2, Phase I, released December 22, 1988, as revised pursuant to paragraph (2) of this subsection; and

``(B) such company's operations are in compliance with such order and plan and with such additional regulations and orders as the Commission may from time to time prescribe concerning open network architecture plans and related requirements.

``(2) COMMISSION REVISION OF ONA ORDER REQUIRED.--The Commission shall--

``(A) revise the order described in paragraph (1)(A) to require that the plan for compliance with such order of each telephone operating company offer unbundled features and functions;

``(B) ensure that such plans provide a reasonable uniformity of such features and functions among such plans;

``(C) ensure that such plans include a schedule for timely offering of new services; and

``(D) ensure that telephone operating companies not discriminate in offering tariffed and non-tariffed features, functions, and capabilities.

``(e) STANDARDS FOR REGULATIONS.--In prescribing regulations to carry out this section, the Commission shall--

``(1) protect and encourage competition in the

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provision of information services, including electronic publishing;

``(2) ensure that the provision of information services by such company affiliate, entity, or organization will not (A) impede customers for information services from having access to a competitive market for such services, or (B) harm ratepayers of telephone exchange service;

``(3) ensure that local telephone companies not affiliated with a telephone operating company may obtain, the features and functions necessary to permit its customers to have access, on a nondiscriminatory basis, to the information services (including information services gateway systems) provided by telephone operating companies;

``(4) ensure that the methods by which such information services are provided by telephone operating companies are otherwise consistent with the public interest; and

``(5) consult with the Secretary of Commerce and with the Attorney General.

``(f) CONTINUING EFFECT OF RESTRICTIONS ON GRANDFATHERED INFORMATION SERVICES.--Any restriction or limitation that applies on the effective date of this part to an information service described in subsection (a)(1) shall continue to

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SAC252

16

apply until modified, terminated, or superseded by the Commission consistent with this Act.

``SEC. 253. AUTHORITY FOR ENTRY INTO MANUFACTURING.

``(a) AUTHORITY TO ENGAGE IN MANUFACTURING.--

``(1) IN GENERAL.--Subject to the requirements and limitations of this part and the regulations prescribed thereunder, a telephone operating company, its affiliates, and any organization or entity in which such company or affiliates have any financial or management interest--

``(A) may engage in the manufacturing functions described in paragraph (2); and

``(B) may provide telecommunications equipment and customer premises equipment.

``(2) PERMITTED MANUFACTURING FUNCTIONS.--For purposes of paragraph (1)(A), the functions described in this paragraph are the following:

``(A) design, maintenance, and operation of exchange networks for the provision of telephone exchange services, including systems planning and engineering, the specification of generic or functional requirements for the equipment necessary to provide such services, and the technical evaluation of systems function alternatives and equipment design alternatives;

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SAC252

``(B) research on, and design and development of, telecommunications equipment and customer premises equipment, including development of specific technical standards and compatibility specifications, prototype construction and testing, manufacturing design and fabrication engineering, and design and evaluation of quality control standards; and

``(C) research on, and design, development, and production of, software integral to telecommunications equipment or customer premises equipment.

``(3) ACTUAL FABRICATION OF TELECOMMUNICATIONS EQUIPMENT PROHIBITED.--Notwithstanding paragraph (1) or (2), a telephone operating company, its affiliates, and any organization or entity in which such company or affiliates have any financial or management interest shall not engage in the actual fabrication or actual production of telecommunications equipment or customer premises equipment except as provided in paragraph (4) or (5).

``(4) EXCEPTIONS TO FABRICATION PROHIBITION.--Paragraph (3) shall not prohibit--

``(A) the actual production of software integral to telecommunications equipment and customer premises equipment; or

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SAC252

``(B) the fabrication or production activities of an organization or entity in which a telephone operating company or affiliates have a financial interest (which may include the right to obtain royalties on the sale of funded products), if such company and its affiliates--

``(i) do not have an equity interest (or the equivalent thereof) of more than 5 percent in such entity or organization; and

``(ii) do not exercise operational control of or have a management interest in such entity or organization.

``(5) PUBLIC INTEREST DETERMINATION REQUIRED FOR ADDITIONAL FABRICATION AUTHORITY.--

``(A) DETERMINATIONS REQUIRED.--An affiliate of a telephone operating company may engage in the actual fabrication or actual production of telecommunications equipment or customer premises equipment if--

``(i) such affiliate is a wholly owned subsidiary of a regional holding company parent of telephone operating companies;

``(ii) such holding company submits an application with respect to such proposed fabrication or production that complies with the

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SAC252

requirements of subparagraph (B) and the regulations prescribed thereunder;

``(iii) the Commission determines, in a proceeding conducted in accordance with subparagraph (D), that such fabrication or production is consistent with the public interest; and

``(iv) the Commission issues an order specifying the terms and conditions under which the fabrication or production is authorized.

``(B) APPLICATION.--A regional holding company that proposes to have an affiliate that engages in the actual fabrication or production of telecommunications equipment or customer premises equipment shall submit to the Commission and to the Secretary of Commerce an application that--

``(i) specifically describes the proposed fabrication or production; and

``(ii) that contains or is accompanied by such additional information as the Commission or the Secretary may require by regulation for the exercise of their functions under this paragraph.

``(C) ASSESSMENT OF IMPACT BY SECRETARY OF COMMERCE.--Within 30 days after the receipt of an application under subparagraph (B), the Secretary of

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SAC252

Commerce shall review the proposed fabrication or production and shall submit to the Commission--

``(i) an analysis of the impact of such fabrication or production on the United States balance of trade in goods and services;

``(ii) an analysis of the impact of such fabrication or production on employment and competition in the manufacture of telecommunications equipment and customer premises equipment; and

``(iii) the Secretary's conclusions and recommendations, based on such analyses, with respect to the consistency of such fabrication or production with the public interest.

``(D) PROCEEDING TO DETERMINE PUBLIC INTEREST.--Upon receipt of an application under subparagraph (B), the Commission shall initiate a proceeding to determine whether the proposed fabrication or production is consistent with the public interest. The Commission shall issue a decision on any such application within 90 days after the date of its submission in final form, unless the applying company shall agree to extend the date for such decision. The Commission shall make a finding of consistency with the public interest under this

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SAC252

paragraph only if the Commission finds that--

``(i) the analyses, conclusions, and recommendations received from the Secretary of Commerce support such a finding;

``(ii) such fabrication or production will be conducted by a wholly owned separate subsidiary of a regional holding company;

``(iii) such fabrication or production will be conducted exclusively within the United States;

``(iv) any telecommunications equipment that is fabricated or produced for use in connection with telephone exchange facilities will be available to all companies providing telephone exchange service without discrimination or preference as to price, delivery, terms, or conditions;

``(v) such fabrication or production will be conducted in a manner that readily permits the Commission and State commissions to verify compliance with subsection (b), the other provisions of this part, and other relevant provisions of law; and

``(vi) considering such other factors as the Commission by rule prescribes for the purposes

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SAC252

its determination under this paragraph, such fabrication or production is consistent with the public interest.

``(b) RATEPAYER PROTECTION FROM DISCRIMINATORY PROCUREMENT.--If a telephone operating company or any of its affiliates or any organization or entity in which such company or affiliates have any financial or management interest are engaged in an activity described in subsection (a), such telephone operating company shall comply with regulations prescribed by the Commission which shall--

``(1) ensure effective competition, including the use of competitive bidding where appropriate, in the procurement by such telephone operating company of equipment and services, and ensure that small business concerns are given an equitable opportunity to share in such procurement;

``(2) ensure that manufacturing by such company affiliate, entity, or organization will not (A) harm competition among manufacturers of telecommunications equipment and customer premises equipment in the United States, or (B) harm ratepayers of telephone exchange service;

``(3) require such company to provide, to other telecommunications equipment manufacturers, opportunities to sell such equipment to such telephone operating

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SAC252

company which are comparable to the opportunities which such telephone operating company provides to itself or any affiliate of such telephone operating company or any organization or entity in which such company or affiliates have any financial or management interest;

``(4) require, as a method to demonstrate the fairness of prices for equipment acquired by such company from itself or any such affiliate, entity, or organization, market testing of such price through either or both of the following:

``(A) sales of such equipment to nonaffiliated entities; and

``(B) acquisition of such equipment from nonaffiliated entities;

``(5) be consistent with the public interest and the protection of ratepayers of telephone exchange service; and

``(6) be prescribed after consultation with the Secretary of Commerce and the Attorney General.

``(c) INFORMATION REGARDING SERVICES AND FACILITIES.--

``(1) DISCLOSURE REQUIREMENTS.--The Commission shall prescribe regulations to require that each telephone operating company shall maintain and file with the Commission full and complete information with respect to the protocols and technical requirements for connection

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SAC252

with and use of its telephone exchange service facilities. Such regulations shall require each such company to report promptly to the Commission any material changes or proposed changes to such protocols and requirements, and the schedule for implementation of such changes or proposed changes.

``(2) DISCLOSURE TO AFFILIATE PRIOR TO FILING PROHIBITED.--A telephone operating company shall not disclose to any affiliate of such company any information required to be filed under paragraph (1) before that information is so filed.

``(3) PUBLIC ACCESS TO INFORMATION.--A telephone operating company shall promptly provide to any person, upon payment of copying fees approved by the Commission, any information required to be filed under paragraph (1), except to the extent such information may be restricted by Commission regulation for purposes of national defense or emergency preparedness.

``(4) ADDITIONAL AUTHORITY OF COMMISSION.--The Commission may prescribe such additional regulations under this subsection as may be necessary to ensure that manufacturers in competition with a telephone operating company have ready and equal access to the information required for such competition that is held by such company.

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SAC252

``SEC. 254. GENERAL REQUIREMENTS AND CONDITIONS FOR ENTRY INTO NEW LINES OF BUSINESS.

``(a) SEPARATE SUBSIDIARY REQUIREMENTS.--

``(1) SEPARATE SUBSIDIARIES REQUIRED FOR CERTAIN NEW LINES OF BUSINESS.--A telephone operating company or its affiliate may engage in a line of business authorized by section 252(a)(5), 252(b), or 253(a) only through a subsidiary which meets the requirements of this subsection and regulations prescribed by the Commission to carry out this subsection. Notwithstanding the preceding sentence, a separate subsidiary is not required for--

``(A) the manufacturing functions described in section 253(a)(2)(A)); or

``(B) the sale of any customer premises equipment that is not fabricated or produced by such company or affiliate.

``(2) MINIMUM NUMBER OF INDEPENDENT DIRECTORS.--Any subsidiary shall have a board of directors not less than 20 percent of whom are not employees, officers, or directors of the telephone operating company or any other affiliate of such telephone operating company.

``(3) TRANSACTION REQUIREMENTS.--Any transaction between any telephone operating company and other affiliates of the telephone operating company--

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SAC252

``(A) shall not be based upon any preference or discrimination arising out of affiliation;

``(B) shall be carried out in the same manner as such company or affiliate conducts such business with unaffiliated persons;

``(C) shall be pursuant to contract reported to the Commission in advance;

``(D) shall be fully auditable and reflect all costs associated with the conduct of such business; and

``(E) shall not have the effect of permitting any violation of the requirements of subsection (b) of this section.

``(4) SEPARATE OPERATION AND PROPERTY.--A subsidiary required by this subsection may not--

``(A) enter into any joint venture or partnership with the telephone operating company;

``(B) have employees or a financial structure in common with the telephone operating company;

``(C) own any property in common with the telephone operating company; or

``(D) establish any other subsidiary or affiliate except after notice to the Commission in such form and containing such information as the Commission may require.

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SAC252

``(5) SEPARATE COMMERCIAL ACTIVITIES.--A subsidiary required by this subsection shall carry out directly its own marketing, sales, advertising, accounting, hiring and training of personnel, purchasing, and maintenance.

``(6) BOOKS AND RECORDS.--Any subsidiary required by this subsection shall maintain books, records, and accounts in a manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by other affiliates of the telephone operating company, and which identify any conduct of business with such affiliates.

``(7) ADVERTISING.--The subsidiary required by this subsection may carry out institutional advertising with the telephone operating company, except that (A) such advertising may not specifically relate to any service; and (B) the subsidiary and the telephone operating company shall share any costs of such advertising in proportion to their earnings.

``(8) SECURITIES INFORMATION.--A subsidiary required by this subsection shall submit to the Commission a copy of any statement, prospectus, or annual or periodic report required to be filed with the Securities and Exchange Commission.

``(9) PRESERVATION OF SEPARATE SUBSIDIARY REQUIREMENTS FOR GRANDFATHERED FUNCTIONS.--Nothing in

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this subsection shall be construed to relieve a telephone operating company of any separate subsidiary requirement imposed with respect to the performance of any information service described in section 252(a)(1).

``(10) ADDITIONAL AUTHORITY.--In addition to any other authority which the Commission may exercise under this Act, the Commission shall take such actions as are necessary--

``(A) to prevent anticompetitive practices between a telephone operating company and any other affiliate of the telephone operating company; and

``(B) to protect users of telephone exchange service from bearing any cost not associated with the provision of such services by the telephone operating company.

``(b) PREVENTION OF CROSS SUBSIDIES.--

``(1) COST ALLOCATION SYSTEM REQUIRED.--Any telephone operating company that is engaged in a line of business authorized by section 252 or 253, or which has an affiliate that is engaged in such a line of business, shall establish and administer, in accordance with the requirements of this subsection and the regulations prescribed thereunder and subject to supervision by the appropriate State commission, a cost allocation system that effectively prevents any cost of engaging in such

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SAC252

line of business from being subsidized by telephone exchange service.

``(2) COST ASSIGNMENT AND ALLOCATION REGULATIONS.--The Commission shall establish regulations to require the just and reasonable assignment and allocation of all costs which are in any way incurred by a telephone operating company in a line of business authorized by section 252 or 253 or in the provision of telephone exchange service. Such regulations shall include a requirement that the allocation of central office equipment and outside plant investment cost between regulated and nonregulated activities shall be based upon the relative regulated and nonregulated usage of the investment at the highest forecast nonregulated usage over the life of the investment.

``(3) INSULATION OF RATEPAYERS FROM FAILED VENTURES.--

``(A) ASSETS.--The Commission shall, by regulation, ensure that economic risks of lines of business authorized by section 252 or 253 are not borne by telephone exchange service ratepayers in the event of a business failure. Investment assigned to such line of business shall not be reassigned to the telephone exchange service unless the appropriate State commission determines that a majority of the

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ratepayers of telephone exchange service will benefit from such reassignment.

``(B) DEBT.--Any telephone operating company affiliate--

``(i) which is engaged in a line of business authorized by section 252 or 253, and

``(ii) which is required to be or is structurally separate from an affiliate engaged in the provision of telephone exchange services,

shall not obtain credit under any arrangement that (I) would permit a creditor, upon default, to have recourse to the assets of the telephone operating company or (II) would induce a creditor to rely on the assets of the telephone operating company in extending credit.

``(4) TRANSFERS OF ASSETS BETWEEN AFFILIATED COMPANIES.--The Commission shall, and a State commission may, within their respective jurisdictions, prescribe regulations governing the accounting for the transfer of assets between a telephone operating company and its affiliates. Such regulations shall protect the interests of ratepayers of telephone exchange service and require such transfer to be conducted by means of a transaction that complies with subsection (a)(3).

``(c) RECOVERY OF GOODWILL SUBSIDY.--Nothing in this

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section shall be construed to prevent a State commission from requiring a telephone operating company to recover and credit to its regulated services a charge for the reasonable value of any goodwill used in the establishment or operation of a line of business authorized by section 252 or 253.

``(d) PRIVACY.--A telephone operating company--

``(1) shall not disclose any customer proprietary network information to any information service personnel of such company or any affiliate of such company except--

``(A) with the consent or authorization of the customer to which it relates; or

``(B) as required by law;

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

``(3) if such company provides any aggregate information based on customer proprietary network information to any information service personnel of such company or any affiliate of such company, shall provide such aggregate information on the same terms and conditions to any other information service provider upon reasonable request therefor.

``SEC. 255. PROHIBITION ON ENTRY INTO INTEREXCHANGE SERVICE.

``(a) IN GENERAL.--Except as provided in subsection (b), but notwithstanding any other provision of this title, no

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telephone operating company shall, directly or through any affiliate, provide interexchange telecommunications services or interexchange information services.

``(b) EXCEPTIONS AND WAIVERS; REGULATIONS.--

``(1) EXISTING AUTHORIZED SERVICES.--Subsection (a) shall not prohibit any telephone operating company from providing, directly or through any affiliate, interexchange telecommunication services or interexchange information services that such company or affiliate was authorized to provide on the effective date of this part.

``(2) ESTABLISHMENT OF SIGNALING INTERFACES.--Notwithstanding subsection (a), a telephone operating company may, in accordance with regulations prescribed by the Commission, establish signaling interfaces, for the provision of routing, control, and billing functions, with carriers outside the exchange area in which a call originates subject to the following conditions:

``(A) the transmission facilities used by the telephone operating company to provide such signaling interfaces shall be leased from a carrier, other than a telephone operating company or an affiliate thereof, authorized to provide interexchange telecommunications;

``(B) the interexchange transmission of signaling

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information permitted under this paragraph shall be used solely to provide carriers with routing, control, and billing information; and

``(C) a telephone operating company shall not use the facilities authorized under this paragraph to make signaling services available to end users.

``(3) WAIVERS TO PERMIT ESTABLISHMENT OF STATEWIDE INFORMATION SERVICE GATEWAY SYSTEMS.--The Commission may grant a waiver to a telephone operating company or affiliate to permit such company or affiliate to carry the services offered by an information services gateway system into each exchange area in a State (as required by section 252(c)(1)(C)(ii)) over the facilities of a common carrier (other than a telephone operating company) authorized to provide interexchange transmission services. Any such waiver shall be for not more than 3 years, but may be renewed. The Commission may not grant such a waiver or renewal unless the Commission determines that--

``(A) the waiver or renewal is essential to permit such company or affiliate to carry the services provided by such gateway system into such an exchange area;

``(B) the waiver or renewal is for only such period as is required for such purposes;

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SAC252

``(C) the waiver or renewal will not impede the development of competition in information services or interexchange services;

``(D) any services necessary to access the gateway system are available on an unbundled, tariffed basis; and

``(E) the waiver or renewal will not prevent a customer from accessing the gateway system using an interexchange common carrier of the customer's choice.

``(4) PROVISIONS RELATING TO CELLULAR MOBILE RADIO SERVICES.--

``(A) INTERSYSTEM HANDOFF.--Notwithstanding subsection (a), a telephone operating company or its affiliate may provide intersystem handoff of cellular mobile radio transmissions on an interexchange basis between adjacent cellular systems, including the provision of such transmission facilities as are necessary to allow the continuation of calls in progress without interruption or degradation of service due to the movement of the mobile telephone unit or the characteristics of radio propagation.

``(B) ROUTING AND COMPLETION.--Notwithstanding subsection (a), a telephone operating company or its affiliates may provide the routing and completion of

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cellular transmissions between a cellular system located in one exchange area and an interconnected cellular system located in another exchange area. The routing and completion of such transmissions by a telephone operating company or its cellular affiliate to a cellular subscriber shall utilize the interexchange carrier designated by the subscriber, or an interexchange carrier selected at random by the telephone operating company or its cellular affiliate in the event that such carrier is not designated by the subscriber.

``(C) USE OF LEASED FACILITIES.--Interexchange facilities necessary for intersystem handoff or the interexchange routing and completion of cellular transmissions permitted under this paragraph shall be leased by a telephone operating company or its cellular affiliate from a carrier (other than a telephone operating company or its affiliate) authorized to provide interexchange telecommunications.

``SEC. 256. TERMINATION OF CERTAIN RESTRICTIONS; INQUIRIES, REPORTS, AND RULEMAKING BY COMMISSION.

``(a) INTTIAL INQUIRY AND REPORT.--

``(1) IN GENERAL.--Not later than 4 years after the date of enactment of this part, the Commission shall

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submit to each House of Congress a report on the results of an inquiry conducted by the Commission on the operation and consequences of this part.

``(2) SUBJECTS OF REPORT.--Such report shall include--

``(A) a description of the effect of this part on the status and development of competition in information services and manufacturing of telecommunications equipment;

``(B) the effect of this part on the availability to consumers of information services and telecommunications equipment;

``(C) the effect of this part on ratepayers and consumers of regulated telecommunications services; and

``(D) such recommendations for legislative changes in the provisions of this part as the Commission considers appropriate in the public interest.

``(b) SUNSET OF SEPARATE SUBSIDIARY REQUIREMENT.--

``(1) IN GENERAL.--The Commission may, by rule issued pursuant to a proceeding commenced more than 3 years after the date of enactment of this part, waive the separate subsidiary requirements of section 254(a). Such rule may waive such requirements in whole or in part and

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SAC252

may make such waiver subject to such terms and conditions as the Commission determines to be necessary and appropriate in the public interest.

``(2) STANDARDS FOR ISSUANCE OF WAIVER.--The Commission may grant a waiver under paragraph (1) only if the Commission determines that granting such waiver--

``(A) will not impair the ability of the Commission or State commissions to verify compliance with this part; and

``(B) will not permit anticompetitive practices between a telephone operating company and any of its affiliates.

``(c) SUNSET OF INFORMATION SERVICE RESTRICTION.--

``(1) IN GENERAL.--The restriction contained in section 252(c) of this part shall cease to be effective on the later of--

``(A) 10 years after the date of enactment of this part, or

``(B) one year after the date of the submission of a report as required by paragraph (2) that contains the recommendation specified in paragraph (2)(C)(i).

``(2) INQUIRY AND REPORT.--

``(A) IN GENERAL.--Not later than 9 years after the date of enactment of this part, the Commission

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SAC252

shall submit to each House of Congress a report on the results of an inquiry conducted by the Commission on the likely operation and consequences of the sunset provision contained in paragraph (1) of this subsection.

``(B) FINDINGS REQUIRED.--The Commission shall include in the report determinations of whether permitting the sunset provision of paragraph (1) to take effect will--

``(i) adversely affect the status or development of competition in information services;

``(ii) adversely affect the availability to consumers of information services;

``(iii) adversely affect ratepayers and consumers of regulated telecommunications services; or

``(iv) otherwise be inconsistent with the public interest.

``(C) RECOMMENDATION; CONSISTENCY WITH FINDINGS REQUIRED.--The Commission shall include in the report a recommendation to the Congress that--

``(i) the sunset provision of paragraph (1) of this subsection be permitted to take effect; or

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SAC252

``(ii) such provision not be permitted to take effect or be extended or revised in accordance with such recommendations as the Commission shall include in such report.

The Commission shall not make the recommendation described in clause (i) of this subparagraph if the Commission determines that permitting the sunset provision of paragraph (1) to take effect will have any of the consequences described in clause (i), (ii), (iii), or (iv) of subparagraph (B) of this paragraph.

``(d) SUNSET OF FABRICATION RESTRICTION.--

``(1) IN GENERAL.--The restriction contained in section 253(a)(3) of this part shall cease to be effective on the later of--

``(A) 10 years after the date of enactment of this part, or

``(B) one year after the date of the submission of a report as required by paragraph (2) that contains the recommendation specified in paragraph (2)(C)(i).

``(2) INQUIRY AND REPORT.--

``(A) IN GENERAL.--Not later than 9 years after the date of enactment of this part, the Commission shall submit to each House of Congress a report on

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SAC252

the results of an inquiry conducted by the Commission on the likely operation and consequences of the sunset provision contained in paragraph (1) of this subsection.

``(B) FINDINGS REQUIRED.--The Commission shall include in the report determinations of whether permitting the sunset provision of paragraph (1) to take effect will--

``(i) adversely affect the status or development of competition in the manufacturing of telecommunications equipment;

``(ii) adversely affect the availability to consumers of telecommunications equipment;

``(iii) adversely affect ratepayers and consumers of regulated telecommunications services; or

``(iv) otherwise be inconsistent with the public interest.

``(C) RECOMMENDATION; CONSISTENCY WITH FINDINGS REQUIRED.--The Commission shall include in the report a recommendation to the Congress that--

``(i) the sunset provision of paragraph (1) of this subsection be permitted to take effect; or

``(ii) such provision not be permitted to

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SAC252

take effect or be extended or revised in accordance with such recommendations as the Commission shall include in such report.

The Commission shall not make the recommendation described in clause (i) of this subparagraph if the Commission determines that permitting the sunset provision of paragraph (1) to take effect will have any of the consequences described in clause (i), (ii), (iii), or (iv) of subparagraph (B) of this paragraph.

``SEC. 257. ADMINISTRATION AND ENFORCEMENT.

``(a) USE OF GENERAL AUTHORITY AND REMEDIES.--For the purposes of administering and enforcing the provisions of this part and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to any telephone operating company as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier subject to this Act. Any violation of this part by any telephone operating company shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of this Act by a common carrier.

``(b) ANNUAL AUDITING REQUIREMENT.--Each telephone operating company that engages, or which has an affiliate that engages, or that has financial or management interest in

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an organization or entity that engages, in any line of business authorized by this part shall provide annually to the Commission, and to the State commission of each State within which such company provides telephone exchange service, a report on the results of an audit by an independent auditor conducted for the purpose of determining whether the company has complied with the cost assignment and allocation regulations prescribed under section 254. Such audit shall be conducted in accordance with audit procedures prescribed by the Commission, by regulation, which shall include rotation or other procedures to ensure the independence of such auditor. The telephone operating company shall submit the audit (certified by the person conducting the audit and by an appropriate officer of such affiliate) to the Commission, which shall make the audit available for public inspection. For purposes of conducting and reviewing such audit, the auditor, the Commission, and a State commission with jurisdiction over the telephone operating company shall have access to the accounts and records of the telephone operating company and to those accounts and records of its affiliates, and any organization or entity in which it has a financial or management interest, necessary to verify transactions conducted with the telephone operating company.

``(c) EXPEDITED REVIEW OF COMPLAINTS CONCERNING DISCRIMINATORY INTERCONNECTION.--

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SAC252

``(1) COMMISSION RULES REQUIRED.--The Commission shall adopt rules setting forth deadlines for the telephone operating companies to satisfy or answer, and the Commission to investigate and issue rulings on, complaints alleging discriminatory interconnection submitted in accordance with section 208 of this Act. In the case of a complaint that states sufficient facts to show that the complainant has been subjected to discriminatory practices and that there is substantial possibility that such practices will result in irreparable harm to present areas of business of the complainant, the Commission's rules shall provide a means for expedited review.

``(2) PERIOD FOR REVIEW; RULINGS.--The period of expedited review shall not exceed 45 days and shall not be extended, except that the Commission may grant extensions of up to 60 days upon showing of good cause. At the end of the period for expedited review, the Commission shall, based upon its findings, either issue a ruling ordering the telephone operating company to cease its discriminatory practices or dismiss the complaint.

``(3) REMEDIES.--In accordance with the Commission's rules, the Commission may impose penalties or fines, or both, in addition to issuing an order to cease discriminatory practices.

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SAC252

``(4) REVIEW.--Notwithstanding section 405, a party whose complaint has been dismissed as a result of expedited review shall be deemed to have exhausted its administrative remedies, unless it elects to petition for reconsideration. A cease order issued by the Commission shall remain in effect pending the outcome of any judicial review of the Commission's findings. Judicial review shall be limited to a determination of whether the Commission's decision was arbitrary, capricious, or in excess of authority.

``(5) PENALTIES FOR FRIVOLOUS COMPLAINTS.--The filing of frivolous complaints shall be unlawful, and the Commission's rules shall set forth penalties or fines, or both, for filing such complaints.

``(d) JOINT BOARD.--Not later than 90 days after the date of enactment of this part, the Commission shall establish a joint board for purposes of reviewing the operation and consequences of this part and making recommendations to the Commission with respect to regulations to be prescribed by the Commission under this part. The joint board shall be composed of an equal number of members of the Commission and State commissioners appointed in accordance with section 410(c) and approved in accordance with section 410(a). With respect to any regulation that directly affects rate regulation by State commission or any regulation under

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subsection (b) of this section, the Commission shall adopt the recommendations of the joint board unless such recommendations are inconsistent with the public interest or any provision of law.

``SEC. 258. WHISTLEBLOWER PROTECTION.

``(a) IN GENERAL.--A telephone operating company, its affiliates, or any organization or entity in which a telephone operating company or its affiliates have any financial or management interest shall not discharge or in any other manner discriminate against any employee, former employee, or applicant for employment because the employee, former employee, or applicant for employment discloses, or demonstrates an intent to disclose, an activity, policy, or practice that the employee, former employee, or applicant for employment believes evidences a violation of any provision of this part or the regulations thereunder.

``(b) EXEMPTION.--This section shall not apply under circumstances where an employee, former employee, or applicant for employment deliberately causes a violation of this part or any regulation thereunder, unless such employee, former employee, or applicant for employment was acting with the consent of the employer.

``(c) PROCEDURES AND REMEDIES.--The Commission shall prescribe, by regulation, procedures to review complaints, and remedies that may be imposed, with respect to violations

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SAC252

of subsection (a).

``SEC. 259. AUTHORIZATION OF APPROPRIATIONS.

``In addition to sums authorized to be appropriated by section 6 of this Act, there are authorized to be appropriated to carry out this part--

``(1) $10,000,000 for the first fiscal year beginning after the date of enactment of this part; and

``(2) such sums as may be necessary for each succeeding fiscal year.

``SEC. 260. RULES OF CONSTRUCTION; EFFECTIVE DATE.

``(a) NO EFFECT ON CABLE TELEVISION RESTRICTIONS.--Nothing in this part shall be construed to amend, supersede, or limit the applicability of any provision of title VI of this Act.

``(b) NO EFFECT ON STATE LAW.--Nothing in this part shall be construed to alter, limit, or supersede the authority of any State with respect to the regulation of intrastate communication service.

``(c) EFFECTIVE DATES; SCHEDULE FOR PROMULGATION OF REGULATIONS.--

``(1) COMMISSION AUTHORITY AND SCHEDULE.--The authority of the Commission to prescribe regulations to carry out this part is effective on the date of enactment of this part. The Commission shall prescribe such regulations in final form within 120 days after such date

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of enactment.

``(2) GENERAL EFFECTIVE DATE.--Except as provided in paragraph (1), the provisions of this part shall be effective on the later of--

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

``(B) 180 days after the date of enactment of this part.''.

SEC. 102. TELECOMMUNICATIONS EMPLOYEES' PROTECTION.

Title II of the Communications Act of 1934 is amended by inserting after section 223 the following new section:

``TELECOMMUNICATIONS EMPLOYEES' PROTECTION

``SEC. 224. (a) DUTY TO HIRE ELIGIBLE PROTECTED EMPLOYEES.--

``(1) SELECTION OF INDIVIDUALS TO FILL ELIGIBLE PROTECTED POSITIONS.--After any appropriate seniority, layoff and recall, or force adjustment provisions in applicable collective bargaining agreements have been satisfied, then, in selecting individuals to fill eligible protected positions, the dominant interexchange carrier, the regional holding companies, the telephone operating companies, and their respective affiliates and subsidiaries, shall afford to eligible protected employees the first right of hire for any eligible protected positions for which they are qualified by

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SAC252

training and experience over any persons who have not theretofore been employees of the dominant interexchange carrier, a regional holding company, the telephone operating companies, or their respective subsidiaries and affiliates.

``(2) CREDIT FOR TRAINING AND EXPERIENCE.--In determining the training and experience of eligible protected employees, the dominant interexchange carrier, the regional holding companies, the telephone operating companies, their respective subsidiaries and affiliates shall credit eligible protected employees as possessing the training and experience they would normally have acquired in their former position had they not been laid off or terminated (for other than just cause) since December 31, 1983.

``(3) TESTING TO DETERMINE QUALIFICATIONS.--An eligible protected employee may be required to take a test or examination for the purpose of determining whether such employee possesses sufficient qualifications to fill the eligible protected position, but only if such test or examination is required of applicants for such position who are currently employed in the company in which the position is available. An eligible protected employee shall not be required to take a test or examination that is required of applicants who have not

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SAC252

been previously employed in such company.

``(4) SERVICE CREDIT.--In the selection of eligible protected employee applicants to fill available eligible protected positions, service credit shall be the basis of selection if training and experience is substantially equal. Upon rehire, an eligible protected employee shall be subject to any seniority, layoff and recall, or force adjustment provisions contained in any applicable collective bargaining agreements.

``(b) AVAILABLE ELIGIBLE PROTECTED POSITIONS.--

``(1) LISTING OF ELIGIBLE PROTECTED POSITIONS REQUIRED.--The dominant interexchange carrier and each regional holding company, on behalf of each of the telephone operating companies, their respective subsidiaries and affiliates shall each establish, maintain, and publish at the beginning of each calendar quarter, a comprehensive list of the eligible protected positions which are known or anticipated to be available with the dominant interexchange carrier, or with the regional holding companies, the telephone operating companies, and their subsidiaries and affiliates, respectively. Each list shall identify the available eligible protected positions by name of company, job description, skills needed, wage scale, location, date to be filled, and the closing date for the accepting of

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SAC252

applications.

``(2) AVAILABILITY AND ACCESSIBILITY OF LISTS.--The dominant interexchange carrier, the regional holding companies, the telephone operating companies, and their respective subsidiaries and affiliates, shall each post the lists of available eligible protected positions at all employment offices and work centers of such dominant interexchange carrier, regional holding companies, telephone operating companies, and their respective subsidiaries and affiliates. Such lists of available eligible protected positions shall be furnished to each local labor organization representing eligible protected employees.

``(3) AVAILABILITY OF PREAPPLICATIONS FOR LISTED POSITIONS.--An eligible protected employee may initiate consideration for an eligible protected position listed pursuant to this subsection by filing a preapplication form, which shall be--

``(A) available at all employment offices and work centers of the dominant interexchange carrier, the regional holding companies, the telephone operating companies, and their respective subsidiaries and affiliates, and

``(B) furnished to each local labor organization representing eligible protected employees.

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SAC252

``(4) REPORTING OF ELIGIBLE PROTECTED POSITIONS FILLED.--The dominant interexchange carrier, the regional holding companies, the telephone operating companies, and their respective subsidiaries and affiliates, shall each post at each of their employment offices, at the beginning of each calendar quarter, a list which shall identify the eligible protected positions which were filled during the previous quarter by name of company, job description, location, wage scale, name of individual filling the position, and whether the individual is an incumbent employee, eligible protected employee, or a person not previously an employee of the dominant interexchange carrier, a regional holding company, a Bell operating company, or their respective subsidiaries and affiliates. Such report shall be furnished to each local labor organization representing eligible protected employees.

``(c) RELOCATION ASSISTANCE.--Eligible protected employees who must relocate in order to fill eligible protected positions within the same regional service area in which they reside and in which they were last employed in an eligible protected position shall have paid for them the actual moving expenses for relocating themselves and their dependents. In addition, such eligible protected employees shall receive reimbursement payments for any loss resulting

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from selling their principal place of residence at a price below the fair market value or any loss incurred in canceling such eligible protected employees' lease agreements or contracts of purchase relating to their principal place of residence. The moving expenses and reimbursement payments under this subsection shall be paid by whichever of the dominant interexchange carrier, the regional holding companies, the telephone operating companies, or their respective subsidiaries and affiliates, laid off or terminated (other than for cause) the services of the eligible protected employees.

``(d) BASE WAGE UPON REHIRE.--An eligible protected employee who is hired to fill an eligible protected position, shall be paid wages determined by placing him at that step of the wage progression schedule for the eligible protected position being filled which is at least equal to two steps below the highest wage progression step which had been attained by such eligible protected employee in any eligible protected position held during the previous 5 years. This subsection applies only to employees who are compensated solely on a hourly-rated wage basis utilizing wage progression schedule.

``(e) COLLECTIVE BARGAINING AGREEMENTS.--Nothing in this section with respect to employee protection shall be construed to restrict, limit, or eliminate the obligations of

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SAC252

a covered employer arising out of any collective bargaining agreement with any labor organization.

``(f) CIVIL ENFORCEMENT.--Any person, or labor organization representing such person or persons, whose rights secured by provisions of this section have been infringed by any violation thereof may bring a civil action in any district court of the United States having jurisdiction of the parties for such relief (including injunctions) as may be appropriate, without respect to the amount in controversy and without regard to the citizenship of the parties.

``(g) TERMINATION OF RIGHTS.--The rights provided by this section shall cease to apply 8 years after the date of enactment of this Act, except that--

``(1) any eligible protected employee who has applied to fill an eligible protected position before the end of such 8 year period may continue to pursue the remedies provided under this section with respect to such position after the end of such 8 year period; and

``(2) in the case of an eligible protected employee who was an employee of the Western Electric Company, this subsection shall be applied by substituting 12 years for 8 years.

``(h) DEFINITIONS.--As used in this section--

``(1) The term `dominant interexchange carrier' means

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American Telephone and Telegraph Company.

``(2) The term `regional holding company' means a regional holding company that owns or controls one or more telephone operating companies as subsidiaries or affiliates.

``(3) The term `telephone operating company' has the meaning specified by section 251 of this title.

``(4) The term `eligible protected employee' means an individual who, on December 31, 1983, was serving in an eligible position as an employee of the dominant interexchange carrier, a telephone operating company, or their respective subsidiaries and affiliates, and who has been or is laid off or terminated for other than cause.

