UNITED STATES TELEPHONE ASSOCIATION
101ST ANNUAL CONVENTION
OCTOBER 11, 1998

GOOD AFTERNOON, LADIES AND GENTLEMEN. MY NAME IS MARLENE JOHNSON AND I'M CHAIR OF THE PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA. IT'S A PLEASURE TO BE WITH YOU TODAY IN PHILADELPHIA ON THE OCCASION OF YOUR 101ST ANNUAL CONVENTION. AS I WAS PREPARING MY REMARKS FOR THIS AFTERNOON'S SESSION, I WAS STRUCK BY HOW LONG A TIME THIS GROUP'S BEEN IN EXISTENCE, ESPECIALLY GIVEN THAT ALEXANDER GRAHAM BELL'S HISTORIC WORDS OVER THE FIRST TELEPHONE LINE WERE UTTERED TO MR.. WATSON 122 YEARS AGO. THAT MEANS THAT YOU ALL HAVE BEEN AROUND TO SEE IT ALL, JUST ABOUT FROM THE BEGINNING. IN FACT, IT WAS LOOKING BACK TO ALEXANDER BELL AND TO 1876 THAT THE 8TH CIRCUIT COURT OF APPEALS BEGAN ITS ANALYSIS OF THE 1996 TELECOMMUNICATIONS ACT, AND WHERE I'D LIKE TO BEGIN TODAY.

BEFORE I START THOUGH, I'D LIKE TO SAY THAT I SEE THAT I'M THE ONLY

STATE REGULATOR ON THIS PANEL, AND I DON'T NOW WHETHER THAT'S GOOD OR BAD. I'M STANDING BEFORE A GROUP OF TELEPHONE COMPANIES THAT PEOPLE LIKE ME REGULATE, AND I'M ON A STAGE WITH THE FCC, AN ILEC AND A CLEC. IT LOOKS TO ME AS THOUGH I AM NOT ONLY IN THE LION'S DEN, BUT IN A DEN WITH ALL OF THE LIONS THAT NORMALLY FIGHT EACH OTHER. PLUS, ALTHOUGH I WAS INITIALLY QUITE HONORED THAT MR. BARRETT, OUR MODERATOR, INVITED ME TO JOIN YOU TODAY, IT NOW OCCURS TO ME THAT HE USED TO BE ONE OF THE LIONS HIMSELF. WHY I AM FINALLY AND JUST NOW CONCLUDING THAT SOMETHING IS WRONG WITH THIS PICTURE, I DON'T KNOW, BUT SINCE I'M REPRESENTING THE CHRISTIANS -- THAT IS, THE STATE REGULATORS -- I'LL JUST HAVE TO TRUST IN THE LORD TO KEEP ME SAFE UP HERE.

THE TOPIC OF THIS PANEL, WHICH I'VE FOOLISHLY AGREED TO JOIN, IS "SECTION 251 OF THE TELECOMMUNICATIONS ACT - A LOOK AT WHERE WE ARE AND WHERE WE MAY BE HEADED." WELL, WHERE WE ARE WITH SECTION 251 IS

IN TWO PLACES. FIRST, WE'RE AT THE SUPREME COURT IN A CASE BROUGHT BY MY COMPATRIOTS AT THE IOWA UTILITIES BOARD AGAINST THE FCC. IT'S THE STATES' POSITION THAT THE 1996 ACT VESTS THEM, AND NOT THE FCC, WITH THE DUTY TO SET COST-BASED RATES FOR INTERCONNECTION AND NETWORK ELEMENTS, AND THE DUTY TO DETERMINE THE AMOUNT OF THE WHOLESALE DISCOUNT FOR THE RESALE OF AN ILEC'S RETAIL SERVICES. IT'S OUR VIEW THAT WITH THE 1934 COMMUNICATIONS ACT, CONGRESS SET UP A DUAL SYSTEM OF REGULATION -- WITH THE FCC HAVING JURISDICTION OVER INTERSTATE MATTERS AND THE STATES HAVING JURISDICTION OVER INTRASTATE MATTERS -- AND THAT CONGRESS INTENTIONALLY LEFT THAT DUALITY UNDISTURBED WHEN ADOPTING THE 1996 ACT.

