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## **REGULATORY REFORM IN THE TELECOMMUNICATIONS INDUSTRY:**

### **THE UNITED STATES**

*In the context of the OECD's programme on Regulatory Reform, country reviews are being undertaken. The scope of the review covers thematic areas and two sectors -- telecommunication and electricity. This work is aimed at producing, for each country reviewed, a multi-disciplinary review of progress on regulatory reform*

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## CHAPTER 6: REGULATORY REFORM IN TELECOMMUNICATIONS

### SUMMARY OF THE CHAPTER

The telecommunications industry has seen significant regulatory reform in OECD countries in recent years. Twenty-two OECD countries now have unrestricted market access to all forms of telecommunications, including voice telephony, infrastructure investment and investment by foreign enterprises, compared to only a handful only a few years ago. The success of the liberalisation process depends on the presence of a transparent and effective regulatory regime that enables the development of full competition, while effectively protecting other public interests. There is a need to promote entry in markets where formerly regulated monopolists remain dominant and to consider elimination of traditionally separate regulatory frameworks applicable to telecommunications infrastructures and services, and to broadcasting infrastructures and services.

The United States is a world leader in the reform of telecommunications regulation. At the time, the 1984 divestiture was a bold step that led to lower prices and more consumer choice in markets for long-distance and international services. It also opened network equipment markets and thus was one of many factors contributing to the dramatic decline in telecommunication switching and transmission costs. The recent WTO Agreement builds on these successes in the international context.

The Telecommunications Act passed in 1996 prohibited state and local governments from continuing to maintain any legal barriers to local entry. The 1996 Telecommunications Act continued three entry routes that new competitors could use -- resale, unbundling and separate facilities. The aim of the Act was not to choose one particular mode of local competition but to establish the conditions where all three would be available and to let competitors choose the mode of entry that makes the most technical and economic sense to them. To date, entrants have used all three methods to try and enter the local market.

There have been many legal, technical and economic issues that have had to be addressed. Although it is difficult to

3. The promotion of “universal service” has been a central objective of US telecommunications policy.<sup>1</sup> For many years, regulatory bodies at the state level have maintained low prices for local telecommunication service facilitated by long-distance prices well above competitive levels.

4. Perhaps the most important impact of regulatory reform is its contribution to facilitating an extraordinary level of innovation that has transformed the industry and had significant positive effects throughout the economy. Regulatory decisions such as the

**BOX 1: INDICATORS OF THE BENEFITS OF REGULATORY REFORM**

	<u>Price (nominal)</u>		<u>Incumbent Market Share</u>
	<u>84' - '92</u>	<u>92' - '96</u>	<u>'84 - '96</u>
Local Residential:	up 45%	up 5%	still near 100%
Intra-state Toll:	down 10%*	up 3%*	still near 100%**
Inter-state Toll:	down 50%***	down 17%	85% down to 55%
International:	N/A.	down 33%	100% down to 55%
Mobile:	N/A.	down 37%	competitive

\* Based on Bureau of Labour Statistics data that does not include discount plans. Thus the data may understate price reductions.

\*\* Incumbent market share in individual states varies considerably and, in select cases, may be considerably lower.

\*\*\* Includes both long-distance and international and composed only of AT&T information.

Source: FCC, *Trends in Telephone Service*, CCB, July 1998. Local price is the average monthly rate including taxes and the subscriber line charge, long-distance (interstate) and international is average revenue per minute. Mobile is average monthly bill and includes both cellular and broadband Personal Communications Service. Incumbent market share is according to total revenue.

**1.2 General features of the regulatory regime and market participants**

8. Over many years, decisions by the Federal Communications Commission (the “FCC”) shaped the general features of the regulatory regime as well as the identity of market participants by promoting competition in telecommunications markets in several dimensions. The *Hush-A-Phone* and *Carterfone* decisions, for example, facilitated the development of competition in customer premise equipment. Decisions in the early 1980s also provided a basis for vigorous resale competition while, as noted above, the *Computer II* and *Computer III* decisions played an important role in facilitating the development of markets for competitive value added network services (i.e. enhanced services). These decisions were emulated in other OECD countries where, in many cases, incumbents tried to extend their dominant positions to value added network services.

9. Over the 1960s and early 1970s, the FCC started to allow the private use of the spectrum giving rise to several competitors entering long-distance markets. To this point, there were no established provisions to mandate access to the incumbent’s public switched telephone network, and the regulatory regime did not establish effective controls on cross-subsidisation (i.e. the ability of the incumbent to recover costs incurred in markets where it competed by increasing the price charged to captive subscribers in regulated markets). The FCC responded to the changing market conditions of the 1970s by beginning to develop competitive safeguards including interconnection requirements and accounting mechanisms to prevent cross-subsidies from monopoly activities, but these were not effective.<sup>3</sup>

10. The root cause of the problem was that the incumbent was participating in both regulated monopoly and competitive markets. The incentives for anticompetitive conduct were magnified by the control of a bottleneck facility -- the local exchange -- by the regulated monopolist. Such an incumbent has an incentive to protect its market power in newly competitive markets by denying access to its network, especially when the costs of such an exclusionary strategy can be “recouped” by increasing the rate that traditional cost-of-service regulation allows.

11. The 1984 antitrust decree, which was essentially a vertical divestiture, was a response to this problem.<sup>4</sup> It generated a market structure in the United States that is unique in OECD countries. Under

the terms of the decree, AT&T was required to divest its local operating subsidiaries, creating seven Regional Bell Operating companies (the "RBOCs") which, subject to several waivers and exceptions, were not allowed to provide "long-distance" service. These restraints on providing long-distance assured that regulated monopolists would not participate in competitive long distance markets, and thus eliminated the incentive to discriminate.<sup>5</sup> The divestiture was also premised on the view that local exchanges had natural monopoly properties. Technological developments since 1984 have eroded the degree to which local exchanges possess such characteristics.

12. The divestiture put in place a distinction between long-distance (or interexchange) services and local exchange services. It defined 164 different Local Access and Transport Areas ("LATAs"), generally smaller than states, and stipulated that RBOCs were not allowed to provide any services that crossed these lines.<sup>6</sup> It also stipulated that RBOCs were not allowed to provide information services. The basic idea behind the divestiture was to assure that RBOCs provided only basic telecommunications services subject to economic regulation due to natural monopoly concerns.

13. With an effective competitive safeguard in place, vigorous competition in long-distance markets between AT&T and new interexchange carriers developed in the market for inter-LATA/inter-state telecommunications services under federal jurisdiction as well as the market for inter-LATA/intra-state services under state jurisdiction.<sup>7</sup> These markets account for roughly half of the US telecommunication market by revenue. The divestiture did not, however, facilitate the introduction of competition into intra-state/intra-LATA or local exchange services and, in fact, most states maintained legal entry restrictions into intra-state/intra-LATA and local exchange markets throughout the 1980s and early 1990s. In revenue terms, intra-state/intra-LATA is a relatively small but not unimportant segment of the market that constitutes a little under ten percent of total industry revenue.<sup>8</sup> At the end of 1997, there were

<b>1980s &amp; '90s</b>	Long-distance competitors became firmly established as the divestiture provided an effective safeguard against the incentive for local exchange carriers to discriminate against rival carriers on access terms. The market share levels attained by new entrants in long-distance increased significantly beyond levels experienced in other OECD countries.
<b>1994</b>	Acquisition of the leading cellular provider, McCaw by AT&T.
<b>Jan. 1998</b>	WTO Basic Telecom Agreement was signed by sixty-nine countries. By 1998, twenty-two of the OECD countries had unrestricted market access to all forms of telecommunications, including voice telephony, infrastructure investment and investment by foreign enterprises.
<b>mid-1990s</b>	British Telecom/MCI and; Sprint/Deutsche Telekom/France Telecom entered into alliances.
<b>1997</b>	Local operating companies: SBC/Pacific Telesis and NYNEX/Bell Atlantic merged.
<b>1997-98</b>	Four applications by RBOCs to provide long-distance service were denied by the FCC.
<b>1998</b>	The number two and number four long-distance providers, MCI and WorldCom merge.
<b>July 1998</b>	AT&T acquires a leading Competitive Access Provider, Teleport.

