

REMARKS OF THE HONORABLE PATRICIA M. WORTHY,
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OF THE DISTRICT OF COLUMBIA

ONA AND GATEWAYS: THE STATE VIEWS

MARCH 21, 1989

FIRST, IT IS IMPORTANT FOR YOU TO UNDERSTAND HOW DIFFICULT IT IS, FOR ME, THIS MORNING TO PARTICIPATE IN A FORUM DESIGNED TO PROVIDE YOU WITH THE VARIOUS VIEWS OF THE "PLAYERS" IN THE IMPLEMENTATION AND THE FURTHER POLICY DEVELOPMENT OF OPEN NETWORK ARCHITECTURE. THE DIFFICULTY CAN BEST BE EXPLAINED IF I DIGRESS FOR A MOMENT AND RECITE BRIEFLY THE EVOLUTION OF THE FCC'S ONA POLICY.

ONA WAS BORN FROM THE LEGAL EXTRAPOLATIONS OF THE FCC'S COMPUTER INQUIRY DECISION, THE FIRST OF WHICH WAS CONCLUDED IN 1971. COMPUTER II, AS YOU KNOW, PREEMPTED STATE REGULATION OF ENHANCED SERVICES AND PROHIBITED STATE INTERFERENCE WITH THE FCC'S DECISION TO ALLOW AT&T TO PROVIDE THESE UNREGULATED SERVICES ON A STRUCTURALLY SEPARATED BASIS. AFTER THE DIVESTITURE, THE FCC EXTENDED ITS PREEMPTION DECISION TO INCLUDE THE ENHANCED SERVICE OFFERINGS OF THE BOCS. FINALLY, IN 1985, THE FCC IN ITS COMPUTER III DECISION, HAVING THEN FOUND SEPARATE SUBSIDIARIES TO BE UNECONOMIC AND INEFFICIENT, INSTITUTED NON-STRUCTURAL SAFEGUARDS AND PROHIBITED STATE REGULATORY COMMISSIONS

THE FOUR PRINCIPAL COMPONENTS OF THE FCC'S NON-STRUCTURAL PROVISIONS, THE BOCS WERE DIRECTED TO PROVIDE ENHANCED SERVICES COMPETITORS WITH NETWORK INTERCONNECTION OPPORTUNITIES ON AN "EQUAL ACCESS" BASIS THROUGH COMPARABLY EFFICIENT INTERCONNECTION (CEI) STANDARDS AND PRICING. THE SERVICE-BY-SERVICE CEI FILINGS WERE TO ULTIMATELY BE REPLACED WITH A "NETWORK DESIGN THAT USES PROPERLY DEFINED OPEN NETWORK ARCHITECTURE (ONA) PRINCIPLES". THE BOC'S WERE DIRECTED TO FILE ONA PLANS BY FEBRUARY 1, 1988, AFTER RELEASE OF THE PHASE I ORDER ON JUNE 16, 1986, THE BOCS AND BELLCORE BEGAN OBTAINING INDUSTRY INPUT FOR ONA PLANNING AND THE SELECTION OF INITIAL BSES. BELLCORE SPONSORED TWO NATIONAL ONA FORUMS AND REPRESENTATIVES OF THE ESP INDUSTRY, THE BOCS, INDEPENDENTS, INTEREXCHANGE CARRIERS, MANUFACTURERS AND USER GROUPS WERE INVITED. IN ADDITION TO THESE NATIONAL FORUMS, THE INDIVIDUAL BOCS HELD REGIONAL FORUMS, WHICH WERE SUPPLEMENTED BY NUMEROUS MARKETING RESEARCH EFFORTS. THE BOCS THEN FORMED A NATIONAL ONA AD HOC COMMITTEE, WHICH WAS SUPERCEDED BY A TECHNICAL ADVISORY GROUP WHICH ULTIMATELY PRODUCED FOUR ONA SPECIAL REPORTS. AFTER THE ONA PLANS WERE FILED ON FEBRUARY 1, 1988, THE FCC RECEIVED NUMEROUS COMMENTS AND REPLY COMMENTS AS WELL AS SUPPLEMENTAL COMMENTS AND SUPPLEMENTAL REPLIES (A DOCKET OF WELL OVER 7,000 PAGES OF COMMENTS AND EXHIBITS). THE FCC ISSUED ITS OPINION AND ORDER ON DECEMBER 22, 1988 -- AND FINALLY THE STATE REGULATORY COMMISSIONS ARE BEING ASKED THEIR OPINION OF ONA.