THE FCC, OF COURSE, TAKES A DIFFERENT VIEW. WITH ALL DUE RESPECT, THEY SEE THEMSELVES AS THE SUPREME POTENTATE AND PLENIPOTENTIARY OF ALL TELECOMMUNICATIONS THINGS, THE MOSES TO THE LOST TRIBE OF THE STATES. THEY VIEW THE '96 ACT AS GIVING THEM THE GREEN LIGHT TO

ESTABLISH A SET OF NATIONAL RULES FOR LOCAL CALLING. ALTHOUGH THE FCC CONCEDES THAT THE ACT DOES NOT GIVE THEM AN EXPRESS GRANT OF INTRASTATE AUTHORITY -- IN OTHER WORDS, NO DIRECTION TO GO TO THE TOP OF THE MOUNTAIN AND BRING BACK TEN TABLETS TO GUIDE THE WAYWARD STATES -- THEY NONETHELESS ARGUE THAT WITHOUT THEIR EXPERTISE IN INTERPRETING FEDERAL COMMUNICATIONS LAW, THE STATES AND THE FEDERAL COURTS WILL CONTINUE TO WANDER IN THE WILDERNESS FOR SO LONG THAT COMPETITION WILL NEVER COME.

WELL, FOR ME PERSONALLY, I CAN ONLY DESCRIBE THAT VIEW AS HOGWASH. ACTUALLY, I PROBABLY COULD COME UP WITH ANOTHER WORD TO DESCRIBE IT, BUT THAT WOULDN'T BE POLITE. I CAN, THOUGH, UNDERSTAND WHY THE FCC MAY HAVE BELIEVED IN EARLY 1997, WHEN THIS LAWSUIT FIRST BEGAN, THAT IT WOULD BE UP TO THEM TO PUSH FOR LOCAL COMPETITION. BACK THEN, THE '96 ACT WAS JUST A YEAR OLD, LOCAL MARKETS HADN'T REALLY OPENED AND FEW, IF ANY CUSTOMERS, HAD A CHOICE OF WHO

PROVIDED THEM WITH LOCAL TELEPHONE SERVICE. TO MAKE MATTERS WORSE, THE CONGRESSIONAL SPONSORS OF THE '96 ACT HAD STARTED TO BEAT THE DRUMS, CONSUMER GROUPS WERE COMPLAINING, AND THE ILECS HAD BEGUN DIGGING THEIR HEELS IN AND DRAWING THE LINES IN THE SAND THAT THEY'RE SO FAMOUS FOR. WHAT I CAN'T UNDERSTAND, THOUGH, IS WHY THE FCC THOUGHT THEN, AND CONTINUES TO THINK NOW, THAT A SET OF NATIONAL RULES WOULD, OR WILL, SOLVE THE SEVERAL PROBLEMS (TO PUT IT MILDLY) INVOLVED WITH DEREGULATING WHAT WAS ESSENTIALLY A 100 YEAR OLD MONOPOLY OVER LOCAL TELEPHONE SERVICE..

I RECENTLY RE-READ A SPEECH THAT REED HUNDT, FORMER CHAIRMAN OF THE FCC, GAVE BEFORE THE AMERICAN ENTERPRISE INSTITUTE IN AUGUST, 1997. THE SPEECH WAS ENTITLED "THE LIGHT AT THE END OF THE TUNNEL VERSUS THE FOG, OR DEREGULATION VERSUS THE LEGAL CULTURE." CHAIRMAN HUNDT'S CENTRAL THESIS WAS THAT THE SUCCESS OF DEREGULATION WAS BEING DELAYED BY OUR COUNTRY'S PENCHANT FOR

LITIGATION. IN HIS VIEW, WHAT HE TERMED AS OUR "LEGAL CULTURE" SIMPLY VALIDATED THE ILECS' COLLECTIVE HOSTILITY TOWARDS DEREGULATION AND ENCOURAGED WHAT HE DESCRIBED AS "UNCEASING ARGUMENT AND INEFFECTIVE DELAY-RIDDEN DECISION MAKING." HE STATED THEN -- AND I QUOTE — "THERE HAS NEVER BEEN A DAY WHEN ANY NEW ENTRANT COULD BE ASSURED THAT INTERCONNECTION PRICING AND NETWORK SHARING PRICING COULD BE COUNTED ON TO BE, AND REMAIN, FAIR IN ANY STATE OR REGION OF THE COUNTRY."

