

REMARKS BY

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DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION  
"OUR TELECOMMUNICATIONS POLICY OF 1990: THE MOVING TARGET"

BEFORE THE  
INTERNATIONAL COMMUNICATIONS ASSOCIATION  
43RD ANNUAL CONFERENCE  
NEW ORLEANS, LOUISISIANA

WEDNESDAY, MAY 23, 1990  
NEW ORLEANS HILTON TOWERS  
8:00 A.M. - 9:00 A.M.

GOOD MORNING. IT IS A PLEASURE BEING WITH YOU HERE IN NEW ORLEANS. BEFORE I BEGIN, I WANT TO THANK THE ASSOCIATION FOR THE INVITATION AND OPPORTUNITY TO BE HERE, AND TO ENABLE ME TO BE REACQUAINTED WITH SOME OF YOU AND TO MEET MANY OF YOU FOR THE FIRST TIME.

AS SOME OF YOU MAY BE AWARE, I HAVE BEEN CHAIRMAN OF THE PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA SINCE 1984 AND A COMMISSIONER SINCE 1980. I'M HERE TODAY IN MY CAPACITY AS CHAIRMAN OF THE DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION AND MY REMARKS ARE ATTRIBUTED SOLELY TO ME AND NOT IN MY CAPACITY AS CHAIRMAN OF THE NARUC COMMUNICATIONS COMMITTEE. AS A RESULT OF MY TEN YEARS AS A REGULATOR, I HAVE HAD THE OPPORTUNITY TO WITNESS FIRST HAND A NEW, EVOLVING TELECOMMUNICATIONS MARKETPLACE DRIVEN BY RAPID TECHNOLOGICAL ADVANCES, NEW SERVICE PROVIDERS, AND THE DEPLOYMENT OF NEW AND INNOVATIVE GOODS AND SERVICES. DURING MY TENURE AS A REGULATOR, I HAVE GAINED AN APPRECIATION FOR THE DYNAMICS OF THE NATIONAL TELECOMMUNICATIONS MARKETPLACE, THE POLICIES THAT HAVE STRUCTURED THAT MARKETPLACE, AND THE NEED TO ENSURE THAT SUCH POLICIES CONTINUE TO FURTHER THE PUBLIC INTEREST. THOUGH, I WOULD AGREE THAT THE MARKETPLACE IS UNDERGOING TRANSITION, I AM SOMEWHAT CONCERNED THAT OUR NATIONAL TELECOMMUNICATIONS POLICY HAS BEGUN TO TAKE ON ALL OF THE FEATURES AND FUNCTIONS OF A "MOVING TARGET."

BASED ON MY EXPERIENCE AS A STATE REGULATOR, POLICY MAKERS' PRIMARY OBLIGATION IS TO ENSURE THAT THE NATION'S TELECOMMUNICATIONS POLICIES CONTINUE TO FURTHER THE GOAL OF

"UNIVERSAL SERVICE". SHOULD THE PACE OF TECHNOLOGICAL GROWTH CONTINUE, AND I FIRMLY BELIEVE IT WILL, I AM OF THE OPINION THAT THE TIME MAY BE RIPE TO INSTITUTE A MECHANISM THAT WILL PROVIDE THE VEHICLE FOR A SYSTEMATIC, COORDINATED OVERVIEW OF THIS NATIONS COMMUNICATIONS POLICY. I AM CONCERNED THAT FEDERAL POLICY MAKING HAS BECOME A FRAGMENTED EFFORT, CREATING UNCERTAINTY AND CONFUSION AMONG THE INDUSTRY, CONSUMERS, AND REGULATORS ALIKE. MOREOVER, I AM CONVINCED THAT THE LACK OF A COORDINATED NATIONAL COMMUNICATIONS POLICY, MAY YIELD SHORT-TERM, INEFFICIENT AND AD-HOC RESPONSES TO NARROWLY DEFINED ISSUES AS OPPOSED TO THE DEVELOPMENT OF A COMPREHENSIVE NATIONAL POLICY. I AM ALSO CONCERNED THAT THIS FRAGMENTATION, THIS MOVING TARGET, IS BEING EXPLOITED, AND THE RESULTING CONFUSION BEING CAREFULLY, EFFICIENTLY AND EFFECTIVELY ORCHESTRATED.