``(5) The term `eligible protected position' means that work, or similar work, which is related, directly or indirectly, to communication by wire or radio or associated services and which was performed by employees of the dominant interexchange carrier, any of the regional holding companies, any of the telephone operating companies, or their respective subsidiaries or affiliates, on or after December 31, 1983, and which was not--

``(A) a supervisory position within the meaning of section 2(11) of the National Labor Relations Act (29 U.S.C. 152(11)), or

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SAC252

``(B) the annual base pay rate for which is not more than $50,000 adjusted by the percentage increase in the Consumer Price Index since December 31, 1983.

``(6) The term `service credit' means service credit for benefit accrual, vesting, and eligibility for benefits under any pension plan, or any other employee benefits, including the interchange and treatment of associated benefit obligations and assets.

``(7) The term `wage progression schedule' refers to the manner by which the basic weekly wages of an employee progresses in incremental steps from the starting step of a wage schedule to the maximum step of a wage schedule over a period of time.

``(8) The term `regional service area' means the States within which a regional holding company, through its telephone operating company subsidiaries or affiliates (or their successors or assigns) provides telephone exchange service.''.

TITLE II--TERMINATION OF ANTITRUST JURISDICTION WITH RESPECT TO MATTERS SUBJECT TO COMMISSION REGULATION

SEC. 201. OVERRIDE OF LINE OF BUSINESS RESTRICTIONS.

(a) IN GENERAL.--The authority of a telephone operating company and any affiliate of such company to engage in a line of business pursuant to, and subject to regulation under, part II of title II of the Communications Act of 1934, as

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amended by this Act, shall be effective notwithstanding any restriction or obligation imposed by the Modified Final Judgment (or any waiver or modification thereunder) on the lines of business in which a telephone operating company and its affiliates may engage.

(b) EXCLUSIVITY AND SUPERSEDING EFFECT OF COMMISSION REGULATIONS.--The Federal Communications Commission shall have exclusive authority to prescribe regulations to carry out part II of title II of the Communications Act of 1934, as amended by this Act. Such regulations shall supersede any restrictions or obligations imposed by the Modified Final Judgment, or any waiver or modification thereunder, with respect to the lines of business in which a telephone operating company and its affiliates may engage.

SEC. 202. DEFINITIONS.

For purposes of this title--

(1) the definitions applicable to the terms defined in section 251 of the Communications Act of 1934 (as amended by this Act) also apply to such terms when used in this title; and

``(2) the term `Modified Final Judgment' means the Modification of Final Judgment entered August 24, 1982, in United States against Western Electric, Civil Action No. 82-0192 (United States District Court, District of Columbia).

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SECTION BY SECTION ANALYSIS
OF STAFF DISCUSSION DRAFT
TELECOMMUNICATIONS POLICY ACT
FEBRUARY 8, 1990

Purpose:

To encourage the continued growth of a competitive telecommunications marketplace, to promote the development of advanced public telecommunications networks and to foster the wide availability of new and innovative consumer services and products.

SEC. 1. SHORT TITLE
The Telecommunications Policy Act of 1990

SEC 2. FINDINGS

Title I--ESTABLISHMENT OF COMMISSION AUTHORITY TO REGULATE ENTRY OF TELEPHONE OPERATING COMPANIES INTO NEW LINES OF BUSINESS

SEC. 251. DEFINITIONS

Advanced Network Services means one or more of the following functions: translation, manipulation, processing, conversion, storage, or retrieval of information which may be conveyed by telecommunications.

Affiliate means any organization directly or indirectly controlled by a telephone operating company or an equity interest of more than 10 percent.

Customer Network Management Services means the provision of customized reports on network use and systems analysis to detect operating or design flaws.

Customer Premise Equipment means equipment to originate, route, or terminate telecommunications, excluding equipment to multiplex, maintain, or terminate telephone exchange service.

Customer Proprietary Network Information means information available to the telephone company by virtue of the carrier-customer relationship and customer billing information.

Electronic Publishing means the provision of any information which originated, authored, compiled, collected or edited and transmitted to an unaffiliated person through some electronic means.

Electronic Yellow Pages Service means an information service providing only names, telephone numbers, addresses, trademarks, service marks, and related product or service information.

Exchange Area means a geographic area established by a telephone operating company as of January 1, 1990, as modified with approval of the FCC in accordance with criteria established in the bill.

Information means knowledge or intelligence represented by any

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form of writing, signs, signals, pictures, sounds, or other symbols.

Information Services means an offering of the capability to generate, acquire, store, transform, process, retrieve, utilize, or make available information via telecommunications.

Information Services Gateway System means a system offering data transmission, address translation, billing information, protocol conversion, and introductory content as defined in FCC regulations.

Interexchange means telecommunications or information services between a point in one exchange area and one or more points elsewhere.

Telecommunications means electromagnetic transmission to specified points without change in form or content of information.

Telecommunications Equipment means equipment other than customer premise equipment or telecommunications services products.

Telecommunications Service means telecommunications capability or the facilities to provide such capability.

Telephone Operating Company means the specific companies identified in the legislation and any successors or assigns, but not affiliates.

SEC. 252. AUTHORITY FOR EXPANSION OF INFORMATION SERVICES

(a) Enhancements to Telephone Network Infrastructure--Authorizes telephone operating companies to provide previously authorized information services, advanced network services, customer network management services, emergency public safety telephone services, and electronic yellow pages services, subject to certain requirements, limitations and regulations

(b) Out-of-Region Information Services--Authorizes telephone operating companies to provide any of the above services and any other information services (including electronic publishing) outside of a State in which it provides telephone exchange service.

(c) Limitations on Authority--

(1) In General. Precludes telephone operating companies from providing information services other than those authorized above, prohibits generation or alteration of the content and restricts electronic yellow page updates to one per month for first 24 months of operation, after the company establishes a statewide information services gateway equally available to all subscribers and commences provision of electronic yellow pages services.

(2) Exception to Limitation. The limitations do not apply when a telephone operating company's equity interest in an information service organization does not exceed 5 percent, providing it does not exercise operational control or have a management interest in the information service organization.

(d) Compliance with ONA Plans Required--

(1) In General. Prohibits telephone operating companies from engaging in information services unless its Open Network

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Architecture plan has been approved by the FCC and the company is operating in compliance with applicable FCC orders and the approved plan.

(2) Commission Revision of ONA Order Required. Requires FCC to revise its order to require unbundled features and functions and ensure plan uniformity, timely new service offerings, and nondiscrimination in tariffed and non-tariffed offerings.

(e) Standards For Regulation--Requires that FCC regulations protect and foster competition in information services, ensure customer access to competitors, protect ratepayers, and ensure consistency with public interest.

(f) Continuing Effect of Restrictions on Grandfathered Information Services--Retains restrictions and limitations until expressly removed by FCC.

SEC. 253. AUTHORITY FOR ENTRY INTO MANUFACTURING

(a) Authority to Engage in Manufacturing--

(1) In General. Permits telephone operating companies to engage in certain manufacturing functions and provide telecommunications equipment and customer premise equipment, subject to certain requirements and limitations.

(2) Permitted Manufacturing Functions. Allows design, maintenance and operation of networks for providing telephone exchange service; research, design and development of telecommunications equipment, customer premise equipment; and production of software integral to telecommunications equipment.

(3) Actual Fabrication of Telecommunications Equipment Prohibited. Prohibits fabrication or production of telecommunications equipment or customer premise equipment.

(4) Exceptions to Fabrication Prohibition

(A) Allows production of software integral to telecommunications equipment and customer premise equipment and

(B) Allows equipment production when the telephone operating company does not have an equity interests of more than 5 percent in the manufacturing company and does not exercise operational control or have a management interest.

(5) Public Interest Determination Required For Additional Fabrication Authority.

(A) Determinations Required. Allows wholly owned telephone operating company affiliates to engage in actual fabrication or production of telecommunications equipment and customer premise equipment, if the FCC in response to a proper application and after conducting a specific proceeding, finds that the proposed fabrication is in the public interest and issues an order authorizing it.

(B) Application. Requires the proposed fabrication to be described in an application as prescribed in federal regulations.

(C) Assessment of Impact by Secretary of Commerce. Requires that balance of trade, employment, and competition implications be assessed by Commerce, and conclusions and recommendations with regard to public interest be forwarded to FCC within 30 days.

(D) Proceeding to Determine Public Interest. Requires the FCC to initiate a proceeding and rule on the public interest of an application within 90 days. Public interest requires support of the Secretary of Commerce, wholly owned subsidiary, all fabrication within U.S., availability of telephone exchange facility equipment to all telephone exchange service providers on

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equitable terms, verifiable compliance with requirements of this bill, and consistency with FCC prescribed public interest factors.

(b) Ratepayer Protection from Discriminatory Procurement--
Requires telephone operating companies involved in manufacturing to comply with FCC regulations that
--ensure effective competition and equitable small business participation,
--protect competition among other equipment manufactures,
--afford other manufacturers opportunities to sell comparable equipment,
--require a market test to determine price fairness, and
--require consistency with the public interest and protect telephone service ratepayers.
Requires FCC to consult with the Secretary of Commerce and the Attorney General before prescribing regulations.

(c) Information Regarding Services and Facilities--

(1) Disclosure Requirements. Requires telephone operating companies to file information on protocols and technical connection requirements and any material changes thereto.

(2) Disclosure to Affiliate Prior to Filing Prohibited. Requires filing before disclosure of needs to affiliates.

(3) Public Access to Information. Requires telephone companies to provide information to the public upon payment of copying fees.

(4) Additional Authority of Commission. Authorizes FCC to prescribe regulations ensuring other manufacturers have ready and equal access to information needed for competition.

SEC. 254. GENERAL REQUIREMENTS AND CONDITIONS FOR ENTRY INTO NEW LINES OF BUSINESS--

(a) Separate Subsidiary Requirements--

(1) Required for Certain New Lines of Business. Requires subsidiaries for electronic yellow pages, out-of-region information services, and manufacturing businesses.

(2) Minimum Independent Directors. Requires at least 20% of directors not affiliated with a telephone operating company.

(3) Transaction Requirements. Prohibits affiliation preferences; requires that business be conducted like unaffiliated business, pursuant to contract, fully auditable, reflecting all costs, and not permitting cross-subsidies.

(4) Separate Operation and Property. Prohibits a subsidiary and telephone company from engaging in any of the following: joint ventures, employees or financial structure, or a common property ownership interest. Prohibits subsidiaries from establishing other subsidiaries except after notifying the FCC.

(5) Separate Commercial Activities. Requires separate marketing, sales, advertising, etc.

(6) Books and Records. Requires subsidiaries to maintain separate books as prescribed by the FCC.

(7) Advertising. Allows institutional advertising with telephone company, if carried out on a cost sharing basis.

(8) Securities Information. Requires subsidiaries to file securities information with FCC

(9) Preservation of Separate Subsidiary Requirements for Grandfathered Functions. Requires information services authorized prior to the Act to meet the above requirements.

(10) Additional Authority. Gives the FCC authority to prevent anticompetitive practices between telephone companies and

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subsidiaries, and protect telephone exchange service users from bearing any cost associated with the provision information services.

(b) Prevention of Cross Subsidies--

(1) Cost Allocation System Required. Requires telephone companies, under state supervision, to establish systems preventing telephone exchange service subsidies of information services or manufacturing businesses.

(2) Cost Assignment and Allocation Regulations. Requires FCC to establish regulations for just and reasonable assignment; requires that central office equipment and outside plant investment costs be allocated on basis of highest forecast non-regulated usage.

(3) Insulation of Ratepayers From Failed Ventures.

(A) Assets. Prohibits assignment of Information service and manufacturing investments to ratepayers unless the state finds it beneficial.

(B) Debt. Prohibits, in the event a regulated business defaults, creditor recourse to telephone operating company assets. Prohibits use of telephone operating company assets to induce a creditor to extend credit.

(4) Transfer of Assets Between Affiliates. Allows FCC and states to regulate asset transfers to protect ratepayer interests.

(c) Recovery of Goodwill Subsidy--Permits States to require a charge for goodwill used in the establishment of information service and manufacturing businesses.

(d) Privacy--Prohibits a telephone operating company from disclosing customer proprietary information to information services providers including Bell affiliates except with customer consent and shall disclose such information to the customer upon request. Requires the information provided to affiliates be made available to others on the same terms.

SEC. 255. PROHIBITION ON ENTRY INTO INTEREXCHANGE SERVICE

(a) In General--Prohibits telephone operating companies from providing interexchange telecommunications or information services.

(b) Exceptions and Waivers; Regulations--

(1) Existing Authorized Services. Grandfathers them.

(2) Establishment of Signaling Interfaces. Allows interfaces for routing, control, and billing functions outside of an exchange area, if

(A) using leased interexchange facilities;

(B) solely for the transmission of routing,control and billing information; and

(C) facilities are not made available to end users.

(3) Temporary Waivers to Permit Establishment of Statewide Information Service Gateway Systems. Allows the FCC to grant a waiver for up to three years, if it determines the waiver

(A) is essential to providing gateway services,

(B) covers only the period for which it is required,

(C) will not impede information or interexchange competition,

(D) provides access to gateway services available on an unbundled, tariffed basis, and

(E) allows customers to access the gateway using any interexchange carrier.

(4) Provision Relating to Cellular Mobile Radio Services.

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(A) Allows intersystem handoff of cellular calls and provision of transmission services necessary to allow continuation of calls between adjacent cellular systems without interruption or degradation.

(B) Allows routing and completion of transmissions between interconnected cellular systems in different exchange areas using the customer's presubscribed interexchange carrier or one selected at random.

(C) Requires that facilities needed to provide the above services shall be leased from an interexchange carrier.

SEC. 256 TERMINATION OF CERTAIN RESTRICTIONS; INQUIRIES, REPORTS, AND RULEMAKING BY COMMISSION

(a) Initial Inquiry and Report--

(1) In General. Requires the FCC, within 4 years of enactment, to must report on the operation and consequences of this legislation.

(2) Subjects of Report. Requires consideration of effects on

(A) competition in information services and manufacturing of telecommunications equipment;

(B) availability of information services and telecommunications equipment to consumers; and

(C) ratepayers and consumers of regulated telecommunications services.

(D) The report must include legislative recommendations where appropriate.

(b) Sunset of Separate Subsidiary Requirement--

(1) In General. Allows the FCC to waive these requirements, by rule, in whole or in part, if found in the public interest, pursuant to a proceeding begun at least 3 years after enactment.

(2) Standards for Issuance of a Waiver. Requires the FCC to determine that the waiver will not

(A) impair the ability FCC or state commissions to verify compliance with this legislation; and

(B) permit anticompetitive practices between telephone operating companies and their affiliates.

(c) Sunset of Information Service Restriction--

(1) In General. Provides that by operation of law, the restriction shall cease the later of 10 years after enactment, or one year after the FCC submits the report required below.

(2) Inquiry and Report.

(A) In General. Requires the FCC must submit a report on the likely operation and consequences of this sunset provision, including legislative recommendations, not later than 9 years after the date of enactment.

(B) Findings Required. Requires the FCC to determine whether allowing the sunset provision to take effect will adversely affect competition in information services, the availability of information services to consumers, and ratepayers and consumers of regulated telecommunications services; or otherwise be inconsistent with the public interest.

(C) Recommendation; Consistency with Findings Required. Requires FCC's recommendation on when the sunset provisions should be allowed to take effect to be consistent with the results of its inquiry.

(d) Sunset of Fabrication Restriction--

(1) In General. Provides that by operation of law, the restriction shall cease the later of 10 years after enactment, or

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one year after the FCC submits the report required below.

(2) Inquiry and Report.

(A) In General. Requires the FCC must submit a report on the likely operation and consequences of this sunset provision, including legislative recommendations, not later than 9 years after the date of enactment.

(B) Findings Required. Requires the FCC to determine whether allowing the sunset provision to take effect will adversely affect competition in telecommunications equipment manufacturing, the availability of telecommunications equipment to consumers, and ratepayers and consumers of regulated telecommunications services; or otherwise be inconsistent with the public interest.

(C) Recommendation; Consistency with Findings Required. Requires FCC's recommendation on when the sunset provisions should be allowed to take effect to be consistent with the results of its inquiry.

SEC. 257. ADMINISTRATION AND ENFORCEMENT

(a) Use of General Authority and Remedies--
Gives FCC the same authority, power and functions with respect to telephone operating companies as it has with respect to common carriers.

(b) Annual Auditing Requirement. Requires independent auditors reports on compliance with cost assignment and allocation regulations, compliance with FCC prescribed audit procedures, and rotation, or other procedures to ensure independence of the auditors.

(c) Expedited Review of Complaints Concerning Discriminatory Interconnection--

(1) Commission Rules Required. Requires deadlines for telephone operating company responses, FCC investigations and rulings.

(2) Period for Review; Rulings. Limits reviews to 45 days; 60 upon showing of good cause.

(3) Remedies. Permits FCC to impose penalties or fines and issue cease and desist orders.

(4) Review. Requires that administrative remedies end with dismissed complaints, unless petitioned for reconsideration; requires that cease orders remain in effect pending judicial review.

(5) Penalties for Frivolous Complaints. Requires that FCC rules provide for fines or penalties, or both.

(d) Joint Board--Requires FCC to establish, within 90 days, a board consisting of FCC and state commissioners to make recommendations on regulations which FCC must accept, unless inconsistent with public interest or law.

SEC. 258. WHISTLEBLOWER PROTECTION

(a) In General--Prohibits discharge or discrimination against individuals for disclosing evidence of violation of this legislation.

(b) Exemption--Does not apply when a deliberate violation is caused by an individual, unless acting with employer consent.

(c) Procedures and Remedies--Requires FCC to prescribe regulations on the procedures to be used for reviewing complaints and imposing remedies.

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SEC. 259. AUTHORIZATION OF APPROPRIATIONS
Authorizes $10,000,000 in the first year beginning after the date of enactment and such sums as may be necessary for each succeeding year.

SEC. 260. RULES OF CONSTRUCTION; EFFECTIVE DATE
(a) No Effect on Cable Television Restrictions--
(b) No Effect on State Law--
(c) Effective Dates; Schedule for Promulgation of Regulations--
(1) Commission Authority and Schedule. Requires final FCC regulations within 120 days of enactment.
(2) General Effective Date. Either 60 days after final regulations or 180 days after enactment.

SEC. 102. TELECOMMUNICATIONS EMPLOYEES' PROTECTION.
amends Title II of the Communications Act 1934
SEC. 224.
(a) Duty to Hire Eligible Protected Employees--
(1) Selection of Individuals to Fill Eligible Protected Positions. Requires affected companies and affiliates to provide first right of hire for protected positions to qualified, former Bell System employees.
(2) Credit for Training and Experience. Credits former employees with the training and experience they would have obtained if not laid off or terminated.
(3) Testing To Determine Qualifications. Allows such tests only if used in hiring current employees.
(4) Service Credit. Required as the basis of selection among equally qualified employees.
(b) Available Eligible Protected Positions--
(1) Listing of Positions. Requires affected companies to file quarterly lists of known or anticipated positions.
(2) Availability and Accessibility of Lists. Requires posting of lists at affected companies employment offices.
(3) Availability Of Preapplications For Listed Positions. Allows preapplications as a means of initiating consideration for a position.
(4) Reporting of Eligible Protected Positions Filled. Requires affected companies to identify, quarterly, eligible positions filled.
(c) Relocation Assistance--
Requires moving expenses and reimbursement payments for some eligible employees.
(d) Base Wage Upon Rehire--
Establishes wage rate for rehired employees.
(e) Collective Bargaining Agreements--
This section does not affect any collective bargaining agreements.
(f) Civil Enforcement--
Gives parties the right to a civil action in any district court.
(g) Termination of Rights--
Terminates rights provided in this section in 8 years, except
(1) For employes who applied prior to 8 year period; and
(2) For western Electric employees who have 12 years.
(h) Definitions--
(1) Dominant interexchange carrier means American Telephone and Telegraph Company.
(2) Regional Holding Company means a company that owns or operates one or more telephone operating companies as subsidiaries

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or affiliates.
(3) Telephone operating company means Bell Operating Companies.
(4) Eligible protected employee means a former employee on December 31, 1983, who has been laid off or terminated without cause.
(5) Eligible protected position means that work related to communications by wire or radio or associated services on or before December 31, 1983, except
(A) Supervisory positions, or
(B) positions paying more than $50,000.
(6) Service credit means credit for benefits under any pension plan.
(7) Wage progression schedule means an incremental wage schedule.
(8) Regional service area means the States within which Regional Holding Companies, through their telephone operating companies provide telephone exchange service.

TITLE II--TERMINATION OF ANTITRUST JURISDICTION WITH RESPECT TO MATTERS SUBJECT TO COMMISSION REGULATION

SEC. 201. OVERRIDE OF LINE OF BUSINESS RESTRICTIONS.
(a) In General--Telephone companies given authority to engage in a line of business pursuant to this act, notwithstanding any MFJ restriction, obligation, waiver or modification.
(b) Exclusivity and Superseding Effect of Commission Regulations--FCC given exclusive authority to prescribe implementing regulations which shall supersede any MFJ restrictions, obligations, etc.

SEC. 202. DEFINITIONS.
(a) Same as is section 251
(b) MFJ means the judgement entered August 24, 1982, in the United States against Western Electric, Civil Action No. 82-0192 (United States District Court, District of Columbia).

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Mr. MARKEY. The time for the opening statement by the Chair has expired.

The Chair recognizes the ranking minority member, the gentleman from New Jersey, Mr. Rinaldo.

Mr. RINALDO. Thank you, Mr. Chairman.

Mr. Chairman, it's difficult to know exactly what to say at a hearing of this type and I'm going to do my best to try to put it in focus and lay out the issues that have to be resolved as I see them.

First of all, I think it goes without saying that these hearings could mark the beginning of this subcommittee's resolution of the complex and contentious issues surrounding the AT&T decree. I say "could" and I say that because the subcommittee members have indicated clearly that they want to resolve the issue of who makes telecommunications policy. If they didn't, obviously staff wouldn't have been directed to draft a bill.

But no one should be a fool.

This subcommittee still has a long way to go before the policy issues surrounding the Bell company business restrictions are resolved to everyone's satisfaction.

The members of this subcommittee are united on one point; Congress should have control over telecommunications policy as the chairman very appropriately said.

But we know that this particular issue is more complicated than a simple transfer of jurisdiction. We've also got to decide if we can level the playing field without harming the interests of competitors and if we should do so, and how we should do it, and how all of those divergent interests should be balanced. In other words, we're dealing with an economic competitive situation that in most cases is left primarily to the parties involved.

Right now it's fair to say that probably no two members of this subcommittee agree in toto on exactly what policies Congress should adopt.

The staff draft should focus the ensuing debate in a way that no stack of position papers could.

During these hearings—and I want to stress this point—I intend to continue as I have on this issue and keep an open mind on how the policy issue surrounding the Bell company restrictions should be resolved.

I think and I hope that most members feel the same way for two reasons.

First of all, although we deal with the problems of competitive industries every day, none of us are real experts on communications policy. That's one reason why the FCC was created; to administer and achieve on a day-to-day basis the policy goals set by Congress. Congress should not under any circumstances micromanage competitors any more than the courts should.

If we legislate, we should try not to set in stone a lot of minute regulatory details. That wouldn't be smart in a field like telecommunications where innovation is driven by rapidly changing technology. What's at the top of the line today is not there tomorrow.

The FCC's ability to monitor and regulate new Bell company business ventures is critically important to our deliberations. After all, a major reason the business restrictions were imposed in the

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first place was because the FCC at that time admitted that it couldn't keep up with the Bell System.

So Chairman Sikes is going to have to convince us this morning that things have changed and that the Commission has the tools and the will and the ability to do the job.

Second, since the Bell companies are the only ones that benefit directly from this legislation, they're going to have to make the case that their participation in new lines of business will bring substantial benefits to our citizens and to our economy.

We all believe that if legislation is going to happen, if a bill is going to pass this House, if it's going to get enacted and signed into law, then the Bell companies properly carry a heavy burden to justify why they should do more than the judge has already allowed them to do.

They have to carry another burden. They have to go the extra mile to compromise with their adversaries.

In my opinion, at least we're not going to enact a bill unless there's more of a consensus. I don't think there are too many members here that want to enact a bill that's going to benefit a group of companies and create a lot of enemies on the other side or that may perhaps disrupt what to some people is at least a relatively balanced playing field at the present time.

The industry and the country stand to lose a great deal in terms of competition and innovation if the delicate balance struck by divestiture is upset. There have been great benefits to divestiture. There have also been significant strains and uncertainties. Our job is to sort these issues out. Our job is to listen to the case that the Bell companies make.

Our job is to listen to the case that the long distance carriers and newspaper publishers and all the other affected parties make. And our job now is to sort out the issues and make adjustments in cases and in instances where the case for a change is clearly and strongly made.

So the Bells must help see to it that competition will continue to flourish by redoubling their efforts to gain more support for the new freedoms they want.

I think it was put very appropriately by Chairman Dingell in a meeting we had with some of the representatives of the major Bell companies when he stated that it was up to them to go out and get the votes.

And I think that still holds because without their efforts it's going to be difficult for Congress to summon the political will necessary to change the status quo. Without a consensus I think that's going to be very difficult to put into place this year.

These series of hearings have been an important watershed in determining the shape of our future telecommunications policy.

Mr. Chairman, I think everyone wants to certainly express our appreciation for your bringing this matter to light, advancing the issue, letting people discuss it, letting it get fully aired, and I certainly look forward to the testimony today and in all our hearings to clarify the subcommittee's thinking on these very complicated issues.

Thank you.

Mr. MARKEY. I thank the gentleman, very much.

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The Chair recognizes the gentleman from Washington State, Mr. Swift.

Mr. SWIFT. I thank the Chair and I'd like also to commend the Chair. I believe the staff draft that he has had prepared moves this issue along in a very, very constructive way. It was an heroic piece of work, both in scope and I think in terms of results.

I think as we approach this issue we really are going to be answering the question, whether we know it or not, as to whether we are going to be measuring what needs to be done against how things used to be or against how things are going to be.

The public policy issues here, I think, are two. It is whether or not we are going to let some of the most experienced, most talented, most capable, and financially most able companies in telecommunications in our society play a full role in what has become in the last few years clearly a world economy; whether that talent is going to be put to use on behalf of this country's efforts to maintain and continue supremacy in the field of telecommunications or not. That is one very key public policy issue.

If we measure that against how things used to be, in which essentially our own market was the only one we had to consider, you arrive at one set of conclusions. If we measure this against the way things are going to be, I would suggest you then arrive at a very different set of conclusions.

The second major public policy issue at stake here, I believe, is, exactly how are the average American citizens going to be able to participate in the information age? The way we decide this is going to determine, I think, whether everybody gets to play or whether a kind of information elite will result in this country.

There, again, I think if you measure that public policy goal against the way things used to be, you come up with one set of conclusions in which your concerns are primarily rates and issues of that nature.

If you instead, however, measure the public policy goals against the way things are going to be in the year 2000, 2010, 2020, it seems to me you arrive at a very different set of conclusions about what has to be done in order to assure that all Americans are going to be able to play in the information age.

I would make one last point, Mr. Chairman, and that is it seems to me that much of this debate as to whether we should do something or not is based upon the unstated assumption that if we do nothing everything will remain exactly as it is forever; that Judge Greene will live forever.

The truth is that at some point things are going to change and at some point Judge Greene is going to retire and who knows what the next judge will do in dealing with these issues.

At some point we are going to restore the situation to the normal public policymaking forum. And the question is: who is going to do that and what kind of safeguards are going to be made?

I would note for those who don't want to do anything that there has already been a major piece of legislation in the last Congress by no less than the Republican leader in the Senate that would have simply returned jurisdiction to the FCC, not one safeguard included in the legislation.

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If you stop and think the status quo is not going to last forever, then does it not suggest that someone should be in charge of that transition and that someone should write the safeguard rules by which that transition will take place?

And if you agree with that, would you not also agree this is the forum in which those safeguards should be written and now is the time to do it?

I yield back the balance of my time.

Mr. MARKEY. The gentleman's time has expired.

The Chair recognizes the gentleman from Ohio, Mr. Oxley.

Mr. OXLEY. Thank you, Mr. Chairman. I'd like to thank you and the committee staff for your continuing efforts in setting the proper regulatory stage for the competitive future of the U.S. telecommunications industry. The staff draft provides a suitable, detailed foundation upon which the committee and all interested parties can build consensus legislation that will propel the United States into the information age and the global manufacturing marketplace.

The telecommunications industry has experienced dynamic changes since AT&T and the Justice Department, before Judge Greene, negotiated the future of seven companies that did not even exist at the time. The changes in technology, the changes in domestic and international competitiveness, and the changes in consumer needs and wants cry out for a reexamination of the regulatory structure of the telecommunications industry.

The new regulatory scheme promised by the staff draft takes the necessary first step; that is, it shifts the jurisdiction over the Baby Bells away from the judicial branch over to the FCC. The next step, freezing up the RBOC's so they can manufacture telecommunications equipment wherever it is economical, and provide information and other telecommunication services to all Americans and the world may be a more delicate operation. But, it is an operation the FCC, under the capable leadership of Chairman Sikes along with the Commerce Department and State regulators can competently handle if enough regulatory flexibility is granted.

Mr. Chairman, I'm concerned that the staff draft may restrain the future it promises in a spiralling web of bureaucracy. Let's not take Judge Greene's handcuffs off the Baby Bells just to put them immediately into an FCC straitjacket. After all, look at the progress we have made in telecommunications without touching the broad directives of the 1934 Communications Act.

I look forward to the testimony of Chairman Sikes and Chairman Worthy on their views of the staff draft proposal and look forward to seeing this as, indeed, the first step in a way that we can effectuate a rational telecommunications policy in this country.

And I yield back the balance of my time.

Mr. MARKEY. The gentleman's time has expired.

The Chair recognizes the gentleman from Oklahoma, Mr. Synar.

Mr. SYNAR. Thank you, Ed. And first of all let me join with the others in commending you and the staff for putting forward this draft of the Modified Final Judgment [MFJ] Bill which really attempts to balance all the interests involved.

I think my concern is in trying to reach that balance some very important policy questions may have been overlooked. I'm not

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going to take the time to comment specifically about the bill. We will get to that during this whole process. But I would like to make about three comments if I could as we begin this. The first of my concerns is that the more we learn about the issue, the more we find there are serious risks involved in lifting the restrictions.

For example, I have with me this morning the AARP and the Consumer Federation of America's recent report which shows the harm in centralizing the RBOC's network.

The Department of Labor just recently come out with a report which showed the potential loss of 27,000 jobs if these manufacturing restrictions are lifted.

A report by the telecommunications manufacturing companies show the benefit that we've had from the competition since divestiture; that the U.S. trade picture is not as dismal as the RBOC's would have us believe.

In 1988, for example, we have had an overall trade balance of $1.3 billion when the Asian countries were excluded.

Until we address, I think, the unfair trade practices of those countries, I'm not sure what benefit we will have in lifting those restrictions.

I hope all of those reports will be made part of the record and I commend them to all of the members for reading because I think they help us very much.

Second, I'm concerned that the FCC cannot adequately protect against cross-subsidization as the NYNEX situation demonstrates. Had it not been for some disgruntled employees and a very aggressive newspaper reporter, I question whether they would have ever been caught. In fact in the Communications Daily of March 5, 1990, we have some FCC Commissioners that share that feeling. The two newest FCC Commissioners expressed concern whether regulators could even catch cross-subsidies.

Let me quote: "I contend that there is a distinct possibility that there is not a regulatory body in the country that would recognize a cross-subsidy if it smacked them in the face." Clearly as we move down this path that has to be a major consideration.

And finally I want to put the record straight and clear up what I think has been too often a misstated principle and that is, I agree that Congress should set telecommunications law but I argue that Judge Greene is simply doing that. The judge is not setting telecommunications policy willy-nilly as some experts would believe. He has a standard which he must use and that standard, ladies and gentlemen, is the antitrust laws enacted by this Congress.

Now, if you're telling me that the telecommunications industry is so important to this country and our economy that it should be exempt from the antitrust laws, then I think they're going to have to make a much, much better case than they have so far. And that is what the issue is when we talk about Judge Greene.

So it's with these concerns that we open this debate today and I look forward to this dialogue and this tugging and pulling. And I commend you again for starting that process.

Mr. MARKEY. Thank you, Mr. Synar, very much. The gentleman's time has expired.

The Chair recognizes the gentleman from Pennsylvania, Mr. Ritter.

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Mr. RITTER. Thank you, Mr. Chairman.

Today we embark on a series of hearings to examine the staff draft to change the Modified Final Judgment that resulted in the breakup of AT&T. I want to thank the chairman for his leadership and the staff for their very substantial effort.

The information age is upon us. Due to advances in telecommunications our country and the world are becoming smaller places. Today we have telecommunications technologies that 10 years ago were only visions in a science fiction film. We must keep striving for advances in telecommunications in order to maintain America's global competitive position.

Telecommunications is the information infrastructure of an advanced economy. If, indeed, information is economic power, then telecommunications is the domestic and global delivery system of that power.

Without the most advanced information delivery system in the world, U.S. global influence and competitiveness cannot be rated "Number One."

The reason we're here today is to determine what is the best way to build the most powerful telecommunications delivery system in the world. We need to take a look at the state of the telecommunications industry in this country and around the world to determine what changes need to be made to improve our position as a world telecommunications leader. These hearings will help determine what direction our telecommunications policy takes into the 1990's.

The Modified Final Judgment [MFJ] has led to significant new investments in information age industries and telecommunications. The MFJ also destroyed the wonderfully national network of our telecommunications system.

We need to try and regain our ability to offer an information network something extending nationally, without too many hoops to jump through, where the whole is greater than the sum of the parts.

There is great potential in this information age. There's the potential for a nationwide fiber network to the home. There's the dream of vast amounts of information available to each and every family and home in the United States, a kind of universal information service to the American people, like today's universal telephone service. But there's also the potential for going astray.

We need to strike a balance in our policies that will allow America's telecommunications capacity to blossom without harmful side effects.

We need, also, to realize that there's this distinction in the way certain restrictions on the Bell operating companies are treated. There are different tests for determining whether or not to lift restrictions on information services, manufacturing, and long distance service.

When deciding on a course of action, we need to remember why there was an MFJ in the first place. We need to determine if there have been truly significant changes in this industry domestically and globally as a whole since the MFJ came into effect with marked changes in that agreement.

Finally, we need to evaluate where jurisdiction for the MFJ should rest. Because it requires the unique mixture of telecom-

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munications policy and antitrust law, Congress must be careful to select the proper vehicle to oversee the MFJ.

This committee will be making decisions that will affect telecommunications policy of the United States and the job and economic activity therein for years to come. No single decision will make all interested parties happy. But within government agencies, industry, and consumers I believe we can begin to draft a policy that all players will be able to live with and profit with, a policy that will propel our American telecommunications capability to new heights bringing leadership to the rest of the world.

Thank you, Mr. Chairman. I look forward to the testimony of our witnesses and I yield back the balance of my time.

Mr. MARKEY. The gentleman's time has expired.

Mr. Scheuer.

Mr. SCHEUER. Thank you, Mr. Chairman. I want to congratulate the chairman of this subcommittee for bringing these hearings and also the staff for having done a prodigious amount of very creative and very thoughtful work in preparing for this hearing.

I'm struck by the problem the antitrust laws are presenting us in our effort to be first and foremost in a global market, whether it's in telecommunications or whether it's in automobile manufacturing or whatever.

The Sherman Antitrust Act was passed 100 years ago. I studied it in law school right after World War II and that's almost half a century ago.

Today the Sherman Antitrust Act in many respects does not stand the test of time. Even as we sit here in this morning's newspaper Diamler Benz and Mitsubishi are getting together on all kinds of joint actions, not just on automobiles but on satellites, on aircraft research and development, on a whole host of problems.

Now, if Diamler Benz and Mitsubishi can get together with no global antitrust limitations, then we have to think very long and hard as to whether the antitrust laws passed exactly a century ago—they were passed in the last decade of the last century—may not be inhibiting the talent and a dynamism and the initiative of American industry in a number of sectors from competing in a global market.

The big question facing us may be not whether we have four large production companies manufacturing automobiles or three, or three as against two, the question may very well be as foreign automobile manufacturers increase their penetration of our market, increase their market share inextricably year by year—the question may very well be: can one major automobile research and development manufacturing sales marketing combine survive as an important player in global markets? And it may take the combined talents of several of today's automobile companies to make it in global markets.

I think the same question looms up on telecommunications where none of the rest of the world operates under the kind of constraints that the Sherman Antitrust Act presented 100 years ago in an era where there was certainly not a global market and barely a national market.

It certainly challenges this committee and perhaps the Judiciary Committee, perhaps working jointly, to look into the question, to

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have a journeyman blow of the Sherman Antitrust Act to see what it's original purposes were, to see the absolutely mindblowing changes that have taken place in our economy in the last century, and to see whether we may not be unfair and unjustly crippling American industry. And to see what combination of talents and efforts, whether it be research, whether it be manufacturing, whether it be sales, distribution, marketing, advertising—what combination of these elements across-the-board in American industry are going to maximize the chance of American industries being primus inter pares, first among equals, in global commerce and how the Sherman Antitrust Act ought to be fine-tuned to assist American corporations in maximizing our potential to remain a key player in as many sectors as possible in the 1990's and the 20th Century and in the Third Millenium.

Thank you, Mr. Chairman.

Mr. MARKEY. I thank the gentleman from New York.

The gentleman from California, Mr. Moorhead.

Mr. MOORHEAD. Well, thank you, Mr. Chairman.

For a number of years now we have been debating, discussing Judge Greene's restrictions on the Bell operating companies and how they affect the public, the competitors, the companies themselves, and our Nation's ability to compete with companies from other parts of the world. This isn't an easy issue to understand. It's not easy to find the proper solution.

