

REMARKS OF
CHAIRMAN PATRICIA WORTHY
PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA,
CONCERNING OPEN NETWORK ARCHITECTURE
COMNET PANEL 90
WASHINGTON CONVENTION CENTER

IT IS IMPORTANT TO UNDERSTAND THAT OPEN NETWORK ARCHITECTURE (ONA) WAS A REGULATORY SCHEME DEvised BY THE F.C.C. AS A PRECONDITION TO REMOVAL OF STRUCTURAL SEPARATIONS FOR THE ENHANCED SERVICE OPERATIONS OF THE BOCs. IT PROMISED A REGULATORY FRAMEWORK THAT WOULD PERMIT THE OPERATING COMPANIES TO PARTICIPATE IN THE ENHANCED SERVICES MARKET WHILE PREVENTING ANTICOMPETITIVE CONDUCT ON THE PART OF THE BOCs BASED ON THEIR CONTROL OF THE LOCAL COMMUNICATIONS NETWORK. WE WERE ASSURED THAT THE FCC'S COMPUTER III DECISION WOULD INCREASE OPPORTUNITIES FOR ALL ENHANCED SERVICE PROVIDERS TO USE THE REGULATED NETWORKS IN HIGHLY EFFICIENT WAYS SO THAT THEY COULD BOTH EXPAND THEIR EXISTING MARKETS AND DEVELOP NEW SERVICE OFFERINGS THAT WOULD BETTER SERVE THE AMERICAN PUBLIC. WE ALL KNEW THAT THE BOC'S RETAINED THE INCENTIVE AND THE ABILITY

TO DISCRIMINATE AGAINST THEIR COMPETITORS BUT THE FCC RULED THAT THIS NEW AND INNOVATIVE REGULATORY APPROACH WOULD GUARANTEE AGAINST CROSS-SUBSIDIES, PREDATORY PRICING AND UNLAWFUL DISCRIMINATION. MORE IMPORTANTLY, ONCE GIVEN THESE ASSURANCES THE STATE JURISDICTIONS WERE PREEMPTED, PRECLUDED, RESTRICTED AND PROHIBITED FROM PURSUING THEIR RESPECTIVE STATUTORY RESPONSIBILITIES.

WITH THIS BACKGROUND, LET ME SHARE WITH YOU SOME OF THE STATES SPECIFIC CONCERNS AS IT RELATES TO ONA. ACCORDING TO THE FCC'S DECISION IN DOCKET 88-2, THE BOC ONA PLANS ARE DEEMED APPROPRIATELY EVEN THOUGH THEY COMBINE BASIC SERVICE ELEMENTS (BSEs) WHICH ARE THE FEATURES THAT ENHANCED SERVICE PROVIDERS (ESP's) MAY REQUIRE WITH BASIC SERVICE ARRANGEMENTS (BSA's) WHICH ARE THE TARIFFED ACCESS, SWITCHING AND TRANSPORT SERVICES THAT ALLOW THE ESPs TO COMMUNICATE THROUGH THE NETWORK. ALTHOUGH ONA WAS ORIGINALLY PROMOTED AS A TECHNOLOGICAL SOLUTION TO THE BOC'S CONTROL OF THE "BOTTLENECK", MANY OF THE BSEs ARE NOT THE PRODUCT OF NEW TECHNOLOGIES. INSTEAD, THEY ARE EXISTING OR REPACKAGED VARIOUS OF

FEATURES WHICH ARE ALREADY OFFERED UNDER CURRENT STATE TARIFFS. SINCE IT IS APPARENT THAT THE FCC HAS RETREATED FROM ITS INITIAL UNBUNDLING AND EQUAL ACCESS REQUIREMENTS THERE IS SERIOUS QUESTIONS AS TO WHETHER THE ONA PLANS, AS AMENDED, SHOULD BE APPROVED AND THE CEI AND SEPARATE SUBSIDIARY REQUIREMENTS LIFTED.

MANY STATE COMMISSIONS ARE CONCERNED THAT THE FCC MAY BE ACTING PRECIPITOUSLY IN ATTEMPTING TO RESOLVE SPECIFIC ONA TARIFFING ISSUES WHILE MAJOR FEDERAL-STATE JURISDICTIONAL ISSUES REMAIN OUTSTANDING.

THE FCC'S AUTHORITY TO PREEMPT THE STATES FROM REGULATING ENHANCED SERVICES OR IMPOSING STRUCTURAL SEPARATIONS SAFEGUARDS AGAINST THE BOCs IS STILL PENDING BEFORE THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT IN PEOPLE OF THE STATE OF CALIFORNIA v. FCC, NO. 87-7230. THE ISSUE OF WHETHER THE FCC CAN REQUIRE ONA TARIFFS TO BE FILED AT THE FEDERAL LEVEL IS PENDING BEFORE THE U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT COURT IN PACIFIC BELL AND NEVADA BELL v FCC, NO. 89-1194. AND, IN UNITED STATES OF

AMERICA v. WESTERN ELECTRIC COMPANY, INC., THE DISTRICT OF COLUMBIA
CIRCUIT COURT IS REVIEWING THE JUDGE GREENE'S ORDER MODIFYING IN
PART THE AT&T CONSENT DECREE REJECTING THE DEPARTMENT OF JUSTICE'S
RELIANCE ON THE FCC'S ONA POLICIES.