IN 1951 PRESIDENT TRUMAN COMMISSIONED A COMPREHENSIVE STUDY OF THIS NATION'S COMMUNICATIONS POLICY TO DETERMINE HOW THAT POLICY COULD BE STRENGTHENED TO DEAL WITH THE EMERGING MAJOR DOMESTIC AND INTERNATIONAL TELECOMMUNICATIONS ISSUES CONFRONTING THE NATION. THE COMMUNICATIONS POLICY BOARD, CREATED BY PRESIDENT TRUMAN, IN ITS FINAL REPORT CONCLUDED THAT THE

PROBLEMS SUCH AS THESE CANNOT ADEQUATELY BE CONSIDERED ON A PIECEMEAL BASIS. THEY MUST BE VIEWED AS PARTS OF THE BROADER PROBLEM OF DEVELOPING A TOTAL NATIONAL COMMUNICATIONS POLICY DESIGNED TO ASSURE THE MOST EFFECTIVE UTILIZATION OF THE VARIOUS FORMS OF COMMUNICATIONS FACILITIES, AND THE FULL SATISFACTION OF THOSE NEEDS WHICH ARE MOST ESSENTIAL TO THE BROAD PUBLIC INTEREST.<sup>1/</sup>

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<sup>1/</sup> NTIA TELECOM 2000, CHARTING THE COURSE FOR A NEW CENTURY, NTIA (OCT., 1988) (NTIA REPORT) AT 174.

MOREOVER, THE BOARD CONCLUDED THAT THE NATION'S COMMUNICATIONS POLICY AND STRUCTURE WAS UNCOORDINATED AND INADEQUATE TO MEET THE RAPIDLY EMERGING COMPLEXITIES OF TELECOMMUNICATIONS IN THE FUTURE.<sup>2/</sup> THESE CONCLUSIONS WERE REACHED IN 1951, BUT WERE REITERATED BY THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION (NTIA) IN 1988.

NEARLY FOUR DECADES AFTER THE TRUMAN REPORT, NTIA UNDERTOOK A COMPREHENSIVE STUDY OF THIS NATION'S COMMUNICATIONS POLICY. ALTHOUGH IN ITS REPORT, NTIA MADE A NUMBER OF ASSUMPTIONS AND CONCLUSIONS WITH WHICH I DISAGREE, THE 1988 STUDY DID CHARACTERIZE THE NATION'S TELECOMMUNICATION POLICY AS "FRAGMENTED, REACTIVE AS OPPOSED TO PROACTIVE, UNCOORDINATED AND SKEWERED TOWARD ACHIEVING SHORT TERM OBJECTIVES."<sup>3/</sup> THE REPORT WENT ON TO STATE THE FOLLOWING: "[W]E FOUND DISTURBING PROBLEMS THAT BEAR ON OUR ABILITY AS A COUNTRY COLLECTIVELY TO ADDRESS AND RESOLVE COMMUNICATIONS PROBLEMS. INTEREST GROUPS HAVE BECOME MORE ADEPT IN BLOCKING FORWARD PROGRESS. MULTIPLE DECISIONMAKING FORUMS AND OTHER UNDESIRABLE FACTORS ARE CONTRIBUTING TO POLICY GRIDLOCK."<sup>4/</sup> WHAT NTIA HAD IN FACT DESCRIBED, WAS THE GENESIS OF THE "MOVING TARGET".

WHAT THESE TWO STUDIES REVEAL IS CLEAR: NATIONAL TELECOMMUNICATIONS POLICY HAS BEEN AND IS CURRENTLY BEING FORMULATED AND DEVELOPED, AT BOTH THE FEDERAL AND STATE LEVELS, BY

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<sup>2/</sup> SEE ID. AT 175.

<sup>3/</sup> SEE ID. AT 165

<sup>4/</sup> ID AT 8.

MULTIPLE GOVERNMENTAL ENTITIES AND SPECIAL INTERESTS WITH, IN MY OPINION, LITTLE OR NO COORDINATION AMONG THE ULTIMATE POLICY MAKERS. ON THE FEDERAL LEVEL, THERE IS CONGRESS, THE PREEMINENT FEDERAL POLICY MAKER, WHERE RESPONSIBILITY FOR TELECOMMUNICATIONS POLICY IS LODGED WITHIN NUMEROUS CONGRESSIONAL COMMITTEES; THE HOUSE ENERGY AND COMMERCE COMMITTEE, THE HOUSE SUBCOMMITTEE ON TELECOMMUNICATIONS AND FINANCE, THE HOUSE JUDICIARY COMMITTEE, THE SENATE COMMERCE, FINANCE AND TRANSPORTATION COMMITTEE, THE SENATE COMMUNICATIONS SUBCOMMITTEE AND THE SENATE JUDICIARY COMMITTEE. MOREOVER, MORE THAN TWO DOZEN AGENCIES OF THE FEDERAL GOVERNMENT ARE INVOLVED IN THE DEVELOPMENT, IMPLEMENTATION AND OPERATIONS OF TELECOMMUNICATIONS AND INFORMATION POLICY. FOR SOME AGENCIES, TELECOMMUNICATIONS IS A PRIMARY MISSION, FOR OTHERS AN OCCASIONAL EFFORT. POWER AND OVERSIGHT RESPONSIBILITY IS SHARED BY A NUMBER OF ENTITIES, SOME OF WHICH ARE CONCERNED WITH DOMESTIC ISSUES EXCLUSIVELY, OTHERS WITH INTERNATIONAL MATTERS AND A FEW HAVING RESPONSIBILITY FOR BOTH.