The channels of debate run deep in the fabric of American telecommunications policy. The MFJ impacts on newspapers, on cable, the information services, on software development, on manufacturing, on American competitiveness, on fairness, and on long distance service, just to name a few.

We hear claims and counterclaims by experts on all sides of the discussion. We feel the pressure from many business interests who are concerned with taking care of their own needs.

We ourselves in these hearings must pretend to be prophets and look into the tumbling and exciting future of American telecommunications and determine really what is best for our Nation, our people, and the whole economic process; while at the same time trying to protect companies from unfair competition. It isn't an easy thing.

I certainly hope these hearings bring out some of the answers that we badly need. I agree with my colleagues that it is necessary to get this matter out of the courts. I know how slow Congress has been in the past in findings answers to many of these solutions and sometimes we've given up our leadership by being so slow.

I hope that at least we look into these issues thoroughly enough so that we can come up with some answers that really do justice to all the interests that are involved, and especially to our country and to our economic ability to compete.

Thank you, Mr. Chairman, for all of your efforts in this area.

Mr. MARKEY. The gentleman's time has expired.

The Chair recognizes the gentleman from Louisiana, Mr. Tauzin.

Mr. TAUZIN. First of all, let me thank the Chair as many others have done on this committee, thank the staff for the work they've done in bringing this issue one step further. I commend them for something that many in this audience didn't believe this legislation

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was going any further than the first hearing. And there was some doubt of this committee to pursue this policy issue.

I think the Chair sent out a strong signal today. If anybody has any doubts about it, let today erase those doubts. This committee is moving on this issue and is seeking consensus on how to return to the proper body within our system the right, power, and responsibility, albeit we sometimes are afraid of that responsibility, to make telecommunications policy for America.

I was in Europe recently when Chairman Gorbachev was being criticized by his adversaries in the Soviet Union for seeking to give too much power to himself in his new Soviet Union Presidency. I recall the point was that it would upset the balance of power and the balance within the Soviet structure between the legislature and the executive and judicial branches.

It's amusing then to see them debate that issue when we in America since 1982 surrendered that balance to the judiciary. We, since 1982, have allowed whatever actions of the Sherman Antitrust Act or some other act to permit a Federal judge, no matter how good his qualifications, no matter how good his product—and I happen to think he's done some remarkable work. But no matter how good his qualifications, we have permitted a Federal judge to usurp the rightful authority of the legislative branch to make telecommunications policy for America.

Mr. Chairman, if nothing else this committee ought to return that power to the proper branch of Government within this United States of America.

I was struck by the fact that those who criticize the efforts of this committee in seeking to reexamine this Modified Consent Judgment which now forms the basis by which the biggest telephone companies in America are restricted in their activities. Those who criticize our efforts to review that, I question whether or not we ought to allow some of the biggest telecommunications companies in America the right to manufacture.

I think we ought to ask ourselves why should we as a matter of telephone and telecommunications policy say to some of the biggest companies in America "You're prohibited in competing with the manufacturing of telecommunications products."

Second, I know why most people fear competition. But I also know that competition is the best protection for American consumers in the free market.

So I think it's fitting that we look into the question of whether or not it's good policy to tell some of the biggest and best companies in America in this critical area that "you're out of the game, that consumers can't benefit from what you might do." In fact several of them say we ought to keep the telephone companies out of the new information age; we ought not to allow them to get into information services. When the truth is that it's probably the most exploding area of new technologies and services around the world. And for us to tell some of the largest and best companies in America "you alone in America and the world are not going to be allowed to enter this field and develop these services for America" seems strange to me and I think it's time we examine the policy.

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Third, Mr. Chairman, I'm concerned about something in the staff draft and I want to highlight it today with reference to a letter I just received from the Louisiana Public Service Commission.

As you know, the Louisiana Public Service Commission is one of the few in the country that has been most active in asserting its rights to protect consumers in the telecommunications field where in fact an amount of power is exercised still and asserted that right through the various judicial system I've just complained about and won a landmark case.

Judge Greene's decision removed from our States' public service commissions and PUC's across America much of their authority to regulate where regulations were proper.

The draft that we're looking at would in fact continue the inability of PUC's and the Public Service Commission in Louisiana from regulating in the area of unilateral services. I, for one, think we ought not do that.

Now, I'm not suggesting that we make a decision to allow the BOC's to offer unilateral services but I am suggesting that authority to regulate and make those decisions for the consumers in my State, which properly resided in the FCC at one time before Judge Greene stepped in, might properly be returned to them if we want to make good policy in this area.

To do otherwise is to say that we, as the Congress, are going to say that some services can't be rendered, again, by some companies in America and I'm not sure whether it closes the door to that possibility.

In short, I think it's time for us to be a little bold in our responsibility. Even if we run from this responsibility, we can't hide. Technology is going to march right on. The world is not going to stop because we refuse to take back our responsibility in this area and make telecommunication policy for the country. Technology will continue to march on. Giant international markets will continue to flourish and new services and technologies will be developed for everybody in the world. Yet we will continue to deny to some of our best and our biggest telecommunications companies in America the right, power, and responsibility to compete for American citizens. And we deny the consumers in America the protection and the benefits of that which the free market competition has always yielded to us in our system.

If there's one thing that brought that wall down in East Germany more than anything else is the fact that people looked out over it at the telecommunications satellite and saw what our system had to offer. It looked at what we were doing in a free competitive environment and said "we want some of that and we reject a system that denies it to us."

It came from our satellite. It came from our telecommunications. And now they demand it in their political system.

Doesn't it make sense for us to perfect that system of the free market, free enterprise, and indeed open the door for the biggest investment of our telecommunications companies to continue expanding those possibilities? I think it does.

I commend you, Mr. Chairman, and the staff for making the effort. I don't agree with all the pieces of the staff draft, none of us will yet, but I hope and pray we can continue to march consensus.

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I think the message ought to go out today that we will continue pressing for that consensus and we intend to develop it this session of the Congress.

Thank you, Mr. Chairman.

Mr. MARKEY. The gentleman's time has expired.

The Chair recognizes the gentleman from Iowa, Mr. Tauke.

Mr. TAUKE. Mr. Chairman, first let me commend and congratulate you for your willingness to take on what is a very difficult issue and to direct the resources of the subcommittee to this effort. I appreciate your leadership on this question.

Second, let me commend the staff of the subcommittee, both majority and minority staff, for the excellent work that they have done in preparing the staff draft. It is a good starting point for our discussions and deliberations on the issue.

Finally, I wish to commend the gentleman from Washington, Mr. Swift, with whom I've had the opportunity to work on this issue for the last several years. He has shown great leadership and ferociousness and sticktotiveness in dealing with this issue and I think that's one of the reasons we're here today.

Mr. Chairman and members of the subcommittee, I believe that it is very important for the Nation that we move forward on this issue. We should move forward on the issue, not because somebody has compromised, not because Congress needs to assert its jurisdiction, but because it is the right thing to do. It's right for American consumers. It is right for the economy of this Nation. It's right for the telecommunications industry of the country and the services that can be provided to business and industry and consumers all across the country.

I think that it is critical as we begin this process that we understand two things. First of all, it's not up to the Bell operating companies to make a case to this subcommittee or to the Congress about what telecommunications policy. It's our job to determine what is the appropriate telecommunications policy for the Nation. And we shouldn't be acting on the basis of what a couple of people in the industry or some players on the outside world decide is the appropriate thing for us to do or on the basis of some compromise that they might reach.

Instead, we should be looking at the facts and making a policy on the basis of what's correct for the Nation, for our consumers, for the economy of this country.

So I hope that as we move forward that we understand that compromise is certainly important but not that compromise is the heart of the process, the legislative process, or that it's the motivation for our actions.

The second thing that I'd like to observe is that the burden isn't on the Bell operating companies alone to make the case. I think in fact if anything, the burden on those who want to continue to place restrictions on a company, say they can't engage in certain activities, to explain why it is that the U.S. Government should use its power to prevent them from participating in the normal streams of commerce. Those who want to prevent a company from being able to engage in certain lines of business have the burden of proof, have to demonstrate why there is a necessity that public policy act in this way.

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I think, therefore, that in a sense some who have addressed the issue have gotten things a little turned around. They've suggested that just because current policy is in place that we have to assume that's correct unless somebody proves otherwise. I suggest any time Government is exercising the kind of power it is in this instance that it's Government who has the burden of proof to demonstrate that that exercise of power is justified.

Mr. Chairman, I finally just want to underscore what many have said already; that a change in policy in my judgment is going to be good for consumers because it will bring the information age to millions of Americans all across the country, not just in urban areas but most importantly from my perspective it will open up the opportunity for these information services to be available in rural areas of the Nation as well. This will help us have the kind of universal information service that we fought so hard for to get in the telephone service arena.

Second, it is good for the economy of the Nation. It will improve our trade picture. It will expand the number of jobs in the telecommunications industry. It will mean greater choice for American business and American consumers.

Mr. Chairman, I think we've had a lot of talk on this so let me yield back and let's get on with the show today.

Mr. MARKEY. Thank you. The gentleman's time has expired.

The Chair recognizes the gentleman from Maryland, Mr. McMillen.

Mr. MCMILLEN. Mr. Chairman, as a new member of this subcommittee let me just say first that these proceedings are critical to our country in establishing a national telecommunications policy in this information age, just as critical as the establishment of an infrastructure policy of roads, bridges, and canals was to our Nation in the Industrial Age. And I applaud you for moving expeditiously on this matter.

Having come from the Banking Committee, I see a lot of parallels between a national telecommunications policy and a national financial services policy in this country. In both cases we see a wrestling match between Congress and the regulatory agencies and the court as to who is in charge. We see the issue as to competitiveness, how we respond to the global markets. We see often the issue of how do we maintain creativeness, innovativeness, and entrepreneurs in our system in both cases.

I think the undercurrent here is we obviously need a policy. We need to make sure that we're competitive. We also need to make sure that we don't lose that innovative, creative aspect of our system.

I think your draft goes forward in trying to establish appropriate firewalls to make sure that happens. And I just want to commend the committee, commend the staff for moving forward to establish this critical policy.

Thank you.

Mr. MARKEY. The gentleman's time has expired.

The Chair recognizes the gentleman from Colorado, Mr. Schaefer.

Mr. SCHAEFER. Thank you, Mr. Chairman.

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Today's hearing not only gives us the opportunity to review the staff draft but also the last 10 months as well. As being the newest member of the subcommittee and the May 4th hearing on H.R. 2140 was certainly my first introduction to this issue and probably as well as other members. In countless meeting with virtually every interested party since then has been as complex as ever. The process itself certainly has been an enlightening one.

To say we understand in lifting the line of business restrictions then you're labeled anticompetitive; if you favor certain safeguards, then your labeled Anti-American. Perhaps this is a bit of exaggeration but it outlines the difficult task facing this subcommittee and the staff.

How much freedom is necessary to enhance competition and how many safeguards are necessary to ensure it?

With very little direction we instructed staff to make the delicate balance and their efforts, Mr. Chairman, have been commendable.

I would yield back the rest of my time.

Mr. MARKEY. The gentleman's time has expired.

The Chair recognizes the gentleman from Kansas, Mr. Slattery.

Mr. SLATTERY. Thank you, Mr. Chairman, and I would like to also join with my other colleagues in commending you, Mr. Chairman, and a lot of our dedicated staff here, especially Gerry Salemme, David Leach and Terry Haines for their countless hours of effort of putting this legislation together in this committee draft. They deserve a lot of credit.

In addition, I think that Al Swift and Tom Tauke deserve a lot of credit for their tenacious commitment to this effort over the last few years and they deserve a lot of credit and recognition for hanging in there tough against some pretty formidable opponents and I commend them for that.

Mr. Chairman, I think a lot has already been said this morning. I don't know that I can add a lot to it except that I would reemphasize the strong feeling that some have expressed that I share, that the Congress of the United States is the policymaking institution in this country and I think that we should indeed have a responsibility to exert ourselves in this area.

After 7 years in the Congress, I would observe that if there's a general criticism that could be made of this institution in the last few years, it is that at time we meddle around in areas that we shouldn't be involved in and can't effect while not spending enough time in those areas that we can affect and should be involved in.

Certainly this area of telecommunications policy falls into the latter category.

In addition, Mr. Chairman, I have a deep concern about how rural Americans are going to be affected as we shape telecommunications policy. And I believe very strongly that rural America must be able to enjoy the complete spectrum of benefits which the information age will offer. We cannot allow this Nation to be divided into two geographic areas: one, information rich and the other, information poor.

As this legislation is considered, I want to ensure that rural telephone cooperatives and small telephone companies are fully integrated into a comprehensive nationwide joint information services network. And I am pleased that the staff draft addresses the need

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for inter-LATA waivers in order to permit establishment of statewide information services gateway systems.

I also hope the subcommittee will explore the need to allow the BOC's to provide content manipulation or in other ways facilitate the creation of content when they have no financial interest in the content. And I hope that we can focus on that as we move forward with this effort.

In conclusion, Mr. Chairman, you know, it just amazes me that at this time when we're deeply involved in a highly competitive global economy that we artificially restrict the capacity of American entrepreneurs, American businesses to compete in a global economy.

So today we find ourselves in a situation where the major users of telecommunications equipment in this country are prohibited by law from design and production and research on new telecommunications equipment while dealing with the reality that 90 percent, according to the information I have, of our consumer telephone equipment in this country is manufactured overseas. This is an absolute absurdity.

As far as I'm concerned I think it's important for us to unleash the entrepreneural genius of America in this area and enable American business to fully compete in a global economy. And I think the legislation before us will enable us to be more competitive. It will create jobs for the telecommunications industry. It will also ensure that we have universal service as we move more deeply into the information age.

For all of these reasons and others I am encouraged we are at this point in the process and I look forward to working with you, Mr. Chairman, and others on the committee in advancing this effort.

I yield back any time that I might have.

Mr. MARKEY. The gentleman's time has expired.

The Chair recognizes the gentleman from Texas, Mr. Fields.

Mr. FIELDS. Thank you, Mr. Chairman. Like all the rest of my colleagues I want to commend you for calling this hearing and moving this very important issue forward.

We've all spent many hours talking about the broad concepts of transferring jurisdiction. And it's easy to form a consensus in theory but now we have before us the staff's draft that brings us to some hard, cold reality.

Of course the monetary stakes are very high in this particular game. I, along with many others, have pledged not to take sides for or against any company or any particular interest group; that instead my focus, likes everyone else's, should be on what's best for my 525,000, my constituents.

Of course trying to decide what's best for consumers is not the easiest thing to do. The technology is evolving so fast it's difficult for us to know really what is going to be out there in the next 10 years.

For example, in the information service area I asked myself several questions: Can the Bell operating companies bring a greater diversity of services to consumers? I think the answer is "yes."

However, will the Bell operating companies actually bring those services to the consumer more rapidly, more efficiently, and most

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cost effectively? And I think the answer to that is "I don't know." And I'm not sure anyone knows the answer.

And if the Bell operating companies are let into the information services arena, do I have faith in the regulators to ensure fair competition? Well, I can't sit here with a straight face and say that I believe the FCC—and no offense, Mr. Chairman—or any other regulatory body can fully police Bell operating companies or really any company. Clearly there are going to be some costs in loosening the prohibition of the Modified Final Judgment. What I continue to weigh is whether the benefits to consumers exceed the costs.

On the manufacturing side I place little credence in the argument that lifting the Bell operating companies manufacturing ban will help our balance of trade.

However, I do believe the Bell operating companies have some legitimate concerns in the research and the development and the software area which may need to be addressed. For example, it seems ludicrous to me that a Bell operating company is required to call the manufacturer every time a software change is needed to improve operation of the network.

I think the issues surrounding this Modified Final Judgment are complex. Many of the issues are very difficult to understand. And if we're going to enact statutory change, I hope we move very carefully and very deliberately but I do hope we move.

Again, I want to commend you, Mr. Chairman, for giving us that opportunity for movement and I hope that something can be accomplished legislatively this year.

Thank you.

Mr. MARKEY. We thank the gentleman very much. His time has expired.

The Chair recognizes the gentleman from Texas, Mr. Hall.

Mr. HALL. Thank you, Mr. Chairman.

I, of course, join all the other members who want to thank you and the subcommittee staff for your very hard work in attempting to balance the numerous interests that are involved in this legislative proposal. You've had a tough job and it's far from over. I would take some of my time to tell you that I personally appreciate the many meetings that you've had and the caucuses and while I don't shrink from reconcilable problems, I don't see that there's a reconcilable problem at this time and I really question a football player running out on the playing field simply to get in some physical contact. That's really what we're doing here.

As you know, this draft language has already ignited much controversy from a lot of companies to newspaper publishers—and I could use the rest of the day to talk about the problems it gives the newspaper publishers and the fact that they're going to have an aggressive position on this.

I just think that it seems just about everyone can see something they don't like in this discussion draft.

Ever since Congress became involved in legislative attempts to lift the antitrust restrictions of the Bell companies, first from the prohibitions in the 1956 decree and now in the 1982 decree, this subcommittee has been very divided on this issue, as you well know.

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The turmoil occurred against the backdrop of endless antitrust litigation that discouraged investment in telecommunications plant and equipment.

From 1976 to 1980—and I think this political background is important—this subcommittee was concerned about attempts to restructure the telecommunications industry through legislation. Our predecessors conducted countless hearings and reviewed dozens of proposals. In the end, Congressional efforts to devise a legislative solution proved futile when the Department of Justice and AT&T settled the pending antitrust case by divesting the Bell operating companies.

In the only vote on MFJ since the consent decree, the Senate defeated in 1986 a bill to transfer jurisdiction over the MFJ to Congress and the FCC.

The draft we look at today is one of several current legislative proposals that revisits this issue, all of them are too controversial, I think, to telescope into a few months.

Ever since divestiture we've seen the Regional Bell operating companies working to reverse the line of business prohibitions, while opposed to them are hundreds of large and small companies and trade associations who want to retain restrictions until the local exchange bottleneck is addressed.

We need greater subcommittee agreement on this issue, I think, before we go forward. Frankly, that kind of consensus has absolutely eluded us. But until we reach some sort of agreement and uncover any evidence of urgent need, I see no reason for getting underway with this now.

I know what I've discussed here has been at least a semidetailed political account but I think it's necessary background for our consideration of this staff draft to avoid the same frustrations as our predecessors. We need a complete record, a full record in order to justify any Congressional tampering with the consent decree.

While we certainly have begun the process of collecting the necessary facts, an awful lot still remains to be done, and I doubt that we can get it done during this year.

Among the questions I have briefly is whether or not there has been a market failure in information services and equipment manufacturing as has been alleged? And if so, what caused it? And can it be directly attributable to the MFJ?

My next question would be: what are the consequences of lifting the restrictions on the RBOC's and could it be brought about without antitrust violations and litigation?

How can we structure adequate safeguards to prevent anticompetitive abuse?

The Energy and Commerce Committee has a number of unfinished items that deserve priority attention this year. More than 3 years after the greatest stock market crash in history, we have yet to pass legislation to address market reform. In addition, we've got a thing called the Clean Air Act Reauthorization, perhaps the most significant issue of this session, that still awaits full committee action.

In the area of communications we've yet to resolve a number of pressing issues, including the financial syndication rule, cable regulation, cable/telco cross-ownership, and spectrum allocation.

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We just have our boat loaded, I think. And I hate to see us engaged on a journey over a lot of rough bridges that's not really going anywhere. And if we get where this bill intends to take us, we won't like it.

I really feel we could once again become bogged down by a legislative issue that isn't going anywhere all at the expense of other legitimate public interests.

I don't think it's fair to tease the Baby Bells and others with a proposal that's not going to get hot enough to do anything other than get a few members scalded, members that have friends on both sides.

I sincerely hope that this subcommittee will continue to hold hearings on a national telecommunications policy and I want to see the jurisdiction moved out of Judge Greene's office. I propose seeing it moved to the chairman himself.

However, I think before we can proceed down this very difficult path I think we need to establish a more comprehensive record on the telecommunications industry's needs and structure.

I yield back my time to a hardworking chairman.

Thank you.

Mr. MARKEY. I thank the gentleman.

The Chair recognizes the gentleman from Texas, Mr. Bryant.

Mr. BRYANT. Well, I'd just like to tag on to the speech that was given by my next door neighbor in Texas, Ralph Hall. It was a good one and I agree with it.

I'd also like to ask the members of this subcommittee to look into themselves and ask where the impetus for this whole activity is coming from. It's not coming from the public. Nobody is receiving mail from home about it. It's not coming from the business community, certainly not from them. I'd like to ask also what our basic concern is that motivates us to be here discussing this matter today.

Mr. Slattery a moment ago stated accurately that 90 percent of all of the telecommunications instruments are being made abroad. I agree if passing this bill would change that, I would be the first one to sign up to sponsor it. But the fact of the matter—and we've had hearings in this committee before on this very topic—is that we lined all of the Bell operating companies up at this table right down here one day, and I asked them "if we passed the bill to allow you manufacture, how many of you are going to manufacture in the United States and how many of you are going to manufacture overseas?" And every single one of them said they're going to manufacture overseas. Every one of them.

So I don't think we ought to fool ourselves into thinking we're going to create jobs by interrupting this remedy, the remedy imposed by Judge Greene in this antitrust case.

Is the concern for profits or the betterment of companies which are doing very, very well? The concern is certainly not profits or the health of those companies.

I think finally we ought to make a careful examination of the propriety of Congress entering into an effort to change or alter or modify or wipe out the remedy in a court decided antitrust case, antitrust verdict, if I might use that word, that was the result of years and years and years of outrageous commercial misbehavior.

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I don't know if that's appropriate legally or if that's consistent with our judicial principles in the United States. Certainly we ought to ask that question as well.

I yield back my time, Mr. Chairman.

Mr. MARKEY. The gentleman's time has expired.

Are there any other members seeking recognition at this time for the purpose of making an opening statement?

[No response.]

Mr. MARKEY. The Chair does not see any other members seeking recognition at this time so we will then turn to our opening panel which consists of the Honorable Alfred Sikes who is the Chairman of the Federal Communications Commission and he is joined by the Chief of the Common Carrier Bureau. We would like to ask Mr. Sikes to identify himself and when you feel comfortable, please begin your testimony.

STATEMENT OF HON. ALFRED C. SIKES, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION, ACCOMPANIED BY RICHARD FIRESTONE, CHIEF, COMMON CARRIER BUREAU

Mr. SIKES. Thank you, Mr. Chairman.

Let me begin by identifying Rick Firestone who is the Chief of the FCC's Common Carrier Bureau and, as we get into particularly detailed questions, is certainly going to be available to supplement my testimony.

Second, I would like to summarize my remarks—I have filed a complete set of remarks for the record—if that's all right with you.

Third, I would like to be the first nonmember to commend you, Mr. Chairman, and to commend the appropriate subcommittee staff for working on a bipartisan basis to develop an important framework for the further discussion and, hopefully, action on this bill.

At the outset, Mr. Chairman, I want to spell out a commitment by this FCC—an FCC which is now at full strength for the first time in several years—to meet vigorously all of its enforcement responsibilities.

This FCC not only understands but takes seriously its duty to ratepayers and competitive markets. We have acted to forestall unfair competition and will continue to do so.

Today, Mr. Chairman, is my first formal Congressional statement on enforcement. I wanted to ensure that FCC action had preceded such a statement. As Lech Walesca told Congress recently "in a world awash in words, deeds are of a much greater value."

Washington is awash in advocacy as firms seek to gain what the late Senator Magnuson called "just a fair advantage." By comparison, the FCC over the last 7 months has taken actions aimed at underscoring its intention to protect competition and the public.

The FCC has acted promptly on unlawful tariffs and ordered refunds. In concluding an audit of a Bell company, we issued a $1.4 million notice of apparent liability. We have worked to strengthen safeguards, including open network architecture.

Several fundamental principles define our enforcement responsibilities.

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First, we do not believe phone companies should be able to use ratepayer bootstraps to compete in unregulated markets.

Second, we do not believe phone companies should be able to use monopoly-acquired and preserved assets to cripple competitors which need access to the public-switched network.

At the same time, but no less important, we will seek methods of regulation which are no more intrusive than necessary. We will also continue to advocate increased competitive freedom for the Bell companies. They should have the opportunity to become communications companies, not simply remain telephone companies. If we do not follow this course, we will both chill network modernization and create a future world of private network "haves," and public network "have-nots."

Mr. Chairman, the basic premise of this Congressional initiative is sound. Specifically, the limits on Bell company manufacturing, particularly those limiting research and development, constitute bad public policy and should be changed. Government policy should encourage, not discourage, research and development.

Second, the rules regarding Bell company information services also need to be changed. American subscribers shouldn't be denied access to new services readily offered overseas.

Third, effective safeguards must accompany consent decree change. The FCC will certainly fully and conscientiously enforce the safeguards which Congress adopts.

And finally, national communications policy should be made by Congress, and the Agency it established to implement that policy, the FCC. It shouldn't be devised and implemented on a day-to-day basis by the courts.

Let me focus principally on information services. The original reason for this decree restriction was the assumption the Bell companies would discriminate and limit competition.

At the time, however, there were few of today's regulatory safeguards, measures such as our comparably efficient interconnection and open network architecture rules.

In 1987 the court altered its restrictions but many restrictions were retained. Bell companies were particularly handicapped in making new services more user friendly. What has been the effect?

If you live in Rochester, NY, you can call the sophisticated electronic yellow pages services that Rochester Telephone Company, a leading independent, currently provides. And keep in mind that Rochester Telephone Company has, in its local market, no less market power than a Bell company.

You can call a restaurant listing and, by pushing a few buttons on your phone, find out what their hours are, or what their daily specials are, or you can make a reservation. Or you can call the Rochester Philharmonic and get information or make reservations.

If you live right outside Rochester in an area served by New York Telephone, you can't get this or a similar service by dialing a local call because the consent decree court won't allow New York Telephone, one of the Bell companies, to provide it.

In other countries, national policy has long encouraged information services by phone companies. One result has been to achieve a significant level of public information services heavily oriented toward serving residential customers.

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If the United States had a comparable percentage of phone company subscribers to an American Minitel as the French telephone company has achieved in France, we would have about 24 million Minitel-like users today.

While hard to quantify, I'm also convinced this situation will have an adverse effect on U.S. public network modernization, investment, and use.

All available information indicates that communications network investments pay substantial public policy dividends by inducing new production, efficiencies, and productivity. This very positive exchange ratio or multiplier effect may explain the large-scale investment Japan is now making in its public network.

The United States cannot afford policies aimed at retarding network advances at precisely the same time our international trade rivals are aggressively taking the opposite tact.

We cannot afford actions which deter investment, create geographic disparities, and cause service option inequities.

Effective safeguards are needed. By any measure, however, the regulatory and enforcement resources available to the FCC, the 51 State public utility commissions, and the antitrust authorities of the Federal Government and all of the States constitute a very significant deterrent.

I might additionally add at this point that the local exchange carriers, the long distance carriers, and the enhanced service providers also provide checks and balances on each other.

The FCC has taken steps to establish sound structural safeguards. These rules minimize the chance of harm, and the level of public enforcement resources undercuts arguments that irreparable injuries will materialize.

There are features to this draft which I believe are too confining. As we have discussed, Mr. Chairman, I look forward to key FCC staff working with the subcommittee in an effort to strengthen the draft bill, if that is the subcommittee's desire.

Mr. Chairman, in conclusion, I'd like to say that the current disputes over communications policy have been and will continue to be characterized in cataclysmic terms. As Washington lawyers and public relations firms assemble industry groups, and self-styled public interest groups draw on private treasuries, you will hear how whole industries will fail if the AT&T consent decree is changed. Not only does history refute such assertions, however, but common sense is repulsed.

We live in a world of competition, specialization, and commercial alliances. Specialization is a fact and alliances its certain progeny.

Two weeks ago, for instance, four specialist companies announced their intention to deliver 100 or more digital channels of programming and possibly other communications services to each home in the United States using very small antennas. These specialists were General Electric's NBC, General Motors' Hughes Communications subsidiary, Rupert Murdoch's News Corporation, and Cablevision, one of the largest cable multiple system operators. Their combined 1989 revenues considerably exceed the $70 billion earned last year by all the Bell companies, not to mention AT&T.

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The announcement dramatized a stark reality. In the communications world you must move and move and move, or risk being left behind.

Three of the four companies mentioned, incidentally, are launching a new service which will compete in some ways with their current, established businesses. Whether through fear or insight, they know that in today's communications marketplace, they can't afford to stand still.

In the final analysis, the Bell companies are in the same position. They must be able to enter alliances, capitalize on new technologies, and use those technologies to their full commercial advantage. And since most of us depend on their offerings, it is crystal clear that the fundamental issues that this legislation seeks to resolve are public issues, not private issues.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Sikes follows:]

STATEMENT OF ALFRED C. SIKES, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. Chairman and Members of the Subcommittee: Thank you for this opportunity to discuss the proposed bill on the manufacturing, information services, and jurisdictional parts of the 1982 AT&T consent decree.

Mr. Chairman, today I am going to review both domestic and international developments, particularly in the information services field. I will also discuss work underway at the Federal Communications Commission (FCC) which underscores the importance of Chairman Dingell's and your own legislative leadership on behalf of better national telecommunications policies.

At the outset, I want to spell out a firm commitment by this FCC—an FCC which is now at full strength for the first time in several years—to meet vigorously all its enforcement responsibilities. This commitment, I want to add, is shared by each Commissioner.

This FCC not only understands, but takes seriously, its fundamental responsibility to protect both ratepayers and competitive markets. As a result, it has taken steps to forestall unfair or predatory competition, and will continue to do so. I believe the vigorous pursuit of this commitment is necessary to assure overall fairness, and the robust competition in communications which has and will benefit our country.

Today, Mr. Chairman, is my first formal Congressional statement on the overriding importance of our general enforcement responsibilities. I wanted to ensure Commission actions preceded such a statement. As Lech Walesca told Congress recently, in a world awash in words, deeds are of much greater value.

Washington is awash in communications company advocacy, as firms seek to gain what the late Senator Warren Magnuson called, "just a fair advantage." By comparison, the FCC over the last 7 months has taken a series of considered and coordinated actions, all aimed at underscoring its intention to protect, as needed, competition and the public. These and related enforcement actions, I might add, have generally been sustained by the courts (see, e.g., *Southwestern Bell Corp.* v. *FCC*, — *F. 2d* —, Civ. No. 87–1764 (D.C. Cir., Mar. 2, 1990).

The FCC, for example, has acted promptly to suspend and reject unlawful, AT&T long distance tariffs, and to set the regulatory stage for customer refunds, where local Bell and GTE phone company charges were found too high. Last year, the FCC also handled almost 90 percent of tariff and related matters within the Congressionally prescribed time limits—no small enforcement accomplishment, given a case buildup during the "lame duck" period and resource challenges.

The FCC recently conducted a searching and comprehensive audit of one of the Bell companies, and subsequently issued a notice of apparent liability to pay $1.4 million in fines. In another proceeding, it concluded a consent agreement in conjunction with an alleged violation of our technical rules which resulted in a payment of $1 million to the Treasury. I have also continued to press aggressively for the speedy implementation of structural safeguards including our "Open Network Architecture" requirements.

Several fundamental principles define my view of the FCC's enforcement responsibilities. First, I do not believe phone companies should be able to use ratepayer "boot-straps" to enter and compete in unregulated markets. Second, I do not believe

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phone companies, in undertaking competitive enterprises, should be able to use monopoly-acquired and preserved assets to cripple competitors which need access to the public-switched network.

At the same time, and of no less importance, I will seek methods of regulation which are no more intrusive than necessary. I will also continue to advocate increased competitive freedom for the Bell companies to have the opportunity to become communications companies, not simply telephone companies. If we do not follow this course, we will both chill network modernization and create a future world of private network "haves," and public network "have-nots."

Additionally, the FCC has just completed a detailed assessment of its resources and responsibilities preliminary to submitting its next appropriations request to the Office of Management and Budget and Congress. In the latter years of the last decade, resource reductions were severe. But I am making a major effort today to get the maximum enforcement return from the resources we do have, and I am also seeking further resources to guarantee there will be a vigorous and effective FCC.

As we have discussed, Mr. Chairman, I believe the basic premises underpinning this Congressional initiative are sound. Specifically, in my judgment:

Manufacturing. The current limits on Bell company manufacturing—particularly those limiting research and development (R&D)—constitute bad public policy, and should be changed. In the past, America's command of technology provided our competitive edge. Today, we're strongly challenged by Europe, Japan, and others. Government policy should encourage, not discourage, R&D, particularly in promising, strategically important areas such as communications.

Information Services. Second, the court rules regarding Bell company information services also need to be changed. All American phone subscribers deserve maximum access to the fruits of advanced communications and computer technology. There shouldn't be a situation where people served by Bell companies can't access new services which those served by independents can. There shouldn't be policies aimed at driving new functions out of the public switched network. And, there shouldn't be policies with the practical effect of denying American subscribers access to new services readily available overseas, in such countries as Japan, West Germany, and France.

Safeguards. Third, effective safeguards must accompany consent decree change. And, the FCC will certainly fully and conscientiously enforce those safeguards Congress adopts.

Jurisdiction. Finally, national communications policy should be made by Congress, and the Agency it established to implement that policy—the Federal Communications Commission (FCC). It shouldn't be devised and implemented on a day-by-day basis by the courts. Whatever need for judicial intervention might have prevailed in 1982, Congress should be setting broad national policy today. The AT&T consent decree limits present fundamental economic and social choices. Those choices should be made by those elected by and responsible to the American public.

Let me turn, now, to some reasons for these positions. In my statement today, I would like to focus on the information services aspects of the bill, although my remarks also apply to other features.

When the Bell System was broken up in 1982, special restrictions were placed on the information services AT&T and the divested Bell companies could market. Information services were broadly defined to include everything from on-line data processing, to most audio services, to cable TV. The argument was that allowing AT&T or the Bell companies into such services would stifle competition. If phone companies were permitted to have any financial interest in the content of transmissions, the court reasoned, they would have the incentive and ability to discriminate in favor of their own transmissions—in short, to limit competition in information services.

At the time the information services limits were imposed, the U.S. information services industry was small (and even today it is not particularly large). There were also few of the regulatory safeguards in place and being refined today—measures such as the FCC's "comparably efficient interconnection" (CEI) and "open network architecture" regulations.

In 1987, the consent decree court altered its restrictions on the Bell companies and, last year, limits on AT&T were removed altogether. The Bell companies were allowed into segments of the information services market. They were allowed to offer "voice mail" service, for instance. But many commercially significant restrictions were retained.

The court allowed Bell companies to provide the "gateway" associated with services such as the Minitel service France Telecom provides today. They could show subscribers the equivalent of an electronic menu or roster of services unaffiliated

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companies were offering. But they couldn't develop other ways to make access more convenient, and they could not have a financial interest in any services. Additionally, they couldn't change the information, or offer most of the index or cross-referencing services at the heart of making information gateways user-friendly.

What has been the effect of the AT&T consent decree's initial and, now revised, information services limits?

The Rochester Example. One example arose in conjunction with meetings I have been having with both Bell and independent phone industry executives regarding their investment in new services and facilities. If you live in Rochester, New York, for instance, you can call the sophisticated electronic yellow pages service Rochester Telephone Company, a leading independent, currently provides. Keep in mind that Rochester Telephone Co., in its local market, has no less market power than a Bell or other phone company.

You can call a restaurant listing and, by pushing a few buttons on your phone, find out what their hours are, or what the daily specials are, or you can make reservations. Or, you can call the Rochester Philharmonic, and get schedule information, or buy a ticket. The company reports it now has some 500 companies using this information service, which is free to callers.

If you live right outside Rochester in an area served by New York Telephone, however, you can't get this or a similar service by dialing a local call, because the consent decree court won't allow New York Telephone, one of the Bell companies, to provide it. The effect is to offer one group of phone customers—and one set of businesses—new service and advertising options, while denying them to others.

The Bell Atlantic E-Mail Example. Another example arisen involves an electronic mail service Bell Atlantic offers. Most electronic mail services allow a subscriber to send a message either to another person's PC, or to his fax machine. But to send a computer message to a fax machine, an electronic mail service has to perform what's called protocol conversion. Because the court appears to have said this function can only be provided in conjunction with an approved "gateway offering," Bell Atlantic has concluded its electronic mail service cannot include this fax capability—despite the fact 80 percent of potential customers say they want it.

The Texas Network Example. Yet another example involves a statewide network to provide teletype and associated services to the hearing impaired. When Texas asked for bids, a member of the Texas Utilities Commission explained, Southwestern Bell declined to bid, since the service might involve computer processes considered information services. That would run afoul of AT&T consent decree limits. In New York, a comparable obstacle has arisen regarding another specialized network for the deaf New York Telephone proposed to offer.

Prodigy. And, a further instance in which the information services limits are creating market uncertainty and geographic disparities of choice concerns the Sears-IBM Prodigy service. Again, in Rochester, New York, this sophisticated home computer service is being aggressively marketed by Rochester Telephone. This provides phone subscribers options and helps boost customer acceptance of a new service. In other parts of New York, however, New York Telephone has been limited to providing local equipment and gateway maintenance services to Prodigy; the company does not market the offering due to consent decree limitations or uncertainties.

Here, as in other instances, the Bell company involved can apply for a court-granted waiver. Given other demands on the court due to other cases, however, and controversies which accompany most decree waiver requests, waivers take time to secure—many months or, in some cases, years. Rather than bear those costs and delays, resources which might go toward expanding phone customer options are simply channeled in other directions.

