

REMARKS BY CHAIRMAN PATRICIA M. WORTHY
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BEFORE THE

AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION
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I AM DELIGHTED TO BE HERE WITH YOU THIS AFTERNOON. I WANT TO THANK THE COMMITTEE FOR THE INVITATION AND THE OPPORTUNITY TO DISCUSS SEVERAL ISSUES WITH WHICH WE SHARE SIGNIFICANT MUTUAL INTEREST. SINCE I AM STANDING HERE BEFORE MEMBERS OF THE PRESS, LET ME HASTEN TO SAY "FOR THE RECORD" THAT I AM 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 COMMUNICATIONS COMMITTEE OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, NARUC.

I HAVE BEEN ASKED TO SHARE MY PROGNOSIS AND PERSPECTIVES ON FEDERAL INITIATIVES TO LIFT THE MODIFIED FINAL JUDGEMENT RESTRICTION ON INFORMATION SERVICES AND THE POTENTIAL FOR CROSS-SUBSIDY.

PERHAPS IT IS MORE APPROPRIATE TO STATE THAT I WILL BE SHARING MY VIEWS ON THE INDUSTRY INITIATIVES, SPECIFICALLY THOSE OF THE REGIONAL BELL OPERATING COMPANIES, SUCH AS BELL ATLANTIC AND BELL SOUTH, TO INFLUENCE FEDERAL AND STATE ACTIONS RESULTING IN THE ELIMINATION OF THE MFJ RESTRICTION ON INFORMATION SERVICES.

AS YOU MAY KNOW, UNDER THE MODIFIED FINAL JUDGEMENT, WHICH CONCLUDED THE U.S. DEPARTMENT OF JUSTICE'S ANTITRUST SUIT AGAINST AT&T IN 1984, THE RBOCS WERE PROHIBITED FROM (1) MANUFACTURING TELEPHONE EQUIPMENT, (2) PROVIDING LONG DISTANCE TELEPHONE SERVICES, AND (3) PROVIDING INFORMATION SERVICES. THE PRIMARY PURPOSE OF THE LINES OF BUSINESS RESTRICTIONS WAS TO ELIMINATE THE RBOCS' INCENTIVE AND ABILITY, THROUGH CROSS-SUBSIDIZATION, DISCRIMINATION AND OTHER ANTI-COMPETITIVE CONDUCT, TO LEVERAGE THEIR BOTTLE NECK CONTROL OF THE REGULATED LOCAL EXCHANGE

MONOPOLIES TO FORECLOSE OR IMPEDE COMPETITION IN RELATED, POTENTIALLY COMPETITIVE MARKETS. AS AN EXAMPLE, THE RBOCS WERE PROHIBITED FROM PROVIDING INFORMATION SERVICES--PARTICULARLY THE DISTRIBUTION OF INFORMATION THEY THEMSELVES HAD GENERATED--BECAUSE THE SAME INCENTIVES AND ABILITIES FOR ANTI-COMPETITIVE CONDUCT EXIST WITH RESPECT TO THIS MARKET. IT WAS BELIEVED THAT A COMPANY THAT HAS A MONOPOLY ON TRANSMISSION OF INFORMATION, COULD NOT BE TRUSTED WITH ALSO GENERATING INFORMATION FOR SALE TO THE PUBLIC BECAUSE ITS TRANSMISSION MONOPOLY GIVES IT THE CAPACITY TO DELAY, IMPEDE, OR OTHERWISE TO DISADVANTAGE THE DATA GENERATED BY OTHERS.