YOU CAN UNDERSTAND, I HOPE MY TENDENCY TO BE LEERY,

CAUTIOUS, APPREHENSIVE AND PERHAPS EVEN A "WEE-BIT" CONFRONTATIONAL. SETTING ASIDE, HOWEVER, ANY PERSONAL HOSTILITIES AND THE REALITY OF OUR PENDING APPEAL OF COMPUTER III IN THE NINTH CIRCUIT, I WILL, FOR THE SAKE OF THIS MORNING'S DISCUSSION, ACKNOWLEDGE THAT AN EFFICIENTLY CONFIGURED TELECOMMUNICATIONS NETWORK IS IN THE PUBLIC INTEREST. HOWEVER, WHAT PASSES FOR EFFICIENCY AT THE FEDERAL LEVEL OFTEN LEADS TO DIFFICULTY AT THE STATE LEVEL. I WILL FIRST ATTEMPT TO SUMMARIZE STATE COMMISSION ACTIVITY AND THEN IDENTIFY BRIEFLY THOSE AREAS WHICH I BELIEVE ARE OF GREATEST CONCERN TO STATE REGULATORS.

PRICING OF ONA

THERE IS ALSO SUBSTANTIAL DEBATE CONCERNING THE PRICING OF ONA SERVICES. SHOULD THEY BE MARKET OR COST BASED? SINCE ONA INCLUDES CURRENT SERVICES, SHOULD SUCH SERVICES BE MAINTAINED AT CURRENT PRICES? HOW WILL THE COSTS OF ONA BE ALLOCATED BETWEEN FEDERAL AND STATE JURISDICTIONS?

UNIFORMITY ISSUES

FINALLY, THERE IS THE ISSUE OF UNIFORMITY. IS IT FEASIBLE TO HAVE A UNIFORM ONA TARIFF THAT CAN BE UTILIZED BY THE STATES WITHOUT INVITING FURTHER FEDERAL PREEMPTION?

THESE ARE JUST SOME OF THE ISSUES OF CONCERN TO STATE REGULATORS AND A FEW STATES HAVE INITIATED PROCEEDINGS IN ORDER TO RESOLVE THEM.

MAINE

MAINE ISSUED AN ORDER IN NOVEMBER OF 1988 WHICH ADOPTED AN APPROACH WHICH THE STATE COMMISSION BELIEVED WOULD OFFER THE

MAXIMUM INCENTIVE TO PROVIDERS OF NEW AND INNOVATIVE SERVICES TO ENTER THE TELECOMMUNICATIONS MARKET. THAT APPROACH IS CALLED OPEN SERVICE/NETWORK ARCHITECTURE (OSNA) AND IT DIFFERS FROM ONA IN SOME RESPECTS. THE MOST SIGNIFICANT DIFFERENCE IS THAT UNDER OSNA, THE INITIAL DETERMINATION OF WHAT PORTION OF THE NETWORK CAN BE OPENED WILL BE MADE BY EITHER THE REQUESTER OR THE PROVIDER OF ACCESS TO THE NETWORK (THE LEC). THUS, THE REQUESTER MAY ORDER SPECIFIC NETWORK ELEMENTS RATHER THAN ACCEPT OR REJECT PREDETERMINED TARIFFED SERVICES WHICH ARE OFFERED BY A LEC. WITH RESPECT TO NEW SERVICES, THE REQUESTER WILL PAY ONLY FOR ACCESS TO THE PORTION OF THE NETWORK THAT IT NEEDS, INCLUDING ANY AND ALL INDIRECT COSTS, AND NO CONTRIBUTION (SET TO COVER MARGINAL COSTS OF PROVIDING SUCH ACCESS). WITH RESPECT TO REQUESTS FOR SERVICES THAT ARE ESSENTIALLY THE SAME AS SERVICES ALREADY OFFERED BY THE LEC, A CONTRIBUTION WILL BE ADDED TO THE ACCESS CHARGE WHICH WILL BE EQUAL TO THE CONTRIBUTION, IF ANY, REFLECTED IN THE LEC CHARGE FOR THE SAME SERVICE.

OSNA ENCOURAGES THE LECS TO RESPOND TO ALL BONA FIDE REQUESTS FOR SERVICE OR NETWORK ACCESS. A BONA FIDE REQUEST IS DEFINED AS ONE WHICH SPECIFIES A SERVICE OR ACCESS AT PARTICULAR LOCATIONS, TIMES AND QUANTITIES. IF A LEC FAILS TO SATISFY A REQUEST, IT MUST NOTIFY THE PSC AND THE REQUESTER OF ITS REASONS WITHIN TWO MONTHS AND SUCH FAILURE WILL BE SUBJECT TO PSC REVIEW.