NTT Data Example. Recently, Nippon Telegraph & Telephone Company—the world's largest corporation based on stock market capitalization—announced a $100 million venture aimed at capturing part of the U.S. data communications, corporate network configuration, and associated markets. Japan's principal international telephone company, KDD, and the Tokyo-based, computer-data processing company, Recruit, previously entered the U.S. information services market, according to the Wall Street Journal. Ironically, none of the Bell companies would be allowed, under the AT&T consent decree, to compete with these Japan-based industrial giants in U.S. information services markets.

In other developed countries, national policy has encouraged provision of information services by phone companies. One obvious result has been to achieve a significant level of public information services, most heavily oriented toward serving residential customers.

France, for instance, just celebrated installation of its 5 millionth Minitel. If the United States had a comparable percentage of phone customers subscribing to an

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American Minitel, we would have about 24 million Minitel-like users here. It should be noted, in this regard, that French phone customers also have available many, if not most, of the independent information services marketed here.

In West Germany, the Deutsche Bundespost (DBP) reports 150,000 subscribers to its comparable service, Bildschirmtext. If we had a similar level of penetration, we would have over 800,000 subscribers to just this one type of public information service. Again, the DBP's information services complement a wide variety of other, independent service options now available to German phone subscribers.

In Japan, Nippon Telegraph & Telephone Co. reported about 80,000 subscribers to its CAPTAIN service—the equivalent of the French Minitel or German Bildschirmtext—at the end of 1988, following a year in which there was a 69 percent increase in customers. If we had a proportional degree of penetration, we would have some 224,000 subscribers to this kind of service. That is eight to ten times as many subscribers as all U.S. phone company videotext experiments combined.

The U.S. information service industry is profitable, it is growing, and it provides valued services to business subscribers. The available statistics suggest, however, that sophisticated information services aimed at the ordinary residential consumer are considerably less well-developed in this country than overseas.

While hard to quantify, I am convinced that, over time, this situation will have a significant, adverse affect on U.S. public network modernization, investment, and use. This, in turn, could have a negative impact on our economy and global competitiveness overall.

Available information indicates that communications network investments pay substantial public policy dividends, by inducing new production, efficiencies, and productivity. Using input-output statistics and analysis, for example, Japan's Telecommunications Ministry has estimated that each 1 yen invested in the Japan communications network yields an output gain of between 2.15 to 1.35 yen for Japan's economy overall. This very positive "exchange ratio" or "multiplier" effect helps explain the large-scale investment Japan is now making in its public communications network.

As I indicated, Mr. Chairman, the United States cannot afford policies aimed at retarding communications network advances, at precisely the same time our international trade rivals are aggressively taking the opposite tack.

U.S. communications policy has been soundly grounded on two principles: universal availability and provision of the most sophisticated and advanced service reasonably possible. We cannot afford actions which deter investment, create geographic disparities, and service option inequities. Yet, Mr. Chairman, that will be the effect of the AT&T consent decree's information policy limitations and the judiciary's regulation of the communications sector, if it continues.

Effective safeguards are needed. By any measure, however, the regulatory and enforcement resources available to the FCC, the 51 State public utility commissions, and the antitrust authorities of the Federal Government and all the States must count as a very significant deterrent. Certainly these public agency resources exceed those at the disposal of one of 630 U.S. District Court judges.

Not only are substantial public agency resources arrayed against potential wrongdoing, but the FCC has already taken important steps to establish sound, structural safeguards, as I indicated. Modern accounting rules have been mandated, new cost manuals have been required, and attestation audits by independent accounting firms have been ordered.

Our "comparably efficient interconnection" and companion "open network architecture" regulations are specifically designed to forestall anticompetitive conduct by phone companies while, at the same time, opening the public network to the information services industry. Under those rules, phone companies will be required to offer information service vendors a broad range of options. Service elements and arrangements will be defined, and will have to be made available on a nondiscriminatory basis. I believe this approach will prevent anticompetitive conduct.

As a matter of sound public policy, a flat prohibition on all instances of potentially beneficial private sector activity is only justified in extraordinary instances. There must be a significant chance harms will materialize, a likelihood they will happen too quickly for Government to react, and a high probability of irreparable damage. The FCC's rules, however, minimize the chance of harms, and the level of public regulatory and enforcement resources now available undercuts arguments that irreparable injuries will materialize too quickly.

There are features of this draft bill which I believe are too confining. I would not place artificial "updating" restrictions on electronic yellow pages services, for instance. The bill's proposed indigenous manufacturing obligation, is also troubling. I also believe the FCC's rigorous cost-accounting, tariff review, and service "unbun-

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dling" requirements are more than sufficient, and legislated separate subsidiary obligations are thus not needed.

As I have indicated to you, Mr. Chairman, I would welcome the opportunity to discuss existing FCC safeguards with the subcommittee's staff, as they work to assure adequate protection without unnecessary intrusion. I recognize, however, that in many instances, there is no single, indisputable approach, and reasonable men and women may differ. As the expert Agency chartered by Congress to regulate communications, I look forward to working with you.

As an Assistant Secretary of Commerce, Mr. Chairman, I testified and commented extensively on the significant public policy issues presented by the AT&T consent decree. Fundamental to my statements was a strong personal view the choices presented are so important to the long-run economic strength of our country that they should be made by publicly elected, publicly responsible, organizations. They should not be relegated to the courts.

Mr. Chairman, current disputes over communications policy have been and will continue to be characterized in cataclysmic terms. As Washington lawyers and public relations firms assemble industry groups, and self-styled public interest groups draw on private treasuries, you will hear how whole industries will fail, if the AT&T consent decree is changed. Not only does history refute such assertions, however, but common sense is repulsed.

We live in a world of competition, specialization, and commercial alliances. Specialization is a fact, and alliances its certain progeny. Two weeks ago, for instance, four specialist companies announced their intention to deliver 100 or more digital channels of programming—and possibly other communications services—to each home in the United States, using very small antennas. These specialists were General Electric's NBC, General Motors' Hughes Communications subsidiary, Rupert Murdoch's News Corporation, and Cablevision, one of the largest cable multiple system operators (MSO's). Their combined 1989 revenues considerably exceed the $70 billion earned last year by the Bell companies, not to mention AT&T.

This announcement dramatized a stark reality. In the communications world, you must move, and move, and move—or risk being left behind. Three of the four companies mentioned, incidentally, are launching a new service which will compete in some ways with their current, established businesses. Whether through fear or insight, they know that in today's communications marketplace, they can't afford to stand still.

In the final analysis, the Bell companies are in the same position. They must be able to enter alliances, capitalize on new technologies, and use those technologies to their full commercial advantage. And, since most of us depend on their offerings, it is crystal clear that the fundamental issues that this legislation seeks to resolve are public, not private ones.

Let me commend the subcommittee and its expert staff for their efforts. The draft bill represents a very positive step forward, in my judgment and provides a sound framework for reasoned, public decisionmaking. I look forward to working with you as this Congressional initiative moves forward.

Mr. MARKEY. Thank you, Mr. Sikes, very much.

I now turn to the subcommittee and the Chair recognizes the gentleman from New Jersey, Mr. Rinaldo.

Mr. RINALDO. Thank you, Mr. Chairman.

Chairman Sikes, as was obvious from the opening statements of the members here this morning, there is still some uncertainty whether the FCC has the ability to regulate and oversee the business activities of the Regional Bell Companies. What concerns people the most is the tracking of potential cross-subsidies from regulated telephone services to unregulated business enterprises.

As we all know, one reason why the court adopted a structural solution and barred the Bells from getting into certain businesses was the FCC's admission that it couldn't adequately regulate the activities of the old unified Bell System.

Now, in your testimony you stated that the FCC now has the ability to regulate the Bell companies and check on cross-subsidies.

What I'd like to know and what I think would be very illuminating to the members of this subcommittee is what's changed? Why

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should we assume just based on your testimony that the FCC is more capable of handling this particular situation now than it was 10 years ago?

Mr. SIKES. Well, let me begin, Mr. Rinaldo, by saying that the contrast needs to be between five Commissioners nominated by the President, confirmed by the Senate, supported by 300-plus people in the Common Carrier Bureau, and a judge and two clerks. That's the first thing that we have to recognize, that is brought into question by this bill.

Second, the bill would provide $2 million in what I think would be necessary support for the FCC to effectively implement this legislation. So the legislation as drafted underscores the fact that the FCC's capability currently is not fully consistent with the additional responsibilities that this bill would assign.

Third, in 1987, 1988, and 1989, the Commission initiated new cost allocation manuals, its automated reporting management information service, attestation audits, and affiliate transaction rules. None of those rules existed in the period that you're talking about.

So I think not only Commission action over the last several years in instituting new rules, but also enforcement actions of recent days—and additionally the support that this bill would provide—would assure that we make good progress toward making sure that bad things do not happen.

Mr. RINALDO. Well, you make a number of very good points there. You pointed out very accurately that the bill has in it a $10 million authorization and you need that money in order to increase your capabilities so that you will be up-to-speed apparently to provide the kind of service that is necessary if the legislation becomes law.

But what happens if the $10 million isn't appropriated—it's authorized but it isn't appropriated? That's certainly a very real and distinct possibility considering the kind of deficits that we have and the budget crunch that we're currently faced with and the fact that we just came off a sequester for the first time in the history of the country.

Mr. SIKES. I don't know whether we could use less than $10 million or not. It strikes me that the question is probably not between $10 million and zero, but between $10 million and $8, or $10 million and $6. I simply have not had the opportunity to fully assess whether $8 million would be inadequate, or whether $10 million is essential.

Mr. RINALDO. Let me proceed to one other question. It was brought up in an opening statement that is germane to this and it was mentioned by one of my colleagues on the other side of the aisle. He mentioned the fact that FCC Commissioner Barrett, who served on the Illinois Commerce Commission for 7 years, was quoted in Monday's Communications Daily as saying last week in your Orlando cable hearing—and I want to quote him—he said: "I contend there is a distinct possibility that there's not a regulatory body in the country that would recognize a cross-subsidy if it smacked them in the face."

Now, that's a pretty strong statement. Obviously Commissioner Barrett is not here to respond or defend himself in any manner. But would you comment on why we shouldn't agree with him be-

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cause your testimony was to the effect that we shouldn't agree with him.

Mr. SIKES. Well, first of all, I was at the hearing so I know that that particular assertion was made as it relates to State public utility commissions, not the FCC.

Second, I don't necessarily agree that State public utility commissions can't identify cross-subsidies. As you commented, it would be appropriate at some point if you would like to inquire of Commissioner Barrett about that.

Third, I think the tools have been initiated in recent years; the automated reporting service, the attestation audits, et cetera, substantially strengthen our position.

One member commented in his opening statement that we have only identified cross-subsidies—at least on a notice of apparent liability basis—at NYNEX. But the attestation audits additionally underway have identified cross-subsidies at two other telephone companies, one independent company and one Bell operating company.

Now, I would simply say that, undoubtedly, we're not going to do a perfect job. But I think it's a risk/reward assessment. I think the risk is that we're going to create a world of private "haves," public network "have-nots." On the other side, the reward, if we take no action is that we won't have to worry about policing cross-subsidies.

Mr. MARKEY. The gentleman's time has expired.

Mr. RINALDO. Thank you.

Mr. MARKEY. The Chair recognizes itself in this round of questions. And what I'd like to do is follow up briefly because I think it's a very important set of questions that have to be answered before—and with great confidence—this subcommittee, the full committee, and Congress can move forward in this particular area.

That goes to the question which many on this subcommittee have had over the last 8 years concerning the FCC's attitude toward the letter and spirit of Congressional intent authorizing the FCC to engage in particular activities. To the extent to which, during the 1981 through 1989 period, there was a real sense that many on this committee developed as a bipartisan consensus, which had existed over the preceding 45 years or so, felt the FCC and its relationship with the Congress had been broken.

I think it's very important for us to hear from you, Mr. Chairman, with regard to what level of confidence you think we should have, that regardless of the safeguards that we put on the books, regardless of the restrictions which we may retain on the books, that you will respect and implement the letter and the spirit of any law that we may pass out of the Congress which transfers authority from the Federal district court judge to the FCC.

Could you give us your sense of how you view what we do in this body even if it does not reflect what you believe to be the proper policy yourself?

Mr. SIKES. Congress sets policy. We enforce it. As I pointed out in my opening statement—and the reason for using Mr. Walesca's words is that I do believe that I could sit here and talk until you tired of my talking—it's only by my actions, by the actions of the current FCC, that you would have any belief in what I say.

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I, consequently, have awaited actions before I've made statements and I think our actions are clear.

Mr. MARKEY. So I take that as an absolute commitment that you will in fact adhere to the Congressional intent?

Mr. SIKES. Yes.

Mr. MARKEY. And that you will try to reflect the spirit of what we are attempting to achieve in any legislation which we pass as well?

Mr. SIKES. Yes. I would presume you will help me find that spirit. But I say that not in jest; I just say it's sometimes difficult, but I'd certainly look forward, as I have already, to working with you.

Mr. MARKEY. The only reason that we make the point is that the preceding two Commissioners had exceedingly great difficulty in identifying the spirit of Congress. While I understand that to a certain extent it does lend itself to ambiguity, I think that the last two Commissioners basically operated from a premise that it was nonexistent. I think that was an operating difficulty that led to problems, which, by the way, we're going to confront in the course of trying to legislate in this area because of the remaining skepticism that does exist with regard to the ability to trust the FCC.

I think we have to have that notion repeated on an ongoing basis. I believe there was once a more respectful relationship that existed between Congress and the independent Agency.

Let me move on to a more specific question, and that concerns the recent report commissioned by two consumer groups which raised concerns about completely removing the MFJ line of business restrictions imposed on Bell operating companies.

The report alleges that the Bell operating company entry into new lines of business will lead to centralization of intelligence within the network that will force all telephone company consumers to bear the additional costs for an overbuilt network simply to provide services that only some consumers want.

The report contrasts the centralized approach with the current decentralized approach in which the intelligence resides in the user PC or telephone equipment. It therefore allows each consumer to control their own costs.

Will, in your opinion, centralization of the intelligence within the network add unnecessary costs to the consumers?

Mr. SIKES. Let me say first of all that it sounds like that was a report funded principally by equipment makers.

Second, let me say that the centralization has and will continue to occur but fortunately equipment, whether it's personal computers or smart telephones or the promised smart television sets will, additionally, provide checks and balances on the increasing sophistication of communications central office switches. That's a worthy check and balance.

Mr. MARKEY. Again, this is not a manufacturers' report. It was the Consumer Federation of America and the American Association of Retired People and they have very real concerns about the additional burdens which would be placed upon those particular segments of the population in order to ensure that we have ubiquitous fiber optic network which would be constructed.

How do you answer that question?

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Mr. SIKES. Then the final point I was going to make, not to belabor the earlier points with respect to our cross-subsidization policing, but the final point is in respect to price caps which I am sure is the area where these particular groups are likely concerned. That is, that there would be unregulated activity, competitive activity, and the transfer of the cost of that activity into the rate base pushing up, then, the price for using basic services.

What has happened in State after State—California, Idaho, Kansas, Kentucky, Louisiana, New Jersey, New Mexico, New York, North Dakota, Rhode Island, Vermont, West Virginia, and a number of other States where it's pending currently—is that they are putting a cap on prices, or developing additionally a formula that would preclude transferring costs into the rate base because they can't raise the prices.

Mr. MARKEY. What I will do, then, is send you a copy of these two consumer groups' reports and I request your analysis of their contentions, and wherever you feel appropriate, rebuttal in terms of the public policy electives which you think the country should have.

Mr. SIKES. Certainly.

Mr. MARKEY. The Chair's time has expired. The Chair recognizes the gentleman from Washington State, Mr. Swift.

Mr. SWIFT. I thank the Chair.

The central issue of this debate it seems to me is safeguards, what they are, are they sufficient, and are they enforceable.

There are those who contend that you can't do this and you responded to that in questions of both the chairman and the gentleman from New Jersey.

But is it not also true that in fact this is something that we simply have to be able to do because you already have the responsibility in effect of doing this with entities that are not restricted as are the Bell operating companies. Telephone companies are not restricted. GTE is approximately the size of one of the RBOC's and while it has some limitations under the MFJ, very few. Do you not as a regulatory Agency already face the need to conduct this kind of regulatory effort with telephone companies that are not restricted under the MFJ?

Mr. SIKES. Yes, that is clearly the case. I mentioned Rochester Telephone in my opening statement, but Southern New England Telephone, Contel, Centel, United, GTE, just to name some very large companies that, again, in their markets have no less market power than Bell operating companies do in their markets.

Mr. SWIFT. So that if this legislation should pass, it does not create any new responsibilities for you; it expands those responsibilities, to be sure, because you would have seven more large companies that would be involved in this kind activity, but it doesn't create a new responsibility for you. The need to have a way to deal effectively to keep cross-subsidization from going on and to keep anticompetitive practices from going on is a responsibility you already face?

Mr. SIKES. Yes, sir.

Mr. SWIFT. And you are already developing means of dealing with that effectively?

Mr. SIKES. Yes.

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Mr. SWIFT. What is the status of your other proceeding right now?

Mr. SIKES. We will, within the next several months, have an additional order in the open network architecture area that will deal with additional unbundling. That simply means making the menu of technologies, elements of the network you can buy, making that menu a little larger, and will additionally deal with uniformity. In that respect, we have been working very closely with the States. In fact, we had a joint conference on this just last week.

Mr. SWIFT. It occurs to me if we go back to my original point, that for example, in my district I have some daily newspapers specifically in Northwest Bell areas. Currently they are protected from any competition from the telephone company.

I also have one daily newspaper that is in a GTE territory and another newspaper that is in a Continental territory. They have no protections right now whatever from competition from a telephone company which has a monopoly in their area.

You as the FCC currently have the responsibility to see that should GTE or Continental in those areas enter into some of these services, which they can do, you currently have a responsibility to see they do not improperly cross-subsidize, that they do not improperly load the rate base, and that they don't improperly use cross-subsidization so as to compete unfairly with anybody else that would be offering that service.

Is that correct?

Mr. SIKES. Yes, that is correct. I also need to point out that the States have responsibilities and authorities in that area as well, and the Department of Justice and the various State attorneys general additionally have responsibilities in that area.

Mr. SWIFT. So that the idea that this legislation somehow creates a new problem or a new responsibility or creates a need for you to develop something that you currently have no need to have is just simply wrong.

You currently have a responsibility, you currently face the problem, and you currently have to deal with it?

Mr. SIKES. That is correct.

Mr. SWIFT. This would simply provide the ability to do these things, enlarge the scale of what your responsibilities would be. Hence being able to gear up and have adequate funding and so forth is crucial to your ability to respond to this larger responsibility, not a new responsibility?

Mr. SIKES. That is correct.

Mr. SWIFT. I thank you very much and yield to the Chair.

Mr. MARKEY. The Chair recognizes the gentleman from Ohio, Mr. Oxley.

Mr. OXLEY. Thank you, Mr. Chairman.

Mr. Sikes, first of all, I wouldn't be too concerned about the $10 million. I mean, in the overall scheme of things, particularly if we're asking our telecommunications network to go from the early 20th Century to the 21st Century and compete in the worldwide market, $10 million around here is not a whole lot of money. We spill more than that before breakfast, as you well know. And I would be gladly willing to support twice that if it meant that the

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FCC would have the wherewithal to carry out the mandate that Congress hopefully will set for the country in telecommunications.

I say that as a fiscal conservative. But I think it really does make sense in so many ways that we can start to get about catching up with the world in telecommunications and that we don't let this opportunity slip by.

Chairman Sikes, you've been quoted recently as encouraging the telephone companies to make greater investments in their networks. For that I applaud you.

I was also interested in a quote from Communications Daily that has you being critical of the Bell operating companies for lobbying for MFJ relief without really emphasizing the positive aspects of investment in the companies. First of all, is that essentially correct as was reported in Communications Daily?

Mr. SIKES. Well, it was and it was not. I had, or have had for the last month or so, meetings with a number of telephone companies and I have been asking them about their investment plans or modernization plans, and services they intend to offer. What almost inevitably happens is when I talk with Bell operating company heads is they talk about all the restrictions they face, all the barriers, the difficulties.

I had Rochester Telephone in one day and they talked about all the things they were doing, and they were excited about the services and they were pointing to the growth of the services. They were pointing to the number of people who were participating in the services. It was just the difference in night and day.

So yesterday at a press breakfast I commented on that difference and it was picked up and characterized as you've noted by Communications Daily.

Mr. OXLEY. What kind of legislative provisions, if any, in the current draft should we include to ensure that the Bell companies continue to upgrade and modernize their networks? Is there something we can do from a legislative standpoint to encourage that type of behavior?

Mr. SIKES. Well, it is my judgment that all we owe—I'm speaking of the Congress and the FCC—is a regulatory environment that is conducive to modernization, advanced applications, new services.

It is my additional judgment that convenience and entertainment will lead the way in the sense of the deployment of new technologies, the use of terminals by people in their homes—whether it's banking, shopping, travel, video, or a variety of other things—if what we are eventually going to arrive at is a two-way video network, interconnected network.

It is my additional view that as convenience and entertainment lead us to that point, we will then find that the health professionals, the safety professionals, the educational professionals will use effectively that network in creating a new and much more enriched tier and much more socially and economically important tier of services.

Now, the question is: how do we get there?

In Japan they're saying "we're going to assure the local company a monopoly—the national company I should call it, a monopoly. We're going to subsidize that monopoly. We're going to go to a $200 billion plan and get there by the year 2000."

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What I'm saying is that in this country we, at the very least, have to allow the market to take us as far as it will take us. Why we would intentionally dampen that potential while our competitors are actively moving forward is beyond me.

Mr. OXLEY. So that the classic American consumer demand really triggers the entire process?

Mr. SIKES. That's right.

Mr. OXLEY. Since there are many electronic data base providers in what they believe to be a competitive market isn't the burden on them to prove that the Bell companies shouldn't be permitted to provide information services content?

Mr. SIKES. Well, let me put it this way: I don't want to place the burden on anybody. It's my general view, as I think you stated in your opening statement, that we can look at this from a consumer/customer/public standpoint.

I think there are some excellent data base providers. They are providing principally business data bases at this point.

I think if you look at France, for example, where they have critical mass in respect to residential and small business use, you'll find a little flowering of additional data bases.

Simply stated, we have a chance to move forward to that and I think we should.

Mr. OXLEY. Thank you, Mr. Chairman.

Mr. MARKEY. The gentleman's time has expired.

The Chair recognizes the gentleman from Oklahoma, Mr. Synar.

Mr. SYNAR. Thank you, Mr. Chairman.

First of all, let me commend you, Chairman Sikes, for your testimony where I think you make a very strong commitment to improving regulation. I think that your commitment to pursue NYNEX is indication of that and the fine of $1.4 million shows that type of commitment.

In the past few years the communications regulation in this country has become more complex. You're now at the FCC in charge of Computer III and tomorrow I think you're going to announce that you want to review the current regulatory structure of AT&T, which is no small undertaking.

Some of my concerns are that it may take an FCC the size of the Pentagon to provide ratepayers and competitors the types of protections against cross-subsidy. Let me just tell you in reviewing the record here why I've come to that conclusion.

You had, for example, 5 of the 7 Bell operating companies in court arguing that the FCC's regulations to protect the ratepayers when assets were transferred were unconstitutional. They didn't win that. But at the height of hypocracies these same companies were in court earlier arguing that Judge Greene should be overturned because they had sufficient regulatory procedures in place at FCC.

Now, very honestly what we have here in the FCC taking on the RBOC's is a David versus Goliath story.

Let me just give you one State example in the Southwestern Bell area. In a recent rate case in Texas, which has one of the better regulatory bodies in the country, Southwestern Bell had 35 people, lawyers and economists, who presented their side, most of them

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full-time employees. They spent over three-quarters of $1 million on one case.

Now, on the other side, the Texas regulators had no more than nine people who do not have just sole responsibility on that one case. They are in charge of other telecommunications cases, too.

I'll tell you, I'm all for a fair hearing. But how many FCC staff can you put against the RBOC's in order to ensure that we have them? Is $10 million enough?

I mean, if they plan to spend three-quarters of $1 million on one case in one State, then $10 million is not even a drop in the bucket.

Mr. SIKES. I don't know whether it's enough or not, Congressman. I don't know whether $10 million is enough or not, Number One.

Number Two, a reason for the initiatives that we have taken that I've earlier pointed out is just exactly what you have just pointed out. It is complex and the advocacy on the other side is ferocious. So we have, for example, begun the independent attestation audits which are done by the best accounting firms in the Nation, and some of the cross-subsidies have been found through those new attestation audits.

We have started the automated reporting management information services, if I recall the acronym correctly, so that we can look at cost allocation data, separations data, revenue data, in terms of demand projections, cost projections; and compare it from company to company to company.

One of the good things about the breakup is that we now can compare; that is, we don't just have AT&T which was incomparable. We have a series of companies that can be compared. So I think you're correct and I hope that we're taking the needed steps. I would hope this legislation would give us additional resources.

Mr. SYNAR. Weren't those attestation audits by those major accounting firms the same ones they used in the savings and loan industry? Look what that did.

Mr. SIKES. We certainly have not sought out savings and loan examiners.

Mr. SYNAR. Thank Heavens for that.

Mr. MARKEY. The gentleman's time has expired.

The Chair recognizes the gentleman from Pennsylvania, Mr. Ritter.

Mr. RITTER. Thank you, Mr. Chairman.

I'd like to start off by just commenting on the manufacturing situation as existed after the MFJ went into effect.

Obviously the MFJ broke off the local network, local exchange from manufacturing. Now we're looking at, I assume, a different world with a different set of circumstances.

I'd like to just hear you out, what your thoughts are on why we would now allow the local exchange to begin to get into manufacturing.

Mr. SIKES. Well, first of all I think it's important to explode some myths.

Do I think that the Bell operating companies are going to add explosively to our manufacturing capacity? Do I think they are going to rescue us in stiff international competition?

Absolutely not.

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Do I think, on the other hand, that the skilled scientists and engineers that they employ that are employed at Bellcorp might have some good ideas, might engage in some constructive research and development, might engage in some constructive design, might in fact engage in starting a business where there would be some constructive fabrication?

Yes, I do.

Now, it's simply because you have that kind of talent in a rapidly moving environment, talent that is working literally daily on improving the network operations from both a hardware and software standpoint, that I think there are manufacturing opportunities.

Mr. RITTER. Do you believe that the staff draft is a vehicle to allow these opportunities sufficiently, too much, or where are you coming down on where the line gets drawn?

Mr. SIKES. Well, I would take a simpler approach. But, you know, certainly as I have said, I think the staff draft is a reasonable vehicle in all respects. But my simpler approach would be to let the Bell operating companies manufacture. I would, in manufacturing, for the most part require separate subsidiaries.

I would additionally not allow them to buy central network equipment from themselves for some period of years so that the manufacturing enterprise would have to be based on the merit of the manufacturing enterprise, not just the opportunity to engage in accounting transactions.

And I would, additionally, give them maximum freedom in the area of customer premises equipment because that is such a highly competitive market today that there is just simply no way that they're going to effectively discriminate.

Mr. RITTER. In looking at the staff draft, unless manufacturing would be conducted in a wholly-owned subsidiary or with a stake of less then 5 percent, it forbids joint ventures. As a matter of fact it would forbid a joint venture with a company like AT&T, or other American manufacturers, no less foreign, which it forbids distinctly. Do you find that somewhat——

Mr. SIKES. First of all, I think manufacturing is a very tough business. And I think the expectation that people are going to get into manufacturing if they have to jump through a lot of hoops are dead on arrival. I just think those are false expectations.

I think the staff draft is at its strongest in terms of network upgrades and in terms of research and development. I think when it gets to fabrication, it strikes me that it's largely going to be chilling.

So I would make the changes, if I were to participate, in the area of fabrication.

Mr. RITTER. You have also been working to encourage the RBOC's to improve the telephone infrastructure of the United States and their network and you've even publicly admonished them that their first priority should be the modernization of their own networks. I understand you're meeting with CEO's of the Bells on that very matter.

Today's Communications Daily quotes you as being critical of Bell lobbying for MFJ relief.

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I just wonder, do you feel that the Bells are doing enough in modernizing their own networks?

Mr. SIKES. Well, first of all I don't mean to criticize the Bell operating companies for lobbying. I certainly wouldn't want to do that.

I was simply suggesting that I get a little frustrated when every time I meet with a Bell operating company, I end up hearing about all these restrictions.

I'd like to hear more about what we can do, about what's right, about what the future holds, and less about all the restrictions. It was expressed in an informal press briefing. I was simply frustrated on that basis.

I think the Bell operating companies have, to a significant degree, advanced their networks in recent years.

I think some of the independents have as well. I met with Contel last week, and was very impressed with their advancements in network technology: digital switches, Signalling System Seven technology, software advancements, fiber in trunking, and in interoffice transport.

So I think we're making progress but I also think we've got to constantly challenge ourselves to make more progress, to become more competitive, to increase our strength. And I think we in Government have to constantly challenge ourselves to make sure that we aren't crippling that effort.

Mr. RITTER. You hear a lot of talk from many of the people who are opposed to be changing the venue of the MFJ, saying that we're doing just very well, thank you. Vast investments have been made, as I think Mr. Synar pointed out, massive numbers of jobs have been created.

Are we doing well enough? And if you look at NTT's, the new report from the Japan telecommunications council appointed by their post telegraph and telephone agency, if you look into the breakup of NTT, they're now talking about breaking up NTT somewhat along the lines of our own MFJ.

Are we in great shape or are we falling behind? People are making a lot of different arguments.

Mr. SIKES. First of all, I think the breakup of AT&T was right.

I think that as a consequence we have a much more competitive telecommunications environment. I think as a consequence we have lower prices, more innovative products.

I think because we allow what is not allowed in Europe and what is generally not allowed in Japan, and that is full facilities based competition, that we have the richest set of private networks anywhere.

So I think there's a lot right with what's happening here.

Mr. MARKEY. The gentleman's time has expired.

The Chair recognizes the gentleman from New York, Mr. Scheuer.

Mr. SCHEUER. Thank you, Mr. Chairman.

Mr. Sikes, let me say I really and truly enjoyed your testimony and benefitted from it. It was very thoughtful and very informative. Let me ask a very simplistic question and take us all to the mountain top a little bit.

On the bottom of page 4 of your testimony you say: "There shouldn't be a situation where people served by Bell companies

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can't [have] access to new services which those served by independents can." I guess that is the Rochester situation.

"There shouldn't be policies aimed at driving new functions out of the public switched network. And, there shouldn't be policies with the practical effect of denying American subscribers access to [those] new services readily available overseas," in countries like Germany, France, and Japan.

Now, for one who has travelled in these countries and others and you turn on the television set during the day or at night and the quality and the significance of those services that you see there absolutely boggles the mind.

Now, none of us want to see the newspapers crippled. In New York City I've watched over the past generation as our newspapers shrunk from well over a dozen to 3 or 4. And it hurts. It's tragic. It's painful.

On the other hand, you think of the interest of the consumer there, the growing percentage of elderly people in our society, the mothers with small children, disabled people, all of whom would enjoy enormous benefits from being spared unnecessary trips out to the shopping center, to the department store, wherever. Physical movement is difficult sometimes for people; the infirm, the elderly. When you have responsibilities at home taking care of kids as some mothers do, that can be inconvenient and taxing.

It bothers me that American consumers are not afforded and apparently under this legislation will be permanently inhibited from enjoying the incredible convenience of seeing the advertising product by product, price by price, and being able to punch in and order.

Now, I can see that that provides an enormous competitive threat to the newspapers. I would hope that we can devise a regulatory framework that gives that option to consumers and at the same time protects the financial integrity of our newspapers, which we all cherish. We all buy them. We want them. We want newspapers to be competitive with all the other options and we want competition between papers. That means we don't want to see that constant shrinking process going on inexorably as it seems to have done in the last 30 or 40 years.

Take us to the mountain top and tell us if there's perhaps some new regulatory device, some new point in the central nervous system where we can exercise the controls necessary to protect the public's right of access to this incredible service, including punching in an order, including knowledge of products, prices, but yet protect the public also from abuse, from the growing power of the media, of the networks. We've seen it in the past. We don't like it. We don't want to see uncontrolled power that can trample the rights of consumers in other ways.

So take us to the mountain top and tell us: Is there any new thinking, any new regulatory approach or device or structure or system that will protect both of these goals?

Mr. SIKES. With all due respect when you asked me to take you to the mountain top, I'm quickly humbled because I'm not sure I can.

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I have seen the services that you speak of. I believe that today the personal computer owners and the modem owners in this country have access to a lot of the services that you have cited.

I believe that if you provide more opportunity to the companies that serve everybody, then you're going to find that the emphasis just isn't on the PC owners and the modem owners but is on everybody. And I think that would be an extraordinarily constructive step. I also believe strongly that these cataclysmic assertions are incorrect.

Radio suggested that television was going to do it in and it did not. And I could go on and on and on through communications history and show that has not occurred.

Mr. MARKEY. The gentleman's time has expired.

Mr. SCHEUER. Thank you, Mr. Chairman.

Mr. MARKEY. The Chair recognizes the gentleman from Iowa, Mr. Tauke.

Mr. TAUKE. Thank you, Mr. Chairman.

Welcome, Mr. Chairman. It's good to have you here this morning.

First of all, is the Federal Communications Commission capable of undertaking the tasks outlined in the staff draft?

Mr. SIKES. Yes.

Mr. TAUKE. You indicated in the previous questioning, however, that you did not know at this point precisely how much in additional resources would be required in order to give you the staff capability necessary to implement the act.

Do you have a timeframe as to when you might be able to give us a little better reading on that?

Mr. SIKES. Well, in response to a question earlier from Senator Ted Stevens, we have prepared and will submit to the Office of Management and Budget as part of our 1992 appropriations request a full assessment of our current responsibilities and our current resources. We have provided that information to the Senate and I would be happy to provide it to this subcommittee.

Now, you know, the next step, of course, is—if you expand our responsibilities through this bill—to determine what additional resources we would have to build on what we have reported to Senator Stevens?

We'll certainly look into that, and be quite specific about it. I don't know exactly how long it will take, but we'll do it as quickly as we can.

Mr. TAUKE. I think it would be helpful if we received the document that you've submitted to Senator Stevens.

Mr. SIKES. OK.

Mr. TAUKE. Earlier there was some question about the ability of the FCC to audit, suggesting that there was a limited ability to do so.

Last year I believe it was we gave you the capability to have independent audits where in essence the industry is paying.

I presume that has significantly expanded your ability to effectively audit what's happening in the industry. Am I correct in that assumption?

Mr. SIKES. Yes, it clearly has.

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Mr. TAUKE. And it does so without obviously burdening the taxpayers?

Mr. SIKES. That's correct.

Mr. TAUKE. One of the areas that a number of us have had concerns about relate to rural telephone companies and telephone users in rural areas and their ability to receive information services.

As I indicated in some of my opening comments, several decades ago the issue was universal telephone service in rural areas. And I suspect that in the future we won't have difficulty getting information services in the urban areas of the country but it may be a challenge in some of the rural areas.

The staff draft attempts to deal with that problem that some of the independent and rural telephone companies will have by requiring the Bells to make available connection for information services. And this tries, of course, to ensure that the local companies can offer those services over their networks, limiting the fear of bypass of information services.

First of all, have you had an opportunity to review these provisions? Do you think they are effective? Is there something else that could be done to meet the concerns of the rural telcos?

Mr. SIKES. Well, first of all, my recent review of the industry with a series of companies convinces me that some of the most progressive modernization efforts are in the rural areas.

Second, I'm convinced that technology has to a significant extent eliminated the basis upon which there would be rural "have-nots" and suburban and urban "haves."

Third, I don't think bypass is a significant threat. In fact, I think whatever threat of bypass exists is a competitive spur. We have seen some of the most aggressive modernization in areas where the bypass threat is its greatest.

But I think generally the staff draft helps along the goals for improving rural telecommunications.

Mr. TAUKE. If we have concerns about this particular issue, could we get some assistance from the experts at the FCC in attempting to work with the rural telephone companies and others on this question?

Mr. SIKES. Sure. Absolutely.

Mr. TAUKE. One of the issues that has been somewhat troublesome is the issue of privacy, particularly as it relates to the provision of information services. Obviously Customer Proprietary Network Information [CPNI] is generated by customer's use of the telephone network. This information would be very important to any service provider because it could reveal precisely how a consumer uses the network and the services available on it.

Current FCC rules give Bell companies the ability to use this information freely unless a customer says "no." The staff draft would change this to a prior consent requirement.

A Bell company could use this information only after the customer gave specific consent. If the Bell company made it available to any information services providers, it would have to make it available to all under equal conditions.

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In your view does the current FCC rule or does the staff draft make more sense on the issue of customer proprietary network information?

Mr. SIKES. We have a review of that underway currently. I can tell you that instinctively I like the staff draft. I think the FCC rule is based on customer expectation, believing that those who do business with the telephone companies would, in fact, expect the telephone companies to use their traffic information, for example, to suggest how they might improve their services. That's the basis of the FCC rule.

We are going to review specifically that difference between the staff draft and the FCC rules.

Mr. MARKEY. The gentleman's time has expired.

Mr. TAUKE. Thank you.

Thank you, Mr. Chairman.

Mr. MARKEY. The Chair recognizes the gentleman from Maryland, Mr. McMillen.

Mr. MCMILLEN. Thank you, Mr. Chairman.