FRANKLY, I THINK CHAIRMAN HUNDT GOT IT WRONG THEN AND THAT HIS PREMISE REMAINS WRONG NOW. WHICH BRINGS ME TO THE SECOND "PLACE" WHERE I THINK WE ARE WITH SECTION 251. IT IS CLEAR TO ME, AS A STATE REGULATOR, THAT DEREGULATION IS ALIVE AND WELL AND THAT COMPANIES ARE, IN FACT, COMPETING WITH ILECS IN VIRTUALLY EVERY STATE IN THE NATION. AS THIS ORGANIZATION POINTS OUT IN THE BRIEF IT FILED WITH THE S SUPREME COURT, THE FCC IS WRONG WHEN IT ARGUES THAT THERE ARE

"PRACTICAL" REASONS FOR OVERTURNING THE 8TH CIRCUIT'S DECISION. YOUR LAWYERS CORRECTLY WRITE THAT, "IN LESS THAN 2 YEARS AFTER PASSAGE OF THE '96 ACT, MORE THAN ONE THOUSAND INTERCONNECTION AGREEMENTS INVOLVING 300 COMPANIES HAVE BEEN SIGNED AND APPROVED BY STATE COMMISSIONS ACROSS THE NATION," AND THAT STATES HAVE SUCCESSFULLY CONDUCTED PROCEEDINGS UNDER THE ACT WITHOUT THE NEED FOR FCC GUIDANCE.

THAT THERE ARE NO STATE IMPEDIMENTS TO COMPANIES ENTERING LOCAL EXCHANGE MARKETS IS BORNE OUT FURTHER IN AN ARTICLE IN THIS PAST THURSDAYS'S COMMUNICATIONS DAILY. ACCORDING TO A SURVEY CONDUCTED BY THEIR AFFILIATED PUBLICATION, STATE TELEPHONE REGULATION REPORT, THE NUMBER OF MULTI-STATE CLECS HAS TRIPLED BETWEEN JULY 1997 AND JULY 1998. THERE ARE NOW 48 CLECS AUTHORIZED TO DO BUSINESS IN 10 OR MORE STATES, WHEN COMPARED WITH 16 AUTHORIZED JUST 1 YEAR AGO. THERE ARE NOW 117 CLECS AUTHORIZED TO DO BUSINESS IN

2 TO 9 STATES, WHERE THERE WERE ONLY 46 AUTHORIZED A YEAR AGO. TEN STATES IN THE UNION, REPRESENTING 37% OF THE LOCAL EXCHANGE MARKET, EACH HAVE 30 OR MORE CLECS CERTIFIED TO PROVIDE LOCAL SERVICE.

SO THE QUESTION ISN'T WHETHER THERE'S GOING TO BE COMPETITION BUT WHAT FORM IT'S GOING TO TAKE. WHICH BRINGS ME TO WHERE WE'RE HEADED UNDER SECTION 251. IT'S NO SECRET, NOR SHOULD IT BE A SURPRISE TO ANYONE, THAT COMPETITION IS NOW COMING ONLY TO HIGH-VOLUME BUSINESS USERS. AS I READ OVER YOUR ASSOCIATION'S SUPREME COURT BRIEF, I WAS FASCINATED, AS A REGULATOR IN A TOTALLY URBAN JURISDICTION, BY THE FACT THAT THE SMALL, MID-SIZED AND RURAL EXCHANGE CARRIERS THAT FORM A LARGE PART OF THIS BODY'S MEMBERSHIP HAVE SOMETHING IN COMMON WITH THE MAJOR ILECS THAT DO BUSINESS IN STATES LIKE MINE. THAT IS, "CREAM SKIMMING," AS YOUR LAWYERS HAVE TERMED IT, OR ECONOMIC REDLINING, AS I WOULD TERM IT IN THE URBAN CONTEXT. FOR SMALL AND RURAL CARRIERS, THE ISSUE APPARENTLY IS NEW

ENTRANTS THAT TARGET ONLY BUSINESS CUSTOMERS. WELL, THE BIG ILECS HAVE THE SAME PROBLEM.