AMONG THE MAJOR PARTICIPANTS IN THE OVERSIGHT AND IMPLEMENTATION OF TELECOMMUNICATIONS POLICY IS NTIA OF THE DEPARTMENT OF COMMERCE. NTIA'S CHARTER ESTABLISHES IT AS THE CENTRAL TELECOMMUNICATION POLICY MAKING AUTHORITY WITHIN THE EXECUTIVE BRANCH. HOWEVER, THE UNDER SECRETARY OF STATE FOR SECURITY ASSISTANCE, SCIENCE AND TECHNOLOGY HAS LEAD RESPONSIBILITY WITHIN THE STATE DEPARTMENT FOR DEVELOPING ITS VIEWS ON U.S. INTERNATIONAL COMMUNICATIONS POLICY AND ENSURING COLLABORATION WITH OTHER INTERESTED AGENCIES. WITHIN THE UNDER SECRETARY'S PURVIEW

IS THE BUREAU OF INTERNATIONAL COMMUNICATION AND INFORMATION POLICY. AT THE SAME TIME, HOWEVER, PRIMARY RESPONSIBILITY WITHIN THE STATE DEPARTMENT FOR TELECOMMUNICATIONS TRADE AND TRANSBORDER DATA FLOW PROBLEMS, LIE WITH THE BUREAU OF ECONOMIC AND BUSINESS AFFAIRS, WHICH REPORTS TO THE UNDER SECRETARY FOR ECONOMIC AFFAIRS, WHILE MATTERS CONCERNING INTERNATIONAL ORGANIZATIONS ARE HANDLED BY THE UNDER SECRETARY FOR POLITICAL AFFAIRS.

THE FEDERAL COMMUNICATIONS COMMISSION (FCC) IS AN INDEPENDENT REGULATORY AGENCY RESPONSIBLE DIRECTLY TO THE CONGRESS AND NOT, THEREFORE, BOUND BY THE ADMINISTRATION'S POLICIES. THE FCC CARRIES OUT ITS RESPONSIBILITIES FOR TELECOMMUNICATIONS THROUGH OVERSIGHT OF CARRIER INVESTMENT, RATES AND SERVICE. IT REVIEWS APPLICATION FOR THE CONSTRUCTION AND OPERATION OF COMMUNICATIONS FACILITIES, SERVICE OFFERINGS AND THE RATES CHARGED. IT REGULATES BROADCASTING AND ASSIGNS FREQUENCIES TO NON-FEDERAL GOVERNMENT USERS. THE FCC ALSO ESTABLISHES RULES AND REGULATION FOR INTERNATIONAL TELECOMMUNICATIONS, AND ENGAGES IN INTERNATIONAL FACILITIES PLANNING AND COORDINATION.

IN ADDITION TO NTIA, THE DEPARTMENT OF STATE AND THE FCC, OTHER AGENCIES, ACTIVE IN DETERMINING POLICY INCLUDE THE DEPARTMENT OF JUSTICE WHOSE STATUTORY RESPONSIBILITIES INCLUDE ENFORCEMENT OF ANTITRUST CONSENT DECREES; THE U.S. TRADE REPRESENTATIVE WHOSE PRIMARY RESPONSIBILITY IS DEVELOPING AND COORDINATING INTERNATIONAL TRADE POLICY; THE DEPARTMENT OF DEFENSE WHICH INCLUDES THE ARMY, NAVY AND AIR FORCE AND THE RELATED BUT SEPARATE DEFENSE COMMUNICATIONS AGENCY AND THE NATIONAL SECURITY AGENCY; THE DEFENSE

IS RESPONSIBLE FOR NATIONAL SECURITY AND IMPACTS SUBSTANTIALLY ON OUR INTERNATIONAL TRADE POLICY; THE GENERAL SERVICES ADMINISTRATION WHICH ADMINISTERS THE GOVERNMENTS TELECOMMUNICATIONS SYSTEM AND THE DEPARTMENT OF AGRICULTURE WHICH IS RESPONSIBLE FOR ADMINISTERING THE RURAL ELECTRIFICATION ADMINISTRATION'S TELEPHONE PROGRAM. IN ADDITION THERE IS THE SENIOR INTERAGENCY GROUP ON INTERNATIONAL COMMUNICATIONS AND INFORMATION POLICY AND THE CABINET LEVEL COORDINATING BODY, THE ECONOMIC POLICY COUNCIL. THE LIST GOES ON, CLEARLY EVIDENCING THE OVERWHELMING SIZE OF THE "MOVING TARGET".