Mr. Sikes, one of the concerns I have in your testimony was whether you felt the safeguards in the draft were sufficient. Let me be more specific.

In terms of the information services making sure that there are safeguards between Bell companies and the other providers and also making sure that the playing field is in fact even.

You talked about comparable efficient interconnection. Members here have expressed their concerns about cross-subsidies.

Let me address some of the other areas and just see what your general thoughts are on these, some of the user-friendly issues, making sure that there is not a distinction between a non-Bell company and a Bell company with regards to user-friendliness of information services.

Also the marketing advantages that might accrue because of a combination of information services with the Bells, cross-marketing and the like and the inability of a non-Bell company to play in that area, so to speak.

I'd like to know your comments on those sort of nontechnical issues, whether in fact there are sufficient safeguards, firewalls if you will, in this draft to address those issues to make sure that the playing field is even and that we continue to have innovation provided by nonproviders.

Mr. SIKES. Yes, I think the safeguards are sufficient. I think that there will clearly be advantages that the Bell companies will have because they're big and they've been in the business a long time. But I think small companies have advantages as well. They typically are decisive, agile, and frequently work harder. So I don't believe that bigness assures success as we have seen, for example, in the automobile industry.

Second, you commented about user-friendly networks. One of the problems today is that a Bell operating company can't use indexing, cross-referencing tools to make gateways more user-friendly so that you could push, for example, one stroke on your personal computer and get a particular index of services or cross-reference to those services. So I think that's part of what this draft would help resolve.

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Mr. MCMILLEN. Let me give you a hypothetical.

For instance, let's say a Bell company owns a wireline cellular operation and they also want to provide information services and the ability to cross-market that, to telemarket a passenger sitting in their car using their cellular phone, all those advantages are obvious for the Bell.

Is there a way to make the playing field even on those kinds of things and does this draft bill address that sufficiently?

Mr. SIKES. Certainly the separate subsidiary requirements in the bill take that head on. I think generally they are going to successfully accomplish what you would want to accomplish.

But I would quickly point out that it's not at all unusual for the non-wireline providers of cellular to offer a number of other telecommunications services, to engage in the same cross-marketing that you make reference to with respect to the Bell companies.

Mr. MCMILLEN. I appreciate your comments. You know, we're just trying to make sure that we do have a balanced draft here and I thank you for your perspective.

Mr. SIKES. Thank you.

Mr. MARKEY. The gentleman's time has expired.

The Chair recognizes the gentleman from Texas, Mr. Fields.

Mr. FIELDS. Thank you, Mr. Chairman.

Mr. Chairman, along the same line of Mr. McMillen talking about the concerns for the firewalls and particularly on the cross-subsidy question, what are the mechanics internally within the FCC to protect against the cross-subsidy? How could you make me feel better about it?

Mr. SIKES. Well, the mechanics generally would fall under the line of FCC audits, independent attestation audits, affiliate transaction rules, automated reporting management information service—I could go into depth on each one of those if you would like.

A second and not unimportant development is that State after State, as well as the Federal Government, is moving towards price caps. Under a price cap method of price regulation there will be no incentive—in fact just the reverse—to take costs from competitive efforts and move into the rate base because you're not going to be able to recover them.

Mr. FIELDS. I was just told by staff that the automated services is a fairly new system.

Mr. SIKES. That's correct.

Mr. FIELDS. How is that working and how does that enhance your ability to protect?

Mr. SIKES. Let me ask if it is OK, Congressman Fields, for my Common Carrier Bureau Chief to answer that because he'll do a better job than I will.

Mr. FIRESTONE. The ARMIS system, as it's referred to, uses the capability to get access to accounting data that may have been available in the past but in a way that allows us to target our audits, to target our investigations, to compare firms, to watch where the money flows are going, to be able to manipulate that data to see how the allocations are made between regulated and unregulated services, for example, between interstate and intrastate allocations.

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It gives us the capabilities, in other words, to actually make use of the data that was in the hands of the companies before and that theoretically we had access to but that now we can actually by using modern technology take advantage of.

By the way, I should add, we have determined to make that same information available to the States so that State regulatory commissions as well can make use of that capability and that data.

Mr. FIELDS. Do you have the capability to monitor the entire system or would you have to focus on a particular company or a particular region?

Mr. FIRESTONE. No. All the companies are required to provide this information to us in a mandated electronic form. So we have the ability to look at the industry as a whole. We have the ability to target in on specific companies. We have the ability to target in on specific kinds of concerns with respect to specific companies.

In other words, we may, at one point, look at the affiliate transactions of Company "X" and look at another company the next month, to see how it allocates costs between the interstate and intrastate jurisdictions, for example.

So we can use it in a number of ways and for a number of purposes. That is actually being used now, not within our accounting and audits division but it's become useful in our tariff review processes, in our enforcement actions, and a variety of things across the Bureau.

As I indicated, I think it will become equally useful to the States in that regard.

Mr. FIELDS. Thank you, Mr. Chairman.

Mr. SLATTERY [presiding]. The Chair recognizes himself at this time.

It's good to see you, Chairman Sikes.

Mr. SIKES. It's good to see you.

Mr. SLATTERY. Rural telephone cooperatives have expressed concern to me that the staff draft legislation does not address the need for sharing in the development of a nationwide public information service infrastructure. I am concerned that the standards for regulations by the FCC set forth in the draft require only that the local telephone companies be provided the features and functions necessary to permit nondiscriminatory access to information services by the BOC's. In other words, the small telephone companies would be treated like any other customer.

I'm just wondering. Do you think it is feasible and desirable to mandate legislatively that the FCC establish regulations mandating a variety of options for carrier-to-carrier contract for these kinds of services?

I'm particularly thinking of such things as joint rates, wholesale pricing, special interconnection facilities, or even joint ownership. Do you think that's something we should be looking at?

Mr. SIKES. I'm not sure that I can answer that adequately, Mr. Chairman.

Let me say clearly we do not want to create a world in which the small telephone companies can't effectively serve their customers. We don't want to create a world where the network nationally is not seamless. We don't want to create a world where there isn't ge-

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ographic parity, averaging. So all those things are fundamental principles that this Commission is going to pursue.

Now, if you'd like to get into some of those more detailed questions, I'd really rather have Rick Firestone attempt to answer them.

Mr. SLATTERY. Mr. Firestone.

Mr. FIRESTONE. There are a couple of aspects to the answer.

One, a number of the efforts the Commission has undertaken already would ensure no discrimination. I think that is also clearly the intent behind this bill, to not allow companies to discriminate and exclude access to their networks.

That's the whole philosophy behind open network architecture, for example. It's an enabling step, not merely an enabling step for the Bell operating companies to allow them to get into certain services, but an enabling step to make network functionalities available on a nondiscriminatory basis to anyone. Then they can devise ways in which to make use of those functionalities.

Now, when you get down to the level of rates and such, then we get into questions that cover both jurisdictions and very much the jurisdiction of the States. It is a matter that has been talked about substantially but will evolve over time, both as State regulators and Federal regulators move their systems—as the chairman made reference—to a price cap type systems. Some of the concerns regarding the basis for discrimination and for cross-subsidies and other things would be minimized.

Mr. SLATTERY. Well, as you might imagine the rural telephone companies and smaller telephone companies are very concerned about what kind of treatment they're going to receive when they seek access to the lines that the BOC's actually would be controlling. It seems to me at some point we ought to be really looking at what kind of regulation should be required to make sure that where the carriers meet carriers that transaction is one that is not discriminatory for sure. I was just curious if you had any further thoughts on that.

Mr. SIKES. My thought is that, number one, we'll have a series of rules to assure it's not discriminatory, rules that Mr. Firestone spoke of. But additionally I think at the State level—where I suspect a lot of those transactions and services are going to be used, either for local or intrastate—my experience with the State regulators has been that they're extremely sensitive to just the kind of concerns that you're expressing.

Mr. SLATTERY. The next concern I have goes to the question of what kind of enforcement authority the FCC has. Under the staff draft the FCC is granted the same enforcement authority with respect to any telephone operating company as it has in administering and enforcing regulations regarding common carriers under the Communications Act.

The FCC also is directed to expedite processing of complaints concerning discriminatory interconnection also.

The draft, however, does not contain any specific provisions regarding damages or other remedies available.

I'm just curious. Do you believe the inclusion of specific damages or remedies could enhance the Commission's regulatory authority in dealing with these kinds of problems and should that be includ-

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ed in the legislation so as to broaden the Commission's capacity to really penalize a telephone company that wasn't really playing by the rules?

Mr. SIKES. I think that the Communications Act provides sufficient authority. It would extend to this new set of requirements, whether it's separate subsidiary requirements or ONA requirements or cross-subsidization matters of all sorts. Those authorities have been recently updated by increasing significantly our fine levels.

Mr. SLATTERY. Say that again, Chairman Sikes.

Mr. SIKES. They have recently been updated, I think, from $2,000 to now—what was the exact increase? I think it is now a $250,000 fine.

Mr. FIRESTONE. The Congress last year significantly increased the penalty levels and the enforcement authority, the teeth if you will, behind the FCC.

For example, for violations of our accounting rules that we applied recently, it has climbed to $6,000 a day.

Mr. SLATTERY. So it's your view at this point the FCC has adequate authority to really and adequate remedies to deal with these kinds of violations or problems that might develop?

Mr. SIKES. Yes.

Mr. SLATTERY. Under the staff draft also the BOC's could produce software integral to telecommunications equipment and customer equipment. They also could fabricate equipment under FCC approval. If they do so, do you believe that the BOC's should also be required to manufacture and sell this equipment to telecommunications companies that are customers basically for a reasonable period of time? That is a concern of mine, that smaller companies might become dependent on some of the equipment that would be manufactured by the BOC's, then the BOC's would terminate the production of it, and they'd be in a situation where they would be very vulnerable.

What could we do to address that, do you think?

Mr. SIKES. I would certainly take that under consideration, Mr. Chairman. I know of no such law that, for example, tells AT&T or Northern Telecom, the two principal suppliers, what they have to do. And I'd be a little hesitant consequently to write a series of must-dos if you get into manufacturing that would apply to new manufacturers. But I'd certainly take that under consideration and report back to you.

Mr. SLATTERY. My time has expired, Mr. Chairman. It's good to see you and we appreciate your work over there.

At this time the Chair recognizes the gentleman from New Mexico, Mr. Richardson.

Mr. RICHARDSON. Thank you, Mr. Chairman.

One question which would follow up on yours that I want answered for the record Mr. Sikes, I don't want to use my time specifically on this question. Do you believe the staff draft should retain requirements that manufactured products from the BOC's be made available to all communications companies, and do we need language which guarantees access to advanced information services to our rural constituents?

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I'd like you to answer that for the record along with another question about the differentiation between technology by the Bells in urban versus rural areas. Are we creating perhaps a infrastructure for urban areas and rural areas being left out? If you could answer that for the record.

Mr. SIKES. I think there is a risk of the rural areas over time being left out, if this bill does not get passed soon. So I wouldn't dispute that, Mr. Richardson.

Mr. RICHARDSON. I want to follow up with an answer you gave relating to safeguards with respect to the Bell operating companies and their entry into manufacturing.

But I ask the question in the light of the recent decision to allow the Bell companies to go into voice messaging and electronic mail without requiring any kind of specific and separate subsidiaries, which is something that we're requiring in the draft. Could you explain that?

Mr. SIKES. I think in some areas a separate subsidiary requirement requires such diseconomies that we don't achieve what we want to achieve. Either services are stillborn because they can't effectively be offered, or we end up piling new costs or new regulatory responsibilities. You've got to have two sales people go make on call when it could be a single sales person. That's the reason we have the cost allocation manual and we have the series of monitoring and auditing functions—to make sure that in the instance where these services are offered on a nonstructural separated basis there is an allocation between the unregulated and the regulated.

Mr. RICHARDSON. Do you agree with the Baby Bell's that the staff draft restricts them in the areas of R&D?

Mr. SIKES. I thought the R&D provision was a quite good provision.

I think you could move backward from the fabrication provision and say because the fabrication provision is so restrictive that it is, therefore, not going to be sufficiently stimulative at the R&D level because they can't take it vertically downstream. But in terms of the discrete provision dealing with research and development, I thought that was quite liberal.

Mr. RICHARDSON. I want to turn to a trade area, Mr. Sikes. I aroused a little bit of ire when in a recent FCC amendment I urged you, the FCC, to get into the international trade area. The bureaucracy, the U.S. Trade Representative in particular, all went crazy. I think no offense to you but probably to me.

I'm going to ask you about the trade deficit in international telephone rates. Our deficit in this arena in 1988 was $2 billion or nearly 2 percent of our total trade deficit, largely because of the PTT's, the foreign telecommunications entities, charging a monopoly rate much higher than U.S. rates, yet these are the same PTT's whose U.S. operating companies are very likely beneficiaries of lifting these manufacturing and information service restrictions.

My question is this: Would you favor a Richardson Amendment in the bill that would effectively prohibit foreign telecommunications entities from participation in ventures with the telephone companies if their own government unfairly discriminates against U.S. companies?

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This is language very similar to the trade bill and I would assume you'd have no problems supporting this.

Mr. SIKES. It strikes me as generally covered by the Trade Act and I realize that implementation might work out to a contrary result. But generally as I understand it, the telecommunications provisions of the Omnibus Trade Act are based on reciprocity.

Mr. RICHARDSON. Do you think MFJ legislation affects our telecommunications trade imbalance? Could you go on the record on that?

Mr. SIKES. I do not think it significantly affects our trade imbalance. No, I do not, nor—and I stated this earlier—do I think there is going to be an explosive level of new manufactured goods by Bell operating companies exported which dramatically improves our trade imbalance in the future.

I do think it is possible over the years the trade imbalance will be improved by the relief called for in this bill. But I think if anybody is looking for a quick fix, they're not going to find it here.

Mr. RICHARDSON. Do I have any more time, Mr. Chairman?

Mr. SLATTERY. The gentleman is out of time. I would ask unanimous consent that our colleague from Oregon be recognized for some questions, if he has any.

[No response.]

Without objection, the gentleman is recognized.

Mr. WYDEN. Thank you, Mr. Chairman.

Mr. Sikes, this has been very helpful this morning and I think you've stressed a number of very important points that we have a good set of safeguards, that the Commission has adequate resources to do the job, and I think you'll have strong support from the members on that.

The question I wanted to ask about is really a policy consideration and that is, do you think it would make sense from a policy standpoint to say that if a Bell operating company in fact commits a serious violation of the rules, the rules that are established in this bill, that it would make sense to temporarily bar them from the right to offer the competitive service unless consumers couldn't get them some other way; perhaps there'd be an exception if there was a consumer need?

What would you say to that concept just from a policy standpoint, apart from existing authority and the area that we pummeled pretty well today?

Mr. SIKES. Generally my preference would be stiff financial penalties and not the preclusion of the services being offered because of what you alluded to, which is that ultimately we would be hurting the customer. I think the offender can be hurt enough with stiff financial penalties.

Mr. WYDEN. What if you weren't hurting the customer? What if we, say, took the concept that I've offered here and said that you would make an exception of, if there was some finding that nobody else could do it and the customers could be hurt? What would you think about that from a policy standpoint?

Mr. SIKES. That would certainly mitigate my concerns.

Mr. WYDEN. So you think, then, this would be an idea that you would consider as we go forward with our discussion?

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Mr. SIKES. I think my preference still would be to stick with the financial penalties.

Mr. WYDEN. All right. With respect to the penalty, and again, the NYNEX case, of course, is what frames this debate, the proposed $1.4 million as opposed to company revenues of $13.2 billion for 1989, do you think this level of fine is going to be perceived as a fine that really sends a message that we're serious or is this going to be a fine that will, in effect, be a cost of doing business and then you set about your affairs even after the fine?

Mr. SIKES. Well, let me state that this, first of all, is a notice of apparent liability.

Mr. WYDEN. Right.

Mr. SIKES. And there is an adjudication and the Commission is ultimately going to have to reach a decision.

The fine is based on the old authority that we talked about earlier in response to the chairman's comments.

If it had been during the current period you know, with the new provisions, it would be rather than $500 a day, $6,000 a day.

So as you can see there is a dramatic, more than a 10 times increase in the penalty authority that exists today.

Mr. WYDEN. Well, I guess what concerns me is that we have a choice. We can come up with layer after layer of safeguards. And then particularly in the NYNEX case you've shown that you're going to be anxious to try and make sure that those safeguards are complied with. Or we can send the message up front either by putting the fear of God in people, by telling them that maybe they are not going to get to offer their competitive services for a few years, or by making fines large enough so that we really send a message. And I'm anxious to work with you so that through some configuration of those two approaches we do it.

Because I think the NYNEX case sends two very powerful messages: One is that you all are serious about abuses. But second it also shows the incredible potential for abuse that is out there.

A lot of those who oppose this legislation—I want to see us pass this bill—are going to be citing it.

One last question, if I might.

I also would like to see us look at the question of the revenues from yellow pages services. As you know, there has been an effort to deal with this with Judge Greene. But I would be interested in your thoughts with respect to whether this legislation ought to give the State regulators clear authority in this area, in effect to get revenues from yellow pages, both sides, electronic and print, and have them as contributions to the rate base.

Do you have any thoughts on this?

Mr. SIKES. I have been under the impression that the States had the authority. But to the extent that they don't, yes, I think they should have authority.

Mr. WYDEN. So in the course of this debate, that's right. I'm under the impression with you as well. But I think there is confusion on that point.

I would be interested, for example, in amending the current staff draft to make sure that there is clear statutory authority in this area so that State regulators could require that revenues from the

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yellow pages go to the rate base. I gather from a policy standpoint you want to make that is done as well?

Mr. SIKES. I want to make sure that States have that authority, yes.

Mr. WYDEN. Thank you very much, Mr. Chairman.

Mr. MARKEY. I thank the gentleman very much. We appreciate the participation of our alumni association.

The gentleman's time has expired.

With the indulgence of the members, because Patricia Worthy will be testifying immediately after Chairman Sikes for the public utility commissioners of the country, I'd like to ask Chairman Sikes just a couple of questions that lay the groundwork, then, for the testimony that Patricia Worthy will be giving. That is with regard to the role of State regulatory agencies. I would like to get your views right on the table so that they can be accommodated to the next witness or put in sharp contrast with it.

Mr. Chairman, how would the FCC work with the State regulatory organizations in fulfilling the regulatory oversight and enforcement responsibilities contained in the staff draft?

Mr. SIKES. We intend to work closely with the State regulatory commissioners. We have taken a number of initiatives along that line already in respect to joint conferences, joint boards, and a regulatory summit which will be held this April at Airlie House.

So I think, again, our actions and certainly my commitment is to work quite closely with the State regulators.

Mr. MARKEY. Fine. Now, does the FCC see any provision of the staff draft that would in effect diminish current State authority over intrastate communications——

Mr. SIKES. No.

Mr. MARKEY. Or reduce the breadth of telecommunications technologies over which they have authority?

Mr. SIKES. No.

Mr. MARKEY. As a former State regulator, are there areas you feel that should be strengthened or clarified to ensure that the FCC and the States work together in tandem?

Mr. SIKES. No, I don't think so.

Mr. MARKEY. In your opinion is there room to provide a greater role for States and would it lead to more productive relationships with them and more effective oversight of the Bell operating companies?

Mr. SIKES. No, I again think the bill addresses adequately that subject.

Mr. MARKEY. OK. Fine.

And any broader comments then in terms of the role which the public utility commissions should play?

Mr. SIKES. No. I, again, believe clearly that the States' jurisdiction is important and I am prepared to work closely with the State regulators.

Mr. MARKEY. Thank you.

We thank you very much, Mr. Chairman. You did a very good job this morning.

We thank you, Mr. Firestone, as well for your help. We'll be talking to you regularly in the course of this year, Mr. Chairman. We do hope to establish a close working relationship with the Agency

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to ensure that all the proper safeguards and competitive incentives are built into this particular piece of legislation.

We thank you very much.

Mr. SIKES. Thank you, Mr. Chairman.

Mr. MARKEY. With that we turn to our second witness, the Honorable Patricia M. Worthy, Chairman of the District of Columbia Public Service Commission, testifying as Chairman of the Communications Committee of the National Association of Regulatory Utility Commissioners.

We welcome you back once again, Patricia; to our hearing, to our subcommittee, a frequent, welcomed, and highly respected guest.

Whenever you feel comfortable, you can begin with your prepared statement. To the extent to which you want it included in the record in its entirety, it will be without objection. And to the extent to which you want to feel free to roam a little bit and comment on some of the testimony that you've heard from the Chairman of the Federal Communications Commission, also feel free to do that as well.

So welcome; whenever you feel comfortable.

STATEMENT OF PATRICIA M. WORTHY, CHAIRMAN, DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION, ON BEHALF OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Ms. WORTHY. Thank you very much, Mr. Chairman, members of the subcommittee. It is with great pleasure that I am with this morning to discuss the staff's draft bill. As Chairman Markey has indicated, I am representing today the National Association of Regulatory Utility Commissioners.

Notwithstanding anything Commissioner Barrett may say about State commissioners, we are really interested in regulation and the protection of ratepayers.

This morning I will only highlight a few of the generic concerns that NARUC has regarding the draft legislation. While I note that I am here before you as a NARUC representative, I should point out that this legislation is of such critical importance to each of the States that I would encourage the committee to solicit their respective views as you continue to legislative drafting process.

The draft appears to have three major implications.

First, it seems to allow for the removal of the restrictions contained in the MFJ.

Second, it removes the jurisdiction with regard to waivers of the MFJ from the district court and places that jurisdiction in the FCC.

And finally, and although I doubt it was intended, the draft could be interpreted to alter the enforcement jurisdiction of the antitrust laws from the courts to the FCC.

While NARUC recognizes the need to reexamine the Nation's telecommunications policy embodied in the Communications Act of 1934 as a result of the dynamic changes in technology and the market structure, we are somewhat concerned that implicit in the draft appears to be the underlying belief that lifting the restric-

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tions could resolve the debate over the scope and focus of the Nation's telecommunications policy.

As stated in the resolution adopted by NARUC in the winter of 1989 the removal of the MFJ's manufacturing and information services restrictions could result in meaningful risks. For example, the policy regional holding companies have to subsidize their unregulated competitive businesses with revenues from their regulated monopoly business.

The level of oversight the FCC is prepared to provide to assure telephone ratepayers or competitors that its cost allocation rules and procedures are properly controlling cross-subsidy.

And the transfer by some regional holding companies to unregulated affiliates of enterprises which could contribute revenues to support basic telephone service, for example, yellow pages, and the possibility that they might therefore attempt to do it again with respect to other services.

NARUC is concerned that as currently written the staff draft may not afford State regulatory agencies a key role in implementing the Nation's telecommunications policy and in deciding issues within their jurisdictions.

Further, the proposed draft legislation does not appear to afford sufficient discretion to the States to pursue their own innovative telecommunications policy that might be in conflict with the very specific provision of the bill.

NARUC also has concerns as to the ambiguity of certain of the terms which are defined, and in some instances, terms that are undefined.

Finally, although the daft attempts to address many of NARUC's concerns—and I would like to take this opportunity to commend the staff and its efforts with regard to NARUC's concerns in its effort to address those concerns—it unfortunately does not address all of our important, or at least some of our important goals.

As this subcommittee is aware, the Communications Act, through section 152(B), reserves to the States the authority over intrastate communications services and matters connected thereto. Therefore, on of NARUC's overriding concerns is the preemption of States' authority.

While section 260(b) of the draft states that "nothing in this part shall be construed to alter, limit, or supersede the authority of any State with respect to the regulation of intrastate communication service," that goal could be superseded by the breadth of the authority granted to the FCC in the remaining portions of the draft as presently drafted.

With this as a general background, permit me first to briefly identify the type of regulatory options that NARUC would like to see reserved to the States followed by a brief description of some of those options in the context of the draft.

In the 1989 resolution, we emphasized the need to protect monopoly ratepayers. And some of the options that we have included as a means to do that was the use of separate subsidiaries; State access to accounting records of BOC affiliates; State determination of appropriate allocations of costs between regulated and unregulated services; and State approval of BOC affiliate purchase agreements,

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"including the authority to require and establish the terms of competitive bidding for BOC contracts."

NARUC urged that the legislation authorize States to determine whether BOC's must use subsidiaries separate from their basic telephone service operations to provide enhanced or information services or to manufacture equipment.

Section 254(a) of the draft requires that separate subsidiaries be required, but only for entry into electronic yellow pages, information services performed outside of the telephone company's region, and certain manufacturing functions.

At first blush it appears to meet the States' concerns. However, the provision does not permit State commissions to determine whether separate subsidiaries should be required, nor does it permit the States the discretion to utilize separate subsidiaries for services other than those delineated.

Moreover, of critical concern is that section 256(b) of the draft permits the FCC to waive the separate subsidiary requirement within 3 years of the enactment of the draft.

Moreover, the NARUC analysis, which is defined in the draft, is limited to an examination that it will not impair the ability of the FCC or State commissions to verify compliance and will not permit anticompetitive practices.

The key here, however, is that the draft leave unanswered and undefined the questions as to what input the States will have into the final determination of what constitutes "impair."

Section 254(a)(3)(D) of the draft provides that "any transaction between any telephone operating company and other affiliates shall be fully auditable."

This provision does deal with concerns raised by NARUC regarding the inability of State commissions to review the books and records of affiliates and appears to allow the States to participate in the auditing process by providing the State commission with jurisdiction over the BOC with access to the accounts and records of the BOC and its affiliates.

However, NARUC also suggests that it should be made clear that States should have the option for access to the books and records of the affiliates in order to verify transactions between those affiliates and the BOC, not merely for the purpose of reviewing an audit report.

A case in point is the recent NYNEX audit by the FCC. Access to the books and records of the affiliate was critical to reaching this determination.

NARUC wishes to emphasize, however, that an after-the-fact review of transactions may deprive State commissions of meaningful review and an opportunity to ensure that these actions do not occur in the first place.

NARUC further suggests that the States should be afforded the flexibility to access the books and records of the affiliates for all of their activities, not only in the limited circumstance of reviewing an audit; the right to prescribe minimum accounting standards; and the discretion to require preapproval of affiliate transactions as necessary.

Now, with regard to cost allocations, section 254(b) of the draft requires the FCC to establish regulations that require "the just and

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reasonable assignment and allocation of all costs" as between the regulated and unregulated services or companies.

I would assume that this is an effort to codify Part 64 of the FCC's rules. The problem is that this section refers to the provisions of telephone exchange service and that unfortunately is not Federal but State and intrastate services.

Although section 254(b)(1) provides that this system shall be implemented by the BOC "subject to supervision" by the State commission, it appears that the State commission will be bound by the FCC prescribed methodology in determining the cost allocation of local telephone service.

By contrast, the existing FCC rules are not binding on the States. The FCC has been attempting for over 20 years to develop a methodology for allocating costs of telephone service and its current joint cost methodology is presently on appeal to the D.C. Circuit and was recently upheld.

Now, if the complexity and the problems the FCC is having with regard to determining cost allocation clearly suggests to us the State commissions should be afforded the opportunity to develop their own cost allocation procedures.

There are other points in the bill I would love to have an opportunity to discuss with you.

We think that the joint board provisions, though we are extremely pleased with the idea that the staff thinks we ought to participate in certain aspects, on telecommunications possibly, but we feel that the joint board provision needs to be beefed up substantially.

With regard to ONA, the only point I would like to make at this point in that the ONA provision of the draft seems to codify the C-III decision which, as you know, preempts States in very important areas and I hope that would be clarified.

With regard to the definitions, we are concerned about the definition of "exchange area" and we would suggest to the staff and the subcommittee that we be able to work with you in the future to clarify any problems which we think are perhaps just drafting problems.

I want to thank you again for the opportunity and I want to let you know we are committed to you with regard to this debate on telecommunications problems. We are committed to working with the staff on the draft. But more importantly we are committed to ensuring that our ratepayers receive universal service at affordable prices.

Thank you.

[The prepared statement and attachment of Ms. Worthy follow:]

STATEMENT OF PATRICIA M. WORTHY, CHAIRMAN, DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION, ON BEHALF OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Mr. Chairman and members of this subcommittee: My name is Patricia M. Worthy and I am Chairman of the Committee on Communications of the National Association of Regulatory Utility Commissioners (NARUC), as well as Chairman of the Public Service Commission of the District of Columbia. I am testifying here today on behalf of NARUC.

NARUC is a quasi-governmental, non-profit organization founded in 1889. Within our membership are the governmental agencies of the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands which are engaged in the regulation of telephone utilities. Our chief objective is to serve the Consumer interest by seeking

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to improve the quality and effectiveness of government regulation in America. NARUC is pleased to have this opportunity to provide this committee perspective with regard to the staff's draft bill entitled the "Telecommunications Policy Act of 1990" (draft).

In these comments, I will discuss the generic concerns that NARUC has regarding the draft legislation. While I note that I am here before you as the NARUC representative, I should point out that this legislation is of such critical importance to each of the States that I would encourage the committee to solicit their respective views of each of the States as you continue the legislative drafting process. NARUC also has encouraged each State to respond to the draft through written comments. Moreover, NARUC, through its executive committee, also requests that it be given the opportunity to provide more substantive comments than I am able to submit here.

The draft appears to have three (3) major implications. First, the draft appears to allow for the removal of the restrictions contained in the Modified Final Judgment (MFJ). Second, it removes the jurisdiction with regard to waivers of the MFJ from the District Court and places that jurisdiction in the Federal Communications Commission (FCC). Finally, and although I doubt it was intended, the draft could be interpreted to alter the jurisdiction to enforce the antitrust laws from the courts to the FCC. See sections 254(a)(10)(A), -201.

While NARUC recognizes the need to reexamine the Nation's telecommunications policy embodied in the Communications Act of 1934 as a result of the dynamic changes in technology and market demand, implicit in the draft appears to be the underlying belief that lifting the restrictions could resolve the debate over the scope and focus of the Nation's telecommunications policy. For this reason, NARUC is encouraged by and supportive of the action of Congress to raise the debate on telecommunications policy to a national level. NARUC is extremely supportive of Congress' efforts in this regard.

As stated in the resolution adopted in its 1989 winter meeting concerning the Modified Final Judgment (MFJ), see attachment A, the risks that NARUC has identified, in the context of the removal of the MFJ's manufacturing and information services, restrictions include: (1) the contradictory information regarding the effect that regional holding companies (RHC's) being restricted from offering the service has had on the demand for such services; (2) the possible incentives that RHC's have to subsidize their unregulated competitive businesses with revenues from their regulated monopoly business; (3) the level of oversight the FCC is prepared to provide to assure telephone ratepayers or competitors that its cost-allocation rules and procedures are properly controlling cross-subsidy; (4) the FCC's preemption of the States in Computer III; (5) the policy of some RHC's in pursuing regulatory approaches which may significantly reduce regulated oversight of the Bell operating companies' regulated and unregulated costs; (6) the guarantee by the RHC's of the debt of their unregulated subsidiaries which could increase the cost of capital for their regulated businesses; and (7) the transfer by some RHC's to unregulated affiliates of enterprises which could contribute revenues to support basic telephone service-for example, yellow pages—and the possibility that they might therefore attempt to do so again with respect to other services.

NARUC is concerned that, as currently written, the staff draft may not afford State regulatory agencies a key role in implementing the Nation's telecommunications policy and in deciding issues within their jurisdiction. Further, the proposed draft legislation does not appear to afford sufficient discretion to the States to pursue their own innovative telecommunications policy that might be in conflict with the very specific provisions of the draft. As discussed below, NARUC also has concerns as to the ambiguity of certain of the terms which are defined and, in some instances, terms that are undefined. Finally, although the draft attempts to address many of NARUC's concerns, it unfortunately does not address certain of our important goals.

As this subcommittee is aware, the Communications Act, through section 152(B), reserves to the States the authority over intrastate communications services and matters in connection with such communications services. This section reflects the historic division of the authority vested in the FCC over interstate communications and the States' authority over intrastate communications as determined and reiterated in *Louisiana Public Service Commission* v. *FCC,* 476 US 355, 106 S. Ct. 189 (1986). One of NARUC's overriding concerns is the preemption of States' authority over intrastate telecommunications policies which reflect the unique concerns of their respective jurisdictions. The risk of preemption of such authority clearly is of concern to NARUC and its members.

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The problem of FCC preemption is well documented. For example, the FCC's preemption of State authority to regulate enhanced services or to impose separate subsidiaries. The Congress should further clarify and allow State authority over all intrastate services including enhanced services as requested by the States and currently under appeal in the U.S. Court of Appeals for the ninth circuit in *State of California* v. *FCC,* No. 87-7230. While NARUC has been assured that the draft is not intended to affect the court's decision in that case, Congress should clearly state that such authority be left to the States.

While section 260(b) states that "nothing in this part shall be construed to alter, limit, or supersede the authority of any State with respect to the regulation of intrastate communication service," that goal could be superseded by the breadth of the authority granted to the FCC. For example, section 201 gives the FCC exclusive authority to prescribe regulations to supersede the restrictions of the MFJ. NARUC is concerned that this section could preclude any State authority to prescribe rules in this area. Another general example is the draft's suggestion that, instead of allowing States the right to determine whether to implement certain specific safeguards, it imposes an obligation upon the States to accept the FCC's policy in determining what the appropriate regulatory safeguards should be and how they should be implemented. See section 256(b).

While there are other instances in the draft which raise similar concerns, some of which are identified below, NARUC believes that any legislation needs to indicate explicitly that the States retain the discretion and the flexibility to take such action as necessary to assure that they are able to respond to the unique concerns raised by their respective jurisdictions. While some may view our States' rights position as obstructionist and many Members of Congress see the need to address the assertions that we are second in the world in technology, I note that the States' focus is to ensure universal service and to protect local ratepayers.

With this as general background, permit me first to identify the type of regulatory options that NARUC would like to see reserved to the States concerning the MFJ restrictions. Thereafter, I will discuss those options in the context of the draft.

In the 1989 resolution referenced above, NARUC reinforced its position that neither Congress nor the FCC should preempt the States' authority "to engage in regulatory action that any State deems essential to protect monopoly service customers." The resolution, thereafter, provides a list of regulatory actions which a State may consider taking to effectuate its statutory mandate as related to the MFJ restrictions. These options include: (1) the use of separate subsidiaries; (2) State access to accounting records of BOC affiliates; (3) State-determination of appropriate allocations of costs between regulated and unregulated BOC operations; (4) a State annual audit requirement; (5) the allocation of the new services of new costs to the telephone network and the requirement of contribution to the underlying network costs; (6) State approval of BOC/affiliate purchase agreements, "including the authority to require and establish the terms of competitive bidding for BOC contracts"; (7) State approval of the sale by a BOC of its customer proprietary network information; (8) oversight authority concerning affiliate recourse credit arrangements against BOC assets; and (9) State authority to disallow, in ratemaking proceedings, increased costs associated with "cost of capital due to a failed competitive venture" in which the BOC affiliate may have engaged. As the resolution indicates, the menu only "illustrates the kinds of actions States may consider taking. . . ." However, I note that the resolution's menu indicates the degree of flexibility that the States seek in fashioning regulatory responses to BOC-participation in those markets currently restricted by the MFJ. These nine areas are addressed in the draft as follows:

NARUC urged that the legislation authorize States to determine whether BOC's must use subsidiaries separate from their basic telephone service operations to provide enhanced or information services or to manufacture equipment. Section 254(a) of that draft requires that separate subsidiaries be required, but only for entry into electronic yellow pages (section 252(a)(5)), information services performed outside of the telephone company's region (section 252(b)), and certain manufacturing functions (section 253(a)).

It appears that the States' goal in insuring ratepayer protection from subsidizing new BOC ventures would be accomplished by this provision. However, the provision does not permit State commissions to determine whether separate subsidiaries should be required, as NARUC requested, nor does it permit the States the discretion to utilize separate subsidiaries for services other than those delineated in the draft. Moreover, of critical concern is that section 256(b) of the draft permits the FCC to waive the separate subsidiary requirement within three (3) years of the enactment of the draft. Since there is a need for safeguards now, why is there a need

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to sunset these safeguards in the future? In any event, the States' analysis is limited to an examination that the waiver will not impair the ability of the FCC or State commissions to verify compliance and will not permit anti-competitive practices. The key here is that the draft leaves unanswered the questions as to what input the States will have into the final determination of "impair." NARUC suggests that the States be given substantial input into this process, with the FCC granting substantial deference to the concerns raised by the respective States.

In sum, NARUC believes that the States should be permitted to decide whether to implement separate subsidiaries in order to verify compliance as opposed to the FCC. Compare section 256(b)(2)(A). This option, if exercised, should be left to the appropriate State commission.

NARUC requested that States be permitted to require access to the accounting records of all affiliates of the BOC providing basic exchange service in their State. Section 254(a)(3)(D) of the draft provides that "any transaction between any telephone operating company and other affiliates of the [BOC] . . . shall be fully auditable. . . ." Moreover, section 257(b) of the draft requires that a BOC or its affiliates that engage in any new line of business must provide to the FCC and to State commissions a report on the results of an audit by an independent auditor to determine whether the company has complied with the cost allocation regulations prescribed under section 254. The section also provides that, for purposes of reviewing the audit, both the FCC and State commissions shall have access to the books and records of the BOC and "to those accounts and records of its affiliates . . . necessary to verify transactions conducted with the [BOC]."