I MUST POINT OUT THAT THE MFJ WHICH GOVERNS THIS INDUSTRY WAS NOT DREAMED-UP BY THE COURT, IT WAS THE PRODUCT OF NEGOTIATIONS BETWEEN THE DOJ AND THE BELL SYSTEM AND AGREED TO BY ALL INTERESTED PARTIES. YET I AM CONVINCED THAT BEFORE THE INK WAS DRY ON THE CONSENT DECREE, THE RBOCS BEGAN AND CONTINUE TO AGGRESSIVELY FORUM-SHOP AT EVERY LEVEL OF FEDERAL AND STATE GOVERNMENTS OF THIS NATION IN AN EFFORT TO ELIMINATE THE LINES OF BUSINESS RESTRICTIONS AND IN PARTICULAR THE INFORMATION SERVICE RESTRICTION. UNFORTUNATELY, IN MY OPINION, THE RBOCS HAVE MADE SIGNIFICANT PROGRESS. IT IS INTERESTING TO NOTE THAT JUDGMENTS IN MAJOR ANTITRUST CASES TRADITIONALLY ENDURE AN AVERAGE OF FORTY YEARS. THE CONSENT DECREE WHICH GOVERNED THE BREAK-UP OF THE STANDARD OIL TRUST HAS LASTED FOR SEVENTY-SIX YEARS, WHILE THE DECREE SEPARATING MOTION PICTURES DISTRIBUTION FROM THEATRE OPERATION HAS LASTED FOR FORTY-ONE YEARS. CONSIDER THIS, WITHIN THREE YEARS AFTER THE MFJ WAS ENTERED, THE SAME DEPARTMENT OF JUSTICE WHICH ADAMANTLY LITIGATED FOR THE LINES

OF BUSINESS RESTRICTIONS BEGAN AND IS CURRENTLY SUPPORTING THE RBOCS' REQUEST FOR THE ELIMINATION OF THESE SAME RESTRICTIONS.

MOREOVER, 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 OF UNRELATED BUSINESS ACTIVITIES. THEN IN MARCH OF 1988, THE JUDGE ALLOWED THE LOCAL EXCHANGE COMPANIES INTO 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 AND AUTOMATIC TRIENNIAL REVIEWS, THE RBOCS WERE STILL DISSATISFIED.

ON APRIL 3, 1990, THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT DETERMINED THAT THE LOCAL EXCHANGE COMPANIES' 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 NOW 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.¹

WHILE JUDGE GREENE GRAPPLES WITH THE IMPLICATIONS OF THE RECENT REMAND, THE RBOCS HAVE SUCCESSFULLY LOBBIED THE CONGRESS FOR THE INTRODUCTION OF LEGISLATION WHICH WOULD ELIMINATE THE LINE OF BUSINESS RESTRICTIONS. A STAFF DRAFT BILL IS CURRENTLY DORMANT IN THE HOUSE SUBCOMMITTEE ON TELECOMMUNICATIONS. THE DRAFT BILL, ENTITLED THE "TELECOMMUNICATIONS POLICY ACT OF 1990", OR COMMONLY REFERRED TO AS THE "MARKEY DRAFT BILL", HAS BEEN CHARACTERIZED AS "A PHASED-IN UNLEASHING OF THE ROBCS" INTO BUSINESSES BARRED BY THE MFJ.

WITH RESPECT TO INFORMATION SERVICES, THE DRAFT SPECIFICALLY PERMITS THE RBOCS TO ENGAGE IN THE PROVISION OF ELECTRONIC YELLOW PAGES, ADVANCED NETWORK SERVICES, CUSTOMER NETWORK SERVICES, AND OUT OF REGION INFORMATION SERVICES THROUGH A SEPARATE SUBSIDIARY.

ONE OF THE MAJOR CONCERNS I HAVE WITH THE DRAFT IS THAT ALTHOUGH IT CONTAINS SEPARATE SUBSIDIARY REQUIREMENTS IT PERMITS THE FCC TO WAIVE SUCH REQUIREMENTS FOR BOTH INFORMATION SERVICES AND MANUFACTURING AFTER THREE YEARS. IN ADDITION TO THE FCC WAIVER PROVISIONS, THE DRAFT WOULD SUNSET THE RESTRICTIONS ON INFORMATION

¹United States of America v Western Electric Company et al,
(D.C. Circuit No. 87-5388) Slp. Op. at 55, N. 29 April 3, 1990.

SERVICES AFTER TEN YEARS, VIRTUALLY ELIMINATING THE REGULATORY SAFEGUARDS THAT PROTECT MONOPOLY RATEPAYERS AND COMPETITORS FROM CROSS-SUBSIDIZATION AND OTHER ANTI-COMPETITIVE CONDUCT.