AND FINALLY, AT THE FEDERAL LEVEL WE HAVE THE JUDICIARY SETTING POLICY THROUGH ITS INVOLVEMENT WITH OVERSEEING THE MODIFIED FINAL JUDGMENT (MFJ) PROCEEDINGS AND THE WAIVER PROCESS.

AS NTIA HAS SUGGESTED IN ITS REPORT, THESE DIVERSE POLICY MAKERS ARE CONFRONTED WITH SPECIAL INTERESTS ADVOCATING THEIR PARTICULAR VISION OF HOW THE PUBLIC INTEREST BALANCE SHOULD BE STRUCK. HOWEVER, I BELIEVE THAT, IN ORDER TO DEVELOP A COHESIVE FEDERAL TELECOMMUNICATIONS POLICY, THE PROCESS MUST CHANGE. MOREOVER, I BELIEVE THAT SUCH CHANGE MUST BE MANDATED BY THE CONGRESS, COORDINATED AT THE FEDERAL LEVEL WITH REQUIRED INPUT FROM THE STATES, ALL SEGMENTS OF THE INDUSTRY AND THE CONSUMING PUBLIC, WITH THE STATED GOAL BEING A DISTRIBUTION OF THE BENEFITS DERIVED FROM SUCH POLICY BEING SHARED FAIRLY AND EQUITABLY AMONG ALL AFFECTED PARTIES.

WITH THE ENACTMENT OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED, THE FEDERAL COMMUNICATIONS COMMISSION IN PARTICULAR, AND ALL TELECOMMUNICATIONS POLICY MAKERS IN GENERAL, HAVE FOR THE MOST

PART, BEEN GUIDED BY THE CONCEPT OF "UNIVERSAL SERVICE." THE GOAL OF DEVELOPING TELECOMMUNICATIONS POLICY IS TO ENSURE THAT ALL CONSUMERS AND THE NATION AS A WHOLE BENEFIT, REQUIRING THE DELICATE BALANCE THAT WE TERM THE PUBLIC INTEREST. THE BALANCE REQUIRED TO MEET THAT GOAL, IS OFTEN DIFFICULT TO OBTAIN. HOWEVER, PURSUIT OF THE PUBLIC INTEREST TODAY IS EVEN MORE CHALLENGING WITH THE DRAMATIC TECHNOLOGICAL GROWTH AND CHANGE; DYNAMICS THAT WE ALL MUST CONSIDER IN SHAPING THE VARIOUS POLICIES THAT WILL GOVERN THE TELECOMMUNICATIONS MARKETPLACE TODAY, AND IN THE FUTURE. ON A RECENT PLANE TRIP TO NEW YORK, I READ A TELECOMMUNICATIONS ARTICLE IN THE PAN AM CLIPPER MAGAZINE (MAY 1990). MR. FERRY, THE AUTHOR, STATED THAT, "TELECOMMUNICATIONS IS PRESENTLY UNDERGOING A REVOLUTION WHOSE COLOSSAL EFFECTS WILL HIT US IN OUR BUSINESS, RECREATIONAL AND FAMILY LIVES". MR. FERRY, THE AUTHOR WENT ON TO PREDICT THAT "BY THE EARLY 21ST CENTURY WE SHALL SEE THE CONVERGENCE OF THREE GREAT TECHNOLOGIES - TELEPHONE, TELEVISION, AND COMPUTER - ON NOT ONE BUT TWO SYSTEMS; THE WIRELESS SYSTEM OF TINY PORTABLE PHONES AND THE WIRED ONE BUILT AROUND THE POWERFUL FIBER-OPTIC LINKS. AT THE HUB OF THESE GREAT EXPECTATIONS IS THE PHONE, WHICH WILL BE USED FOR MORE THAN JUST TALK."

ON THE WIRELESS FRONT, THE ARTICLE STATED THAT WE WILL EVENTUALLY BE ABLE TO HAVE OUR CAR ENGINES DIAGNOSED FROM OUR HOMES OR THE ROAD THROUGH A DIGITAL PHONE LINK BETWEEN THE GARAGE'S AND OUR CAR'S COMPUTERS OR WE WILL BE ABLE TO TAKE OUT OUR POCKET PHONE WHILE DRIVING HOME FROM WORK AND "DIAL UP" OUR HOME CONTROL SYSTEM TO SWITCH ON OUR AIR CONDITIONER OR START THE COFFEE MACHINE.



THE ARTICLE ALSO STATED, THAT THE WIRED WORLD OF FIBER OPTICS WILL GIVE BUSINESSES AND HOMES THE ABILITY TO MOVE VAST QUANTITIES OF DATA, INCLUDING DATA-INTENSIVE FORMS OF INFORMATION SUCH AS TELEVISION PICTURES.