THE COMMISSION ENCOURAGED THE LECS TO CONSIDER PROVIDING ALTERNATIVE ACCESS ARRANGEMENTS AND RATES WHICH WOULD ELIMINATE THE NEED FOR COLLOCATION. THE PSC WOULD ONLY REVIEW A REFUSAL TO

COLLOCATE IF SUCH REFUSAL PREVENTED THE ESP FROM OFFERING THE PROPOSED SERVICE.

THE COMMISSION DECLINED TO PRESCRIBE WHICH SERVICES SHOULD BE TARIFFED AND TO WHAT DEGREE THEY SHOULD BE UNBUNDLED.

FLORIDA

THE FLORIDA PSC HAS AN ONGOING ONA PROCEEDING. ON FEBRUARY 6, 1989, THE PSC ISSUED AN ORDER WHICH ENUMERATED THE ISSUES AND THE POSITIONS OF THE PARTIES. SOME OF THE MAJOR ISSUES ARE:

UNBUNDLING - SOUTHERN BELL BELIEVES THAT THE LECS SHOULD DECIDE THE PROPER LEVEL OF UNBUNDLING. THE PSC STAFF BELIEVES THAT ALL BSES SHOULD BE OFFERED SEPARATE FROM BSAS AND THAT THE BSES PROPOSED IN SOUTHERN BELL'S ONA PLAN SHOULD BE OFFERED IMMEDIATELY UNDER TARIFF. ADDITIONAL BSES SHOULD BE PROPOSED BY A COMMITTEE CONSISTING OF LEC AND INDUSTRY REPRESENTATIVES.

MIXED JURISDICTIONAL TRAFFIC - SOUTHERN BELL'S POSITION IS THAT THE DEFINITION AND HANDLING OF SUCH TRAFFIC SHOULD BE EXPLORED IN THE UPCOMING PART 69 RULEMAKING AND THE 410 (B) CONFERENCE. THE STAFF'S POSITION IS THAT WHETHER A CALL FINALLY TERMINATES AT AN ESP'S DATA BASE IN ANOTHER STATE IS NOT RELEVANT. SUCH CALLS SHOULD BE HELD TO BE INTRASTATE.

STATE UNIFORMITY - SOUTHERN BELL ARGUED THAT IT COULD BE APPROPRIATE FOR INTERCONNECTION RATES, BUT THAT THE TERMS AND CONDITIONS MAY VARY. HOWEVER RATE STRUCTURES, TERMS AND CONDITIONS SHOULD BE UNIFORM WITHIN A LEC'S SERVICE AREA.

STAFF ARGUED THAT THE METHODOLOGY FOR DETERMINING RATES AND

THE TERMS AND CONDITIONS SHOULD BE UNIFORM STATEWIDE. HOWEVER, RATE LEVELS COULD BE COMPANY SPECIFIC.

PRICING - SOUTHERN BELL TOOK THE POSITION THAT RATES SHOULD BE RELATED TO COSTS AND, WHERE COSTS VARY WITH USAGE, RATE ELEMENTS SHOULD BE PRICED ON A USAGE SENSITIVE BASIS. ANCILLARY SERVICES SHOULD NOT BE TARIFFED.

STAFF URGED THAT PRICING SHOULD REFLECT CUSTOMER IMPACT, PREVENTION OF DISCRIMINATION AND NON-SUBSIDIZATION, AND SHOULD PROMOTE THE USE OF THE NETWORK. THUS, STAFF ARGUED THAT CURRENT RATES FOR ACCESS TO THE NETWORK SHOULD NOT BE CHANGED AND THAT CURRENTLY TARIFFED OFFERINGS (SUCH AS CUSTOM CALLING FEATURES) USED BY ESPS SHOULD CONTINUE TO BE OFFERED AT CURRENT RATES.

COLLOCATION - SOUTHERN BELL ARGUED THAT PHYSICAL COLLOCATION SHOULD NOT BE OFFERED AND THAT VIRTUAL COLLOCATION SHOULD NOT BE REQUIRED.

STAFF ARGUED THAT PHYSICAL COLLOCATION SHOULD BE MANDATORY AND THAT VIRTUAL COLLOCATION SHOULD BE REQUIRED WHEN PHYSICAL COLLOCATION IS NOT POSSIBLE.

THE FLORIDA PSC RECENTLY CONCLUDED HEARINGS ON THIS MATTER. THE PSC STAFF IS SCHEDULED TO MAKE A RECOMMENDATION DURING A SPECIAL COMMISSION CONFERENCE ON APRIL 26, 1989.