AS CURRENTLY WRITTEN THE DRAFT APPEARS TO HAVE SEVERAL MAJOR IMPLICATIONS. IT PERMITS THE REMOVAL OF THE LINES OF BUSINESS RESTRICTIONS CONTAINED IN THE MFJ. IT REMOVES THE MFJ WAIVER PROCESS FROM THE U.S. DISTRICT COURT AND JUDGE GREEN AND TRANSFERS THE JURISDICTION AND RESPONSIBILITY TO THE FEDERAL COMMUNICATIONS COMMISSION (FCC). ALTHOUGH IT MAY HAVE BEEN UNINTENTIONAL THE DRAFT APPEARS TO GRANT THE RBOCS ANTITRUST IMMUNITY FROM COMMISSION AUTHORIZED CONDUCT WHICH IN EFFECT SHIFTS THE ENFORCEMENT OF ANTITRUST LAWS FROM THE COURTS TO THE FCC.

ALTHOUGH WE HAVE BEEN ASSURED THAT CONGRESSIONAL ACTION CONCERNING THE ELIMINATION OF THE MFJ RESTRICTIONS WILL NOT OCCUR IN THIS SESSION, MY SOURCES ADVISE ME THAT THE MFJ LEGISLATION WILL BE RESURRECTED IN THE NEXT CONGRESSIONAL SESSION. I BELIEVE THAT JUDGE GREEN'S DECISION ON REMAND WILL SIGNIFICANTLY RETARD OR ACCELERATE THE LEGISLATIVE INITIATIVES. IF FOR INSTANCE JUDGE GREENE PERMITS THE RBOCS TO PROVIDE ELECTRONIC YELLOW PAGES, AND HE HAS INDICATED THAT HE MAY, THEN I BELIEVE THE RBOCS WILL NOT PUSH FOR LEGISLATIVE RELIEF BY THE CONGRESS. CONVERSELY, IF JUDGE GREENE DOES NOT GRANT JUDICIAL RELIEF THE RBOCS WILL CONTINUE THEIR MASSIVE, INTENSIVE AND EXPENSIVE PUBLIC RELATIONS CAMPAIGN AND LOBBYING EFFORTS 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 NATION'S INFRASTRUCTURE, CONTRIBUTING TO OUR COMPETITIVE DECLINE INTERNATIONALLY, AND THAT JUDGE GREEN'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, I BELIEVE THERE ARE GREATER RISKS AND HARM THAT COULD BE INCURRED BY LIFTING THE RESTRICTIONS. THEY ARE THE VERY SAME RISKS THAT PROMPTED THE NEED FOR THE RESTRICTIONS AT DIVESTITURE. THESE INCLUDE THE INCENTIVE OF THE RBOCS TO SUBSIDIZE THEIR UNREGULATED COMPETITIVE BUSINESSES WITH REVENUE FROM REGULATED MONOPOLY CUSTOMERS; THE FEDERAL COMMUNICATIONS COMMISSION'S PREEMPTION OF STATE REGULATORY AUTHORITY; THE RBOCS EXPOSURE OF RATEPAYERS TO FINANCIAL RISK OF RBOC ENTRY INTO SPECULATIVE COMPETITIVE VENTURES; AND THE RBOCS TRANSFER OF ENTERPRISES TO UNREGULATED AFFILIATES RESULTING IN A REDUCTION IN THE CONTRIBUTION OF REVENUES WHICH SUPPORT BASIC TELEPHONE SERVICE AND ENSURE ITS CONTINUED AFFORDABILITY.

THE SIZE AND POWER OF THE RBOCS AND THE LIMITED REGULATORY RESOURCES OF THE FCC MAKE OVERSIGHT OF THE RBOCS MORE THEORETICAL THAN REAL. THE FEDERAL REGULATORY SAFEGUARDS AND THE MONITORING BY COMPETITORS MAY PROVE INSUFFICIENT TO PROTECT LOCAL RATEPAYERS IF THERE ARE CHANGES TO THE MFJ.