This provision does deal with concerns raised by NARUC regarding the inability of State commissions to review the books and records of affiliates. It appears to allow the States to participate in the auditing process by providing the State commission with jurisdiction over the BOC with access to the accounts and records of that BOC and its affiliates. By coordinating Federal and State efforts, States are afforded a proactive role in the annual auditing functions of the BOC and its affiliates that the State regulates. However, NARUC also suggests that it should be made clear that States should have the option to access the books and records of the affiliates in order to verify transactions between those affiliates and the BOC, not merely for the purpose of reviewing an audit report.

A case in point is the recent NYNEX audit of the FCC. While the FCC has tentatively found that NYNEX's regulated subsidiaries were overcharged to the tune of $118 million, access to the books and records of the affiliate was critical to reaching this determination. NARUC wishes to emphasize, however, that an after-the-fact review of transactions may deprive State commissions of meaningful review. NARUC suggests that reporting requirements for the FCC's Automated Report Management 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 and urges that language be added to provide for this expansion. NARUC further suggests that, the States should be afforded (1) the flexibility to access the books and records of the BOC's and their affiliates for all of their activities, and not only in the limited circumstance of reviewing an FCC audit report; (2) the right to prescribe minimum accounting standards; and (3) the discretion to require pre-approval of BOC/affiliate transactions as necessary.

NARUC urged that States be allowed to determine the appropriate allocation of costs between the BOC's regulated and unregulated intrastate services. Section 254(b)(2) requires the FCC to establish regulations that require "the just and reasonable assignment and allocation of all costs" which are in any way incurred by a BOC in a line of business authorized by section 252 or 253, or in the provision of "telephone exchange service." Moreover, the FCC is directed to include a requirement that the allocation of jointly used central office equipment and outside plant investment between regulated and nonregulated activities shall be based upon the relative regulated and nonregulated usage of the investment at the "highest forecast nonregulated usage over the life of the investment." Section 254(b)(2). In addition, section 252(b)(10)(B) gives the FCC authority "to protect users of telephone exchange service from bearing any cost not associated with the provision of such services by the [BOC]." Here, again, this area has historically been left to the discretion of the States.

Although section 254(b)(1) provides that this system shall be implemented by the BOC "subject to supervision" by the State commission, it appears that the State commission will be bound by the FCC-prescribed methodology in determining the cost of telephone exchange service. By contrast, the FCC's current joint cost allocation methodology is not binding on the States for allocation of intrastate costs. The FCC has been attempting for over 20 years to develop a methodology to allocate

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costs of telephone service and its current joint cost methodology is presently on appeal in *Southwestern Bell* v. *FCC* (D.C. CIR., NO. 87–1764). This would suggest that State commissions must be able to implement their own cost allocations methods.

If State regulators were given, by virtue of this legislation, the option to determine the appropriate allocation of costs between the BOC's regulated and unregulated intrastate services, NARUC's concern regarding cost allocations would be met. However, as drafted, the States are left with merely implementing or supervising implementation of the rules prescribed by the FCC. This language in its present form appears to preempt the States' jurisdiction and, therefore, is extremely troublesome.

NARUC also urged that States be permitted to require the Regional Holding Company (RHC) serving that State to submit the results of annual audits conducted pursuant to standards established by that State's regulatory agency. NARUC's comments regarding this topic have been identified in section 2, above, concerning "affiliate accounting records."

NARUC urged that States be permitted to require that new RHC services 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. However, as stated above, the draft appears to have preempted States from determining the appropriate cost allocation to basic intrastate exchange service by granting the authority to make such standards to the FCC. In fact, the draft appears to limit State discretion in the allocation of costs between regulated and nonregulated services to the State's right to require that the nonregulated service be charged for "goodwill." See section 254(c). As before, NARUC would urge that language be added to strengthen and clarify the rights of the States in this area.

NARUC also urged that States be permitted to 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. Section 254(b)(4) of the draft authorizes State commissions to prescribe regulations to govern "the accounting for the transfer of assets between a [BOC] and its affiliates." This recognizes State jurisdiction and addresses another concern raised by NARUC: the inability of many State commissions to investigate affiliate interest transactions. However, the draft does not recognize State discretion to determine whether, and under what circumstances, the BOC's should be allowed to procure equipment from their affiliates and whether competitive bidding should be required. Rather, such discretion is granted only to the FCC under section 253(b). See generally section 253(b).

NARUC also urged that States be permitted to determine whether State agency approval is appropriate for the State regulated BOC's to sell telephone customer proprietary network information and to set the terms of the sale so that the regulated telephone business receives appropriate compensation. The draft does not appear to authorize States to require such approval but does not preclude it. Moreover, it also should be emphasized that one of the States' concerns is the preservation and protection of the privacy rights of their local ratepayers. State flexibility and discretion in this area is critical in assuring that these rights are considered. In order to remedy this, NARUC would be pleased to provide language to the committee for inclusion in the next iteration of this draft.

NARUC urged that States be permitted to 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. Section 254(b)(3)(B) of the draft prohibits separate subsidiaries from obtaining credit under arrangements where a creditor would have "recourse to the assets of the [BOC] or . . would induce a creditor to rely on the assets of the [BOC] in extending credit." NARUC is pleased that this concern was addressed in the draft.

NARUC also requested that, in the course of setting rates for BOC's regulated services, States be permitted to disallow the costs associated with increases in a BOC's cost of capital due to a failed competitive venture of a BOC affiliate. Section 254(b)(3)(A) of the draft provides that investment assigned to new lines of business "shall not be reassigned to the telephone exchange service unless the appropriate State commission determines that a majority of the ratepayers of telephone exchange service will benefit from such reassignment." This subsection explicitly gives State commissions the right to protect local exchange users against excessive rates as a result of failed competitive ventures.

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In addition, we are pleased that section 254(c) authorizes a State commission to require the BOC to impute to the nonregulated service from the regulated service a credit for "goodwill used in the establishment or operation" of a new line of business. While NARUC supports this section, some effort should be made to clarify how "goodwill" will be derived. Absent these efforts, the laudable goals of the draft concerning the imputation of goodwill risks legal challenges on the grounds of "vagueness". Moreover, as I have stated above, State discretion to allocate costs should not be limited to goodwill.

As discussed above, therefore, the draft attempts to meet some of NARUC's requests. However, NARUC also is concerned that certain other language may give the FCC exclusive power to issue rules. The sections are set forth below.

Section 252 of the draft authorizes the expansion of information service. However, except for emergency public safety telephone services, the draft does not provide for State action authorizing expansion of particular information services. The fact that the draft does not provide that States retain authority over the intrastate portions of these services raises all of the issues associated with preemption. Moreover, this is inconsistent with section 260(b) which appears to protect the rights of the States. See section 260(b).

By incorporating the FCC's proposal concerning Open Network Architecture (ONA), see section 252(d), the draft may validate the FCC's determination in is "Open Network Architecture" (ONA) decisions to preempt State imposition of structural safeguards and to require that ONA features, even those that are identical to locally tariffed features, be tariffed at the Federal level. As stated above, the decision to preempt State imposition of structural safeguards is on appeal in the ninth circuit. Moreover, the determination to require Federal tariffing of ONA features, which could result in "tariff-shopping" and reduction of intrastate revenues, could result in increases in local rates for your constituents. This decision has been appealed in *Pacific Bell and Nevada Bell* v. *FCC* (D.C. CIR., NO. 89-1194). Moreover, the FCC is required to revise its ONA order to provide for BOC provision of "unbundled features and functions." Section 252(d)(2)(A). Notwithstanding the fact that the concerns expressed by the States in the FCC's ONA proceeding are not addressed by this section, the term "unbundled" is not defined. NARUC suggests that this section be clarified so as not to require the unbundling of intrastate rates or permit the FCC to require the BOC's to adhere to an ONA plan for intrastate features without any State input.

Section 252(e)(2)(B) requires the FCC, when prescribing regulations to carry out the section, to "ensure that the provision of information services by the telephone operating company will not . . . (B) harm ratepayers of telephone exchange service." This section does not address the concomitant historical interest of the States in also protecting the interests of the ratepayers of telephone exchange service. Moreover, NARUC questions the reasonableness of this section. Given the limited resources of the FCC and the size of the BOC's, this provision may be meaningless if States are not clearly given the authority to assure ratepayer protections. Therefore, at the very least, the language needs to be modified to acknowledge the States' concerns over the protection of the local ratepayer.

A similar concern is raised by section 253(b). In this provision, the FCC is required to prescribe regulations concerning manufacturing which, among other things, shall not "harm ratepayers of telephone exchange service" and shall "be consistent with . . . the protection of ratepayers of telephone exchange service." Section 253(B) (3) and (5). Protection of local exchange ratepayers, however, is a State function. While it is true that section 253(a)(5)(D)(v) requires that, in approving any application to fabricate, the FCC must find that the fabrication will be conducted in a manner "that readily permits" the FCC and State commissions to "verify compliance" with section 253(b). It is unclear what mechanisms this will give to the States to verify compliance. Moreover, State action protecting local exchange ratepayers should not be dependent on findings of the FCC.

NARUC commends the staff for providing for a joint board in the draft. The joint board assures State input into areas which are of importance to both State and Federal regulators. However, NARUC suggests that the draft's provisions regarding the joint board be modified. One of NARUC's major concerns is the proposed composition and purpose of the joint board as proposed in section 257(d). That section provides for a "joint board for purposes of reviewing the operation and consequences of this part and making recommendations to the Commission with respect to regulations to be prescribed by the Commission under this part." However, this provision gives no indication, aside from rate or auditing issues, what weight the FCC should give to the joint board's recommendations. Moreover, even with respect to rate and auditing issues, the section permits the FCC to disregard joint board recommenda-

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tions which the FCC views as not in the public interest. While the provision for an equal number of State and Federal members would appear to increase the influence of the States, it would not do so if the FCC, instead of NARUC, can appoint State members. Therefore, NARUC urges that the draft establish procedures, separate and apart from section 410(c) of the Communications Act, to provide for NARUC-appointment of State commissioners, without the requirement that the FCC approve NARUC's nominations. This was the method utilized by the FCC in the establishment of its current 410(b) joint conference on ONA. Moreover, all five (5) FCC Commissioners should be on the Joint Board. Otherwise, the Joint Board's recommendation could always be overridden by the full FCC. Further, there is no provision for breaking a tie. Consideration also should be given to making a Joint Board decision final so that it can be directly appealed to the courts. At the very least, the section should be rewritten to make more explicit the standards for review.

As I indicated above, concerns also were raised as to the ambiguity of certain of the terms which are defined and, in some instances, terms that are undefined. To this end, the definitional sections could be improved so that the intent of the draft is clarified. There are several concerns with the definitions contained in the draft. The definition of "exchange area" is one such example.

The draft defines an "exchange area" as any "exchange area" established by a telephone operating company as of January 1, 1990, or modified by the FCC based on criteria including that it: (1) "shall encompass one or more contiguous local exchange areas serving common social, economic, and other purposes . . ." or encompass every point served by a BOC within a State. Section 251(8)(A) and (B). The limitations placed upon the definition are (1) that the exchange area cannot include a "substantial part" of two standard metropolitan statistical areas, and (2) that exchange areas cannot cross State boundaries unless approved by the FCC section 251(8)(C)-(D).

The first concern raised by this definition is its relationship to the definition of "telephone exchange service", which is subject to State jurisdiction, and is defined as "service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area. . . ." See 47 U.S.C. section 153(r). Since the "exchange areas" are intended to replace the "LATA's" established pursuant to the MFJ, it is unclear whether the exchange areas refer to the LATA's established by the OBC's or to the exchange areas referred to in 47 U.S.C. section 153(r). Moreover, since the draft prohibits the BOC's from providing most interexchange service, which is defined in section 251(12) as service between points located in different exchange areas, and since 47 U.S.C. section 221(b) gives States exclusive jurisdiction over service within an exchange area that the State decides to regulate, the draft could be interpreted to give the States exclusive jurisdiction over the services which the BOC's would be permitted to provide. In light of the FCC's role expressed in the legislation, I doubt whether this is what was intended; clarification, therefore, appears necessary.

Another concern is that the language in this definition appears to circumvent the current BOC interlata service prohibitions. This appears to occur where the FCC permits a BOC to define its exchange area to include multiple LATA's, or where the BOC's exchange area is defined as the State in which it operates and that State has multiple LATA's. Moreover, an expansive reading of this definition could permit the FCC to allow BOC entry into interstate, interlata information services by granting a BOC's request for redefinition of its exchange area to include multi-state, multi-lata areas. As applied, therefore, this definition could permit the FCC to circumvent the current prohibition against interlata service provided by the BOC's.

In closing, I reiterate that NARUC is pleased to have had this opportunity to provide its comments on the draft. Moreover, NARUC is pleased by the action of Congress to raise the debate concerning telecommunications policy to a national level. Finally, I reiterate NARUC's commitment to assist this subcommittee in its efforts to further the public interest.

RESOLUTION ON MFJ RELIEF

WHEREAS, The Modified Final Judgment (MFJ) administered by U.S. District Court Judge Harold Greene prohibits the Bell regional holding companies (RHC's) from manufacturing telecommunications equipment and providing information services content; and

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

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WHEREAS, The RHC's are seeking relief from the information services and manufacturing restrictions from the U.S. Congress; and

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

WHEREAS, The RHC's 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 BOC's provide enhanced services through a separate subsidiary; and

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

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

WHEREAS, Some RHC's 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 BOC's 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 BOC's 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 BOC's 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 BOC's 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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Mr. MARKEY. Thank you very much.

We now turn to questions from the subcommittee and the Chair would like to recognize itself at this point in time.

Let me begin by observing that it's obvious you've dedicated an enormous amount of time to analyzing the staff draft and analyzing the court's decision and the affect of any changes which the Congress might make would have upon the regulatory authority of the public utility commissions, but also on consumers and competitors.

It is very important for us to have that information, as you are, along with the FCC, the prime guarantors of the protection that is afforded to Americans.

I appreciate in your opening statement that you recognize the attempts made in the staff draft to try and deal with NARUC's concerns and we would be willing to stipulate that not all of those concerns have been fully met.

In many instances, as you also point out, perhaps what is needed is further clarification; in other areas, further negotiation is clearly called for.

Am I correct in saying that there is significant agreement in principal about the nature of safeguards proposed in the draft but there's still some debate as to the scope and the duration of the safeguards?

Ms. WORTHY. I think that is correct, Mr. Chairman. I think that the draft attempts to identify what we have viewed as possible safeguards the State commissions should be able to use in their effort to ensure against cross-subsidies and other abuses.

The problem, as we see it, is that the bill deals with not the incentive to conduct or incentive for the BOC's to participate in a competitive activity. The bill only deals with or tends to deal with their ability to do that. Because it does not deal with the incentive issue, then we have no reason to believe that in 5 years or 3 years or 7 years that the BOC's are going to change their behavior such that the safeguards should sunset.

Mr. MARKEY. Now, because of the number of concerns which have been raised in your statement, one would have to think that the role of State regulators would not be enhanced if the proposed bill were to become law.

Wouldn't you agree, however, that if the staff draft became law, that State regulators would play a far greater role in the oversight of the Bell operating companies' entry into new lines of business than they would if the jurisdiction over these matters remained in the U.S. District Court system?

Ms. WORTHY. Mr. Chairman, that's difficult for me to respond to in that——

Mr. MARKEY. For example, in rate structuring. Right now you are not given any additional supervisory responsibility. It remains within the discretion of Judge Greene. Under our bill there would be additional authority given to the public utility commissioners of the country.

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Ms. WORTHY. Again, because I'm representing NARUC it's difficult for me to be able to respond to all of your questions because they have not all been debated and discussed by my colleagues.

But let me share this with you. At our recent meeting in Washington last week, many of the commissioners indicated that perhaps what could be done is to look at the waiver process to determine whether or not there ought to be a different role that State commissions play in the waiver process before Judge Greene. The implications I got or the connotations from the remarks or the inferences was that perhaps if a State went forward with a particular operating company and assured the safeguards were in place, that Judge Greene perhaps would allow them to enter different areas.

But that has been the extent of the debate on this issue and, therefore, I could not go any further in my comments.

Mr. MARKEY. I understand.

I'm only pointing this out because a distinction has to be made between what the public utility commissioners can play as petitioners in a Federal District Court proceeding where the judge may or may not take into account whatever concerns the commissioners have as opposed to something which is formalized and guaranteed on an ongoing basis.

Ms. WORTHY. Chairman Markey, my reluctance is that though I know there has not been a great deal of credence given by the judge to the States because his role is to interpret the antitrust laws, we have not been as successful at the FCC either in an attempt to prevail. So I am not particularly excited about the prospect of going to the FCC either.

Mr. MARKEY. And that's why in my initial round of questions with Chairman Sikes I wanted to be sure we put that on the record.

Ms. WORTHY. If I thought he was going to be there for the next 50 years, my comfort level would rise. But I have also been a Commissioner——

Mr. MARKEY. I'm going to be here for 50 years.

Ms. WORTHY. I sat in the same room when Commissioners Patrick and Fowler were here before you——

Mr. MARKEY. I understand.

Ms. WORTHY. So I'm not as assured.

Mr. MARKEY. But on the other hand if you could be sure that Judge Greene was going to be there for the next 50 years and not some replacement judge that might not share your same philosophical views; that's our difficulty.

Wouldn't you also agree that the joint board provisions in the staff draft provides State regulators with an unprecedented combination of representation and power over the formulation of Federal communications regulation?

Ms. WORTHY. Mr. Chairman, if the rules would have permitted, I would have brought the staff a case of champagne when we saw that portion of the draft.

But let me say we are pleased by the possibility, though. But I think there needs to be perhaps some additional clarification in terms of the number of State and FCC Commissioners, how they would be selected. I think the 410(c) process is perhaps not the way

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to go. But we would be more than happy—but note that we are encouraged by its inclusion in the draft.

Mr. RITTER. Mr. Chairman, would you just yield for a minute?

Mr. MARKEY. I recognize the gentleman.

Mr. RITTER. I was just about to say on the case of champagne—I have just spoken to the staff and they tell me it is not in violation of the rules.

Ms. WORTHY. Thank you very much, and Mr. Haines.

Mr. RITTER. I yield back the balance of my time.

Mr. MARKEY. Again, she pointed out she's not ready to give us the champagne so I think we're dealing with a hypothetical at this point. She is just letting us know there is an opportunity for us to earn the right to have to consult with the ethics committee.

I and the subcommittee would like to work with NARUC and with you to ensure that there is a proper balance which is struck. It is our view that in the end the public utility commissioners will be playing a much larger role, a more significant role than they are now allowed to play under the current formulation that has a Federal District Court judge making most of decisions without full consultation with the public utility commissions.

The time for the Chair has expired.

The Chair recognizes the gentleman from Pennsylvania, Mr. Ritter.

Mr. RITTER. Thanks, Mr. Chairman.

I personally don't drink champagne that much.

Ms. Worthy, you were talking about increasing the amount of State regulatory input on some of these questions; for example, the separate subsidiary question. And the State I take it would have its own rules and regulations.

It would seem to me that this would run somewhat counter to the idea that we're trying to in some ways put Humpty Dumpty together again after MFJ, recognizing the good things that happened in the post-MFJ environment but perhaps there's this idea that many of us have that somehow our network is not as national as it should be and there are too many roadblocks to being national.

In listening to your testimony I kind of got the impression that we could end up with rules for doing business in one State versus rules for doing business in another State when the business itself is interstate in character and the two sets of rules would be conceivably quite different.

How do you justify this urge to really pin down a kind of 50-State oversight which might give 50 different alternatives with the need to enhance the national character of our telecommunications system?

Ms. WORTHY. Congressman, this is probably the most difficult decision to make and this is, I think, where a great deal of the debate should be focused.

The decision that this Congress must make is whether or not it wants to ensure that a NYNEX-type situation does not occur over and over again.

I want to commend the FCC for its effort. But with a staff of 17 auditors, the NYNEX audit only covered 4 years. It took 6,000 man hours to do.

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My point is that I think the separate subsidiary requirement is minimally necessary in order for the State commissions to be able to track transactions between the companies.

The FCC talked about its affiliate transaction rules. They are wonderful rules. However, if the FCC had its way, they would eliminate the separate subsidiary requirements and the affiliate transaction rules would have nothing to be applicable to.

I'm suggesting to you that a 3-year period for separate subsidiaries is not workable. The States need to be able to track the transactions. This is minimally what we would need in addition to access to the books.

Now, let me tell you why.

Mr. RITTER. I'm not necessarily against tracking transactions. But if you set a whole different set of rules from one State to another, that would kind of defeat the purpose of the national network, wouldn't it?

Ms. WORTHY. I think that's the choice the Congress must make.

For example, for those State commissions who have affiliate transaction legislation and their companies provide access to the books, you find those State commissioners saying separate subsidiaries are not required.

In most jurisdictions, such as the District with Bell Atlantic and US WEST, where they do not allow us access to the books, we need and hope for the ability to maintain separate subsidiaries so we can track the costs.

The differences you get from the State commissioners reflects the differences of the experiences they have with their own particular operating companies.

I think it's up to the Congress to say that "we want everyone to be assured that there will be no cross-subsidization and in order to assure that we're going to require separate subsidiaries for all affiliates and all Bell operating companies."

Now, again, that's the Congress' call and I understand the difficulty of it.

Mr. RITTER. I guess my point would be, maybe the safeguards that you seek should be performed once for the country and not necessarily in 50 separate places.

Ms. WORTHY. That could very well be the more appropriate route, yes.

Mr. RITTER. There is a controversy currently over whether or not the FCC can preempt the States over information services and there is this Ninth Circuit Court of Appeals case.

In your testimony, you make a comment that while NARUC has been assured that the draft is not intended to affect the court's decision in that case, Congress should clearly State that such authority be left to the States.

On the one hand you're saying that we should look at this objectively and not prejudice the decision. On the other than you're saying that we should leave it to the States, constrain that court decision.

Ms. WORTHY. What we're trying to do, Mr. Congressman, is win both ways.

Mr. RITTER. I like that. That's real honesty.

Ms. WORTHY. I confess to that.

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It is our position, whatever happens we want to be able to protect monopoly ratepayers.

Mr. RITTER. I yield back the balance of my time, Mr. Chairman. Thank you, Ms. Worthy.

Mr. SLATTERY [presiding]. Thank you.

We have no further questions today, Chairman Worthy, and we appreciate your cooperation and participating in the hearing today and thank you very much.

Ms. WORTHY. Thank you very much.

Mr. SLATTERY. We're adjourned.

[Whereupon, at 12:10 p.m., the hearing was adjourned, to reconvene at the call of the Chair.]

[The following material was submitted for the record.]

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SECOND SESSION

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HERBERT H. BROWN
CHIEF COUNSEL AND STAFF DIRECTOR

May 1, 1990

The Honorable John D. Dingell
Chairman
Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Dingell:

As part of the Subcommittee on Telecommunications and Finance's review of national telecommunications policy and consideration of the staff draft, the "Telecommunications Policy Act of 1990," I request that the enclosed materials be incorporated into the hearing record for March 7, 1990.

The attachments include a comparison of the Federal Communications Commission's audit resources for fiscal year 1986 and 1990 as well as a table charting the equal access conversion timetable for the regional Bell operating companies.

Thank you for prompt consideration of this issue. As the end of the session draws near, I look forward to working with you on these and other related matters.

Sincerely,

Edward J. Markey

Edward J. Markey
Chairman

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COMPARISON OF AUDIT RESOURCES FOR 1986 AND 1990

This report compares the Commission's audit capabilities for FY86 and FY90 and explains the Commission's strategy for ensuring that the carriers' regulated customers do not subsidize the carriers' nonregulated activities.

Audit resources for FY90 are currently at about the same level[1] they were for FY86. In FY86 there were 15 auditors, three supervisors, and $34,000 in audit travel funds. Currently, there are 14 auditors, three supervisors, and $40,000 in audit travel funds. Although the audit resources have not changed appreciably, we plan to complete many more audits in FY90 than we did in FY86. In FY90 we plan to complete 25 audits, compared with only eight in FY86. We are able to complete more audits in FY90 for two reasons. First, only eleven of the FY90 audits are on-site "field audits." The other fourteen are reviews of independent CPA attestation audits.[2] These audits are limited to reviewing the independent auditors' workpapers and, therefore, require considerably less time and travel funds than a full audit. Second, in FY86 a substantial portion of the auditors' time was spent on important non-auditing functions, such as preparing final revisions to the new uniform system of accounts and preparing a new jurisdictional separations manual and new access allocation rules for telecommunications carriers. Since 1988, virtually all of the auditors' time has been spent doing audits.

Although having an effective "field audit" capability is essential to any oversight program, it is only one of our accounting safeguards. Other important elements of our oversight program are: an effective and modern accounting system (implemented in 1988) which is consistent with generally accepted accounting principles and which provides a firm basis for our monitoring efforts; rules that require carriers to submit and obtain Commission approval of cost allocation manuals, which provide an objective basis against which cost allocations can be judged; an independent attest audit program which requires a comprehensive review of the carriers' regulated/nonregulated cost allocation processes by independent CPAs; and an automated data reporting system which allows us to prepare comprehensive analyses of the carriers' regulated/nonregulated cost allocations.

The elements described above are designed to complement each other and to help us get the most out of our audit resources. For example, the automated monitoring report system helps us to identify areas where the potential problems are the greatest. This helps maximize our audit resources by focusing audits on the most productive areas. Moreover, the attest audit program frees our auditors from the need to do substantial detailed compliance audits of these costs, and it permits us to focus more attention on critical problem areas and to audit other areas not covered by the independent attest audits.

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1 During FY89 the Audits Branch had 18 auditors. Due to attrition, however, three auditors moved to other government agencies.

2 Attest audits became a requirement beginning in calendar year 1988, and the first attest audit reports were filed in April 1989.

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Central Office Features - (000 of Lines)
Total Bell Operating Companies

Year	Total	Equal Access		CCSS-7		ISDN	
		Lines	% of Total	Lines	% of Total	Lines	% of Total
1980	80,234	0	0.00%	0	0.00%	0	0.00%
1981	82,709	0	0.00%	0	0.00%	0	0.00%
1982	83,716	0	0.00%	0	0.00%	0	0.00%
1983	85,924	0	0.00%	0	0.00%	0	0.00%
1984	88,546	3,528	3.98%	0	0.00%	0	0.00%
1985	91,442	46,688	51.06%	0	0.00%	0	0.00%
1986	93,863	69,957	74.53%	0	0.00%	0	0.00%
1987	96,654	81,381	84.20%	1,035	1.07%	1	0.00%
1988	99,524	91,565	92.00%	10,325	10.37%	43	0.04%
1989	102,671	97,198	94.67%	21,552	20.99%	99	0.10%
1990	105,866	102,655	96.97%	36,785	34.75%	496	0.47%
1991	109,249	106,727	97.69%	51,661	47.29%	1,059	0.97%
1992	112,485	110,555	98.28%	65,540	58.27%	1,368	1.22%
1993	115,706	114,252	98.74%	78,185	67.57%	1,887	1.63%
1994	118,947	117,765	99.01%	86,661	72.86%	2,217	1.86%

Source: Carrier Submittals in CC Docket 89-624
Ref: Tbl1-4.wk1 April 11,1990 JMA

Central Office Features- (000 of Lines)
Ameritech Operating Companies

Year	Total	Equal Access		CCSS-7		ISDN	
		Lines	% of Total	Lines	% of Total	Lines	% of Total
1980	13,897	0	0.00%	0	0.00%	0	0.00%
1981	13,969	0	0.00%	0	0.00%	0	0.00%
1982	13,928	0	0.00%	0	0.00%	0	0.00%
1983	14,113	0	0.00%	0	0.00%	0	0.00%
1984	14,337	783	5.46%	0	0.00%	0	0.00%
1985	14,828	8,027	54.13%	0	0.00%	0	0.00%
1986	15,025	11,862	78.95%	0	0.00%	0	0.00%
1987	15,357	13,233	86.17%	0	0.00%	0	0.00%
1988	15,507	14,406	92.90%	213	1.37%	7	0.05%
1989	15,873	15,308	96.44%	2,157	13.59%	33	0.21%
1990	16,247	15,965	98.26%	6,920	42.59%	44	0.27%
1991	16,621	16,447	98.95%	8,659	52.10%	65	0.39%
1992	16,963	16,874	99.48%	9,925	58.51%	88	0.52%
1993	17,314	17,254	99.65%	10,988	63.46%	110	0.64%
1994	17,662	17,606	99.68%	11,790	66.75%	122	0.69%

Source: Carrier Submittals in CC Docket 89-624
Ref: Tbl1-4.wk1 April 11,1990 JMA

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Central Office Features- (000 of Lines)
Bell Atlantic Operating Companies

Year	Total	Equal Access		CCSS-7		ISDN	
		Lines	% of Total	Lines	% of Total	Lines	% of Total
1980	13,224	0	0.00%	0	0.00%	0	0.00%
1981	13,559	0	0.00%	0	0.00%	0	0.00%
1982	13,837	0	0.00%	0	0.00%	0	0.00%
1983	14,281	0	0.00%	0	0.00%	0	0.00%
1984	14,677	778	5.30%	0	0.00%	0	0.00%
1985	15,090	7,084	46.94%	0	0.00%	0	0.00%
1986	15,509	13,071	84.28%	0	0.00%	0	0.00%
1987	16,075	14,699	91.44%	234	1.46%	0	0.00%
1988	16,553	15,978	96.53%	5,016	30.30%	1	0.01%
1989	17,238	17,029	98.79%	10,386	60.25%	4	0.02%
1990	17,819	17,746	99.59%	13,456	75.51%	14	0.08%
1991	18,417	18,391	99.86%	14,757	80.13%	28	0.15%
1992	18,989	18,987	99.99%	15,680	82.57%	63	0.33%
1993	19,616	19,616	100.00%	17,101	87.18%	130	0.66%
1994	20,246	20,246	100.00%	18,550	91.62%	247	1.22%

Source: Carrier Submittals in CC Docket 89-624
Ref: Tbl1-4.wk1 April 11,1990 JMA

Central Office Features- (000 of Lines)
Bell South Operating Companies

Year	Total	Equal Access		CCSS-7		ISDN	
		Lines	% of Total	Lines	% of Total	Lines	% of Total
1980	12,613	0	0.00%	0	0.00%	0	0.00%
1981	12,999	0	0.00%	0	0.00%	0	0.00%
1982	13,254	0	0.00%	0	0.00%	0	0.00%
1983	13,632	0	0.00%	0	0.00%	0	0.00%
1984	14,060	773	5.50%	0	0.00%	0	0.00%
1985	14,532	8,912	61.33%	0	0.00%	0	0.00%
1986	15,046	11,082	73.65%	0	0.00%	0	0.00%
1987	15,739	13,466	85.56%	801	5.09%	0	0.00%
1988	16,407	15,351	93.56%	5,096	31.06%	2	0.01%
1989	16,962	16,446	96.96%	7,011	41.33%	5	0.03%
1990	17,574	17,574	100.00%	10,158	57.80%	335	1.91%
1991	18,207	18,207	100.00%	13,505	74.17%	837	4.60%
1992	18,868	18,868	100.00%	16,345	86.63%	1,075	5.70%
1993	19,543	19,543	100.00%	17,968	91.94%	1,460	7.47%
1994	20,243	20,243	100.00%	19,333	95.50%	1,605	7.93%

Source: Carrier Submittals in CC Docket 89-624
Ref: Tbl1-4.wk1 April 11,1990 JMA

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Central Office Features- (000 of Lines)
NYNEX Operating Companies

Year	Total	Equal Access		CCSS-7		ISDN	
		Lines	% of Total	Lines	% of Total	Lines	% of Total
1980	12,272	0	0.00%	0	0.00%	0	0.00%
1981	12,559	0	0.00%	0	0.00%	0	0.00%
1982	12,756	0	0.00%	0	0.00%	0	0.00%
1983	13,022	0	0.00%	0	0.00%	0	0.00%
1984	13,380	367	2.74%	0	0.00%	0	0.00%
1985	13,727	6,006	43.75%	0	0.00%	0	0.00%
1986	14,039	8,094	57.65%	0	0.00%	0	0.00%
1987	14,458	9,785	67.68%	0	0.00%	0	0.00%
1988	14,874	13,119	88.20%	0	0.00%	2	0.01%
1989	14,966	13,838	92.46%	0	0.00%	8	0.05%
1990	15,515	15,063	97.09%	1,263	8.14%	23	0.15%
1991	16,030	15,748	98.24%	5,512	34.39%	29	0.18%
1992	16,486	16,404	99.50%	9,589	58.16%	32	0.19%
1993	16,977	16,925	99.69%	13,846	81.56%	41	0.24%
1994	17,489	17,489	100.00%	15,574	89.05%	53	0.30%

Source: Carrier Submittals in CC Docket 89-624
Ref: Tbl1-4.wk1 April 11,1990 JMA

Central Office Features- (000 of Lines)
Pacific Telesis Operating Companies

Year	Total	Equal Access		CCSS-7		ISDN	
		Lines	% of Total	Lines	% of Total	Lines	% of Total
1980	9,858	0	0.00%	0	0.00%	0	0.00%
1981	10,314	0	0.00%	0	0.00%	0	0.00%
1982	10,471	0	0.00%	0	0.00%	0	0.00%
1983	10,920	0	0.00%	0	0.00%	0	0.00%
1984	11,253	232	2.06%	0	0.00%	0	0.00%
1985	11,610	5,324	45.86%	0	0.00%	0	0.00%
1986	12,013	8,741	72.76%	0	0.00%	0	0.00%
1987	12,439	11,628	93.48%	0	0.00%	0	0.00%
1988	13,000	12,383	95.25%	0	0.00%	0	0.00%
1989	13,561	13,094	96.56%	1,998	14.73%	0	0.00%
1990	14,176	13,967	98.53%	4,356	30.73%	5	0.04%
1991	14,754	14,599	98.95%	4,676	31.69%	9	0.06%
1992	15,281	15,120	98.95%	4,835	31.64%	6	0.04%
1993	15,712	15,674	99.76%	4,991	31.77%	24	0.15%
1994	16,219	16,179	99.75%	5,150	31.75%	42	0.26%

Source: Carrier Submittals in CC Docket 89-624
Ref: Tbl1-4.wk1 April 11,1990 JMA

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Central Office Features- (000 of Lines)
Southwestern Bell Operating Companies

Year	Total	Equal Access		CCSS-7		ISDN	
		Lines	% of Total	Lines	% of Total	Lines	% of Total
1980	9,151	0	0.00%	0	0.00%	0	0.00%
1981	9,969	0	0.00%	0	0.00%	0	0.00%
1982	9,948	0	0.00%	0	0.00%	0	0.00%
1983	10,172	0	0.00%	0	0.00%	0	0.00%
1984	10,622	146	1.37%	0	0.00%	0	0.00%
1985	10,887	6,040	55.48%	0	0.00%	0	0.00%
1986	11,098	8,702	78.41%	0	0.00%	0	0.00%
1987	11,102	9,428	84.92%	0	0.00%	0	0.00%
1988	11,315	9,945	87.89%	0	0.00%	12	0.11%
1989	11,645	10,358	88.95%	0	0.00%	17	0.15%
1990	11,970	10,830	90.48%	370	3.09%	29	0.24%
1991	12,300	11,400	92.68%	2,220	18.05%	40	0.33%
1992	12,620	12,010	95.17%	3,810	30.19%	50	0.40%
1993	12,950	12,610	97.37%	6,900	53.28%	65	0.50%
1994	13,290	13,150	98.95%	8,840	66.52%	85	0.64%

Source: Carrier Submittals in CC Docket 89-624
Ref: Tbl1-4.wk1 April 11,1990 JMA

Central Office Features- (000 of Lines)
US West Operating Companies

Year	Total	Equal Access		CCSS-7		ISDN	
		Lines	% of Total	Lines	% of Total	Lines	% of Total
1980	9,220	0	0.00%	0	0.00%	0	0.00%
1981	9,340	0	0.00%	0	0.00%	0	0.00%
1982	9,522	0	0.00%	0	0.00%	0	0.00%
1983	9,785	0	0.00%	0	0.00%	0	0.00%
1984	10,218	449	4.39%	0	0.00%	0	0.00%
1985	10,768	5,295	49.17%	0	0.00%	0	0.00%
1986	11,133	8,406	75.51%	0	0.00%	0	0.00%
1987	11,483	9,142	79.61%	0	0.00%	0	0.00%
1988	11,869	10,382	87.47%	0	0.00%	19	0.16%
1989	12,427	11,125	89.52%	0	0.00%	33	0.27%
1990	12,564	11,509	91.60%	263	2.09%	46	0.37%
1991	12,921	11,935	92.37%	2,331	18.04%	50	0.39%
1992	13,278	12,292	92.57%	5,355	40.33%	54	0.41%
1993	13,595	12,630	92.90%	6,390	47.00%	58	0.43%
1994	13,799	12,852	93.14%	7,424	53.80%	62	0.45%

Source: Carrier Submittals in CC Docket 89-624
Ref: Tbl1-4.wk1 April 11,1990 JMA

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

April 17, 1990

IN REPLY REFER TO:

Mr. Gerry Salemme
Senior Policy Advisor
Subcommittee on Telecommunications
Committee on Energy & Commerce
2145 Rayburn House Office Building
Washington, D.C. 20515

Dear Gerry:

Attached are materials requested by members of the House Telecommunications Subcommittee during Chairman Sikes' March 7, 1990 testimony concerning the Modified Final Judgment.

First, Chairman Markey asked for an analysis of the AARP and CFA study entitled "Expanding the Information Age for the 1990's: A Pragmatic Consumer Analysis", and the IDCMA, TIA, and North American Telecommunications Association collaborative research study entitled "The Post-Divestiture U.S. Telecommunications Equipment Manufacturing Industry: The Benefits of Competition." The FCC Office of Plans and Policy prepared the attached analysis.