NEW YORK

IN AN ORDER DATED SEPTEMBER 29, 1988, AS AN INTERIM MEASURE, THE NEW YORK COMMISSION ORDERED NEW YORK TEL TO FILE, BY NOVEMBER 19, 1988, TARIFFS FOR THOSE SERVICES IDENTIFIED BY THE COMPANY IN THIS ONA FCC FILING. ONCE FILED THE COMMISSION ORDERED THE

TARIFFS TO BECOME EFFECTIVE BY MARCH 31, 1989. IF THE EFFECTIVE PERIOD EXCEEDS MARCH 31, THE COMPANY HAS TO PROVIDE JUSTIFICATION.

THE COMMISSION FOUND THAT THE COMPANY'S FCC FILING PROVIDED FOR MINIMAL PHYSICAL RESTRUCTURING AND NO PRICE CHANGES. THEREFORE, THE IMPLEMENTATION OF ONA WOULD HAVE MINIMAL IMMEDIATE IMPACT ON THE COST AND PRICE OF BASIC EXCHANGE SERVICES.

WITH REGARD TO UNBUNDLING, THE COMMISSION FOUND THAT THE NYNEX ONA PLAN WAS INADEQUATE TO ASSURE THAT NEW YORK'S TELECOMMUNICATION NETWORK EVOLVES AND IS AVAILABLE TO CUSTOMERS IN KEEPING WITH THE COMMISSION'S GOAL. THE COMMISSION STATED THAT THE BSAS IN NYNEX'S PLAN WERE REALLY ASSEMBLAGES OF BSES, BUT THAT THESE BSES WERE NOT SEPARATELY IDENTIFIED. MOREOVER, THAT THE BSES THAT WERE IDENTIFIED WERE NOT ALWAYS FUNDAMENTAL COMPONENTS OF THE NETWORK. THEREFORE, NYNEX OFFERINGS WERE INADEQUATELY UNBUNDLED. THEY STATED THAT "IT IS VITALLY IMPORTANT THAT THE PLAN STRUCTURE BE CONDUCIVE TO AS COMPLETE A DISAGGREGATE AS POSSIBLE BOTH NOW AND IN THE FUTURE." THEY ALSO RULED THAT THE NYNEX PLAN HAD TO BE MODIFIED TO PERMIT A BSE TO BE PURCHASED SEPARATELY FROM A BSA.

IN ORDER TO MITIGATE THE IMPACT OF ONA ON BASIC SERVICE, THE INCREMENTAL AND ADMINISTRATIVE COSTS OF ONA MAY BE ABLE TO BE FULLY RECOVERED IN THE RATE CHARGED TO THE ESP. HOWEVER, THIS APPROACH COULD DISCOURAGE THE DEVELOPMENT OF ONA FEATURES. THE COMMISSION THEN IDENTIFIED SOME GENERAL PRINCIPLES RELATING TO PRICING AND COSTS THAT THE COMMISSION WILL BE CONSIDERING IN THE

FUTURE IN AN EFFORT TO BALANCE THE POTENTIAL NEGATIVE IMPACT ON PRICE AND AVAILABILITY OF BASIC LOCAL EXCHANGE SERVICE WITH THE ENCOURAGEMENT TO DEVELOP NEW INFORMATION SERVICE. THEY DISCUSSED DIFFERENTIATING, AS A FIRST STEP, BETWEEN EXISTING ONA SERVICES AND NEW SERVICE. THE FORMER, INITIALLY, PRICED ON EXISTING LEVELS AND THE LATTER AT INCREMENTAL COST. PRICING OF NEW SERVICES COULD THEN EVOLVE OVER TIME ADDING ELEMENTS OF COMMON COSTS TO THE BASE COST UNTIL PRICES REACH THE LEVEL OF FULLY ALLOCATED COSTS. THE OTHER OPTION IDENTIFIED BY THE COMMISSION WOULD BE TO IDENTIFY A CORE GROUP OF BASIC ONA SERVICES AND ASSESS THEM LITTLE OR NO CONTRIBUTION, ASSESSING ANY LEVEL OF CONTRIBUTION FROM LESS DESIRABLE SERVICES. ULTIMATELY THE COMMISSION STATED, ONA SERVICES, AND THEIR LEVEL OF CONTRIBUTION SHOULD BE BASED UPON DEMAND ELASTICITIES STUDIES.

THE VIEW FROM THE DISTRICT OF COLUMBIA

THE D.C. PSC SUBSCRIBES TO THE NARUC ONA RESOLUTION ADOPTED IN MARCH OF 1988. THIS RESOLUTION EMPHASIZED INTER ALIA, THAT IMPLEMENTATION OF ONA MUST NOT ADVERSELY AFFECT RATES OR QUALITY OF SERVICE FOR BASIC LOCAL EXCHANGE SERVICE, AND THAT COSTS ASSOCIATED WITH ONA IMPLEMENTATION MUST BE BORNE BY THE COST CAUSER.