IF THE RBOCS ARE ALLOWED TO PROVIDE INFORMATION SERVICES, THE QUESTION ARISES AS TO WHAT SAFEGUARDS ARE NECESSARY FOR MONOPOLY RATEPAYERS (AND YES, YOUR INDUSTRY, AS COMPETITORS) BECAUSE OF THE ADVANTAGES THE RBOCS HAVE FROM THE JOINT PROVISION OF MONOPOLY AND COMPETITIVE SERVICES USING THE SAME INTEGRATED NETWORK.

SINCE DIVESTITURE, THERE HAS BEEN A DRAMATIC EXPLOSION IN THE NUMBER OF NON-REGULATED SUBSIDIARIES OF THE RBOCS. FOR EXAMPLE, THE BELL ATLANTIC COMPANY GREW FROM 17 NON-REGULATED SUBSIDIARIES RIGHT AFTER DIVESTITURE TO OVER 90 IN FIVE YEARS TO THE END OF 1989.

THESE TRENDS MEAN THERE IS AN EVEN GREATER OPPORTUNITY FOR AND THUS RISK OF CROSS-SUBSIDIZATION FROM MONOPOLY RATEPAYERS TO THE NON-REGULATED SERVICES. THIS INCREASES THE ALREADY HEAVY BURDEN UPON STATE REGULATORS TO GUARD AGAINST ANTI-COMPETITIVE PRACTICES AND TO INSURE A "LEVEL PLAYING FIELD" WHERE COMPETITION CAN FULLY THRIVE. ONE OF THE WAYS WHICH I BELIEVE HELP TO ENSURE THE EXISTENCE OF A LEVEL PLAYING FIELD IS THROUGH THE USE OF STRUCTURAL SAFEGUARDS IN ESSENCE, THE USE OF SEPARATE SUBSIDIARIES. THE INTEGRATED NATURE OF THE NETWORK MAKES CROSS-SUBSIDIZATION DIFFICULT TO DETECT AND MONITOR. THE FULLY DISTRIBUTED COST METHOD, KNOWN AS FDC, CURRENTLY REQUIRED BY THE FCC WHICH ALLOCATES COSTS BETWEEN THE REGULATED AND NON-REGULATED SERVICES AND THEN DIVIDES THE REVENUE REQUIREMENT BETWEEN THE INTERSTATE AND STATE JURISDICTIONS DOES NOT PROVIDE ADEQUATE SAFEGUARDS AGAINST CROSS-SUBSIDIZATION AND PREDATORY PRICING BY THE BELL OPERATING COMPANIES. THAT IS, THE FDC-BASED COSTS WHICH ARE ALLOCATED TO A

SERVICE DO NOT CORRESPOND TO THE PRICE THE SERVICE WILL COMMAND IN THE MARKETPLACE. THIS DILEMMA ARISES BECAUSE THE LOCAL EXCHANGE COMPANY (LEC) HAS A CLEAR AND UNAMBIGUOUS INCENTIVE TO ALLOCATE AS MUCH OF THE JOINT COSTS OF PRODUCING BOTH REGULATED AND NON-REGULATED SIDE TO THE REGULATED SERVICES WHILE ASSIGNING AS MUCH OF ITS REVENUES AS POSSIBLE TO THE NON-REGULATED SIDE. THUS, IT WOULD BE IN THE INTEREST OF THE LEC TO OPERATE A NON-REGULATED ACTIVITY AT A LOSS (FROM THE TOTAL CORPORATE PERSPECTIVE) AS LONG AS THE REVENUES ASSIGNED "BELOW THE LINE" EXCEED THE SIMILARLY ASSIGNED COSTS.