Secondly, Congressman Tauke requested a copy of materials submitted to the Senate concerning FCC resources and a resource analysis of the MFJ staff discussion draft.

Finally, Representative Richardson asked the Chairman to supplement the hearing record on two points.

Please let me know if you need anything else as you consider MFJ legislation.

Sincerely,

Linda Townsend Solheim
Director
Office of Legislative Affairs

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Congressman Tauke request for
Senator Stevens Report and
Resource Analysis

MFJ STAFF DRAFT:

FCC Resource Impact

1. Overview

o Summary of Staff Draft:

- Designates FCC as lead Federal entity for overseeing and regulating telecommunications industry.

- Authorizes BOC entry into certain portions of information services & manufacturing markets, and permits very limited BOC long distance activity, subject to safeguards (most are defined broadly).

- Directs FCC to implement legislation, through rulemaking, in cooperation with states, Commerce, and U.S. Attorney General.

- Directs on-going oversight by FCC in conjunction with states.

o Major Budget Estimate Assumptions:

- Time provided FCC to complete implementation rulemakings is expanded from four months to one year.

- All regulations would be developed and adopted through modified Joint Board Process. Staff draft requires both: (1) FCC adoption of most Jt. Bd. recommendations; and (2) FCC consultation with Commerce and Justice. Requirement assumed to mean that Jt. Bd. makes recommendations; Commerce and Justice comment; then FCC makes final decision.

2. Information Services

Proposal: authorizes BOCs, their affiliates, and subsidiaries to provide information services inside and outside their service territory, subject to certain safeguards.

Requirements:

1. Define terms used in bill (e.g., information services, advanced network services, customer network management services, etc.).

2. Revise ONA rules as directed:

   o require more unbundling & uniformity of ONA services.
   o ensure that ONA plans include schedule for new service offerings.

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o require written customer permission for release of CPNI to any person.

3. Develop and implement regulations establishing the means for independent telephone companies to access BOC information services (draft suggests that BOC info service gateways could serve this purpose, but no gateway requirement established)

3. Manufacturing

Proposal: authorizes a BOC, its affiliates or subsidiary to research, design, develop, manufacture and distribute equipment and software, except for the "fabrication or production" of equipment. FCC may waive exception by approving BOC plan filed with FCC specifically describing the proposed fabrication or production. FCC and Commerce must find plan to be in public interest.

Assumptions:

1. FCC would develop generic standards for evaluating fabrication proposals, and procedures for consulting with Commerce, before evaluating any BOC filings.

2. BOCs would not need FCC/Commerce approval to fabricate particular items (e.g., PBXs); rather, would seek broader approval (e.g., approval to fabricate "telecommunications equipment").

Requirements:

1. Define terms (e.g., "fabrication or production).

2. Develop generic standards for evaluating fabrications proposals (the terms and conditions under which fabrication/production is authorized);

3. Develop procedures for consulting with Commerce.

4. Develop regulations governing telephone company procurement of equipment and services (i.e., ensure non-discriminatory procurement; opportunities for small business participation; "market testing" of prices paid by BOC for its subsidiary's equipment or services).

5. Develop regulations ensuring that all equipment manufacturers have opportunties to sell to BOCs comparable to the BOC's own susidiary.

6. Develop regulations requiring each BOC to file and maintain at FCC "full and complete information with respect to the protocols and technical requirements for" interconnection with the BOC's network. Uniform formats would need to be developed, as would actual disclosure requirements. Also, we'd need to develop a filing system accessible to public (e.g., we'd need space, copying machines for the public, etc.) The information will be updated from time to time by the BOCs.

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4. Long Distance Services

Proposal: entities generally may not provide long distance services, except in connection with establishment of signaling interfaces, provision of cellular handoffs, and provision of statewide information service gateway systems (FCC waiver to provide gateway service).

Requirements:

1. Define terms (e.g., "signaling interface").

2. Develop regulations defining the boundaries of permissible activities.

5. Separate Subsidiary Requirements

Proposal: bill requires creation of separate subsidiary before entity may engage in manufacturing, provision of information services outside its service territory, or provision of electronic yellow pages inside its service territory.

Requirements:

1. Develop and implement regulations defining separate subsidiary.

2. Prescribe system of book keeping, record keeping, and accounting for subsidiaries (note: Part 32 USOA likely cannot be adapted to this purpose).

3. Revise/expand Joint Cost rules to establish system of preventing cross subsidization between telephone company and any of its affiliates.

4. Revise ARMIS system to track revisions to Joint Cost rules.

5. Review all contracts between telephone company and any of its subsidiaries/affiliates (Section 254(a)(3)(C) requires all such contracts be filed with FCC).

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PROPOSED MFJ RESOURCES
April 9, 1990

Assumptions:

Resource requirements are based on an extended time frame for the implementation of rulemakings from four (4) months to one (1) year.
Outyear dollars are at FY 1990 salary rates.
Personnel costs are calculated at step 5 of grade and benefits at 16%.
ADP costs for first year are purchase costs; 10% is budgeted in out years for maintenance and upgrades. Includes word processing terminal for each attorney and secretary; a computer for every 15 terminals; a personal computer for each engineer, public utility specialist, auditor, accountant and technical librarian.
Auditing costs in first year are to establish a baseline of information for both developmental requirements and as a comparison point for future audits. Second year and beyond costs are for implementation.

Personnel Costs (in thousands)

	YEARS 1	2	3	4	5 and Out Yrs	Total
1. Information Services						
Define terms in bill; revise ONA rules; develop/ implement regulations	$421	$421	$421	$133	$133	$1,529
(Assumes 1 GM-15 & 4 GS-14 attorneys; 1 GS-13 eng.; 1 GS-5 Secr. in years 1, 2, and 3; 2 GS-14 attorneys in year 4 and beyond)						
2. Manufacturing						
a. Requirements 1-5 Define terms; develop generic standards; develop procedures for consultation with Commerce; develop/ implement regulations	$233	$233	$233	$ 66	$ 66	$ 831
(Assumes 1 GM-15 & 2 GS-14 attorneys; 1 GS-5 Secr. in years 1,2, and 3; 1 GS-14 attorney in year 4 and beyond)						
c. Requirement 6 Develop/implement regulations; Set up/maintain technical library	$368	$368	$368	$368	$368	$1,840
(Assumes 2 GS-14 attorneys/2 GS-13 engineers/1 GS-13 technical librarian/1 GS-5 Secretary/2 GS-5 clerks)						

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Personnel Costs (Continued)
(in thousands)

	YEARS 1	2	3	4	5 and Out Yrs	Total
3. Long Distance Services						
Define terms; develop/ implement regulations (Assumes 1 GM-14 attorney)	$ 66	$ 66	$ 66	$ 66	$ 66	$ 330
4. Accounting/Audits						
a. Requirements 1-3 Develop/implement regs; prescribe system of acctng. system; revise/ expand Joint Cost rules. (Assumes 1 GM-15, 7 GS-13 accountants, 2 GS-13 attorneys, 1 GS-5 Secr. in years 1, 2, and 3; 2 GS-13 accountants and 1 GS-13 attorney in year 4 and beyond)	$604	$604	$604	$168	$168	$2,148
b. Requirements 4,5 Revise ARMIS, review all contracts (Assumes 2 GS-13 public utility specialists; 1 GS-13 attorney in years 1, 2 and 3; 1 GS-13 PUS in year 4 and beyond.)	$168	$168	$168	$ 56	$ 56	$ 616
c. Related Auditing Establish base-line of info.in 1st yr.; audit implementation in out years. (Assumes 1 GM-15 and 10 GS-13 auditors; 1 GS-5 secretary)	$828	$828	$828	$828	$828	$4,140
5. Joint Board Activity Coordinate developmental activities with states. (Assumes 1 GS-14 attorney; 2 GS-5 admin. support in Years 1-3; 1 GS-5 in year 4 and out years)	$111	$111	$111	$ 23	$ 23	$ 379
6. Complaints (Assumes 1 GM-15 & 4 GS-14 attorneys; 4 GS-5 analysts; 1 GS-5 Secr.)	$ 0	$500	$500	$500	$500	$2,000
Total Estimated Resources	$2,799	$3,299	$3,299	$2,208	$2,208	$13,813

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SUMMARY OF ESTIMATED RESOURCE REQUIREMENTS

NOTE: These are estimates of the cost to implement the MFJ as described in draft language. Estimates of workyears and resources are a "best guess." Dollars are in thousands.

Assumes developmental work in Years 1 through 3.

Assumes complaints workload will begin in Year 2 after enactment of the bill.

	YEARS 1	2	3	4	5 and Out Yrs	Total
Personnel	$2,799	$3,299	$3,299	$2,208	$2,208	$13,813
Computer Automation Hardware, Software	$ 353	73	40	31	31	$ 528
Travel						
Joint Board	$ 200	125	30	30	30	$ 415
Audit and Other	138	233	258	225	225	$ 1,079
TOTAL	$ 338	358	288	255	255	$ 1,494
Miscellaneous per staff costs (includes space, supplies, etc. @ $5K per FTE)	$ 255	315	315	215	215	$ 1,315
Total Estimate	$3,745	$4,045	$3,942	$2,709	$2,709	$17,150

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OVERVIEW OF FCC RESOURCE REQUIREMENTS

February 14, 1990

Introduction

The Commission's resources have failed to keep pace with the rapid growth of the telecommunications industry. Delays in introducing new services, in issuing licenses for existing services, or in resolving interference and service complaints, may have adverse economic and competitive consequences for the United States. The attached charts highlight the results of a decade of underfunding.

FCC Workyears/FTEs (Chart No. 1)

FCC staffing declined 21% (over one fifth or 475 FTE) between FY 1980 and 1990. Yet overall, the work of the Commission has increased -substantially in some areas. Policy and rule making activities leading to the introduction of new services and opportunities for business growth and personal use are labor intensive. Stations must be licensed and rules enforced once new services are established. Common carrier competition contributes significantly to GNP but generates disputes which must be addressed through the FCC complaint process. The FCC has simply not been able to keep up with all essential work.

FCC Budget: Real vs. Nominal (Chart No.2)

While the FCC appropriation has increased substantially since FY 1981, in real terms our "purchasing power" has declined. The result has been hiring restrictions and lengthy "freezes" leading to the staff reductions illustrated in the previous chart. Additionally, in recent years, after paying for rent, telephones and other fixed costs, the Commission could not buy the tools that the staff needs to do its work effectively and efficiently. In particular, accounts for technical equipment and computers were considerably underfunded.

Impact of Inadequate Staffing (Chart No. 3)

Inadequate staffing impairs every aspect of the Commission's operations from policy and rule making through licensing and enforcement. It also generates adverse international consequences and denies service to the public.

Technologies at Risk (Chart No. 4)

One of the more subtle but serious consequences of underfunding is the potential for delay in introducing new technologies which are beneficial to the private sector. In many instances these delays adversely affect the U.S. competitive position in international markets. Our future competitiveness and prosperity in the new information age depends in large measure on our ability to fully exploit new telecommunications technology.

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Impaired Speed of Service (Chart Nos. 5A, B, C and D)

Telecommunications users will not be able to realize the full potential of new services if they cannot readily obtain a radio license or have their interference or service complaints resolved in a timely manner. These four charts illustrate several recent trends at the FCC.

FCC Additional Staff Requirements (Chart No. 6)

The Commission needs an additional 266 FTE and over $10 million for salaries, benefits and support costs to meet its basic mission requirements, principally for authorization of service and enforcement. This figure includes no administrative or support staff.

Impact of Inadequate Technical Equipment/IRM Funding (Chart No. 7)

The Commission has been able to provide basic office automation tools to many of its staff in recent years but this equipment is aging and needs to be replaced and the software upgraded. The FCC's Honeywell mainframe "work horse" is old and costly to maintain. Service interruptions are of increasing concern. Further delays in replacement could have unacceptable downstream consequences. The Field Operation Bureau's technical equipment base is growing older and less reliable every year. The Commission's Laboratory has not been able to keep up with the evolution of telecommunications equipment. In order to pay the Commission's rent and avoid furloughs, technical equipment accounts have been virtually "zeroed out" year after year.

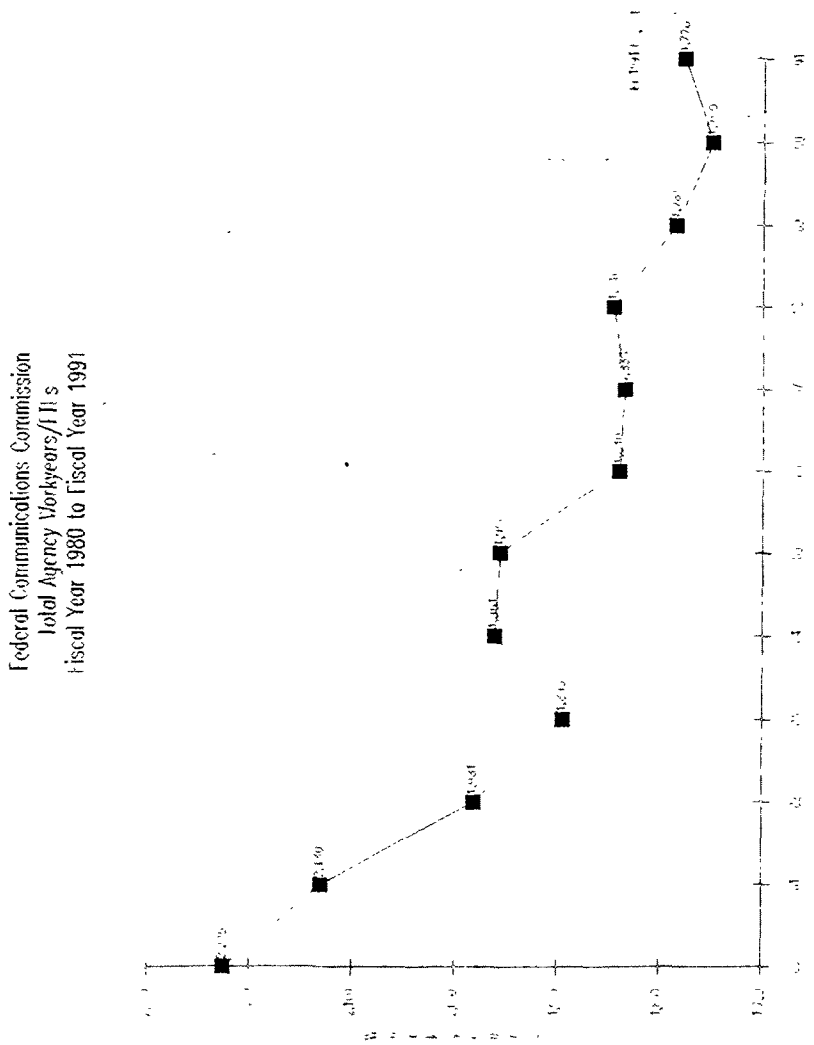
FCC Technical Equipment/IRM Requirements (Chart No. 8)

The Commission needs an additional $22 million over the next four years for technical equipment and IRM funding. Almost all of this amount is needed to replace equipment essential to basic mission accomplishment which is presently obsolete, unreliable or inoperative.

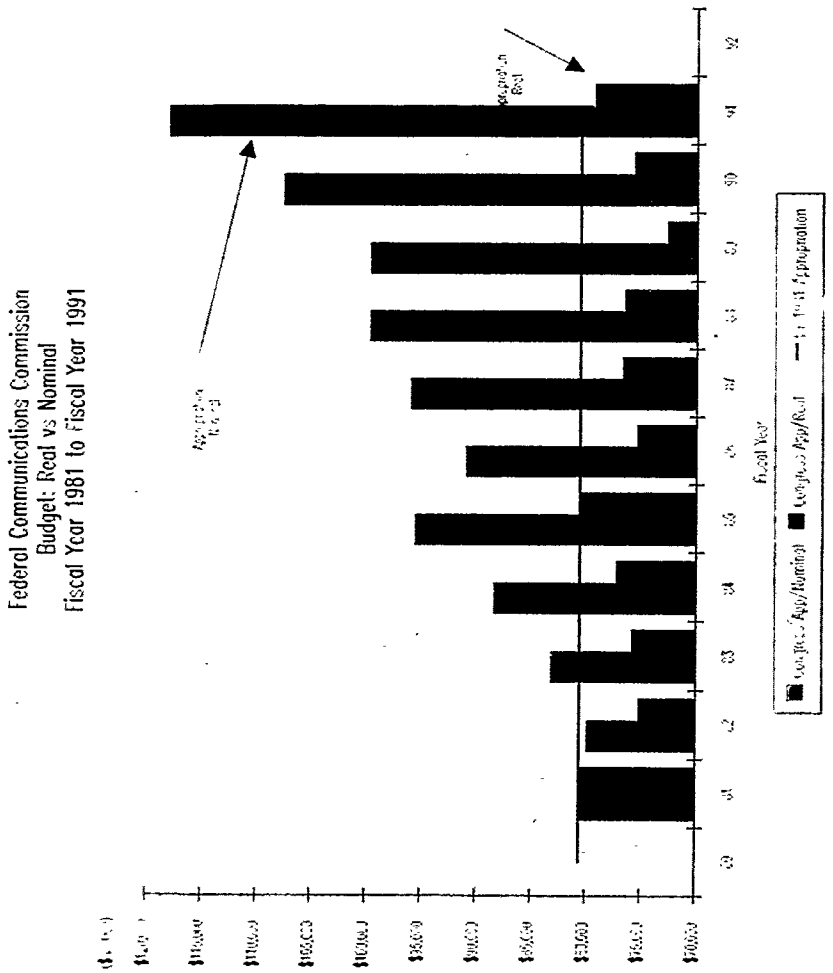
FCC Summary (Chart No. 9)

To accomplish its basic mission, with no frills, and to ensure the timely introduction and authorization of new telecommunications technologies, the Commission needs an additional $15.5 million for staff and technical/ADP equipment, in addition to any fixed cost increases for such items as rent, utilities, and pay adjustments. These requirements will be included in the Commission's FY 1992 budget request to OMB.

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CHART NO. 3

IMPACT OF INADEQUATE STAFFING
(Examples)

- MAJOR POICY-RULE MAKING ACTIVITIES DELAYED
  - Advanced TV
  - FM Translators
  - Advanced Personal Communications
  - AM Expanded Band
  - 800 Operator Services
- SIGNIFICANT LICENSING DELAYS
  - FM Facility Changes: 8 months vs. 4
  - Cellular: 300 days versus 150
  - Private Microwave: 100 days versus 70
  - Land Mobile: 120 days versus 30 days
- SIGNIFICANT ENFORCEMENT SLOW-DOWNS.
  - Major Carrier Activities Audited Every 15 years versus 5 years (e.g. Cost Allocations)
  - Carrier Complaints: Formal 16 months versus 9.5; Informal 276 days versus 75 days
  - Private Radio Complex Interference Cases: 400 days versus 180
  - Field Staff Respond to only 35,000 of 60,000 Interference Complaints
  - No routine Broadcast/CATV Inspections
- ADVERSE INTERNATIONAL CONSEQUENCES
  - US Position at International Conferences Jeopardized
  - Frequency Registrations to Protect US Assignments Curtailed
- BASIC PUBLIC SERVICES NEEDS NOT MET.
  - Slower Service in FCC Public Reference Rooms
  - Eliminate Interference Education Program

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CHART NO. 4

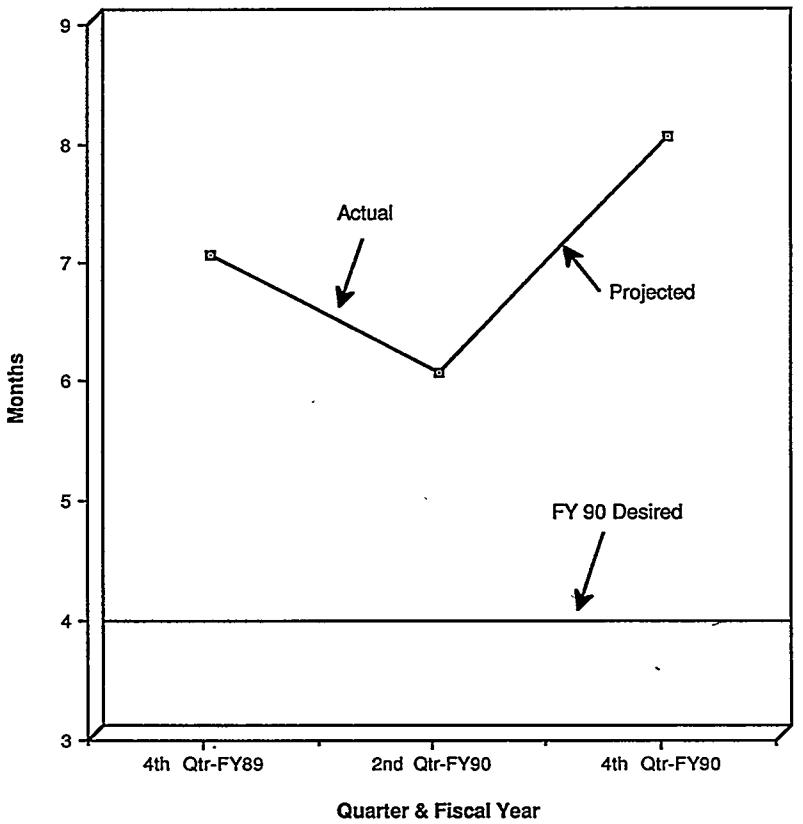
TECHNOLOGIES AT RISK

- ADVANCED TV
- TELECOMMUNICATIONS SATELLITES
  - Mobile Applications and Teleconferencing
- NEW INFORMATION AGE
  - Integration of Computers and Communications
  - Multimedia Capabilities
- LOCAL NETWORK INNOVATIVE SERVICES
  - "Automated Home"
- LONG DISTANCE SERVICES
  - ISDN and ONA
- EXPANDED LAND MOBILE SERVICES
  - Business (cellular, SMR)
  - Public Safety
- ADVANCED PERSONAL COMMUNICATIONS

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CHART NO. 5A

FEDERAL COMMUNICATIONS COMMISSION
Impaired Speed of Service
Mass Media FM Facility Changes



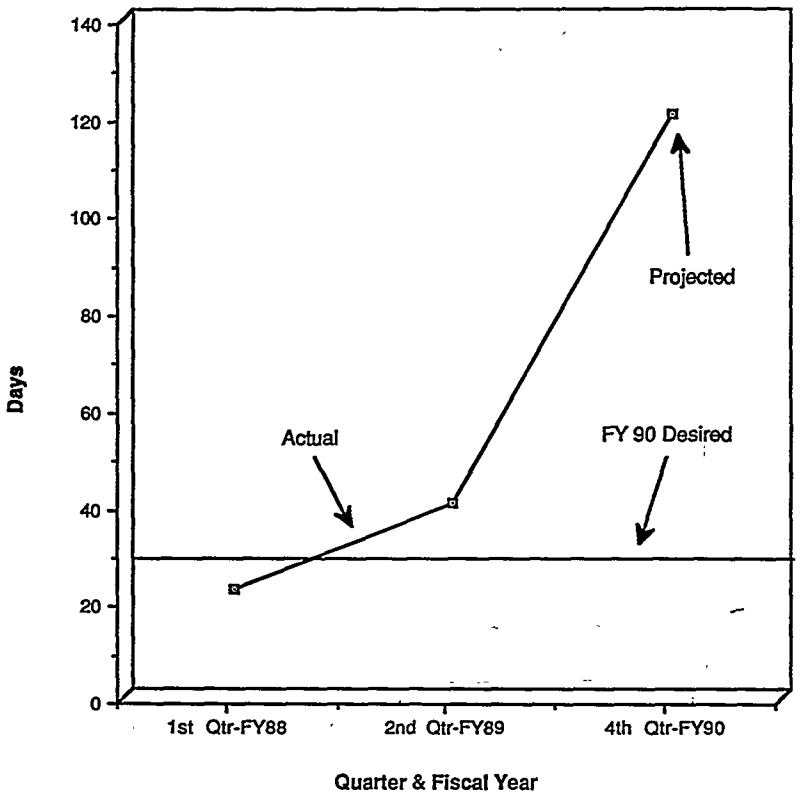
Explanation:

Workload projected to be constant while resources will decrease 43% (from 14 WYs - FY 89 to 8 WYs - FY 90). The slowdown will delay improvements in FM facilities such as changes in: power, transmitter/studio site, tower height and antenna location.

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CHART NO. 5B

FEDERAL COMMUNICATIONS COMMISSION
Impaired Speed of Service
800/900 MHz Land Mobile



Explanation:

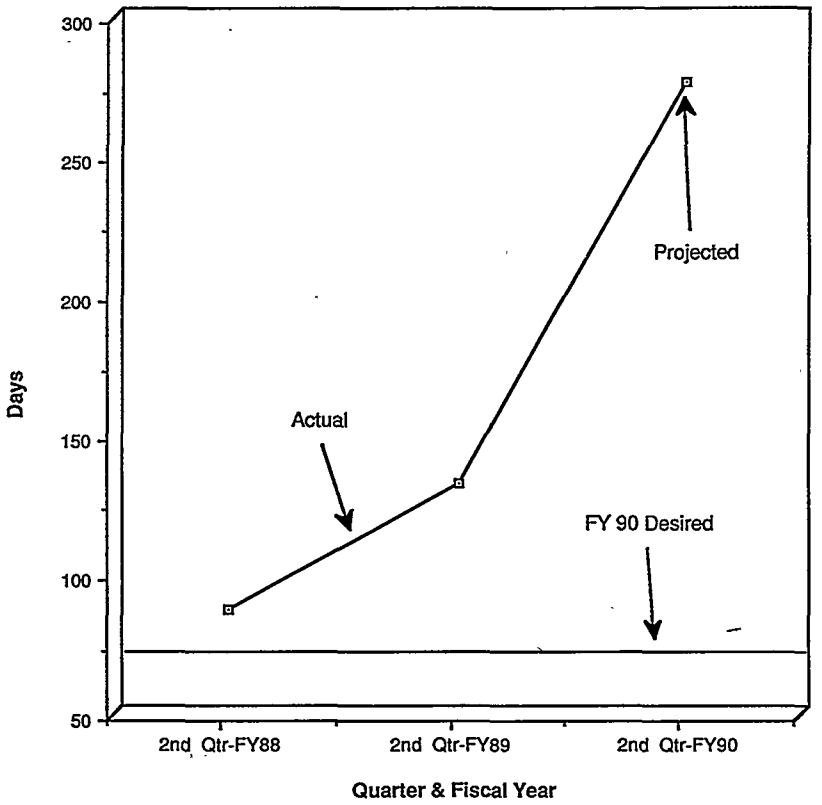
Receipts have generally exceeded disposals (average receipts/Qtr = 22,536; average disposals/Qtr = 21,351) resulting in a growing backlog (pending levels for 1st Qtr - FY 88 = 11,658; estimated pending levels for 4th Qtr - FY 90 = 25,271).

Receipt increase due to equipment cost reduction and an increase in permitted service areas.

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CHART NO. 5C

FEDERAL COMMUNICATIONS COMMISSION
Impaired Speed of Service
Common Carrier Informal Complaints



Explanation:

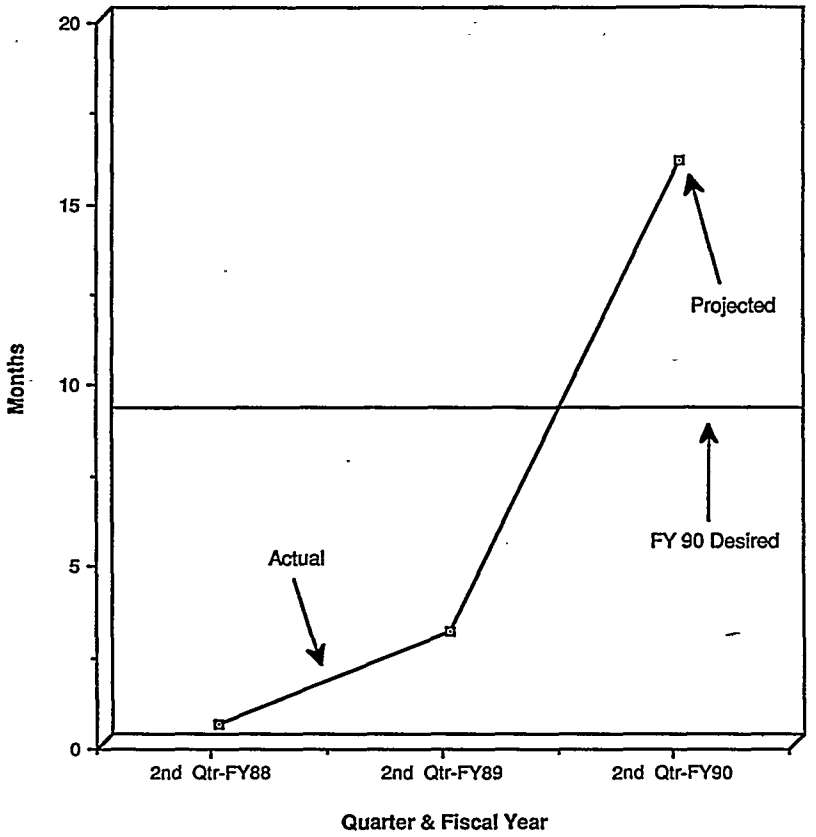
Receipts have continually exceeded disposals (average receipts/Qtr = 1990; average disposals/Qtr = 1425) resulting in a growing backlog (pending levels for 2nd Qtr - FY 88 = 1533; estimated pending levels for 2nd Qtr - FY 90 = 5000).

Receipt increase due to problems/confusion with new services and industry structure.

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CHART NO. 5D

FEDERAL COMMUNICATIONS COMMISSION
Impaired Speed of Service
Common Carrier Formal Complaints



Explanation:

Receipts have continually exceeded disposals (average disposals/Qtr = 32; estimated receipts for 2nd Qtr - FY 90 = 80) resulting in a growing backlog (pending levels for 2nd Qtr - FY 88 = 161; estimated pending levels for 2nd Qtr - FY 90 = 545). Receipt increase due to increased competition and increasingly complex rate structures and services.

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CHART NO. 6

FEDERAL COMMUNICATIONS COMMISSION

ADDITIONAL STAFF REQUIREMENTS

JANUARY 29, 1990

PROGRAM	ADDITIONAL FTEs REQUIRED	SALARIES & BENEFITS ($000)	SUPPORT COSTS ($000)	TRAVEL ($000)	TOTAL REQUIRED ($000)
Authorization of Service	85	$2,720	$545	4	$3,269
Rulemaking Activities	58	1,856	372	3	2,231
Enforcement	84	2,688	539	416	3,643
International	19	608	122	51	781
Public Service	20	640	129	6	775
TOTALS	266	$8,512	$1,707	$480	$10,699

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CHART NO. 7

IMPACT OF INADEQUATE TECHNICAL EQUIPMENT / IRM FUNDING

- FIELD OPERATIONS BUREAU (receivers, spectrum analyzers, field strength meters, antennas , etc.)
  - Unable to Respond to Many Interference Complaints in Timely and Effective Manner, some involving Safety of Life and Property.
  - Fixed Monitoring Network May be Unable to Quickly and Reliable Locate Vessels and Aircraft in Distress. Also, Unable to Reliably Monitor User Compliance Levels.
  - Both Fixed Stations and Mobile Units will have Limited Capability to Monitor UHF Spectrum above 800 MHz (land mobile, cellular).
  - Bureau Unable to Keep Pace with Rapid Changes in Technology.
- OFFICE OF ENGINEERING AND TECHNOLOGY (new/automated test facilities)
  - FCC Laboratory Unable to Evaluate Equipment Employing New Technologies
  - Laboratory Unable to Improve Testing Productivity.
- INFORMATION RESOURCES MANAGEMENT (computer /communications equipment and software)
  - Unable to Replace Outdated and Obsolete FCC Mainframe Computer System (Honeywell):
    - Unacceptable Service Interruptions due to Equipment Failures;
    - Substantial Increases in Hardware/Software Maintenance Costs.
  - Unable to Replace Aging Office Automation Network Equipment and Implement Improved Software (modern word processing, graphics, etc.).
  - Unable to Implement new IRM Technologies to meet Critical Requirements such as Optical Imaging and Electronic Filing.

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FEDERAL COMMUNICATIONS COMMISSION

TECHNICAL EQUIPMENT / IRM REQUIREMENTS ($000)

JANUARY 29, 1990

	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	TOTAL
Technical Equipment:							
Field Operations Bureau	$526	$852	$2,003	$2,145	$2,008	$2,087	$9,621
Office of Engineering and Technology	220	300	985	904	998	455	3,862
Information Resources Management (all FCC):	1,627	1,704	4,579	5,898	4,500	6,500	24,808
FY TOTAL	$2,373	$2,856	$7,567	$8,947	$7,506	$9,042	$38,291
Additional Needed *	-0-	-0-	$4,711	$6,091	$4,650	$6,186	$21,638

CHART NO. 8

* FY Total minus $2,856 Base in FY1991

CHART NO. 9

FEDERAL COMMUNICATIONS COMMISSION

SUMMARY

JANUARY 29, 1990

	STAFF	DOLLARS ($000)
FY 1991 Budget Estimates	1,778 FTE	$117,998
FY 1991 Authorization	NA	SENATE: $119,831 * HOUSE: $121,478 *
Additional Requirements:		
Staff	266 FTE	$10,699
Technical Equipment/IRM	NA	$4,711**
TOTALS	2,044 FTE	$133,408

* Both bills allow expenditures for uncontrollable cost increases; FY 1991 pay raise estimated at $2,722.

** Assumes 5 year equipment replacement "Catch Up" program.

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"THE POST-DIVESTITURE U.S. TELECOMMUNICATIONS EQUIPMENT MANUFACTURING INDUSTRY: THE BENEFITS OF COMPETITION," prepared by IDCMA, North American Telecommunications Association, and Telecommunications Industry Association.

HIGHLIGHTS

This study advocates retaining the manufacturing restrictions on the Regional Bell Operating Companies (RBOCs).

The study's central argument is logically flawed.

* It assumes that allowing RBOCs into manufacture of telecommunications equipment would cause a return to the pre-divestiture market.

* It fails to note that there would be seven RBOCs and AT&T in place of the Bell System, plus many domestic and foreign competitors.

* It fails to note that the RBOCs already engage in many of the stages of equipment provision.

* It does not consider differences in regulatory and market conditions among various types of equipment, which may necessitate treating them differently.

* It fails to note regulatory safeguards against abuse of network control, including cost allocations, open network architecture (ONA), and comparably efficient interconnection (CEI). It also fails to note movement toward incentive regulation that reduces or eliminates incentives for cross-subsidization.

The data presented fail to demonstrate what they purport to show. The study provides little evidence concerning the competitiveness or efficiency of the industry.

Allowing additional competitors such as the RBOCs into the industry with appropriate safeguards should increase its competitiveness, not decrease it.

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"THE POST-DIVESTITURE U.S. TELECOMMUNICATIONS EQUIPMENT MANUFACTURING INDUSTRY: THE BENEITS OF COMPETITION," prepared by IDCMA, North American Telecommunications Association, and Telecommunications Industry Association.

This study focuses on the telecommunications equipment manufacturing industry, and argues that the manufacturing restrictions on the Regional Bell Operating Companies (RBOCs) should be retained. The study asserts that the potential for the kinds of anticompetitive abuses believed to have occurred before divestiture remains. The study tries to refute the claim that lifting the manufacturing restrictions would make the industry more competitive domestically and internationally. The basic argument of the study is logically flawed, however, and the data presented to support it fail to show what they purport to show.

According to the study, "the argument has been made that, if the RBOCs were allowed to manufacture, the equipment producing industry would be healthier and more competitive than it is today. That argument is fallacious. If it were true, it would mean that the health of the industry would have deteriorated since divestiture." Thus the study assumes that allowing entry into manufacturing by the RBOCs would cause a return to a situation identical to the one that existed before divestiture. The argument ignores the fact that there would be seven RBOCs and AT&T in place of the monolithic Bell System, in addition to the manufacturing industry that has grown up since divestiture, including both domestic and foreign competitors.

Furthermore, the study makes no effort to differentiate among discrete lines of equipment. It assumes equally adverse effects due to Bell company entry into the production of customer premises equipment, core network equipment, or central office switches. As the regulatory status, and the competitive dynamics, of the various markets differ, the effects of RBOC entry will differ, so that the markets need to be considered individually. The study also fails to note that the RBOCs already participate in many of the independent stages of equipment provision, such as retail, installation, and maintenance, so that an inconsistency is created by not permitting them to manufacture.

This study also ignores the regulatory safeguards imposed since divestiture, which reduce the ability of the RBOC's to behave anticompetitively. The FCC has established open network architecture (ONA) and comparably efficient interconnection (CEA) requirements for enhanced services, as well as nonstructural accounting safeguards for competitive lines of business. The movement toward incentive regulation at the FCC and among some state regulators may soon reduce or eliminate the incentive for the RBOCs to engage in cross-subsidization.