15. More recently, there have been considerable pressures for change in the structure of the US telecommunications market. Beginning in the mid-1990s, US long-distance carriers entered into international alliances with carriers from other countries. As part of the policy of promoting open international competition, the alliances were permitted on the condition that safeguards be put in place to assure that other US carriers were not discriminated against in regard to the terms of access to foreign local exchanges. In an important recent development, British Telecom announced that it plans to enter into an international agreement with AT&T.

16. A second important development is the recent increase in concentration at the level of local exchange carriers. Two mergers approved in 1997 (Nynex/Bell Atlantic and SBC/Pacific Telesis) have reduced the number of major local exchange carriers from eight to six. There are two additional merger proposals pending (Ameritech/SBC and Bell Atlantic/GTE) which would reduce the number of local exchange carriers still further to four. At the same time, the recent MCI/WorldCom merger has reduced the number of major long-distance carriers to three.

17. An important recent development in the US domestic long distance market is the recent merger between MCI and WorldCom. At the time of the transaction, MCI and WorldCom were the second and fourth largest providers of domestic long-distance services in the US. MCI and WorldCom also had a significant presence in the market for international and Internet backbone services. In its analysis of the market for domestic long distance services, the FCC stated that: "in light of the significant new transmission capacity that we believe will become available by the end of 1999, we conclude that existing market participants as well as potential market entrants will likely be capable of using the newly available capacity to constrain any attempted exercise of market power."<sup>11</sup> Thus, the FCC held that the merger was in the public interest subject to the condition that MCI sold its Internet business to a competitor.<sup>12</sup>

18. As in several OECD countries, mobile communications services provides an additional example where market liberalisation had a significant impact. In the US, the FCC introduced cellular competition through a duopoly licensing process. Throughout the 1990s, levels of penetration achieved by mobile communications grew strongly in the US, but at the same time has lagged behind the growth in other countries.<sup>13</sup> The US mobile market has recently been opened further through the use of auctions and resulting licensing of spectrum licenses Personal Communications Services. Some highlights related to the emergence of mobile competition is provided are box 3 below:

**BOX 3: DEVELOPMENTS IN THE EMERGENCE OF MOBILE COMPETITION**

- ◆ In the early 1980s, two cellular licenses were granted in each of numerous separate geographic areas across the United States. One license was reserved for the in-region local exchange carrier, a second license was granted to an independent player.
- ◆ Throughout the 1980s and early 1990s, cellular communications constituted a fairly small segment of the telecommunications industry, appealing largely to a narrow sub-set of subscribers with quite specialised needs. As of December 1993, national subscribership was about 16 million and the penetration rate was about 6 percent. The average monthly bill was just over \$60.
- ◆ As part of the 1993 Budget Act, Congress authorised the FCC to use competitive bidding to award certain licenses for the right to use the electromagnetic spectrum. Over 1995 and 1996, four blocks of spectrum used for broadband Personal Communications Services were auctioned.
- ◆ By December 1997, mobile communications (i.e. both cellular and PCS) had become a large and growing segment of the telecommunications market. National subscribership was about 55 million and the penetration rate was just over 20 percent. The average monthly bill had fallen to just over \$40.<sup>14</sup>
- ◆ In its Third Annual CMRS Competition Report in June 1998, the FCC concluded: "...this past year has seen the beginnings of a shift in the relationship between wireless and wireline services. A number of wireless technologies have begun to take aim at services long thought of as the sole province of wireline operators."

### ***1.3 The Promotion of Local Competition***

19. In the years since the 1984 divestiture, the promotion of local competition has been a central policy focus. Conditions of entry into local markets varied, and still vary, significantly across states. In the early 1990s, some state regulators developed initiatives to extend the beneficial effects of regulatory

Telephone's "Open Market Plan."<sup>18</sup> In exchange for relief from regulatory rules, Rochester Telephone voluntarily broke itself into a network operator and a retail company. The network operator intended not to engage in any direct sales to individual subscribers to instead act as a carriers' carrier, providing service on a wholesale basis to its own retail company as well as any entrants at a rate 5 percent below the regulated retail price. Time Warner entered the market on a trial basis, providing access through its cable plant and relying on the Rochester Tel network company for other elements of local service.

22. The approach taken to promoting local competition differed from that taken in regard to promoting competition in long-distance markets in 1984. Rather than implementing a structural divestiture, US policy makers attempted to promote entry by relying on co-operation from incumbent local exchange carriers. The basic theory behind the Ameritech and Rochester initiatives was that even if natural monopoly characteristics made full-scale facilities-based entry into local markets uneconomic, it may be possible for competitors to enter into the provision of some aspects of local competition.

23. In the Rochester Telephone case, the intention was that cable companies might be able to use their cable access to individual subscribers and rely on Rochester Telephone's network for switching, aggregation and termination. In the Ameritech example, the idea was that entrants could self-supply some services and rely on Ameritech's network for the services that were the most difficult or expensive to self-supply. Thus, for example, interexchange carriers or Competitive Access Providers might be able to supply their own bulk transport and switching, but rely on Ameritech for access to individual subscribers (i.e. Ameritech's local loops). Neither of these strategies to open local markets has, as yet, proven to be effective.

24. The next significant development in the policy to promote local competition was the *Telecommunications Act of 1996*, which represents a renewed attempt to facilitate the development of competition in all telecommunications markets, including local. The *Act* was implemented by three major FCC orders known as the "Competition Trilogy"-- local competition; universal service reform; and access charge reform -- designed to reform the regulatory regime. The interconnection, unbundling and resale provisions of the 1996 *Act* are closely related to earlier attempts to facilitate local entry. In fact, specific aspects of the implementation of these provisions are modelled after pre-existing initiatives of state Public Utility Commissions. The *Act* attempts to strengthen these initiatives by making approval to enter in-region inter-LATA toll markets contingent on a demonstration that local markets are open to competition. Key provisions of the 1996 *Act* are summarised in Box 4 below:

**Box 4: Key Features of the 1996**



**Universal Service:** An explicit mechanism to maintain local rates at affordable rates is mandated.

**Access Charge Reform:** To facilitate the development of an explicit mechanism for universal service, the FCC reformed the access charge rate structure.

**Entry into long-distance:** RBOCs are allowed to provide out-of-region inter-LATA service. A procedure is provided for under which the RBOCs are permitted to enter in-region inter-LATA when their local markets are found to be sufficiently open to competition. In assessing whether the local markets are open, the FCC is directed to give “substantial weight” to the DOJ’s assessment of a “competitive checklist.” Once an RBOC gains approval to offer inter-LATA service, they are required to do so subject to an accounting separation for a three year period.