IF YOU BELIEVE THAT THE RBOCS DO NOT CROSS-SUBSIDIZE WITNESS THE CASE OF NYNEX. RECENTLY, THE NEW YORK PUBLIC SERVICE COMMISSION AND THE FCC HAVE USED THEIR AUTHORITY TO INVESTIGATE AFFILIATE TRANSACTIONS TO AUDIT THE RELATIONSHIP AMONG NYNEX'S REGULATED AND UNREGULATED SUBSIDIARIES. NYNEX HAD ESTABLISHED THE MATERIALS ENTERPRISES COMPANY (MECO) FOR THE PURPORTED PURPOSE OF REDUCING THE COSTS OF PURCHASING GOODS AND SERVICES FOR ITS REGULATED COMPANIES. HOWEVER, INSTEAD OF LOWERING THE COSTS, MECO RAISED THE COSTS. FOR EXAMPLE, MECO ACCEPTED A \$574,000 BID TO REMOVE SWITCHES AND CHARGED NEW YORK TELEPHONE \$832,000 FOR THE REMOVAL WITHOUT PROVIDING ANY ADDITIONAL SERVICE. MECO PURCHASED CIRCUIT BOARDS FOR NYNEX. THESE BOARDS CAN BE PURCHASED FOR APPROXIMATELY \$60.00 BUT MECO CHARGED THE OPERATING COMPANIES \$79.00 PLUS HANDLING.

ANOTHER MAJOR CONCERN WITH THE FDC METHOD IS THAT IT IGNORES NON-BOOK TRANSFERS. THE ALLOCATION MANUALS (CAMS) OF THE LECS DO

NOT IN ANY MATERIAL SENSE ADDRESS NON-BOOK TRANSACTIONS BETWEEN REGULATED AND NON-REGULATED ACTIVITIES. THESE INCLUDE, BUT ARE NOT LIMITED TO, EXCHANGES OF INFORMATION, REASSIGNMENT OF PERSONNEL, ACCESS TO THE FORMIDABLE FINANCIAL RESOURCES OF THE REGULATED UTILITY, AND ACCESS TO THE TRADEMARKS, REPUTATION, ORGANIZATIONAL AND PHYSICAL UBIQUITY, GOODWILL, AND OTHER TANGIBLE AND INTANGIBLE RESOURCES OF THE REGULATED UTILITY AND ITS CORPORATE PARENT. AN EXAMPLE OF THIS PROBLEM IS THE TRANSFER OF CUSTOMER PROPRIETARY NETWORK INFORMATION (CPNI). WHEN A NEW RESIDENTIAL CUSTOMER CONTACTS THE LEC, SUCH INFORMATION AS THE CUSTOMER'S NAME AND ADDRESS CAN BE GIVEN TO THE NON-REGULATED SIDE OF THE BUSINESS (UNLESS THE CUSTOMER SPECIFICALLY PROHIBITS THE TRANSFER OF SUCH INFORMATION) AND THE SAME CUSTOMER CAN THEN BE CONTACTED TO BUY A NON-REGULATED SERVICE SUCH AS VOICE MAIL. YET, THERE IS NOTHING IN THE FCC'S COST ALLOCATION RULES WHICH WOULD REQUIRE ANY FINANCIAL TRANSFER OR "PAYMENT" BY THE NON-REGULATED SIDE OF THE LEC'S BUSINESS FOR THIS INFORMATION. CONSIDER THE DISTINCT COMPETITIVE ADVANTAGE THAT THIS GIVES THE RBOCS IN THE PROVISION OF INFORMATION SERVICES; CONSIDER THE IMPACT UPON YOUR INDUSTRY.

AS A REGULATOR, I PREFER SEPARATE SUBSIDIARIES AS OPPOSED TO ACCOUNTING-ALLOCATION RULES TO MINIMIZE CROSS-SUBSIDIZATION. HOWEVER, I WANT TO STRESS THAT SEPARATE SUBSIDIARIES IN AND OF THEMSELVES ARE NOT SUFFICIENT TO PROTECT THE RATEPAYERS OR COMPETITORS. AGAIN, WITNESS THE NYNEX SITUATION.