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The only argument the study makes against lifting the manufacturing restrictions is the unsupported assertion that "competition in the U.S. market would be reduced as the RBOCs turn inward for equipment purchases from captive/affiliated manufacturers instead of relying on competitive bidding from unaffiliated manufacturers. This would only reduce the competitiveness of U.S. manufacturers, as many rely on RBOC business to give them the economies of scale they need to compete internationally." But if regulatory safeguards are effective, the RBOC's will have an incentive to buy the best equipment for the price, regardless of the source. For equipment where economies of scale are important, the RBOCs will need to expand beyond their internal markets and will compete with each other. Prices established in the competitive market will act as a regulatory benchmark to prevent selling at inflated prices to regulated affiliates. In addition, a large consumer market exists that is highly competitive and where the RBOCs purchase little or no equipment. The study notes the number of small firms that have been able to enter and compete successfully since divestiture; clearly a large segment of the market exists where economies of scale are not essential.

Unless a case can be made that the RBOCs would engage undetected in abuses made possible by their control of the network, it is hard to see that adding seven competitors to the firms already in the market will make the industry less competitive. Yet this study fails to consider the regulatory progress toward preventing cross-subsidy, self-supply at excessive prices, and discriminatory interconnection.

The study also fails to note the potential benefits to be gained from the RBOCs' experience in using network equipment, which must be balanced against any costs of RBOC entry. The RBOCs may be able to bring knowledge of equipment requirements and other expertise not available elsewhere to the manufacture of communications equipment. So real cost savings and competitive benefits may arise from the RBOCs' participation in the equipment market.

The bulk of the study purports to demonstrate that the communications equipment manufacturing industry is healthy, efficient, and competitive, and that the MFJ is partly responsible. That may be true, but the evidence presented fails to make the case, and in any case those facts would not justify keeping new competitors from entering the market.

For instance, the study shows that prices of communications equipment rose less rapidly after divestiture than before (p. 4). But the relationship between rates of growth of communications equipment prices and all prices was about the same before and after divestiture. In a chart captioned "Price Decreases Brought On By The Bell System Divestiture...", the study shows decreases in price between 1984 and 1988 of several kinds of telecommunications equipment (p. 6). But no causal link with divestiture is made. Technological progress might have caused such declines in price

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in any case. In fact, the equipment whose price decreased most rapidly, the modem, was provided competitively before divestiture.

Some of the data that purport to show that the industry "is becoming more efficient and more competitive" (p. 8) show nothing of the sort. Growth in factory shipments and new orders shows that the industry is expanding, but says nothing about efficiency or competitiveness. Growth in capacity utilization says nothing about the efficiency of the industry unless the stage of the business cycle is considered. Declines in various costs as a percentage of shipments and increases in net income as a percentage of net worth may indicate higher profits but not necessarily greater efficiency.

The study shows that the number of business establishments, and particularly the number of small establishments, grew rapidly between 1984 and 1986 (p. 18). This may be an indicator of the growth of the industry, but not of its competitiveness. To know something about the state of competition in the industry, we would need to know about the large firms in the industry--how much of the productive capacity they control and what alternatives customers would have if the largest firms raised their prices or produced inferior products. The study tells us nothing about market structure that would allow us to judge whether the industry is competitive and whether entry by the RBOCs would pose risks of anticompetitive abuse.

The study examines the performance of U.S. telecommunications equipment in international trade, and points out that to the extent there are trade problems the causes lie outside the industry. The study finds that leaving aside mass market consumer equipment and facsimile machines, where the trade deficit may be explained by low wages in Far Eastern countries, and cable television equipment, which was unaffected by divestiture, telecommunications equipment experienced a trade surplus in 1988 (p. 29). In computer equipment, which includes much telecommunications equipment, the United States has a large trade surplus (p. 30). The study is inconsistent in that, in general, it lumps together various types of equipment to show that the market is healthy, but disaggregates when that is necessary to explain away a trade deficit.

Again, the finding may be correct but the data presented often fail to support the paper's assertions. For instance, the paper shows percentage changes in exports and imports of telecommunications equipment between the U.S. and various countries (p. 31). But since the bases are never given, we cannot judge the magnitude of the effects, or whether the overall balance is positive or negative. The study also asserts that, compared with the period before divestiture, import penetration is stabilizing. That conclusion is misleading because the data include the period between 1980 and 1982 when imports nearly doubled, probably because consumers had only recently been permitted to buy and use their own telephones. Import penetration in fact has been growing at an increasing rate since divestiture (p. 33).

This study may provide some evidence that the telecommunications equipment manufacturing industry is growing, that prices have been falling relative to the overall price level, and that the high-tech portion of the industry has recently experienced a trade surplus. It provides little evidence concerning the competitiveness or efficiency of the industry. And even if the industry were healthy, competitive, and efficient, that fact would provide no justification for retaining the manufacturing restrictions. With appropriate regulatory safeguards, allowing additional competitors such as the RBOCs should increase the competitiveness and efficiency of the industry, not decrease it.

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"EXPANDING THE INFORMATION AGE FOR THE 1990'S: A PRAGMATIC CONSUMER ANALYSIS," by Mark Cooper, prepared for the American Association of Retired Persons and the Consumer Federation of America.

HIGHLIGHTS

This study endeavors to compare what it describes as centralized provision of information age services, exemplified by the French Minitel system, with the United States's system, which it describes as decentralized.

The study asserts that centralization of information service provision would be excessively costly and thus should not be attempted in the United States.

The study has numerous conceptual problems:

* The use of the term "centralization" suggests a single monopoly provider of service, when in the United States information services would be available through terminal equipment and independent service bureaus as well as in the network. Many or most non-residential users would have a choice of networks or could self-supply.

* The study confuses the regulatory issue of who should provide services with the technical issue of whether services should be provided in the network or in a terminal.

* The study does not take into account the benefits that may accrue from allowing some information services to be provided in the network.

* The study fails to recognize that centralization is not an either/or decision. Some services may be provided most efficiently in the network while others are best provided in the periphery.

The empirical work in the study is flawed.

The study's policy recommendations are unsupported:

* It fails to recognize that nonstructural safeguards and equal access requirements are already in place that would allow provision of information services by the Regional Bell Operating Companies (RBOCs) while protecting against abuses of control of the network.

* It fails to make a case for subsidies for special needs groups.

* It fails to make a case for retaining the information service restrictions on the RBOCs.

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"EXPANDING THE INFORMATION AGE FOR THE 1990'S: A PRAGMATIC CONSUMER ANALYSIS," by Mark Cooper, prepared for the American Association of Retired Persons and the Consumer Federation of America.

This study (the AARP-CFA study) considers centralized and decentralized approaches to the provision of information age services, which it defines as "communications, data, entertainment or other services provided to consumers in their homes and businesses over the telephone network." The decentralized approach is currently employed in the United States and involves provision of transmission capacity by the telephone company and provision of content by other companies, frequently using the customer's "smart" terminal. In the centralized approach the telephone company provides both transmission and services. The French Minitel system, which uses "dumb" terminals, provides an example. Adopting the centralized approach in the United States would require lifting the restrictions placed on the Regional Bell Operating Companies by the AT&T divestiture decree. The study concludes that a centralized system would be excessively costly and should not be adopted in the United States.

The AARP-CFA study's policy conclusions are (1) that there is no need to relax restrictions on local telephone companies; (2) that state regulators need to protect ratepayers from overbuilding and cross-subsidies; and (3) that programs to facilitate access by special needs groups should be strengthened. The study argues that development and deployment of information age services in the United States has been satisfactory, and that centralization would be a far more costly way of providing the services. The study asserts that overbuilding, cross-subsidy and other inefficiencies would be likely to result from centralized provision of services. In particular, the study warns that the telephone companies may use the need to acquire capacity to offer information age services as a rationale for replacing copper wire with optical fiber prematurely, which would impose excessive costs on ratepayers. The study claims that low-income, disabled, rural, and elderly populations, and public interest institutions, are less likely than other groups to use information age services and so would be disproportionately harmed by additional costs occasioned by premature adoption of information age technology.

In the context of the American policy debate the comparison of centralized and decentralized information service provision misses the mark, since a centralized monopoly provider on the French model is not a serious policy option in this country. Even if the RBOCs provide information services they will also be provided by other suppliers through terminal equipment and independent service bureaus, and for large users alternative networks and self-supply provide additional options.

Another central problem of the study is the ambiguous definition of centralization. The discussion confuses the issue of providing what the

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FCC calls "enhanced services" by local telephone companies with the technical issue of whether intelligence is more efficiently provided in the network or at the terminal. The former is a regulatory issue having to do with preventing abuses of market power; the latter is a technological choice. The study also fails to recognize that centralization of information service provision is not an either/or choice. Some information services might be better or more cheaply provided in the network, while others would be better provided independently. One attractive configuration might be a sophisticated, user-friendly gateway provided by the network that allowed users access to services from many different sources. Ideally, regulation should provide a framework that would allow technological choices to be made on the basis of which combination will provide the services consumers want at the lowest social cost. The FCC has developed accounting safeguards and nondiscrimination requirements (i.e., open network architecture (ONA) and comparably efficient interconnection (CEI)) that will allow provision of information services by local telephone companies while protecting against cross-subsidy or abuses of control of the network.

The study considers the process of diffusion of innovations and compares the rate of diffusion of personal computers with that of other successful innovations. The study relates the penetration of each of six products to its cost relative to per capita income, and concludes that personal computers have performed as well as the others. But to draw conclusions about whether the rate of diffusion of a particular innovation is satisfactory from these comparisons is useless, because a large portion of the differences can probably be explained by differences in demand conditions, that is, in the value consumers place on the service the innovation provides relative to the price.

An economic analysis might provide a benchmark for judging whether adoption of a service is efficient. The outcome of a competitive market is one such benchmark; where market failures occur, some form of cost-benefit analysis might be used. But the comparison of diffusion rates offers no such criterion; by the study's own admission, "how far or how fast the services 'should' diffuse is an open question." So even if the results were correct they would not help us judge the success of current policies.

Further, some of the relative cost comparisons are invalid. Annualized telephone and cable TV rates are compared with prices of VCRs and computers, divided by the number of years of the product's life, which is conceptually

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wrong. To compare a stream of expenditures with a one-time cost requires a discounted present value calculation.[1]

The study compares French experience with the Minitel system, an example of government-fostered centralized information service provision, with American experience where information services are accessed with personal computers and modems. The Minitel system offers telephone customers a "dumb" terminal with access to various information services in place of a telephone directory. The terminal is provided with no direct charge, and customers pay connect charges.

The study compares penetration of Minitel terminals with penetration of personal computers and modems in the United States, apparently as a measure of whether U.S. adoption of information age technology is in some sense satisfactory. The comparison tells us little. Most importantly, the fact that the French face prices that differ greatly from market prices (and their bills are not itemized, so they do not know what prices they face) means that the level of service in France is probably far from the optimum, and that it is impossible, for practical purposes, to know what the optimum is. We have no idea how much customers would use the service if they had to pay what it costs to provide the service. In addition, the French and American products compared offer different services--personal computers have computational capacity and the ability to download data, and Minitel terminals do not. Finally, per capita incomes are higher in the U.S. than in France, and one would expect demand for information services to be highly income elastic. The study may be correct that no supply bottlenecks exist in the provision of information services in the United States, but the cross-country comparison presented provides no information on that point.[2]

The AARP-CFA study also examines a request by Southern Bell for accelerated depreciation of copper wire to finance the early replacement of

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1 In the same vein, many of the graphs in the study are misleading. Figure III-3, for instance, puts six products on the same adoption curve with "time" on one axis. Clearly the units of time should be different for each product. The graph gives the false impression that all the products were adopted at the same rate. Figure III-1 puts "economic costs" on one axis of a graph and "technological barriers" on the other as if they were separable concepts. But they are not; a product that cannot be made has infinite cost.

2 Supply bottlenecks should be distinguished from other impediments such as ease or cost of consumer access or use.

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copper with optical fiber to provide capacity to carry video services. The study states that early fiber deployment would create an enormous revenue requirement relative to what would be needed for telephone service alone. Again, the study's empirical work contains errors. For instance, in estimating the additional cost for fiber, attributing the full cost to accelerated replacement is incorrect; the proper measure is the difference in discounted cost streams between the two cases. Further, it is not clear what the analysis of fiber deployment costs has to do with the issue of centralization versus decentralization, since transmission capacity will be needed and will be provided by the local telephone companies whether the information services are provided by the telephone companies or by other firms.

The AARP-CFA study's discussion of universal service raises important issues of equity. The study points out that if rates for basic service rise to pay for information service capabilities, low income groups, the elderly, and others with little demand for sophisticated services may have to pay for others' luxuries and will be made worse off. The study makes a valid point in that both equity and efficiency require that as much as possible the users of the services should be required to bear the costs. But the issue of centralized provision of service is independent from the issue of pricing. In addition, the study fails to consider the safeguards that are already in place, such as cost allocation procedures and ONA requirements, to prevent basic service ratepayers from cross-subsidizing services offered in competitive markets.[3] The study also does not address a key point often raised in this context, namely, that increased usage of telephone plant in conjunction with the provision of new services could, in fact, lower the per-unit cost of providing basic voice telephone service by defraying some of the substantial joint and common costs borne by telephone customers.

The study asserts that subsidies are needed to bring information age services to groups likely to be underserved by a decentralized approach, such as the elderly, low income groups, rural residents, and the disabled. The study does not recognize that if information services were offered through the network their costs might be enough lower that underserved groups could take advantage of them without subsidies. Further, groups that society finds in need of assistance will almost certainly be made better off by direct payments, which they can use in ways that are most valuable to them, than by subsidies of particular goods and services. The study is self-contradictory in that it asserts that because of their attitudes and lack of computer skills members of underserved groups might

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3 It is important to note that until approved accounting and nondiscrimination procedures (i.e., ONA or CEI) are in place, RBOCs must provide enhanced services through separate subsidiaries.

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not use the services even if they could afford them, so that extraordinary expenditures to provide the services to them might be wasted.

Again, one of the great advantages of providing advanced information services through using network capabilites may that the services will be so much cheaper and easier to use than existing or future decentralized alternatives that they will come within reach of otherwise underserved groups without below-cost pricing. Voice message services priced on a per-call basis, for instance, might be far less expensive for occasional users than an answering machine; user-friendly information gateways might give access to information services to persons who would never learn to operate a personal computer. The study fails to make the case that the market would not provide these groups with the services they want to buy.

This study serves an important function in pointing out the pitfalls of inefficient investment, operation, and pricing that may occur in regulated industries, but fails to consider the safeguards that regulators have devised to prevent such abuses or the benefits that might accrue from allowing regulated firms to perform functions that they perform uniquely well. The study also emphasizes the desirability of a system that relies as much as possible on consumer choice and payment for services by the user. But the study fails to make the case that the restrictions on provision of information services should be retained. It also fails to make the case for subsidies for special needs groups.

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Question: Do you believe that the staff draft should retain requirements that new BOC-manufactured products, including software, be made available to all telecommunications companies?

Answer: Some have suggested that, in order to ensure the maintenance of a unified national network, the BOCs should make every product they might manufacture, including software, available on the open market. As noted above, I think that maintaining a unified national network is a sound public policy goal. The suggested provision, while directed at that goal, may not be necessary to achieve it, particularly with the vigor of competition in the national, and now global, telecommunications equipment and software markets.

Question: Do we need language which guarantees access to advanced information services to all our rural constituents?

Answer: Government policies should encourage the development of a unified national network and a telecommunications environment in which small and large companies alike can serve their customers effectively wherever they are located. The staff draft contains several provisions that reflect a desire to stimulate the proliferation of advanced information services in rural areas. The critical point is that this issue is being addressed early in the process.

My review of the industry convinces me that some of the most progressive modernization efforts are occuring in the rural areas. Some mostly rural companies, for example, have a higher percentage of digital switching capacity today than do some of their mostly urban counterparts. Moreover, technological developments are, to a significant extent, eliminating the basis for a dicotomy between urban "haves" and rural "have-nots." The FCC is playing a positive role here by encouraging network investment, including the kinds of investment that will push deployment of information age services into rural areas.

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Committee on Energy and Commerce
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LAWRENCE R SOMAN
CHIEF COUNSEL AND STAFF DIRECTOR

March 1, 1990

The Honorable Roderick A. DeArment
Deputy Secretary
Department of Labor
200 Constitution Ave., NW
Room S-2018
Washington, D.C. 20210

Dear Mr. DeArment:

The Subcommittee on Telecommunications and Finance is interested in receiving your testimony at its March 7, 1990 hearing on the staff draft of the "Telecommunications Policy Act of 1990."

The staff draft was developed through the joint efforts of majority and minority staff. It is predicated on the extensive oversight hearing record on national telecommunications policy amassed by the Subcommittee during the last session. The purpose of the March 7 hearing is to determine whether the proposed public policy changes would encourage the development of an advanced domestic telecommunications infrastructure, yet protect consumers, and promote a more competitive telecommunications industry at home and abroad.

In addition to this overall focus of the hearing, your written testimony should include separate responses to each of the enclosed pre-hearing questions pertaining to your staff study on the "Employment Implications of Elimination of the Manufacturing Prohibition of the AT&T Consent Decree." Your testimony and responses to pre-hearing questions may be of any length and contain supplemental supporting materials. Your testimony should be typed, double-spaced and should include a one-page summary touching upon the major points of your testimony. In order for Members of the Subcommittee to ask questions of all witnesses, your accompanying oral statement should be limited to no more than 5 minutes.

Committee rules require that witnesses provide the Subcommittee with 75 copies of prepared statements 48 hours prior to the hearing. These copies should be delivered to the Subcommittee by 3:00 p.m. on Tuesday, March 5, 1990. This will give the Members and staff the appropriate opportunity to review your testimony. An additional 75 copies should also be brought to the hearing room at the time of the hearing.

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If you cannot appear at the March 7 hearing, the Subcommittee extends the option of testifying at either of two follow-up hearings tentatively scheduled for March 21 and March 22, 1990, or of submitting a statement for the record. The deadline for submitting testimony and responses to prehearing questions, or a written statement for the record, for either of the subsequent hearings would be March 19, 1990.

If you have any questions regarding this request, please contact Gerry Salemme of the Subcommittee staff at 226-2424.

The Subcommittee looks forward to your testimony.

Sincerely,

Edward J. Markey

Edward J. Markey
Chairman

cc. The Honorable Michael J. Boskin
Chairman
Council of Economic Advisors

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PRE-HEARING QUESTIONS
OF THE
SUBCOMMITTEE ON TELECOMMUNICATIONS AND FINANCE
COMMITTEE ON ENERGY AND COMMERCE

Background

For the past year, the Subcommittee on Telecommunications and Finance has been engaged in a comprehensive review of national telecommunications policy. The result of this review is a draft piece of legislation called, the "Telecommunications Policy Act of 1990," which the staff recently presented to the Chairman and Members of the Subcommittee. Central to this review has been an examination of the lines-of-business restrictions placed on the Regional Bell Operating Companies (RBOCs) under the AT&T Consent Decree and whether or not the restrictions have hampered the rapid development of an advanced telecommunications industry and infrastructure. One major point of discussion is to what effect RBOC entry into manufacturing would have on American jobs and the domestic manufacturing industry.

A few weeks ago, AT&T's government relations office delivered a study to my staff which is attributed to your office. The unofficial study focuses on the specific question of RBOC entry into the central office (CO) switch manufacturing area. The unofficial study projects, albeit with several caveats, that for each RBOC entering into the manufacturing of CO switches, an estimated 3,000 American jobs could be lost, either through joint ventures with foreign firms or through off-shore manufacturing.

In response to your unofficial study and its projections, BellSouth and others have provided Subcommittee Members with analyses that raise questions about the assumptions and findings in the unofficially released staff study. The Subcommittee is interested in your response to the following questions to help clarify the issues raised by the competing industry interests regarding the unofficial study. In addition, the Subcommittee requests more information on the position of the Department of Labor regarding the Regional Bell Operating Companies (RBOCs) entry into manufacturing subject to the requirements proposed by the TPA.

Pre-hearing Questions

1) What is the official status of the study requested by the Economic Policy Council? Has the study been approved and officially released by the Department of Labor?

2) Are the estimates in the unofficial staff study on the effect on American jobs predicated upon current market conditions? Does the unofficial study take into consideration the RBOC increasing reliance on foreign switch manufacturers as alternative suppliers to domestic manufacturers.

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3) Did the unofficial study consider the loss of American jobs in the telecommunications industry since divestiture? Why was there no mention in the study that AT&T has entered into an estimated 20 joint production ventures with foreign manufacturers? What does the Labor Department estimate is the total number of lost jobs in these joint-ventures using your ratio of 2 lost domestic jobs for every job lost off shore?

4) Although the unofficial study focuses on CO switch manufacturing, one of the last markets where AT&T is still dominant, there are those who will argue that AT&T's manufacturing arm is not as productive as its long-distance service. Indeed, some will claim that as AT&T's competitors make further inroads into the long-distance market, it may be forced to pare down its less productive manufacturing entity in order to focus on the more lucrative long-distance market. Is there a reason the study did not consider such a scenario? And if there is any plausibility to this argument, would not RBOC entry into manufacturing ensure long term U.S. competitiveness in this market, if AT&T is forced to retreat from this market?

5) On what basis did the study conclude that RBOCs will choose not to engage in R & D joint-ventures with AT&T or other US manufacturers?

6) What effect would the safeguards proposed in the TPA have on your estimates? Furthermore, would you please make a comment on the efficacy of the safeguards proposed in the legislation and how you would envision such a marketplace?

7) Please reassess the assertions in the unofficial study in light of the TPA's requirements that all RBOC fabrication or production would be conducted exclusively in the United States, through a wholly-owned separate subsidiary.

8) Finally, would you please provide the Subcommittee with any statistics on current labor trends in the telecommunications manufacturing industry? Please project the level of employment in the telecommunications marketplace over the next ten years, if Congress does not act to remove the line of business restrictions.

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U.S. DEPARTMENT OF LABOR

DEPUTY SECRETARY OF LABOR
WASHINGTON, D.C.
20210

April 24, 1990

The Honorable Edward J. Markey
Chairman, Subcommittee on
Telecommunications and Finance
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

It has come to my attention that during the first round of hearings held by the Subcommittee on Telecommunications and Finance on "The Telecommunications Policy Act of 1990," reference was made to a Department of Labor staff study. The study in question examined the possible U.S. employment implications of abolishing all restrictions on domestic central office equipment manufacturing by the Regional Bell Operating Companies contained in the AT&T Consent Decree.

Since surreptitiously obtained copies of the Department of Labor internal staff study have been circulated widely and, it is my understanding, a copy may be entered into the record of your hearings, I thought it would be useful to provide you and your Committee with some background information about this study.

The staff study was prepared as a follow up to the discussion of the October 1989 meeting of the Economic Policy Council. An internal staff study of the employment implications of lifting the equipment manufacturing restrictions contained in the AT&T Consent Decree was prepared by the Department and transmitted to the Council of Economic Advisers and others in the Economic Policy Council in January. The study was, and still is, an internal staff document and has never been released as an official Department document or distributed by any Department staff.

I am concerned that the Department's staff study has been cited and quoted out of context and has been portrayed as more comprehensive than it actually is. Moreover, the study, and my cover transmittal memo to Dr. Boskin, were careful to list the limitations of the study. The Department's staff study was not intended to be a comprehensive review of all employment impacts of abolishing the manufacturing restrictions; rather, it focused on what we considered a contestable market -- for central office switching equipment -- and did not address other aspects of the

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manufacturing restrictions. In addition, the study relied on readily available data, studies, and reports, considering the short time-frame for doing the study and our resource limitations. Finally, the study considered only a complete abolition of the manufacturing restrictions and did not review the effect of an onshore production requirement.

I strongly support the conclusions of the Department's study. Nevertheless, the study addressed only one part of the very complex problem of whether to modify the AT&T Consent Decree. No doubt your hearings will reveal more comprehensive information on this most important issue. Since the Administration is still in the process of reviewing this issue, it would be inappropriate for me to testify on the matter at this time.

I hope this letter is responsive to your concerns.

Sincerely yours,

Roderick A. DeArment

RAD:ner

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U.S. DEPARTMENT OF LABOR

DEPUTY SECRETARY OF LABOR
WASHINGTON, D.C.
20210

MEMORANDUM FOR MICHAEL BOSKIN
CHAIRMAN, COUNCIL OF
ECONOMIC ADVISERS

FROM: RODERICK A. DeARMENT

SUBJECT: Employment Implications of Elimination of the Manufacturing Prohibition of the AT&T Consent Decree

I have enclosed a staff study estimating the possible employment effects of lifting the manufacturing prohibition on the Regional Bell Operating Companies (RBOCs). You will recall this was discussed at the October 5 meeting of the Economic Policy Council.

Although this study is subject to certain caveats and assumptions, it concludes that the elimination of the manufacturing restriction would not be cost-free. A total of 18,000-27,000 jobs would be lost. While this is a relatively moderate number, it should be noted that it does not include potential adverse effects in employment in research and development functions. Also, no separate estimates have been made of the adjustment costs that would be borne by workers.

The study analyzes the economic situation of the telecommunications equipment industry and the different alternatives open to the RBOCs if the manufacturing restriction were lifted. It concludes that absent the manufacturing prohibition, 2-3 RBOCs would likely choose to enter into manufacturing (via joint venturing with, or acquisition of, foreign manufactures) and locate their manufacturing facilities abroad. The study focuses primarily on the potential impact of lifting the manufacturing restriction on the central office switch market, a critical piece of equipment in telecommunications systems and one in which our manufacturers are competitive.

Although the potential employment dislocations would not be extraordinarily large, I still believe that there should be no changes in the current regulatory environment at least until U.S. telecommunications equipment providers have meaningful access to the markets of their major competitors in Japan and Europe.

It is widely agreed that a major objective of U.S. trade policy should be to open the foreign major telecommunications markets to

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U.S products and services. Most countries have public telecommunications monopolies that discriminate against foreign suppliers.

The combination of restricted access to foreign markets, coupled with the drastic decline in our telecommunications products trade balance--which many believe resulted in part from the unilateral opening up of our telecommunications market after the break up of AT&T--led the Congress to direct the United States Trade Representative (USTR), in the Omnibus Trade and Competitiveness Act of 1988 to identify priority countries with which to negotiate liberalization of telecommunications trade barriers. Negotiations under this provision are now underway with the European Community and Korea. In addition, a principal goal of the United States in the General Agreement on Tariffs and Trade (GATT) Government Procurement Code negotiations is to expand code coverage to include telecommunications entities (such as the European Post, Telephone, and Telegraph (PTT) Administrations). Opening our market unilaterally would eliminate any incentives telecommunications firms in these countries might have to support their governments' efforts to open their markets.

I thus question why we should throw away a bargaining chip at this time and undercut our trade negotiators by making it harder for them to open large closed foreign telecommunications markets. Although the Justice Department determined that, due to changed circumstances, the information services and manufacturing restrictions were no longer needed to protect competition in those markets, the question remains, what will be the benefits of lifting the restrictions? It is not clear that modifying the decree's restrictions will lead to a technically more sophisticated national telecommunications infrastructure or improve our international competitiveness. Is it worth jeopardizing the jobs of some of our engineers and scientists without getting something in return to mitigate possible adverse effects? Would we not be even better off if we worked first to open other foreign markets to our domestic producers and thus forego short-term efficiency gains for even larger long-term gains?

Enclosure

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Employment Implications of Eliminating the Domestic Manufacturing Prohibition of the AT&T Consent Decree

December 1989

Staff Study

by the

Office of International Economic Affairs
Bureau of International Labor Affairs
U.S. Department of Labor

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Executive Summary

- The 1982 American Telephone and Telegraph antitrust consent decree placed three fundamental line-of-business restrictions on the Regional Bell Operating Companies (RBOCs) that were divested by AT&T in 1982. The consent decree barred the RBOCs from:

  -- offering new computer-related information services in the domestic market, including electronic publishing;

  -- manufacturing, designing, and developing telecommunications equipment for use in the U.S. market; and

  -- providing long distance telephone service.

- Proposals have been made recently to eliminate the equipment manufacturing restriction on the RBOCs.

- Some industry analysts believe that the impact of the lifting of the manufacturing restriction will be felt most acutely in the critical area of central office (CO) switches, the equipment and software that interconnect local telephone lines and connect local telephone lines to long distance trunk lines.

- The RBOCs are the largest purchasers of CO switches, accounting for about 70-80 percent of the market. Other purchasers of CO switches are independent local and long-distance telephone companies, and the government. By and large, the market for CO switches is driven by the shift of operators from analog to digital networks and the upgrade of existing software for digital switching networks.

- Domestic production of digital CO switches is dominated by AT&T and Northern Telecom Inc. (NTI). Other foreign producers include Stromberg-Carlson, CIT-Alcatel, Siemens, Ericsson, and NEC.

- We estimate that in 1987, about 30,600 workers were employed domestically in the production of CO switches; indirect employment and that related to R&D are not included in this number.

RBOC Behavior Absent the Manufacturing Restriction

- According to industry analysts, the likelihood is low that, absent the manufacturing restriction, the RBOCs would choose to start up manufacturing on their own. This is due to the extremely high cost of market entry (e.g., R&D costs,

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substantial investments that would be necessary to construct new manufacturing facilities), lack of experience of the RBOCs in manufacturing, high production costs in manufacturing that require high volume of sales to break even, and the considerable lead times involved, as well as existing excess capacity.

- A more likely scenario would have RBOCs enter manufacturing via joint ventures with, or acquisition of, established foreign manufacturers who would have the capacity to meet the needs of individual RBOCs or would be willing to expand capacity to do so. Among potential joint venture partners are NEC and Fujitsu (Japan), Siemens (West Germany), and Ericsson (Sweden).

Employment Impact of Lifting the Manufacturing Restriction

- The level of domestic industry employment would be reduced if domestic output were displaced as the result of RBOCs entering into ventures with foreign producers to supply the U.S. market. Under these circumstances, up to 21,400 jobs could be lost in the U.S. CO switch industry (about 3,060 jobs per RBOC entering into a joint venture with a foreign producer producing abroad); up to 30,600 jobs may be eventually at risk if the joint ventures created by the RBOCs also serve the non-RBOC market.

- Any displacement of domestic output by new foreign production as a result of lifting of the manufacturing restriction would also have an impact on suppliers to CO switch producers. Based on input-output industry relations, it can be estimated that for every job opportunity lost in the telecommunications equipment sector as a result of domestic output being displaced by foreign sales, another two job opportunities might be lost in supporting sectors.

- It is reasonable to expect that, as a result of the lifting of the manufacturing restriction, 2 or 3 RBOCs might choose to form manufacturing joint ventures to produce CO switches abroad, resulting in a reduction of between 6,000 and 9,000 direct jobs and 12,000 to 18,000 indirect jobs.

- Development costs associated with CO switches are very high. CO switching networks embody an immense amount of both R&D and human capital. If the RBOCs were to engage in joint ventures with foreign CO producers, it is likely that basic research associated with this activity would be done abroad; however, no separate estimates have been made of the number of scientists, mathematicians, engineers, and other technicians that might be affected.

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1. Introduction

The 1982 American Telephone and Telegraph (AT&T) antitrust consent decree placed three fundamental line-of-business restrictions on the Regional Bell Operating Companies (RBOCs)[1] that were divested by AT&T in 1984. The consent decree barred the RBOCs from:

- offering new computer-related information services in the domestic market, including electronic publishing;
- manufacturing, designing, and developing telecommunications equipment for use in the U.S. market; and
- providing long distance telephone service.

Taking into account the result of the 1987 review of the decree restrictions conducted by the Department of Justice, the U.S. District Court partially lifted the information services restriction on the RBOCs (thereby permitting them to provide transmission-related information "gateway" services, voice storage and retrieval, and electronic mail). However, the Court maintained the prohibition on domestic manufacturing despite the Department of Justice's conclusion that such restriction was no longer needed to protect competition in the domestic market. The Court subsequently concluded, pursuant to a petition by AT&T, that the definition of manufacturing embodied in the consent decree includes research, design and development related directly to a specific product, and not just fabrication. Regarding the provision of long distance service, the 1987 Department of Justice review concluded that restrictions were justified and the

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Court has not issued any modifications.

H.R. 2140, the "Consumer Telecommunications Services Act of 1989," introduced by Representatives Swift and Tauke in early 1989, would lift the restrictions on the provision of information services and the manufacture of equipment, subject to some safeguards regarding nondiscriminatory interconnection and procurement. Another legislative approach to changing the information services and manufacturing restrictions has sought to transfer the jurisdiction over administration of the consent decree from the District Court to the Federal Communications Commission (FCC); the expectation is that if the FCC administered the decree, that agency may be more sympathetic to modifying--or eliminating--the restrictions.

The prospect of further modification of the consent decree has given rise to a lively controversy. Proponents of further modification of the decree point to potential efficiencies in the operation of the RBOCs and to the consumer gains that would ensue.[2] Opponents argue that no such efficiencies are likely to occur and that lifting of the restriction on domestic manufacturing might not lead to additional fabrication in the United States and could adversely affect already-established domestic production and employment and the trade deficit.[3]

This paper attempts to estimate the potential impact on domestic employment in a segment of the telecommunications equipment manufacturing sector of eliminating the current restriction on manufacturing by the RBOCs without introducing any

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safeguards. While such estimates are inherently perilous and subject to significant margins of error, they are probably more so in this case because of the lack of adequate data and the rapid technological change that has taken place in the industry. Moreover, these estimates will be extremely sensitive to assumptions about the behavior of the individual RBOCs in the face of a decision to permit them to enter into manufacturing. For these reasons, we have chosen to provide hypothetical estimates of the employment impact of lifting the manufacturing restriction in the form of ranges of employment impacts under different scenarios (i.e., assumptions about the behavior of RBOCs if the manufacturing restrictions were lifted), rather than as a single point estimate.

2. The U.S. Telephone and Equipment Market

The U.S. Telephone and Equipment Industry: U.S. firms that manufacture products covered by the AT&T consent decree are located primarily in the telephone and telegraph equipment industry (SIC 3661). This industry includes the manufacturers of switching and switchboard equipment, telephone instruments, teleprinting and telex equipment, and other telephone and telegraph apparatus and parts.[4]

Some of the producers within this industry may also manufacture other types of equipment, such as microwave systems, mobile radio systems, satellite communications equipment, fiber optics and cellular radio equipment (except the network

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switches), included in SIC 3662--radio communication and detection equipment industry. Production of such related equipment may also be affected by lifting of the manufacturing restriction but will not be considered here because the focus of this study is on the potential manufacture of equipment by the RBOCs for their own use.

In 1988, real value of domestic industry shipments of telephone and telegraph equipment (SIC 3661) stood at $14.2 billion (in terms of 1982 dollars), roughly the same level as a year earlier, but lower (by about 14 percent) than in 1985 (Table 1). In 1982, the most recent year for which this information is available, there were 332 establishments nationwide producing telephone and telegraph equipment, located primarily in the states of California (67 establishments), New York (34), Illinois (32), New Jersey (22), Texas (20) and Florida (19).[5]

According to official statistics from the Bureau of the Census (Table 1), domestic employment in the telephone and telegraph equipment industry (SIC 3661) in 1988 was estimated at 102,000 workers, of which 53,400 (52.4 percent) were production workers (i.e., hourly employees engaged in fabrication, shipping, storage, handling, and other activities closely related to the manufacturing process). Both total employment, and employment of production workers, have been declining since 1980, when they peaked at 152,700 and 101,200 workers, respectively (Figure 1). Employment levels based on establishment survey data from the Department of Labor's Bureau of Labor Statistics (BLS), also

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reported in Table 1, differ in level from those of the Bureau of the Census but show very similar trends over the period (Census figures are about 85-90 percent of BLS totals).[6]

It is evident from data in Table 1 that increases in real output in this industry have been achieved as the result of substantial increases in labor productivity with a concomitant decline in the level of employment. Between 1977 and 1986, output per all employee hour (based on the value of industry shipments in 1982 constant dollars and total all employee hours worked from Bureau of the Census data) increased by 62.5 percent or at an average annual rate of 5.5 percent per annum while output per production worker hour increased over the same period by 115.6 percent, or at an average annual rate of 8.9 percent. Over this same period, the corresponding average annual productivity growth rates for the U.S. business sector and for the manufacturing sector were 1.1 and 2.4 percent, respectively.[7]

Over time, employment in the telephone and telegraph equipment industry (SIC 3361) has shifted from a preponderance of production workers compared to non-production workers (i.e., professional, technical, managerial and clerical workers), to a closer balance between the two. Thus, according to Bureau of the Census data, production workers accounted for 66.3 percent of the industry's total employment in 1980 compared to about 52.4 percent in 1988.[8] This trend reflects technological changes in the industry (e.g., the growing importance of software), a higher proportion of white collar workers and technicians, restructuring

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in light of deregulation, and foreign outsourcing of low-end equipment.

Product Composition: Telephone and telegraph equipment manufacturers supply the domestic telecommunications network, which consists of about 23,000 switching offices, billions of miles of transmission lines and special services circuits, and 130 million access lines connecting customers to the public-switched telephone network. They also supply equipment to the private telecommunications networks operated by the Federal Government (e.g., the FTS system) and private corporations. Equipment manufacturers provide both network and customer premises equipment.

The U.S. telecommunications network provides local, regional, and international connections for the transmission of voice, text, data, and video information. Some 200 billion calls are placed each year over the U.S. public telecommunications network. This network consists of companies providing local telephone service (the 7 RBOCs--Ameritech, Bell Atlantic, BellSouth, NYNEX, Pacific Telesis, Southwestern Bell, and U.S. West--together with GTE and 1500 smaller, independent telephone companies), and long-distance telephone service (AT&T, MCI, US Sprint, and about 540 smaller carriers). Smaller long-distance carriers generally lease telecommunications circuits from AT&T and other large carriers and then resell services to the public rather than developing their own networks.

Output of the telephone and telegraph equipment industry can

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