**Forbearance:** The FCC is directed to forbear from aspects of regulation that are deemed to be unnecessary.

**Removal of State Barriers to Entry:** State regulation that raises barriers to entry into local markets is pre-empted.

provide both traditional voice telephony and new services such as interactive broadband video services, tele-medicine or electronic commerce. No one can predict exactly which networks or standards will emerge, and which new information services consumers will demand on a widespread basis. There is, however, strong evidence that relative costs are changing in a manner that will create new markets and new infrastructures capable of offering new as well as existing information services.<sup>22</sup>

27. Potential alternative technologies to provide telephone service include cable systems, mobile services and wireless local loop. A primary advantage of cable systems is their access link to a large number of homes. Cable systems “pass by” over 95 percent of homes with a broadband access. In coming years, this broadband access link will likely allow cable companies to provide not only traditional voice telephony, but also Internet service on a widespread commercial basis. The current technological challenge for cable systems is to “upgrade” their networks to allow for interactive communications.

28. Existing networks providing mobile services (including cellular and PCS) provide a second potential substitute for the provision of traditional local telecommunications. When they were initially introduced, price and reliability considerations meant that mobile services were used almost exclusively as a complement to primary wireline. Increasingly, however, cellular and now digital PCS are gaining acceptance as a substitute as well as a complement to traditional wireline telephony.

29. New technologies employing wireless local loop access provide a third potential entrant to local markets. Networks using these technologies are currently less developed than cable or mobile telecommunications networks. However, such alternative networks are likely to have a considerable comparative advantage in providing access services to rural or remote subscribers. An added advantage is that the investments necessary for entry are less likely to involve irreversible (i.e. “sunk”) investments.<sup>23</sup>

30. The speed with which these alternative delivery systems are likely to develop depends in part on regulatory developments such as local rate rebalancing. Current geographic rate averaging requirements mean that some high-cost (e.g. rural) subscribers are served at prices below true cost. These are the customers for which wireless technologies are likely to be most well-suited. The speed with which these alternative delivery systems are likely to develop also depends on the speed with which new information services are introduced. There is an increased incentive to enter if a new network can expect to earn revenue from both voice telephony and other new information services.

31. We note, however, that section 706 of the Telecommunications Act directs the FCC to examine whether advanced telecommunications services are being made available to all Americans on a reasonable and timely basis.

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## 2. Regulatory Structures and their Reform

### 2.1 Regulatory Institutions

33. The regulatory structure in the United States is a complex web that involves the interface of jurisdiction over sector-specific regulation between the states and the federal government, the relationship between sector-specific regulation and antitrust law, as well as between these agencies and the courts. In other OECD countries such as Canada and Australia, the regulatory structure is somewhat simpler because there is exclusive federal jurisdiction. The dual federal-state role can give rise to both costs and benefits. While the scope for states to pursue different policy initiatives can sometimes promote the development of innovative schemes to forward regulatory reform, the jurisdictional overlap also generates costs and uncertainties in policy development. The dual federal-state role in the US telecommunications industry has been the source of numerous jurisdictional battles in the Court of Appeals.<sup>24</sup>

#### **BOX 6: Regulatory Institutions**

The US regulatory regime provides for joint Federal and State jurisdiction:

- ◆ Federal Communications Commission (the “FCC”): The FCC is an independent agency consisting of five Commissioners. Commissioners are nominated by the President subject to confirmation by the Senate. Once confirmed, they cannot usually be removed from office during their five year term. One of the Commissioners is appointed Chair by the President. Decisions are made by simple majority rule of the Commissioners. The Federal Communications Commission has exclusive jurisdiction over inter-state matters, as well as intra-state matters where legislation pre-empts State authority.

- ◆ State Public Utility Commissions (the “PUCs”): Each of the fifty states and the District of Columbia have public utility commissions. The legal authority of PUCs derives from the relevant State legislature. The State PUCs, in general, have jurisdiction over intra-state matters such as prices and entry conditions into local markets as well as intra-LATA long-distance.

In addition, a number of other federal level institutions play a role:

- ◆ The Department of Justice, Antitrust Division (the “DOJ”): For historical reasons, the DOJ rather than the Federal Trade Commission takes the lead role in antitrust enforcement in telecommunications.

- ◆ The Courts: Regulatory or antitrust decisions in telecommunications can in general be appealed to the Courts. Prior to the 1996 *Telecommunications Act*, the divestiture consent decree (i.e. Modification of Final Judgement) was administered by the US District Court for the District of Columbia.

- ◆ The National Telecommunications & Information Administration: an agency of the US Department of Commerce, is the Executive Branch's principal voice on domestic and international telecommunications and information technology issues. The NTIA focuses on telecommunications infrastructure and the US government's legislative initiatives in telecommunications.

- ◆ The Office of the US Trade Representative: is responsible for developing and co-ordinating US international trade, commodity, and direct investment policy, and leading or directing negotiations with other countries on such matters (including telecommunications issues). The US Trade Representative is a Cabinet member who acts as the

## 2.2 *Telecommunications Regulation and Related Policy Instruments*

### 2.2.1 *Regulation of Entry and Service Provision*

34. Historically, regulation of entry and service provision have varied depending on whether the market was under state or federal jurisdiction. Entry conditions have been significantly liberalised in markets under federal jurisdiction many years before comparable reforms were undertaken in other OECD countries. The liberalisation of entry conditions in markets under state jurisdiction has proceeded more slowly.

35. At the federal level, the FCC liberalised entry conditions through a number of decisions dating back as early as the 1950s and continuing over many years. For example, FCC decisions liberalised the conditions of entry into customer premise equipment, value-added and resale markets. In regard to facilities-based entry into long-distance, entry conditions were liberalised gradually. In 1959, in the *Above 890* decision, the FCC permitted private use of the spectrum, in effect allowing rivals to enter into the provision of long distance services.<sup>25</sup> In the late 1960s, the FCC took additional steps to lower barriers to entry in the *Carterphone* decision as well as decisions to grant microwave licenses in 1969 and 1971.<sup>26</sup>

36. Important barriers to entry into inter-LATA markets remain. Section 271 of the *Act* requires RBOCs to show that the local market in a particular state is sufficiently open to competitors before it is permitted to enter into the provision of inter-LATA service within that state. Under this section, the FCC “shall not approve” a RBOC application to enter long distance markets unless it finds that the RBOC has concluded agreements with one or more facilities-based competitors to provide access or interconnection (which satisfies the “competitive checklist”) as well as a public interest test. Alternatively, if a RBOC has not received a qualifying interconnection request within a designated period of time, the 271 test can be satisfied by providing a statement of generally available terms and conditions that complies with the competitive checklist and that “has been approved or permitted to take effect by the [relevant] state commission.” Importantly, in the assessment of a section 271 application, the FCC must give “substantial weight” to the DOJ’s evaluation.

37. Section 271 of the Communications Act, as amended by the Telecommunications Act of 1996, maintains the pre-1996 Act prohibition against a RBOC providing inter-LATA long-distance service originating in a state within its local service region until the FCC approves an application demonstrating that the RBOCs local telephone market is open to competition. Section 271 contemplates that to permit the RBOCs immediate entry into the long-distance market would allow the RBOCs to leverage their bottleneck control in the local market into the long-distance market, thus both threatening competition in the long-distance market and entrenching the RBOCs monopoly into the local market. Apparently, the US Congress believed that unless the RBOCs had some affirmative incentive to open their markets to competition, it would be highly unlikely that competition would develop expeditiously in the local market. The US Congress thus decided to use the promise of long distance entry as an incentive to prompt the RBOCs to open their markets to competition.