THERE MUST BE ADDITIONAL ASSOCIATED SAFEGUARDS. SEPARATE SUBSIDIARIES MAKE IT EASIER TO DETECT ANY CROSS-SUBSIDIZATION WHICH

MIGHT OCCUR THROUGH PROCUREMENT PRACTICES. THEY ALSO FACILITATE THE MONITORING OF INTRA-CORPORATE TRANSACTIONS AND ELIMINATE THE NEED TO DEVELOP ACCOUNTING RULES WHICH PROHIBIT THE TRANSFER OF COSTS TO RATEPAYERS. HOWEVER THE NECESSARY ASSOCIATED SAFEGUARD IS THE RIGHT OF THE FCC AND STATE COMMISSIONS TO REVIEW AFFILIATE INTEREST TRANSACTIONS INCLUDING NOT ONLY THE PURCHASE AGREEMENTS AND CONTRACTS PRIOR TO EXECUTION, BUT ALSO THE BOOKS AND RECORDS OF AFFILIATES. THIS AUTHORITY IS NEEDED EVEN IN THE REGULATORY ENVIRONMENT OF SEPARATE SUBSIDIARIES BECAUSE SEPARATE SUBSIDIARIES DO NOT REDUCE THE INCENTIVE OF THE PARTIALLY REGULATED FIRM TO INCREASE ITS PROFITS THROUGH COST SHIFTING. SEPARATE SUBSIDIARIES ONLY PROVIDE A BRIGHT LINE THAT CAN BE SEEN IF THE REGULATOR HAS THE RIGHT TO LOOK.

ACCESS TO THE BOOKS AND RECORDS OF AFFILIATES IS VIRTUALLY IMPOSSIBLE TODAY WITHOUT AFFILIATE INTEREST LEGISLATION.

AS AN EXAMPLE, THE STAFF OF THE DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION HAS BEEN TRYING TO CONDUCT AN INFORMAL AUDIT OF C&P'S PROCUREMENT PRACTICES SINCE 1989. THE STAFF WAS ABLE TO OBTAIN ONLY INFORMATION FOR C&P'S PURCHASES FROM AFFILIATED BELL ATLANTIC COMPANIES. HOWEVER, THE COMPANY WOULD NOT PROVIDE THE STAFF WITH SIMILAR INFORMATION FOR ITEMS SOLD BY BELL ATLANTIC TO THE OTHER TELEPHONE OPERATING COMPANIES AND THIS INFORMATION IS NECESSARY TO DETERMINE WHETHER THE C&P TRANSACTION WAS REASONABLE. IN ADDITION, THE STAFF ALSO NEEDS TO KNOW THE UNREGULATED AFFILIATES' COSTS AND PROFITS.

I CONTEND THAT THE ULTIMATE SAFEGUARD AGAINST CROSS SUBSIDY

AND ANTI-COMPETITIVE CONDUCT IS THE NEED FOR STRONGER STATE AUTHORITY. DOES THAT SURPRISE YOU? I AM OF THE OPINION THAT THE STATES, NOT THE FCC, ARE IN THE BEST POSITION TO ADDRESS THE SPECIFIC NEEDS OF THEIR JURISDICTIONS. THE STRENGTHENING OF THIS ABILITY FOR THE STATES IS OF PARAMOUNT CONCERN TO ME AND, IN MY OPINION, SHOULD BE TO YOU AS WELL.

TO THIS END, THE NARUC, IN TESTIMONY I GAVE BEFORE CONGRESS REITERATED WHAT IT BELIEVES TO BE A MENU OF REGULATORY OPTIONS AVAILABLE WHICH NEED TO BE AVAILABLE TO THE STATES IN ORDER TO ASSURE THEIR RIGHTFUL REGULATORY AUTHORITY SHOULD THE MFJ RESTRICTIONS BE ELIMINATED. 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 TO 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. I NOTE THAT THIS MENU ONLY

"ILLUSTRATES THE KINDS OF ACTIONS STATES MAY CONSIDER TAKING..." HOWEVER, I ALSO NOTE THAT THE MENU INDICATES THE DEGREE OF FLEXIBILITY THAT THE STATES SEEK AND NEED IN FASHIONING REGULATORY RESPONSES TO BOC-PARTICIPATION IN THOSE MARKETS CURRENTLY RESTRICTED BY THE MFJ.