AS YOU MIGHT IMAGINE, MY STATE IS ONE OF THE MOST LUCRATIVE TELECOMMUNICATIONS MARKETS AROUND. WE ARE DENSELY POPULATED, GEOGRAPHICALLY COMPACT AND WE ARE THE NATION'S CAPITAL. FOR OBVIOUS REASONS, OUR ILEC HAS INSTALLED SOME OF THE MOST SOPHISTICATED TELECOMMUNICATIONS INFRASTRUCTURE DEPLOYED ANYWHERE IN THE WORLD. AS A CONSEQUENCE, WE HAVE OVER 25 COMPANIES ALREADY CERTIFIED TO PROVIDE LOCAL SERVICE IN OUR TINY JURISDICTION, WITH ANOTHER 20 APPLICATIONS PENDING.

BUT COMPETITION ISN'T RUNNING AMOK IN THE DISTRICT, AS THE NUMBER OF NEW ENTRANTS MIGHT SUGGEST. OUR ILEC, BELL ATLANTIC-DC, HAS BEGUN, DURING THE FIRST 3 MONTHS OF 1998, TO ACTUALLY LOSE CUSTOMERS, BUT THEY'RE LOSING BUSINESS CUSTOMERS. CLECS ARE INDEED PHYSICALLY COLLOCATED IN 5 OF BELL ATLANTIC'S CENTRAL BUSINESS

OFFICES IN THE DISTRICT OF COLUMBIA, BUT THOSE CENTRAL OFFICES ARE THE ONES THAT SERVE THE BUSINESS AREAS OF OUR CITY. MCI HAS ABOUT 15 ROUTE MILES OF FIBER IN THE DISTRICT. WORLDCOM HAS ABOUT 75, AT&T HAS ABOUT 17 AND TCG HAS ABOUT 20. BUT AS A DISTRICT RESIDENT AND A PERSON THROUGH THE CITY EVERYDAY, I CAN TELL YOU IT'S OUR DOWNTOWN STREETS THAT ARE BEING TORN UP FOR FIBER INSTALLATION, NOT THOSE IN OUR NON-BUSINESS AREAS.

EVEN WHEN NEW ENTRANTS DECIDE TO SERVE NON-BUSINESS USERS, I CAN ASSURE YOU THAT COMPETITION DOES NOT NECESSARILY BRING THE RESULTS THAT PEOPLE MIGHT EXPECT. JUST LAST MONTH IN THE DISTRICT, OUR COMMISSION RECEIVED A COMPLAINT FROM A FORMER ILEC RESIDENTIAL CUSTOMER WHO HAD SWITCHED HER LOCAL SERVICE TO A NEW ENTRANT. THE CUSTOMER COMPLAINED TO US THAT ALTHOUGH SHE HAD SELECTED A NEW CARRIER, BELL ATLANTIC WAS CONTINUING TO SEND HER A MONTHLY BILL. AFTER INVESTIGATION BY OUR STAFF, IT TURNS OUT THAT THE NEW ENTRANT

HAD PLACED THE CUSTOMER BACK WITH BELL ATLANTIC BECAUSE THE CUSTOMER'S SECURITY DEPOSIT CHECK FOR SERVICE FROM THE NEW ENTRANT HAD BEEN DISHONORED. TO ME, THIS IS JUST ANOTHER EXAMPLE OF "CREAM SKIMMING" OR "ECONOMIC REDLINING" -- THAT NEW ENTRANTS CAN NOT ONLY DECIDE TO AVOID CERTAIN UNPROFITABLE SEGMENTS OF THE MARKET, BUT ALSO CAN PICK AND CHOOSE WITHIN THE CUSTOMER SEGMENT THAT THEY ARE WILLING TO SERVE.