38. The analysis of local competition by the DOJ and FCC in recent section 271 applications makes a strong case that, based on the available facts, the specific markets considered were not “irreversibly” open to competition. Thus, this analysis shows that a potentially important role remains for the restraints on RBOC entry. The DOJ analysis follows the framework provided by the so-called “competitive checklist.” The approach relies on the proposition that, by denying inter-LATA authority, the prospects for local competition are advanced because the relevant RBOC would have an incentive to co-operate with new entrants.

39. The remaining line-of-business restrictions are potentially an important constraint on economic activity. The RBOCs argue that, as a result of these restraints, they as well as consumers forego the benefits of potentially important economies of scope in the joint provision of local and long-distance service. Because of the RBOCs bottleneck control of the local market and the early stage of the opening of local markets, these restraints will likely remain in place under the existing regime for the foreseeable future.

40. The FCC has promoted flexibility in spectrum licensing in order to reduce barriers to entry that spectrum scarcity would otherwise impose on communications markets. In recent proceedings to license

corresponding intra-state rate. Between 1985 and 1990, the inter-state rate for termination fell much faster than the intra-state rate, and by 1990, the inter-state rate was about 50 percent below the median of intra-state rates.<sup>31</sup> The inter-state rate continued to fall over the 1990s. In terms of the total charge per conversation minute (i.e. including charges both at origin and termination), the interstate charge has fallen dramatically, from over 17 cents on 1984 to less than 4 cents in 1998.<sup>32</sup>

46. In regard to quality of interconnection, a primary issue has been “equal access” (sometimes referred to as “dialing parity”). Equal access was implemented much more quickly in regard to inter-state services. FCC information shows that equal access for subscribers was implemented rapidly after the 1984 divestiture in regard to inter-LATA toll.<sup>33</sup> Equal access in regard to intra-LATA markets has been implemented much more slowly. The result is that, in many states, a subscriber who chooses to switch to a rival intra-LATA toll carrier must dial extra digits every time he or she makes a call.

47. The 1996 *Act* builds on these policies to reduce interstate access fees. First, as discussed above, the FCC concluded in the *Local Competition* decision that interconnection prices should be based in Total Service Long Run Incremental Cost plus a reasonable share of forward-looking joint and common costs. Second, it provides for an explicit mechanism to fund universal service. This has allowed the implicit subsidy that excessive interstate access fees formerly provided to be eliminated while allowing other policy objectives to be met. The result has been seen in effective competition in inter-LATA long-distance markets.

48. The 1996 *Telecommunications Act*

exchange carriers sell wholesale service for resale by competitors at prices that equal the retail price minus the cost that the local exchange carrier avoids by not having to retail the service itself.

51. The main procompetitive rationales for resale and unbundling is that it may promote facilities-based competition. Resale can potentially play a multi-purpose role in promoting and sustaining competition in telecommunications services. Both resale and unbundling may be effective entry vehicles for new entrants that may initially lack the necessary capital to build their own networks, in whole or in part. Resale may also allow for small competitors that will not become facilities-based players to offer service. At the same time, resellers may stimulate the usage of the incumbent's network, and thus may benefit the incumbent facilities-based provider and further growth of an information economy. The primary reason for encouraging competitive entry is to benefit both residential and business users of telecommunications services. Restricting methods of entry can create price signals that are not optimal for a fully competitive market and therefore can cause investment distortions and higher prices. Because the goal of competition policy is increased consumer and public welfare, equivalent treatment for all competitors regardless of whether or not they own facilities should be encouraged.

52. It is important to note that unbundling and resale can also impede facilities competition. If elements are made available at low prices relative to the cost of investing in new facilities, entrants will use the incumbent's facilities even if, on a stand-alone basis, the investment would have been an economic proposition for the entrant. That is, there is a danger that regulatory prescriptions for unbundling at prices that are excessively low may act against the consumer's longer run interests through the reduction of incentives for companies to install their own wired (or wireless) networks. In general, resale and unbundling should be used as a temporary measure subject to review over time.

#### 2.2.4 *Regulation of Pricing*

53. Historically, the goal of promoting universal service has given rise to prices that do not reflect relative costs.<sup>38</sup> Prices charged to business users and for long-distance services were set at higher than competitive levels to allow low rates (sometimes below cost) for local service to be maintained. At the same time, local rates in rural and remote areas were held at low levels relative to rates in urban areas. The maintenance of low rates for local telecommunications service in rural and remote areas generates a particularly large economic distortion since these are generally higher cost subscribers to service.

54. The adoption of policies to rebalance these rates have played an important role in the reform of telecommunications regulation in the United States. Three main types of rate rebalancing are long-distance/local, urban/rural and business/residential.

55. The increase in competition in inter-LATA markets since the 1984 divestiture has given rise to significant long-distance/local rate rebalancing. Information on changes in prices of local service, intra-state toll (including some inter-LATA and some intra-LATA) and inter-state toll (i.e. inter-LATA) service since 1984 are provided in box 9. As the box illustrates, while there has been considerable rebalancing of inter-state rates, there has been less rebalancing of intra-state prices.<sup>39</sup>

**BOX 7: CHANGES IN PRICES IN INTRA-STATE AND INTER-STATE MARKETS**



**BOX 8: ECONOMIC ARGUMENTS FOR RATE REBALANCING**

There are three main economic benefits of rate rebalancing:

**Enhancing Productive Efficiency:** The maintenance of rates either above or below their true economic cost distorts entry decisions and thus distorts productive efficiency.\* For example, the maintenance of prices above costs for long-distance calls may prompt subscribers to substitute toward other less efficient arrangements or networks to “by pass”

**BOX 9: PROGRESS TOWARD RATE REBALANCING - A CROSS-COUNTRY COMPARISON**

OECD data contained in the Communications Outlook, provides comparisons of the price to final subscribers of 20 hours per month of local service used for Internet access at hours of peak usage. Specifically, it uses a monthly basket including the monthly cost of connection (spread over 5 years), monthly line rental and usage cost of 20 local calls each of one hour duration. No long-distance charges are included. The graph below shows the monthly cost of local residential service, 1996 \$US (Purchasing Price Parity) for the above noted number of local calls, peak times, in six OECD countries, as compared to the OECD average:



(Chile), contributions from carriers (United States, Dominican Republic) or contributions from spectrum auctions (Guatemala).

62. There are three principal universal service programs in the US. First, the traditional programs to subsidise service to high cost areas are continued with operators delivering universal service<sup>48</sup> being able to draw compensating support from a Universal Service Fund. Second, the “Lifeline Assistance” and “Link Up” programs are designed to subsidise hook-up cost and the cost of monthly phone bills to qualifying low income customers provided by all eligible telecommunications carriers. Third, discounts to assist schools, libraries and rural health care centers to connect to the ‘Information Superhighway’ have been initiated. These discounts became colloquially known as the “E-rate” and were designed to cut between 20 and 90 percent off the monthly charges of connecting to the network, and in some cases, some of the internal wiring costs. The discounts attracted applications from more than 40,000 schools and libraries. Box 11 provides highlights of the reforms to universal service.<sup>49</sup>

#### **BOX 10: REFORMS TO UNIVERSAL SERVICE**

1) Introduction of transparent and explicit support for universal service. All carriers satisfying specific conditions can obtain support from the federal Universal Service Fund regardless of the technology used. All carriers, including wireless carriers, are required to make contributions to the universal service fund based on end-user revenues. To qualify for access to the fund, a carrier must be able to offer (and advertise) service throughout a geographic region known as a “service area.” The size of these service areas is left to the discretion of state regulators.