HAVING SHARED MY VIEWS ON THE BELL OPERATING COMPANIES' INITIATIVES TO ELIMINATE THE MFJ, AND THE POTENTIAL FOR CROSS-SUBSIDY LET ME BRIEFLY STATE THAT THE INFORMATION SERVICES MARKET IS A RAPIDLY CHANGING, MULTI-BILLION DOLLAR INDUSTRY. TAKEN AS A WHOLE, THE MARKET IS TREMENDOUS, AND IS ONE OF THE FASTEST GROWING SECTORS OF THE U.S. ECONOMY. CONSERVATIVELY SPEAKING, IT ENCOMPASSES AT LEAST \$150 BILLION A YEAR IN REVENUES FROM CONTENT-AND-SERVICE SEGMENTS LIKE PUBLISHING AND BROADCAST, AND ANOTHER \$100 BILLION IN COMPUTER HARDWARE AND SOFTWARE. IT IS MY UNDERSTANDING THAT OVER SIXTY LOCAL NEWSPAPERS ACROSS THE COUNTRY CURRENTLY PROVIDE ELECTRONIC VERSIONS OF THEIR NEWS, SPORTS, AND WEATHER, ACCESSIBLE BY AUDIOTEX, VIDEOTEX, THROUGH GATEWAYS, OR DIRECTLY ON LINE.² DIALOG, A LEADING ELECTRONIC INFORMATION PROVIDER AND GATEWAY OPERATOR³ PROVIDES CONSUMERS AND BUSINESS USERS WITH NEWS FROM ASSOCIATED PRESS, UNITED PRESS INTERNATIONAL, BUSINESSWIRE, AND MCGRAW HILL. WEST, THE DOMINANT PUBLISHER OF PRINT LEGAL MATERIALS, OBVIOUSLY COMPETES WITH MEAD DATA CENTRAL, THE DOMINANT PROVIDER OF ELECTRONIC ALTERNATIVES.

²Cuadra/Elsevier, Directory of Online Databases, 617 (Jan. 1990).

³Id. at 749-753.

NEWSPAPERS HAVE BECOME MAJOR PARTICIPANTS IN THE ELECTRONIC INFORMATION MARKET, EXPANDING THEIR ROLES AS PROVIDERS OF CRITICAL BUSINESS AND NEWS SERVICES. HOWEVER, IT IS MY VIEW THAT IF THE INFORMATION SERVICES RESTRICTION IS ELIMINATED BY JUDICIAL REVIEW OR LEGISLATIVE ACTION, WITHOUT THE SAFEGUARDS WHICH I HAVE DISCUSSED HERE TODAY, THEREBY PERMITTING THE RBOCS TO GENERATE INFORMATION FOR SALE TO THE PUBLIC, IT WILL GIVE THE RBOCS POTENTIAL TO PLACE YOUR INDUSTRY AT A TREMENDOUS COMPETITIVE RISK.

I RECENTLY READ A QUOTE FROM DAVID COX, CHAIRMAN OF YOUR ASSOCIATION'S COMPETITIVE ANALYSIS PROJECT, IN WHICH HE CONCLUDED THAT FOR ADVERTISER-SUPPORTED INFORMATION SERVICE, "ANYONE WITH A LARGE CONSUMER DATABASE WILL BE A COMPETITOR TO NEWSPAPER IN THE FUTURE", SINCE ANYONE SO EQUIPPED WILL BE ABLE TO COMPETE FOR ADVERTISING DOLLARS THROUGH DIRECT MARKETING SERVICES.⁴

THE LEC'S POSSESSION OF THE CUSTOMER PROPRIETARY NETWORK INFORMATION AND THEIR CONTROL OVER THE LOCAL EXCHANGE SERVICE THROUGH WHICH YOUR INDUSTRY MUST SEND YOUR INFORMATION GIVES THE RBOCS BOTH THE INCENTIVE AND THE ABILITY TO CROSS-SUBSIDIZE AND TO DENY OR IMPEDE YOUR INDUSTRY'S ABILITY TO PROVIDE COMPETING INFORMATION AND NEWS SERVICES. IF PERMITTED THE RBOCS HAVE HINTED THAT THEY WANT TO CREATE THEIR OWN 976 INFORMATION SERVICES WHICH WOULD SIGNIFICANTLY IMPACT ON YOUR INDUSTRY'S REVENUES.