AS A PERSONAL MATTER, I AM A STRONG BELIEVER IN COMPETITION, A STRONG BELIEVER IN THE ECONOMIC THEORY THAT MARKET FORCES ARE THE BEST REGULATOR EVER IN A MARKET THAT IS TRULY COMPETITIVE, AND A BELIEVER IN THE THEORY THAT COMPETITION CAN BRING UNTOLD BENEFITS TO ANYONE WHO HAS AN OCCASION TO PICK UP A TELEPHONE.. FURTHER AND AS MY LOCAL ILEC WILL CERTAINLY TELL YOU, I AM NOT A DEFENDER OR APOLOGIST FOR THEIR INTERESTS. BUT AS A STATE REGULATOR, EVEN WITHOUT A CRYSTAL BALL, I CAN SEE THAT IF WE'RE NOT CAREFUL ABOUT

WHERE WE'RE REALLY HEADED, WE'LL NEVER REACH THE COMPETITIVE GOALS THAT CONGRESS SET FOR US. AND BY US, I MEAN THE FCC AND THE STATES.

IT SEEMS TO ME THAT, RATHER THAN SPEND TIME WRITING REPORTS AND ORDERS THAT PURPORT TO TELL THE STATES HOW THINGS MUST BE DONE IN THE FCC'S VIEW OF THE WORLD, OUR TIME IS FAR BETTER SPENT IN FIGURING OUT HOW TO DEAL WITH THE VERY THORNY ISSUES THAT THE 1996 ACT POSES FOR YOU AS COMPANIES IN THIS MARKET AND FOR ME AS A REGULATOR. AND I THINK THE THORNIEST OF THOSE, SIMPLY STATED, IS WHAT DO WE DO TO BRING CHOICE TO CUSTOMERS THAT NOBODY WANTS TO SERVE, BECAUSE PROFIT MARGINS AREN'T HIGH ENOUGH. IT'S REALLY THE ISSUE OF "DUTY TO SERVE," WHICH IS A DUTY THAT MANY OF YOU IN THIS AUDIENCE CURRENTLY HAVE. IT'S A QUESTION THAT IS OF CONCERN TO VIRTUALLY EVERY STATE REGULATOR I KNOW. AND IT'S ONE THAT I BELIEVE THE FCC SHOULD <u>REALLY</u> BE WORRYING ABOUT, AS A MATTER OF FEDERAL POLICY, INSTEAD OF TRYING TO WHIP THE STATES INTO LINE.

THE QUESTION IS, IS IT FAIR TO YOU TO LEAVE YOUR COMPANIES WITH A "DUTY TO SERVE" IN A COMPETITIVE MARKETPLACE? HOW DO YOU REMAIN ECONOMICALLY VIABLE IF YOU'RE LEFT WITH THE CUSTOMERS NO ONE ELSE WANTS? IS IT FAIR TO RELIEVE YOU OF THE DUTY TO SERVE? AND IF YOU ARE RELIEVED OF IT, WHAT HAPPENS TO THE UNPROFITABLE CUSTOMERS YOU NOW SERVE? WHAT RESPONSIBILITY SHOULD NEW ENTRANTS HAVE, IF ANY? SOME PEOPLE WOULD ARGUE THAT THE UNIVERSAL SERVICE FUND PROVIDES THE SOLUTION, BECAUSE IT WILL COMPENSATE COMPETITORS SERVING HIGH COST OR LOW INCOME CUSTOMERS. BUT THAT ARGUMENT DOESN'T ADDRESS THE REAL QUESTION, WHICH IS WHAT HAPPENS WHEN NEW ENTRANTS CHOOSE NOT TO COMPETE FOR THOSE CUSTOMERS BUT CHOOSE INSTEAD, AS ANY PROFIT MINDED BUSINESS WOULD, TO GO WHERE THE MONEY IS.

IN MY VIEW, WE'LL ONLY BE TRULY HEADED IN THE RIGHT DIRECTION WITH SECTION 251 WHEN EVERYBODY, NOT JUST BUSINESS CUSTOMERS, GETS TO ENJOY THE BENEFITS THAT CONGRESS INTENDED INTERCONNECTION AND