IN SHORT, THE AUTHOR CLAIMED, "OUR TELEPHONE, TELEVISION, AND COMPUTER SYSTEMS WILL EVENTUALLY BE LINKED TOGETHER TO FORM "THE IMMENSELY POWERFUL COMMUNICATIONS, ENTERTAINMENT, AND SERVICE NETWORK."

IF MR. FERRY IS TO BE CORRECT IN HIS PREDICTION IT IS IMPERATIVE THAT A COHESIVE TELECOMMUNICATIONS POLICY WITH CLEARLY DETERMINED OBJECTIVES IS IDENTIFIED. WE NEED TO SOMEHOW ANCHOR THIS MOVING TARGET.

AS I STATED EARLIER, I CONTEND THAT FEDERAL TELECOMMUNICATIONS POLICY MAKING IS A FRAGMENTED PROCESS. IN EXAMINING THE PROBLEMS OF DEVELOPING COMMUNICATIONS POLICY, THE NTIA REPORT CONCLUDED THAT THE CURRENT DIVERSITY OF INTEREST AND RESPONSIBILITIES OF TELECOMMUNICATIONS POLICY MAKERS INVITES "FORUM-SHOPPING", AND "DIVIDE AND CONQUER" STRATEGIES BY SPECIAL INTERESTS.<sup>5/</sup> WHILE THE NTIA REPORT DOES NOT IDENTIFY A SPECIAL INTEREST GROUP IT IS NO SECRET OR SURPRISE THAT ONE SUCH GROUP IS COMPRISED OF THE REGIONAL BELL OPERATING COMPANIES (RBOCS).

I AM CONVINCED THAT SINCE THE VERY DAY AFTER DIVESTITURE THE RBOCS HAVE BEEN AGGRESSIVELY FORUM-SHOPPING AT EVERY LEVEL OF THE FEDERAL AND STATE GOVERNMENTS OF THIS NATION IN AN EFFORT TO

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<sup>5/</sup> CITE ID AT 183

ELIMINATE THE LINES OF BUSINESS RESTRICTIONS UNDER THE MFJ. AS YOU KNOW, UNDER THE CONSENT DECREE, THE RBOCS ARE PROHIBITED FROM ENGAGING IN INFORMATION SERVICES, TELECOMMUNICATIONS EQUIPMENT MANUFACTURING, AND LONG DISTANCE TELEPHONE SERVICE. IN THEIR INTENSIVE EFFORT TO SEEK RELIEF FROM THESE RESTRICTIONS, AND IN THE ABSENCE OF A NATIONALLY COORDINATED COMMUNICATIONS POLICY, THE RBOCs HAVE BEEN ABLE TO DEFINE AND FOCUS THE ISSUES CONCERNING THE CURRENT CONGRESSIONAL TELECOMMUNICATIONS POLICY DEBATE AS ONE OF "TURF" AND "INTERNATIONAL COMPETITIVENESS."

A PRIME EXAMPLE OF THE ABILITY OF THE RBOCs TO FRAME THE ISSUES AND FOCUS THE DEBATE IS THE PROPOSED STAFF DRAFT BILL ENTITLED THE "TELECOMMUNICATIONS POLICY ACT OF 1990," OR REFERRED TO AS THE "MARKEY DRAFT BILL." THIS LEGISLATION IS CURRENTLY BEFORE THE HOUSE SUBCOMMITTEE ON TELECOMMUNICATIONS AND FINANCE. ALTHOUGH THE PREAMBLE OF THE DRAFT LEGISLATION PURPORTS TO ADDRESS NATIONAL TELECOMMUNICATION POLICY, THE EFFECT OF THE LEGISLATION IS NARROWLY FOCUSED AND CONCERNS. PRIMARILY ALLOWING THE RBOCs ENTRY INTO THE MARKETS CURRENTLY RESTRICTED TO THEM UNDER THE MFJ. AS I UNDERSTAND IT, THE RBOCs HAVE BEEN ENGAGING IN A MASSIVE, INTENSIVE AND EXPENSIVE PUBLIC RELATIONS CAMPAIGN AND LOBBYING EFFORT TO OBTAIN LEGISLATIVE RELIEF FROM THE TERMS OF THE CONSENT DECREE. THE REGULATORY COMMUNITY HAS HEARD SUCH FIGURES AS \$21 MILLION AS A LOBBYING WAR CHEST AMASSED BY THE BELLS IN THIS EFFORT. THE RBOCs INSIST THAT THE MFJ DECREE IS HARMING THE NATIONAL INTEREST, DENYING CONSUMERS ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES, RETARDING THE DEVELOPMENT OF THIS

NATIONS INFRASTRUCTURE, CONTRIBUTING TO OUR COMPETITIVE DECLINE INTERNATIONALLY, AND THAT JUDGE GREENE'S IMPLEMENTATION OF THE CONSENT DECREE IS A DIRECT AFFRONT TO CONGRESSIONAL RESPONSIBILITIES AND AUTHORITY TO DETERMINE TELECOMMUNICATIONS POLICY. EVEN ASSUMING THAT THE HARMS IDENTIFIED BY THE RBOCs DO EXIST, WHICH ABSENT ANY EMPIRICAL DATA I TAKE STRONG ISSUE WITH, THE RBOCs CONCERNS LEAD ME TO CONCLUDE THAT THERE IS CLEAR JUSTIFICATION FOR THE DEVELOPMENT OF AN OVERALL NATIONAL TELECOMMUNICATIONS POLICY.