IN AN EFFORT TO DEVELOP SOME CONSENSUS THE FCC ESTABLISHED A
JOINT FEDERAL-STATE CONFERENCE PURSUANT TO SECTION 410(B) OF THE
1934 COMMUNICATIONS ACT. AMONG THE ISSUES THAT THE CONFERENCE HAS
DISCUSSED AND WILL DISCUSS IN THE FUTURE ARE 1) UNIFORMITY OF ONA
TARIFFS (NOMENCLATURE, CROSS-REFERENCING, SERVICE DESCRIPTION,
FORMAT, TERMS AND CONDITIONS, RATE STRUCTURE, AND RATE LEVELS) 2)
DUAL TARIFFING, 3) JURISDICTIONAL SEPARATIONS AND WHETHER CERTAIN
REGIONS SHOULD BE PERMITTED TO PROCEED WITH IMPLEMENTING ONA ON AN
EXPERIMENTAL BASIS.

SOME STATE COMMISSION VIEW THE ISSUE OF JURISDICTIONAL
SEPARATIONS AS CRITICAL TO ONA DEVELOPMENT. AT THE JULY 410(B)
MEETING THE STATE COMMISSIONERS EXPRESSED CONCERN THAT THE USE OF
EXISTING SEPARATIONS PROCEDURES MAY BE INAPPROPRIATE IN THIS

ENVIRONMENT OF NEW TECHNOLOGY. UNDER EXISTING SEPARATIONS PROCEDURES, MINUTES OF USE ALLOCATORS, FOR EXAMPLE, ARE APPLIED TO FAIRLY ALLOCATE THE COSTS OF TRADITIONAL, LARGELY ANALOG, CIRCUIT-SWITCHED TECHNOLOGY TO EACH JURISDICTION. SPECIFICALLY, THE COST OF LOCAL SWITCHING FACILITIES IS APPORTIONED BETWEEN THE INTERSTATE AND INTRASTATE JURISDICTIONS BASED ON THE PERCENTAGE OF USAGE, AS MEASURED BY DIAL EQUIPMENT MINUTES (DEMS). HISTORICALLY, ABOUT 85-90% OF THE COST OF LOCAL SWITCHING EQUIPMENT HAS BEEN APPORTIONED TO THE STATE.

NEW TECHNOLOGIES WHICH ARE RAPIDLY EMERGING FOR ONA RELY NOT ON ANALOG CIRCUIT-SWITCHED, BUT DIGITAL SWITCHED TECHNOLOGIES. SUCH TECHNOLOGIES INCLUDE SIGNALLY SYSTEM 7 (SS7), ISDN AND INTELLIGENT NETWORK 2. THESE TECHNOLOGIES ARE BEING DEVELOPED PRIMARILY TO SUPPORT NEW ENHANCED, OR DATA-BASE TYPE SERVICES. MANY BSEs SUCH AS CALLING NUMBER IDENTIFICATION, MAY INVOLVE SERVICES THAT DO NOT CREATE ADDITIONAL MINUTES OF USE. THESE NEW SERVICES WILL NOT USE THE PRIMARY COMMUNICATIONS PATH OF

INTEROFFICE TRUNK FACILITIES. INSTEAD, THEY WILL USE A SIGNALLING PATH. EXISTING MINUTES OF USE ALLOCATORS DO NOT CAPTURE USAGE OVER THE COMMON CHANNEL SIGNALLING PATHS. OTHERS BSEs WHICH USE PACKET SWITCHING WILL PRODUCE MUCH LOWER ADDITIONS TO MINUTES OF USE BECAUSE OF THE INHERENTLY COMPRESSED NATURE OF PACKET DELIVERY. SUCH USAGE WILL BE GREATLY UNDERSTAND RELATIVE TO CIRCUIT-SWITCHED TRAFFIC. THEREFORE COST ALLOCATIONS UNDER EXISTING PROCEDURE WILL NOT PROPERLY APPORTION THE COST OF NEW TECHNOLOGIES BASED ON ACTUAL USAGE BETWEEN THE STATE AND FEDERAL JURISDICTIONS.

A BRIEF DISCUSSION ON THE FCC'S PROPOSAL TO TARIFF ONA SERVICES AT THE FEDERAL LEVEL: ANY MISALLOCATION OF INVESTMENT COST IN NEW ONA TECHNOLOGIES IS CLEARLY AGGRAVATED BY THE FCC'S DECISION TO TARIFF AS INTERSTATE BSEs WHAT ARE CLEARLY LOCAL EXCHANGE FUNCTIONS. DUAL TARIFFING WILL OBVIOUSLY INVITE TARIFF SHOPPING BY ESPs FOR CHEAPER INTERSTATE ONA SERVICES. WHICH, IN TURN, WILL RESULT IN REDUCED REVENUES WHILE INTRASTATE COSTS ARE DRIVEN SKYWARD BY THE NEW TECHNOLOGY AND IMPROPER COST ALLOCATION

FACTORS.

I RECOGNIZE THAT IN DOCKET 89-79 THE FCC PROPOSES THAT ESPs BE PROHIBITED FROM USING FEDERALLY TARIFFED BSEs WHILE USING STATE SHOPPING. THE THEORY BEHIND THIS PROHIBITION OF SO-CALLED "MIXING AND MATCHING" IS THAT, WHILE STATE-TARIFFED FEATURES PROVIDE A CONTRIBUTION TO BASIC SERVICE IN EXCESS OF COST, BUSINESS LINES ARE CHEAPER THAN FEDERALLY-TARIFFED BSAs. BY REQUIRING THE ESPs TO USE EITHER ALL FEDERAL OR ALL STATE ONA SERVICES, THE FCC HOPES TO LIMIT TARIFF SHOPPING. WHILE I SUPPORT THIS PROPOSAL AS A STEP IN THE RIGHT DIRECTION, I WOULD CONTINUE TO URGE THE FCC TO "FORBEAR" AND TO RESIST THE TEMPTATION TO ASSERT ITSELF, YET AGAIN, INTO WHAT IS CLEARLY A STATE MATTER.