ONLY TODAY AS REPORTED BY THE WASHINGTON POST IN AN ARTICLE

⁴Its Telecommunications -- or Else: Newspapers Urged to Examine Telecommunications as a Supplement to their Core Product or Risk Permanent Loss of Market Share, Editor & Publisher 10, 11 (June 30, 1990).

ENTITLED: " NEWSPAPERS STRUGGLE AS ADVERTISING INCOME FALLS", THE POST STATED "EVEN THE LARGEST NEWSPAPERS ARE STRUGGLING WITH DECLINING REVENUE...THE NEW YORK TIMES HAS DECIDED NOT TO FILL TWENTY-FIVE EDITORIAL VACANCIES NEXT YEAR. THE WASHINGTON POST HAS CUT BACK ON HIRING AND STAFF TRAVEL...THE WALL STREET JOURNAL HAS FROZEN SALARIES AND CAPITAL SPENDING, REDUCED SPECIAL INSERTS, TABLED PLANS FOR A MAGAZINE AND WANTS TO AVOID TRANSFERRING REPORTERS BETWEEN BUREAUS. ITS PARENT COMPANY, DOW JONES AND COMPANY, IS SELLING THE CORPORATE JET."

IN VERY REAL TERMS THE MFJ HAS COME FULL CIRCLE. IT WAS DESIGNED TO PREVENT ANTI-COMPETITIVE PRACTICES IN THE TELECOMMUNICATIONS INDUSTRY. ALTHOUGH THE RBOCS CONTINUE TODAY TO HAVE THE SAME INCENTIVES AND ABILITIES TO CROSS-SUBSIDIZE AND OTHERWISE DISCRIMINATE AGAINST COMPETITORS AS WHEN THEY WERE PART OF THE BELL SYSTEM, THERE ARE THOSE WHO WANT TO TOTALLY ELIMINATE THE ANTI-TRUST RESTRICTIONS IMPOSED BY THE MFJ. I BELIEVE THAT IF THE INFORMATION SERVICES RESTRICTION IS LIFTED WITHOUT THE APPROPRIATE REGULATORY SAFEGUARDS, THE RBOCS' INCLINATION TO DISADVANTAGE ITS COMPETITORS WILL BE TOO TEMPTING AND THEIR ABILITY TO DO SO TOO REAL. AS A REGULATOR I HAVE BEEN IN THE FOREFRONT OF THIS STRUGGLE TO MAINTAIN THE LEVEL PLAYING FIELD. I GUESS I'VE BEEN SOMEWHAT EFFECTIVE SINCE ONE OF THE RBOC EXECUTIVES SUGGESTED TO ME THAT I HIRE A "FOOD TASTER", AND ANOTHER BELL OPERATING COMPANY OFFICIAL HAS ATTRIBUTED MY EFFORTS AS THE CAUSE OF THE NATIONAL TRADE DEFICIT.

THE RBOCS ARE FORMIDABLE. I RECOGNIZE THAT YOUR INDUSTRY HAS

BEEN INVOLVED IN THE STRUGGLE, HOWEVER, I DON'T SEE NEARLY THE VISIBILITY OR THE INTENSITY THAT I HAD ANTICIPATED GIVEN THE THREAT THAT YOU FACE FROM THE RBOCS' UNFETTERED PARTICIPATION IN THE PROVIDING OF INFORMATION SERVICES. I HOPE WHAT I HAVE DISCUSSED THIS AFTERNOON WILL SERVE AS A WAKE-UP CALL TO YOUR ASSOCIATION AND TO YOUR INDUSTRY AS A WHOLE SO THAT IN THE FUTURE THE FEDERAL AND STATE POLICY MAKERS WILL CLEARLY KNOW WHERE YOUR INDUSTRY STANDS ON THE IMPORTANT ISSUE OF THE MODIFIED FINAL JUDGEMENT.

THANK YOU.