WHILE AT THE SAME TIME THE RBOCs ARE LOBBYING ON CAPITOL HILL FOR THE SAKE OF THE NATION, THEY ARE CONTINUING THEIR LEGAL EFFORTS TO OBTAIN FURTHER JUDICIAL RELIEF FROM THE EXISTING MFJ.

DESPITE THEIR CONTINUED ATTACKS ON JUDGE GREENE AND THE MFJ DECREE, THE RBOCs HAVE FREQUENTLY USED THE WAIVER PROCESS, DEVELOPED BY JUDGE GREENE, IN AN EFFORT TO OBTAIN ADDITIONAL ANTITRUST RELIEF. DURING THE PERIOD 1984 THROUGH 1987, THE RBOCs WERE GRANTED 160 WAIVERS RANGING FROM THE PROVISION OF TIME AND WEATHER SERVICES TO THE EXPANSION OF CELLULAR AND PAGING CALLING AREAS BEYOND LATA BOUNDARIES. MOREOVER, IN SEPTEMBER OF 1987, JUDGE GREENE ORDERED THE LIFTING OF THE INFORMATION SERVICES RESTRICTIONS TO THE EXTENT OF ENABLING REGIONAL COMPANIES TO ACQUIRE AND OPERATE INFRASTRUCTURE NECESSARY FOR TRANSMISSION OF INFORMATION SERVICES GENERATED BY OTHERS AND REMOVED THE LIMITATION ON UNRELATED BUSINESS ACTIVITIES. THEN IN MARCH OF 1988, THE JUDGE ALLOWED THE TRANSMISSION OF INFORMATION AS PART OF A GATEWAY, DEFINING "TRANSMISSION" AS DATA, ADDRESS TRANSLATION, PROTOCOL

CONVERSION, BILLING MANAGEMENT AND INTRODUCTORY INFORMATION CONTENT. HE ALSO ALLOWED THE LECS TO ENGAGE IN VOICE STORAGE AND RETRIEVAL SERVICES, INCLUDING VOICE MESSAGING AND ELECTRONIC MAIL.

EVEN WITH THE BENEFIT OF HAVING A CONSENT DECREE THAT WAS DESIGNED TO ALLOW FOR MODIFICATIONS AS NEEDED AN AUTOMATIC TRIENNIAL REVIEWS, THE RBOCS WERE STILL DISSATISFIED. AND AGAIN, A NEW PLAYER WAS ADDED TO THE MULTITUDES IN FASHIONING TELECOMMUNICATIONS POLICY. ON APRIL 3, 1990, THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT DETERMINED THAT THE BOCS UNOPPOSED MOTION TO LIFT THE DECREE'S INFORMATION SERVICE RESTRICTION IN ITS ENTIRETY MUST BE DETERMINED UNDER A DIFFERENT STANDARD THAN THE ONE APPLIED BY JUDGE GREENE. INSTEAD, ON REMAND, THE DISTRICT COURT MUST DECIDE THE "PUBLIC INTEREST" IMPLICATIONS BASED ON PRESENT MARKET CONDITIONS, CONSIDERING ALSO "THE PRACTICAL DIFFICULTY OF ENFORCING A MERELY PARTIAL REPEAL OF THE INFORMATION - SERVICES BAN."<sup>6/</sup> - THE TARGET CONTINUES TO MOVE.

WHILE THE CONGRESS CONVENES HEARINGS IN BOTH THE HOUSE AND THE SENATE ON THE BELL OPERATING COMPANY'S LINES OF BUSINESS RESTRICTIONS AND THE DISTRICT COURT JUDGE GRAPPLES WITH THE IMPLICATIONS OF THE RECENT REMAND, THE NTIA HAS ISSUED A NOTICE OF INQUIRY IN JANUARY OF THIS YEAR THAT WAS OVER 100 PAGES IN LENGTH AND ENTITLED "COMPREHENSIVE STUDY OF DOMESTIC TELECOMMUNICATIONS INFRASTRUCTURE."