FURTHER, AS THE DISTRICT ARGUED IN ITS COMMENTS FILED WITH THE FCC, BSAS, BSES, AND CNSS ARE NEW NAMES FOR OLD SERVICES OFFERED ON THE OLD NETWORK UNDER EXISTING TERMS. IN THE DISTRICT OF COLUMBIA, FOR EXAMPLE, AN ESP HAS ALWAYS BEEN ABLE TO SELECT A SWITCHED OR PRIVATE LINE "BSA", AND HAS BEEN ABLE TO SELECT A

WIDE RANGE OF SWITCHING ALTERNATIVES, INCLUDING LOOP AND LINE CAPACITY, LINE OR TRUNK SIDE CONNECTION, AND THE AVAILABILITY OF BLOCKS OF NUMBERS AND VARYING CALLING SCOPES. LIKEWISE, ESPS HAVE LONG BEEN ABLE TO PURCHASE BSE-LIKE SERVICES SUCH AS CENTREX CUSTOM CALLING FEATURES. THESE FEATURES PROVIDE SERVICES IDENTICAL TO BSES IDENTIFIED AS CALL FORWARD ON BUSY/DON'T ANSWER, CALL FORWARD OR VARIABLE RING COUNT, DISTINCTIVE RINGING, AUTOMATIC CALL BACK, AND OTHERS. OTHER BSE-TYPE FEATURES ARE OFFERED ELSEWHERE IN THE TARIFF.

OF BELL ATLANTIC'S PROPOSED BSES, MANY ARE EITHER EXISTING TARIFFED SERVICES OR ARE AVAILABLE ON AN INDIVIDUALIZED BASIS. ALTHOUGH BELL ATLANTIC PLANS TO MAKE THESE SERVICES AVAILABLE ON A MORE WIDESPREAD BASIS, I FIND IT DIFFICULT TO IMAGINE THAT THE GOAL OF ONA CAN BE REALIZED BY THE INTRODUCTION OF A FEW NEW SERVICES AND THE REPACKAGING OF THE OLD.

BELL ATLANTIC'S DEPLOYMENT SCHEDULE IS ALSO NOT ADEQUATE. IN ESSENCE, THE COMPANY PLANS TO OFFER BSES ON 85% OF ITS LINES IN TWELVE METROPOLITAN AREAS COMPRISING 78% OF ITS LINES IN SERVICE. INITIALLY, THIS CALLS FOR DEPLOYMENT TO ONLY 66% OF BELL ATLANTIC'S LINES IN SERVICE BY THE END OF 1989. THERE IS NO INDICATION WHICH OF THESE METROPOLITAN AREAS WILL RECEIVE PARTICULAR BSE SERVICES OR A WIRE CENTER-BY-WIRE CENTER SCHEDULE OF WHEN THESE BSES MIGHT COME ON LINE. MOREOVER, THERE IS NO CLEAR INDICATION OF WHEN THE REMAINING 15% OF LINES IN THE TWELVE METROPOLITAN AREAS OR THE 22% OF BELL ATLANTIC'S TOTAL LINES OUTSIDE OF THESE AREAS WILL RECEIVE BSES.

FINALLY, BELL ATLANTIC TIES THE PURCHASING OF BSES TO THE PURCHASING OF BSAS. IN MY OPINION, THIS TYPE OF ARRANGEMENT DOES NOT PROVIDE ADEQUATE UNBUNDLING FOR THE PURPOSES OF ONA.

CLOSING

THE ISSUES CURRENTLY BEING CONSIDERED BY THE STATES, AS WELL AS OTHER ISSUES, WILL BE DISCUSSED IN THE STATE-FEDERAL JOINT CONFERENCE WHICH THE FCC IMPLEMENTED UNDER SECTION 410 (B) OF THE COMMUNICATIONS ACT. I AM CO-CHAIRMAN OF THE TASK FORCE WHICH IS WORKING OUT THE PARAMETERS OF THE CONFERENCE. ITS FIRST MEETING IS SCHEDULED TO COINCIDE WITH THE NARUC MEETING TO BE HELD IN SAN FRANCISCO IN JULY OF 1989. IT IS MY EXPECTATION THAT THIS MEETING WILL PROVIDE ANSWERS TO SOME OF THESE ISSUES, OR AT LEAST, GIVE AN INDICATION OF WHERE COMPROMISE IS POSSIBLE. THANK YOU FOR THE OPPORTUNITY TO SPEAK TO YOU TODAY.