2) Revision and extension of support for low-income customers (Lifeline and Link-Up America);

3) Introduction of a specific fund for the needs of schools, libraries and rural health care centers;

4) Restructuring of the Subscriber Line Charge and the Common Carrier Line Charge, to partially transfer Universal Service Fund support costs to subscribers and interexchange carriers; increased subscriber line charges for second residential lines and multiline business customers; gradual phasing out of the existing traffic sensitive Common Carrier Line charge with a flat-rate Presubscribed Interexchange Carrier charge.

63. A central economic principle for the development of a universal service fund is that it should achieve other policy goals in the manner that distorts competition as little as possible. That is, any subsidies to carriers should be portable and available to all competitors. In addition, the fund should be financed to the extent possible from general tax revenues.<sup>50</sup> In practice, few countries (Chile is one exception) fund universal service through general tax revenues. Alternatively, if it is necessary to finance the fund from the telecommunications industry, revenues should be obtained from charges on services that are relatively inelastic (e.g. subscriber line charge). Competitively neutral taxes from all carriers can often minimise the economic distortion that would otherwise result from the tax.

64. An additional principle is that the fund should be targeted so that, taking the size of the fund as given, maximum positive impact toward the relevant policy goals is achieved. To the extent that high telephone penetration is a policy goal, funding should be focused on marginal subscribers that are most likely to fall off the network as a response to a price increase. Similarly, to the extent that income redistribution is a policy goal, funding should be targeted on low income subscribers. In this regard, it is noteworthy that the US Link-up and Lifeline programs are targeted to those with the most need.

65. Rate rebalancing and other entry promoting reforms can also promote universal service goals. Increasing competition may expand the availability of low-cost telephone services. In some countries (e.g., the United Kingdom) niche market operators have begun operating payphones profitably even

though, due to their previously unprofitable provision by the incumbent carrier, payphones had to be mandated as an aspect of universal service obligations (e.g., in the UK and Australia). Subsidised services delivered as part of universal service programs can generate disincentives for commercial provision.

66. Important aspects of the initiative to reform universal service funding in the US have not yet been fully implemented. The FCC is currently examining models to establish revenue benchmarks that will allow universal service funding to be targeted at high cost subscribers. This initiative appears to hold considerable promise as a means to promote the policy goals related to universal service without distorting competition. On the other hand, initiatives to reform universal service funding do not currently apply to rural telephone companies that service many of the areas of the country where local prices do not cover costs by a large margin.<sup>51</sup>

#### 2.2.6 *International Aspects*

67. As also discussed in chapter 4, progressive liberalisation of the US market for telecommunications services over time has earned the sector a strong historical record of international market openness. Certain US service sectors such as domestic long distance, international value added network services, and the IMTS switched resale (basic telephony) market have been open to foreign participation for years. More recently, important policy developments at national and international levels have dramatically altered the competitive landscape for telecommunications services and further improved prospects for enhanced market openness in the sector. At the national level, the *Foreign Carrier Entry Order* issued by the FCC in November 1995 ushered in a new regulatory philosophy on foreign participation in the US telecommunications market. But the defining event in shaping the current US regulatory regime for foreign participation in the telecommunications services market was the successful conclusion in February 1997 of the WTO agreement on basic telecommunications.<sup>52</sup>

68. Recent substantive regulation and market openness in the sector are thus best understood from pre and post-WTO agreement perspectives. Pre-WTO, foreign participation in the market was regulated on the basis of the *Foreign Carrier Entry Order* and through application of a reciprocity-based “effective competitive opportunities” (ECO) test as part of an overall public interest analysis for authorisations relating to the provision of international telecommunications services. The ECO policy ordinarily

have a chilling effect on license applications by other prospective competitors, eroding prospects for enhanced foreign participation in the sector.

71. Improvements in processing procedures concerning the FCC's undertaking to act on Section 214 license applications should contribute to market openness. With its adoption of the new foreign participation rules, the FCC stated it would act within 90 days on all Section 214 applications except those that raise issues of "extraordinary complexity." In addition, the Commission expanded its streamlined processing rules under which, absent any objections, a license may be presumed granted after 35 days. Foreign and domestic carriers alike have benefited from streamlined treatment: recent examples of foreign beneficiaries include an application by Japan's NTTA Communications to operate as facilities-based and resale carrier to Japan and an application by Canada's Teleglobe Inc. for the transfer of control of Excel Communications to Teleglobe. However, processing of applications by carriers affiliated with foreign carriers that possess market power in non-WTO markets are not eligible for streamlined processing. On a broader level, potential new market entrants, whether they are domestic or foreign, may encounter licensing and approval delays when incumbent competitors introduce opposing arguments to pending applications. The degree to which such applications (and those which raise issues of extraordinary complexity) may languish at the hands of the regulatory authorities remains of considerable concern to affected carriers.

72.

2.2.7 *Number Portability*

74. Number portability is defined by the 1996 *Telecommunications Act*

79. The 1996 Act provides two mechanisms providing systematic review of FCC regulations. First, as noted, the Act provides for a so-called “Biennial Regulatory Review.”

80. Second, the 1996 Act provides explicit “forbearance” procedures whereby the concept of eliminating regulations that are no longer necessary given current market conditions is codified.<sup>57</sup>

introduction and (especially given the complexity of distinctions that may need to be drawn in a dynamic industry such as telecommunications) can impose costs on market participants.

85. Developments since 1984 have eroded the basis for the distinctions the consent order created. First, in 1986, the FCC abandoned the distinction between monopoly and competitive services drawn in *Computer II*. It replaced structural separation (i.e., the requirement that AT&T could engage in competitive services, such as enhanced services, only by forming a separate corporate affiliate) with non-structural (i.e., accounting and pricing) safeguards that would ensure that neither AT&T nor the BOCs could use revenues from their basic services operations to cross subsidise their provision of competitive services. Second, over time, the distinction between the switching, transport and aggregation functions that had been drawn before divestiture on the basis of whether they were used to provide local or long-distance services has largely disappeared. Finally, in a related point, information services are now often provided by both local and long-distance networks. At the same time, functions and services that were likely "monopoly" services in 1984 (e.g., local exchange and intra-LATA toll services) are potentially competitive. Viewed in isolation, arguments can be made that there are possible substitutes for most, if not all, parts of RBOC networks -- including even the local loop. These facts suggest that the pre-divestiture notion that some aspects of the BOC networks are a "natural" monopoly is no longer applicable. Yet, it is unclear whether the limited entry by new competitors into many BOC local exchange areas suggests that some elements of the BOC networks remain as natural monopolies. Until the 1996 Telecommunications Act, the decision to allow competition in the local exchange area was under the authority of the states and many states did not allow such competition. With implementation of the 1996 Act, legal barriers to local entry have been removed and it is believed that, over time, local competition will develop.