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<sup>6/</sup> UNITED STATES OF AMERICA V. WESTERN ELECTRIC COMPANY, ET. AL  
(D.C. CIRCUIT NO. 87-5388) SLP. OP. AT 55, N. 29 APRIL 3, 1990

I COMMEND NTIA FOR ATTEMPTING TO ESTABLISH, IN ONE PROCEEDING, A FORUM FOR EXAMINATION OF THE WIDE ARRAY OF TELECOMMUNICATIONS ISSUES CONFRONTING THIS NATION AND THE POLICY IMPLICATIONS ARISING THEREFROM. THE SCOPE OF THE NOTICE RANGED FROM THE APPROPRIATE DEFINITION OF UNIVERSAL SERVICE TO THE STATE OF THE DOMESTIC INFRASTRUCTURE. WHAT I FOUND DISTURBING WAS THAT IN JUNE OF 1983 NTIA ISSUED ANOTHER DOCUMENT, A REPORT ENTITLED VIDEO PROGRAM DISTRIBUTION AND CABLE TELEVISION: CURRENT POLICY ISSUES AND RECOMMENDATIONS NTIA REPORT 88-233 WHEREIN NTIA PROVIDED SEVERAL REASONS AS TO WHY THE TELEPHONE COMPANIES SHOULD NOT BE ALLOWED INTO THE CABLE INDUSTRY SUCH AS: 1) THE BOCS COULD SUBSIDIZE CABLE SUBSIDIARIES FROM THEIR MONOPOLY SERVICES 2) THE BOCS HAVE THE ABILITY TO DISCRIMINATE AGAINST CABLE COMPETITION AND 3) THE BOCS HAVE THE ABILITY TO ABUSE THEIR MARKET POWER TO DECREASE THE PROBABILITY OF ENTRY BY ALTERNATIVE PROVIDERS. THE NEW NTIA NOTICE APPEARS TO SUGGEST THAT, CONTRARY TO NTIA'S PRIOR POSITION, TELEPHONE COMPANY DELIVERY OF VIDEO SERVICE BY WAY OF A BROAD BAND NETWORK WOULD INTRODUCE NEW COMPETITION AND IS A NECESSARY INCENTIVE FOR THE TELEPHONE COMPANIES TO PROVIDE BROADBAND SERVICE. THE "MOVING TARGET" CLEARLY NEEDS ANCHORING.

MOREOVER, THE FCC, IN ATTEMPTING TO RESPOND TO THE NEW COMPETITIVE ENVIRONMENT HAS ADOPTED POLICIES THAT ARE OFTEN FRAGMENTED AND NOT FULLY RATIONALIZED WITH THE OVERALL PUBLIC INTEREST. MOREOVER, ITS REGULATORY APPROACH HAS BEEN, AT TIMES, PIECEMEAL AND UNRESPONSIVE. FOR EXAMPLE, AFTER THE ADOPTION OF PRICE CAPS THE FCC HAS ONLY NOW INSTITUTED A REEXAMINATION OF THE

"COMPETITION" ISSUE IN ITS REVIEW OF THE "DOMINANT" STATUS OF AT&T.<sup>7/</sup> MOREOVER, THE FCC HAS PREEMPTED THE STATES FROM REGULATING ENHANCED SERVICES AND FROM IMPOSING MORE STRINGENT SAFEGUARDS IN ITS COMPUTER III DECISION. THE FCC THEN ADOPTED A WEAK OPEN NETWORK ARCHITECTURE (ONA) POLICY THAT SUFFERS GREATLY FROM POTENTIAL DISCRIMINATORY ABUSES.

JUST AS INTERESTING, THE FCC HAS ONLY RECENTLY BEGUN TO LOOK SERIOUSLY AT THE QUESTION OF "EFFECTIVE COMPETITION" IN THE CABLE INDUSTRY, BUT ONLY AFTER THE RBOCS BEGAN TO LOBBY EFFECTIVELY FOR A REVISION TO THE 1984 CABLE ACT TO PERMIT THEM INTO CABLE OWNERSHIP. THE TARGET CONTINUES TO MOVE.

THE FACT IS THAT THE CONGRESS, THE COURTS, THE FCC AND THE EXECUTIVE BRANCH ARE ALL EXAMINING ASPECTS OF THE NATION'S TELECOMMUNICATIONS POLICY, HOWEVER NO SINGLE ENTITY IS EXAMINING THE ENTIRE RANGE OF ISSUES. I SUGGEST TO YOU, THAT THE TARGET MUST BE ANCHORED.

I MUST CONFESS THAT TELECOMMUNICATIONS POLICY AT THE STATE LEVEL HAS NOT FOLLOWED ANY PARTICULAR MASTER PLAN BUT HAS INSTEAD, TO A LARGE DEGREE, BEEN FOSTERED BY TECHNOLOGICAL CHANGE AND THE INTRODUCTION OF COMPETITION.