86. On balance, however, it would appear that over the last decade and a half, the benefits resulting from the market structure created by the divestiture decree outweigh any detriments that resulted from implementation of that decree. The order has allowed the creation of a competitive market structure with three major and many smaller interexchange carriers. The decree has also allowed the emergence of several major local exchange companies. The regime mandated by the divestiture decree that requires interconnection between interexchange carriers and local exchange companies is well established. With these effective regulatory safeguards now firmly in place, the need for the antitrust divestiture may be reduced. An antitrust policy focused on effective merger control and, where appropriate, application of monopolisation provisions is likely more appropriate in today's Telecommunications industry.



**2.3. The Dynamic View: Convergence in Communications Markets**

88. While traditional telecommunications and broadcasting are both regulated by the FCC at the federal level, there are significant differences between the regulatory regime applied to these sectors. As technology develops, the possibility of entry into broadcasting by telecommunications carriers is quickly becoming more realistic. In fact, many users of the Internet are currently making use of telecommunications networks to download video images. As a result, traditional distinctions between broadcasting and telecommunications are quickly breaking down.

89. With the convergence of communications media, it is becoming increasingly difficult to designate individual operators and even services as falling into one category or another. Such fragmented regulation not only restricts companies from taking full advantage of technology innovation and business opportunities but also prevents users from enjoying better possible services. Problems raised by relatively burdensome broadcasting regulation can be crucial since it may determine the extent to which convergence is effectively reflected in laws, policy initiatives and regulations.<sup>60</sup>

**3. Market Structure and Performance**

**3.1 The Structure of the Market**

90. The telecommunications industry is a relatively large part of the US economy which encompasses traditional common carrier service as well as other activities such as network equipment manufacturing, customer premise equipment, and private line services, and accounts for about \$600 billion in economic activity.<sup>61</sup> Looking specifically at total revenue from traditional common carrier services, the most comprehensive data is available for 1996. In 1996, total revenue from traditional common carrier services was about \$222 billion. Local exchange carriers accounted for about \$96.5 billion and interexchange carriers accounted for about \$93.2 billion. Cellular and PCS providers accounted for about \$26 billion and resellers of various services accounted for about \$6.5 billion.

**BOX 11: 1996 TOTAL REVENUE OF US CARRIERS (IN MILLIONS)**

	<u>Local Service</u>	<u>Long Distance</u>	<u>International</u>
CAPs and CLECs	\$1,328.1 (1.4%)	0	0
Local Exchange Carriers	\$95,188 (98.6%)	12.0 %	0
AT&T	0	42.1 % (\$39,300)	\$8,900
MCI	0	17.6 % (\$16,400)	\$3,800
Sprint	0	8.5 % (\$7,900)	\$1,700
World Com	0	4.8 % (\$4,500)	\$600
Other IXC's	0	15.0 %	

Source: FCC Trends in Telephone Service, July, 1998.

91. As in most countries, telecommunications services in the US are differentiated on the basis of whether they are local or long distance communications. However, in the United States, long-distance communications are divided into intra-LATA and inter-LATA regions and carriers charge differently

depending on service areas. Local service is generally billed on a flat, per month basis and in 1996 accounted for about \$61 billion. Long distance toll is generally billed per minute and accounted for about \$93.2 billion during the same time period, \$74.8 billion for domestic toll and \$18.5 billion for international toll.<sup>62</sup>

92. The revenue figures in Box 9 demonstrate the dichotomy in the structure of the US market. Local exchange carriers continue to dominate local service, neither interexchange carriers or cable service providers have established a significant market presence. Similarly, local exchange carriers are restricted in their ability to compete in long distance and international markets. Most of the LECs twelve percent market share consists of intra-LATA long distance, though as noted above, the 1996 *Act* allowed them to provide out-of-region inter-LATA services. In February 1997, the FCC extended this authority to include international services originating from “out-of-region” points in the US and terminating at various international points.<sup>63</sup>

### **3.2 Market Performance**

93. The rationale for regulatory reform is the desired effects it is expected to deliver. Thus in assessing the performance of regulatory reform, the primary criterion is how well it has delivered these desired effects. The perspective adopted here is primarily that of the customer. This is appropriate since government policy makers, as well as telecommunication regulators (including those in the US) have repeatedly declared that it is the impact on the customer (both residential and business) which should and does drive regulatory policy. The main elements of market performance are:

- lower prices;
- increased range of product choice;
- improved quality of service; and

conditions, including up front fees for some schemes.<sup>65</sup>

1996, the FCC processed 35,095 written complaints and inquiries. Of these, 36% involved slamming issues (becoming the customers' telephone service provider without their knowledge or consent), 13% involved pay-per-call services, and 12% involved operator service provider rates and services.<sup>69</sup> The remaining complaints covered a range of issues including international telephone rates, unsolicited calls or faxes and telemarketing.

102. The number of households with telephones increased over the period. In 1988, the fraction of households with telephone service was 85.4 percent and the fraction of additional lines for households with telephones was 2.7 percent. By 1992, the respective fractions had risen to 91.0 percent and 9.1 percent. By 1996, the respective fractions were 95.1 percent and 16.5 percent.

### 3.3.4 *Productivity and Technological Development*

103. FCC statistics provide information on labour productivity index for the telecommunications industry which relates output to the employee hours expended in producing that output. The growth in average labour productivity is higher than in other US industries. This higher-than-average annual growth rate is likely the result of telephone companies installing more efficient, advanced technology as well as increases in human capital.

#### **BOX 12: LABOUR PRODUCTIVITY**

Investments in new technologies, particularly by interexchange carriers, have increased the quality of capital available. Information published by the FCC from the US Bureau of Labour Statistics relates output per employee hours expended. Over the period 1951-1995, the index rose an average 5.8 percent. The FCC reports that this labour productivity factor is higher than the average in other industries (typically between 3 and 4 percent):

##### Labour Productivity Index (1987=100) for the Telephone Communications Industry Measured in Output per Hour

Year	Index	Year	Index	Year	Index	Year	Index
1965	28.9	1980	67.6	1991	119.8	1994	141.6
1970	35.6	1985	88.9	1992	127.7	1995	144.6
1975	49.3	1990	113.3	1993	135.2		

Source: FCC (Common Carrier Bureau) *Trends in Telephone Service*, February 1998, Table 5.2

104. There are signs that even the limited amount of competition in local service markets has stimulated network modernisation. The new local service competitors (CLECs) doubled the total amount

digital modem and phone service that promises to bring mass market, high-speed Internet access to every US home and business. The agreement between the Bells, Microsoft, Intel and others involves digital subscriber line technology that allows copper phone lines to transport multiple channels of data. Originally developed for video transmission, the new technology will move data at speeds between 0.6-1.5 Mbps compared to today's modems which operate at a top speed of 56 Kbps.

106. Qwest, IXC, Williams Communications and Level 3 Communications Inc. are expected to build new fiber networks which will result in six national long-distance networks in operation. Moreover,

**4.1 General assessment of current strengths and weaknesses**

111. For other OECD countries, the US example provides an important example from which to draw insights. Many policy ideas and initiatives have been experimented with by US policy makers and thus other OECD countries can use the experience, both positive and negative aspects, to fine-tune their own policy initiatives. At a more fundamental level, however, the US has been uniquely successful to date, and provides a useful standard for OECD countries with less experience in regulatory reform. Below, we list select strengths and weaknesses of the US regulatory reform experience with a view to highlighting lessons learned.