ACCORDING TO A RECENT STUDY BY THE MISSOURI PUBLIC SERVICE COMMISSION,<sup>8/</sup> TEN JURISDICTIONS ARE REVIEWING ACTIVELY SOME DEGREE

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<sup>7/</sup> IN THE MATTER OF COMPETITION IN THE INTERSTATE INTEREXCHANGE MARKETPLACE, NOTICE OF PROPOSED RULEMAKING, CC DOCKET NO. 90-132, FCC 90-90, APRIL 13, 1990

<sup>8/</sup> REPORT ON ALTERNATIVE REGULATION PLANS BY STATES, MISSOURI PUBLIC SERVICE COMMISSION (SEPT. 1989)

OF ALTERNATIVE RATEMAKING, TWENTY-ONE STATES HAVE ADOPTED SOME FORM OF NON-TRADITIONAL RATEMAKING PROCEDURE FOR LOCAL TELEPHONE COMPANIES, TWENTY-FOUR STATES HAVE ENACTED LEGISLATION WHICH HAS AT LEAST ESTABLISHED THE FRAMEWORK FOR ALTERNATIVE REGULATION, AND 18 STATES CURRENTLY HAVE SOME TYPE OF RETURN-RELATED INCENTIVE MECHANISM IN PLACE.

UNFORTUNATELY, NOT ALL OF THESE BOLD AND NEW REGULATORY APPROACHES HAVE BEEN SPEARHEADED BY COMPETITION OR TECHNOLOGY. STATE ACTION BY EITHER THE REGULATORY COMMISSIONS OR THE LEGISLATURES HAVE, IN SOME INSTANCES, BEEN THE RESULT OF EXTENSIVE LOBBYING ON THE PART OF THE RBOCS. THERE HAVE BEEN PROMISES OF ECONOMIC DEVELOPMENT, EMPLOYMENT OPPORTUNITIES, RATE MORATORIUMS, AND MODERNIZED FACILITIES.

I BELIEVE THAT THE TIME IS RIPE FOR A COMPREHENSIVE REVIEW OF OUR TELECOMMUNICATIONS POLICY FOR THE COMING CENTURY. SOME MECHANISM MUST BE ESTABLISHED TO ASSURE THAT ALL POLICY MAKERS, ON THE STATE AND FEDERAL LEVELS, HAVE A VEHICLE, A FORUM, WHERE THEIR EXPERIENCE AND CONCERNS CAN BE ADDRESSED IN A COHERENT, COORDINATED MANNER. MOREOVER, SUCH A MECHANISM MUST BE OPEN TO INDUSTRY AND CONSUMER GROUPS ALIKE, IN ORDER THAT THEIR PERSPECTIVES AND CONCERNS CAN BE SHARED WITH THOSE INDIVIDUALS RESPONSIBLE FOR MAKING ACTUAL POLICY.

WHILE I RECOGNIZE THAT THIS WOULD BE A BOLD AND DIFFICULT UNDERTAKING, IT IS IMPERATIVE THAT WE WORK TOGETHER TO ACHIEVE THIS GOAL. LAST MONTH, CWA PRESIDENT MARTIN BAHR CALLED FOR THE ESTABLISHMENT OF A BIPARTISAN COMMISSION TO DEVELOP A COHERENT U.S.

TELECOMMUNICATIONS POLICY. SOME EFFORT MUST BE ATTEMPTED NOW AS WE CONTINUE TO EXPEND GREAT RESOURCES IN A DEBATE THAT IS FAR TOO NARROWLY DEFINED. IN MY OPINION, CONGRESS PRESENTLY HAS THE OPPORTUNITY, NO, THE RESPONSIBILITY TO TAKE THE LEAD IN ESTABLISHING NATIONAL INITIATIVES AND PRIORITIES. THE CONGRESS MUST DO MORE THAN RESPOND TO THE SPECIFIC INTEREST AND NEEDS OF A FEW. IT MUST SEIZE THE MOMENT AND EVALUATE, REVIEW AND ULTIMATELY EMBRACE A POLICY THAT WILL TAKE US INTO THE NEXT CENTURY. WE MUST FASHION THE TELECOMMUNICATIONS DEBATE, WE MUST DETERMINE THE TARGET AND WE MUST ADOPT COMPREHENSIVE TELECOMMUNICATIONS LEGISLATION IN THIS COUNTRY - I URGE YOU INDIVIDUALLY AND COLLECTIVELY AS AN ASSOCIATION TO JOIN IN THAT EFFORT. WE MUST AND WE CAN PUT AN END TO THIS MOVING TARGET.

THANK YOU AGAIN FOR ALLOWING ME THIS OPPORTUNITY TO SPEAK TO YOU TODAY. I WOULD BE PLEASED TO ANSWER ANY QUESTIONS.