**STRENGTHS**

- *Economically efficient interstate interconnection pricing based on forward-looking costs.*
- *Effective role of competition policy.*
- *Domestic market structure with several carriers with facilities and a customer base (as well as resellers and competitive access providers) which, if the conditions were right, could compete in all markets including local.*

are also present. As a result, there are a number of potential competitors to telecommunications carriers that have the potential, in the future, to significantly erode incumbent market power. The availability of these alternative infrastructures also provides the opportunity for efficient networks, including hybrids, to evolve to efficiently provide communications services.

116. The modern telecommunications infrastructure provides a sound basis for rapid convergence between communications services. Even today, technology is being used that allows traditional broadcasting services to be carried on telecommunications networks and that allows voice telephony to be carried using packet-switching rather than circuit-switched means. At the same time, ISDN has already been widely introduced as a faster access technology, and even faster broadband access technologies are on the horizon.

117. As in most OECD countries, the US has recently taken steps to significantly increase spectrum available to new entrants into services such as mobile communications. The US has led other countries in adopting flexible licensing frameworks that allow spectrum to be allocated to carriers that can use it most effectively.

#### **WEAKNESSES**

- *Increasing economic costs of maintaining inter-LATA and information restraints on RBOCs.*
- *Limited competitive entry into the local market.*
- *Overlap in jurisdiction between state and federal regulators.*

118. As discussed above, local markets are largely monopolies (although not in law). Rather than implementing a structural divestiture to directly address anticompetitive safeguards, policy has attempted to promote co-operation by incumbents with remaining dominant positions. Local prices have not fallen and the technology to provide subscriber access -- the twisted copper pair -- has remained static for decades. The US experience in local markets demonstrates the difficulties that can arise when policy

and important provisions of the 1996 Act are exempted. There are likely additional benefits that can be achieved if the overall streamlining process is made more systematic.

#### **4.2 *Potential Benefits And Costs Of Further Regulatory Reform***

122. Regulatory reform has already provided significant benefits to the US economy. The most concrete benefit has been the dramatic reduction in the overall costs to subscribers of inter-LATA long distance and international telecommunications services. Further reductions in costs during the 1995 to present, as well as reductions in the cost of mobile telecommunications have provided further concrete benefits.

123. These benefits are likely the product of two main factors. First, market power of firms in international and long distance markets has been significantly reduced, thus reducing the distortions of pricing above competitive levels. Second, due to a number of factors including technological change and increased competition in both service and equipment markets, the costs of switching and transmission have fallen dramatically. The degree of the adoption of technological change is reflected in the level of investments in fiber optics and digital switching discussed above.

124. From a longer-term perspective, the most important impact of regulatory reform is its contribution to facilitating dynamic growth and innovation. Despite the lack of local competition, technological change will continue to improve the prospects for entry in the next few years. A potential benefit of further reform is to put the conditions in place to allow competition to evolve in the local exchange network. Revenues from local exchanges are considerably larger than inter-LATA long distance and international markets combined. Competition could speed the adoption of new technologies in local exchanges and facilitate the introduction of new services. Competition in local markets could allow a rapid deregulation of many aspects of telecommunications. Eliminating local market power is the most effective way of dealing with competitive concerns of vertical integration.

125. The development of a broadband subscriber access to national fiber networks would eliminate a technical bottleneck and allow enormous increases in speed and capacity of networks. The new products and services that consumers might demand from such a network are difficult, if not impossible to predict. But the possibilities are substantial.

#### **4.3 *Policy options for Consideration***

126. There is an extensive literature on recommendations for regulatory reform in the US telecommunications industry. Based in part on this literature, this section builds on international consensus regarding steps to promote good regulatory practices applied to market realities in the US telecommunications industry. The following recommendations are also based on the "Policy Recommendations For Regulatory Reform" set out in the OECD Report on Regulatory Reform (OECD, June 1997).

- *Promote streamlining of regulation of the US telecommunications industry by extending mandatory regulatory quality controls in executive orders to the regulatory activities of the Federal Communications Commission.*



127. Ministers have recommended that proposals for new regulations, as well as existing regulations, be reviewed. In general, as effective competitive safeguards are implemented in telecommunications industries and market forces introduced, the need for sector-specific economic regulation declines. As dominant positions of formerly regulated monopolists erode, reliance on market forces subject to economy-wide competition policy rules becomes a more effective means of promoting economic efficiency in the industry. There is a need to continually review and streamline economic regulation as underlying market conditions change.

128. The US has been effective in implementing effective competitive safeguards to promote competition in markets under federal jurisdiction and in many markets competition is advanced well beyond that in other OECD countries. However, the Federal Communications Commission is not subject to the mandatory regulatory quality controls required by executive orders for most regulatory activities. Regulations adopted by the FCC are subject to systematic review through biennial review and forbearance procedures. While the enactment of these processes is a significant step, it is important to note that the forbearance provisions do not include an explicit recognition of the costs that regulation imposes, and important provisions of the 1996 Act are exempted. There are likely additional benefits that can be achieved if the overall streamlining process is made more systematic.

- *Competition in intra-LATA markets should be promoted by federal initiative as a necessary step to promote rebalancing of rates to reflect economic costs and thus to promote entry into local markets. If current initiatives fail to eliminate state actions that have the effect of raising barriers to entry, consideration should be given to vesting exclusive authority in the federal government as is done in Australia and Canada.*

129. Ministers have recommended that those aspects of economic regulation that restrict entry, exit, pricing, output, normal commercial practices and forms of business organisation be reviewed as a high priority. An important challenge relates to barriers to entry and competition in intra-LATA markets. Some state regulators have continued the policy of encouraging intra-LATA prices above competitive levels to limit local rate rebalancing. By allowing intra-LATA toll prices to exceed competitive levels, there is increased scope to maintain artificially low prices for the local services of some subscribers, particularly in rural areas. Historically, states have been able to resist pressures for local rate rebalancing due to the overlap of federal and state jurisdiction.

130. Regulatory reform initiatives have clearly been more successful in markets under federal jurisdiction. In 1984, limits to federal regulatory reform initiatives reflected market realities in that intra-LATA markets may have had natural monopoly characteristics. Today, however, remaining natural monopolies are much smaller, and therefore the introduction of competition into local and intra-LATA markets is now feasible.

131. The 1996 *Telecommunications Act* provides for the pre-emption of state legislation that raises barriers to entry. While it is too early to assess the implementation of this provision, it is a positive step in the right direction. Promoting entry and competition in these markets will reduce intra-LATA prices toward competitive levels and will promote efficient entry into local markets by significantly reducing the scope to charge local rates to some customers that are below true economic cost. However, additional institutional steps may be necessary. In other OECD countries such as Australia and Canada, the nation-wide impact of regulatory reform initiatives have been enhanced by exclusive federal jurisdiction.

- *Promote economic efficiency by establishing a level playing field between Internet-based services and other communications services by harmonising and, in the longer term, phasing out sector-specific obligations.*

132. Ministers have recommended that governments ensure that procedures for applying regulations are transparent, non-discriminatory, contain an appeals process, and do not unduly delay business decisions. Current policy treats traditional voice telephony and voice telecommunications over the Internet differently in regard to the important issue of interconnection pricing. As Internet telephony becomes a more significant medium for subscribers, it will become increasingly important to assure symmetric regulatory treatment so that usage is not distorted by differential usage fees.

- *Reduce barriers to entry by alternative communications networks by eliminating asymmetries in the treatment of communications services. In particular, the regulatory regime for broadcasting should be reviewed, in the light of convergence, as soon as possible.*

133. As noted above, Ministers have recommended that governments ensure that procedures for applying regulations are transparent and non-discriminatory. Future local competition will depend importantly on the ability of alternative infrastructures to offer both voice telephony services and newly developing information services. However, as convergence brings the Telecommunications and broadcasting industries closed together, fragmented regulation in these areas restricts companies and users from taking advantage of the benefits of convergence. In the United States, one significant asymmetry in regulatory treatment is existing broadcasting licensing procedures designed to promote other public interests. Thus, to promote entry of new alternative networks that could provide voice telephony, non-discriminatory and transparent regulation of entry into other communications services should be advanced.

**NOTES**

1. For example, the *Communications Act of 1934* specifies as a policy objective in communications to: “make available, so far as possible, to all people of the United States a rapid, efficient, nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.”
2. For discussion see, for example, President William J. Clinton and Vice President Albert Gore Jr., “A Framework for Global Electronic Commerce,” posted July, 1997 at <<[www.iift.nist.gov/telecom/ecom.htm#background](http://www.iift.nist.gov/telecom/ecom.htm#background)>>.
3. One reason for the inadequacy of these competitive safeguards was a technical one -- i.e. the absence of so-called “equal access.” That is, in the 1970s, subscribers choosing to use alternative long-distance carriers had to dial extra digits because the incumbent carrier was the only carrier available as the “default” carrier.
4. The divestiture was very much a “last resort.” By 1980, MCI had turned to the legislature, the regulator and private antitrust action but had been unsuccessful in securing a remedy providing effective competitive safeguards.
5. For a more detailed explanation of the theory, see: Timothy J. Brennan, “Is the Theory Behind *US v. AT&T*”

to one study (published in January 1998), the average price for service in the most expensive plans is over \$0.50 per minute while the least expensive plans average in the mid-\$0.20 range).

15. Application of Teleport Communications N.Y. 7 F.C.C.R. 5986, 5988 (1992).
16. See FCC, In the Matter of the Annual Assessment of the Status of CS Docket No. 97-141 Competition in Markets for Video Programming. In June 1997, the number of homes capable of receiving cable programming was 94.2 million, which accounts for 97.1 percent of television homes.
17. Under the plan, Ameritech acted to argue for the elimination of state barriers to entry, to provide equal access to intra-LATA toll and to provide access to its network for new entrants into the local exchange. For discussion, see DOJ, "Memorandum of the United States in Support of its Motion for a Modification of the Decree to Permit a Limited Trial of Interexchange Service by Ameritech," Mimeo., May 1, 1995.
18. Hearing Order, "Petition of Rochester Telephone Company for Approval of Proposed Restructuring Plan; Petition of Rochester Telephone Corporation for Approval of a Multi Year Rate Stability Agreement," New York Public Service Commission, Case 93-C0133, Opinion No. 94-25, November 10, 1994.
19. See Joel Klein, "The Race For Local Competition: A Long Distance Run, Not a Sprint," Speech before the American Enterprise Institute, Nov 5, 1997 and William E. Kennard, "Section 271 of the Telecommunications Act of 1996," Statement Before the Subcommittee on Communications of the Committee on Commerce, Science, and Transportation, United States Senate

27. For discussion, particularly of the notion of “flexibility” in licenses, see: Gregory L. Rosston and Jeffrey S. Steinberg, “Using Market-Based Spectrum Policy to Promote the Public Interest,” FCC Discussion Paper, January 1997.
28. Subject to limited exceptions, see FCC PR Docket No. 94-107, Released May 19, 1995.
29. See for example, Leonard J. Kennedy and Heather A. Percell, “Section 332 of the Communications Act of 1934: A Federal Regulatory Framework That Is “Hog Tight, Horse High, and Bull Strong,” Federal Communications Law Journal, 50;3, 1998.
30. For a discussion of foreclosure effects in network industries see, for example, Jeffrey Church and Neil

incumbent LEC must base prices of a specific network element on TELRIC plus a reasonable share of forward-looking joint and common costs.

38. The FCC has characterised the historic structure of telecommunications prices a “patchwork quilt of implicit and explicit subsidies.” See, for example, FCC CC Docket No. 96-45 [the Joint Federal-State Report to Congress on Universal Service].
39. There are a number of underlying factors that have contributed to the ability of incumbents to maintain higher intra-LATA prices. First, these markets were not divested from the incumbent local exchange carriers in the 1984 divestiture. Second, as noted above, state regulators have been slow to promote entry into these markets, and in instances where entry has been allowed, interconnection on equal quality terms

48. The FCC has adopted the following definition of universal service: voice grade access (500-4000 Hz); dual tone multifrequency signalling or digital equipment; single party service; access to 911, directory services, operator services and interexchange services. In addition, call blocking service is supported for low income consumers.
49. Until the end of 1997, universal service programs were financed by per line monthly charges imposed on long distance carriers. Under the new rules which took effect in January 1998, the per-line charges previously paid by large long distance carriers have been discontinued. Instead, all providers of interstate telecommunications, including local exchange carriers, long-distance providers and wireless carriers, now contribute to the provision of universal service based on the amount of their telecommunications revenues.
50. Collecting funds through general tax revenues is generally less distortionary because it is collected from a broader base and thus there is less distortion of relative prices.
51. Local rates are likely below economic cost by the largest margin in rural and remote areas. Moreover, information reported by the FCC indicates that monthly charges in rural areas are about 20 percent *lower* than in urban areas. FCC, Industry Analysis Division, "Reference Book on Rates, Price Indices and Expenditures for Telephone Service," Mimeo., July 1998. The average rate reported in a survey of 89 cities by the Bureau of Labour Statistics indicates that the flat-rate local rate (not including subscriber line charge, 911 charges or taxes) was \$13.71 while the corresponding average rate reported by rural carriers was \$11.17 in 1996. The Rural Utilities Service of the US Department of Agriculture's National Information Infrastructure initiative provides nearly \$11 billion in approved loans to rural telephone companies.

58. Section 401(d) exempts sections 251(c) [i.e. interconnection and unbundling requirements] and 271 [the in-region inter-LATA restraints on BOCs] from consideration under a forbearance petition.
59. The administrative and enforcement burden imposed by line-of-business restrictions has been an ongoing concern. The line-of-business restrictions in the divestiture decree created a complicated system of contested and uncontested “waivers” that essentially allowed RBOCs to offer new services or otherwise amend the restrictions (e.g. update LATA boundaries to reflect network developments). It has been argued that the process has been slow, delaying new product innovations and impeding competition. [See, for example, the affidavit of Paul H. Rubin, June 14, 1994, submitted on behalf of Motion of Bell Atlantic Corporation, BellSouth Corporation, Nynex Corporation, and South-western Bell Corporation to Vacate the Decree, *United States v. Western Electric Co.* No. 82-0192 (D.D.C. filed July 6, 1994)]. These concerns do not appear to have been eliminated by the transfer of authority to the FCC. In its scrutiny of FCC regulatory practices under the *Paperwork Reduction Act* the Office of Management and Budget made only



67. Zolnierek, J and Rangos, K, *Long Distance Market Shares, Fourth Quarter 1997*, Industry Analysis Division, Common carrier Bureau, March 1998.
68. MCI, *true Competition in the Long-Distance Market*, January 1997
69. FCC, *Trends in Telephone Service*, Industry Analysis Division, Common Carrier Bureau, February 1998
70. *Source: FCC, Rate of Return Report 1997*