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## Local Exchange Services in the Next Century -- What Still Must Be Done to Bring Us to Where We Want to Be?

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# ***Local Exchange Service In The Next Century -- What Still Must Be Done To Bring Us To Where We Want To Be?***

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#### **Moderator: The Honorable Hullihen Williams Moore[\*]**

*Virginia State Corporation Commission*

{1} Our panel is Local Exchange Service in the Next Century--What Still must be Done to Bring Us to Where We Want to Be? We have four excellent panelists to address these questions. I expect the panelists to agree, in part, where we want to be, and they won't spend a whole lot of time about increased service, new technology, lower prices, and all those things. I am sure we'll hear some assurances along those lines, at least from three of the panelists. Most of the time will be spent on what still must be done to get us there. I hope we will have not just what we, the Commission, has to do to get us there, but also perhaps what they may have to do to get us there. Also, perhaps, some references to some new technologies.

{2} I have asked our panelists to limit their initial comments to 8-10 minutes, and then give them an opportunity to respond to each other. We had some negotiations over who would go first. That was "mediated", I would say, so that's the way we will proceed. Our first presenter will be Rick Cimerman. Rick

is the Director of State Telecommunications Policy at the National Cable Television Association. Our second speaker will be John Langhauser, Regional Vice-President of Law and Government Affairs at AT&T. Our third presenter will be Phillip McClelland, Assistant Consumer Advocate with the Pennsylvania Office of Consumer Advocacy. Our final presenter will be Mark Mathis, Vice-President and General Counsel of Bell Atlantic Network Services.

{3} We will begin with Rick Cimerman.

**Rick Cimerman[\*]**

***Director of State Telecommunications Policy at the National Cable Television Association***

{4} Good morning. With all due respect to Mark Mathis, who put together sort of ten myths about, I guess, long distance, that I believe is in your package; I sort of followed that same format and came up with about seven myths about local competition that I am going to go through. The first one is sort of "good news, bad news," and that is that local competition is not just around the corner. I guess that is the bad news for most people; but for those of you who are telecommunications attorneys, that is probably good news because as we all know, the judicial aspects of the Telecommunications Act and its implementation are going to be with us for some time to come.

{5} Let me talk a little bit about why I think local competition is not around the corner, and in that regard, go to some of the things that still need to be done. Although one of the first reasons, I think, that local competition is not around the corner is found if you look at some of the FCC time frames for implementation of certain parts of the act. Although the universal service order is not coming out, or at least the announcement press release, until tomorrow or Thursday, an order may be three or four weeks later, it looks like they are going to at least adopt part of the joint board's recommendation, one of which is that there be a transition for rural companies until the year 2003, a six-year transition, starting this year. So, at least in those rural areas, I do not think we can expect full blown local exchange competition, if ever, but certainly not until 2003, until rural companies have been transitioned to some new universal service mechanism, and companies wanting to compete are allowed in there to compete. So let me talk a little about the universal service and what I think we are looking at in the next couple of days, again, getting to the point that local competition is not around the corner.

{6} It looks like the commission at this time is going to take a pass on identifying high-cost areas and they are looking at continuing with either a proxy model or an auction mechanism. This approach has gotten perhaps a little more interest of late, and something that GTE proposed was not exactly rejected. It could come back to life, but it looks like the Commission is looking at July of 1998 before they adopt any sort of cost model or mechanism for determining where high-cost areas exist. That is for the large companies again separating out the rural guys--we will not know what is happening with them until the year 2000, and then 2003, for the final transition. Since it looks like 1998 for the large companies, I do not think that we can have a full-fledged local competition until universal service and access charges are reformed. And, I think the big debate right now at the FCC, as they come down to the wire here, has been more on access charges than on the universal service side. There are questions about how much of a revenue, if any, the local exchange companies have to take and whether new charges will be imposed on multi-line businesses and second lines, which looks to be where they are going today, that the subscriber line charges are going to increase for multi-line businesses and for second lines that are out there. A new charge that is just in the last two weeks has had various names: the FERC charge (Flat End Rate user Charge), or the PICC charge (Pre-subscribed Inter-exchange Carrier Charge), which is the PICC charge, not the usual PIC (Primary Inter-exchange Carrier) charge, that we are all aware of. And so they are doing their best to increase the number of acronyms that we all have to know something about. But when this order comes out, I think the thing that everyone also agrees upon, is that there are going to be appeals, and so the judicial process is something that is somewhat of a wild

card. Certainly, we would expect that GTE, since they have appealed just about everything that has come out so far, will be going to court. Interestingly or ironically enough, I do not know if this was discussed yesterday; but the FCC's initial interconnection order that is now in the Eighth Circuit,<sup>[1]</sup> of course you all know was appealed by GTE and others, but part of GTE's appeal was that the states ought to be doing this, not the Feds. The states know how to implement the Act;<sup>[2]</sup> they know how to set pricing; they have the authority. Ironically enough, GTE has now sued seventeen states, because those seventeen states could not get it right. So, as far as I know, they have yet to find a state that could get it right. So I am not sure who is left, if it is not the Feds or if it is not the states. But that is where we stand today. So clearly, the judicial process is going to be very involved in what we have left to do. Right now, they have the interconnection order on their plate; there are appeals of the non-reportability order. We certainly expect the universal service and access charges will be appealed, and then there are all the various state appeals that are working their way through the courts. So, local competition, I do not believe, is just around the corner.

{7} Myth Number Two, I think, is that competition is purely about price. I think this is what you hear when you look at what some of the local exchange companies are saying about long distance competition, and they want to focus on the lock-step price increases of the big three inter-exchange carriers. However, they fail to recognize that competition is about more than price. Now, I happen to think that there has been plenty of competition in long distance. I am on my third or fourth different plan in the last couple of years, and at one point, I was with MCI getting a free airline ticket. That worked out well. Now, I am on an AT&T plan for less than \$0.15 a minute, regardless of the time of day, so I am paying much less than I paid even just a couple of years ago. So, I think there is competition, and I think that there is less local competition than there is long-distance competition. That is sort of Myth Number Three--that there is more local than long-distance. That is what we will hear from the RBOCs (Regional Bell Operating Companies) and others, but let me note two things. Remember that GTE is in the long-distance business today. They need nothing from the Feds and essentially nothing from the states, and that is why they are so willing to go to court. You know all of these areas; they are not looking for inter-lateral relief. GTE, in their results from last year, announced in the third quarter alone, they signed up, according to their own filings, 500,000 new customers for long-distance. That 500,000 customers that they signed up in the third quarter of 1996. I believe that exceeds the entire number of customers that have a local exchange alternative in the entire country today. Certainly, there may be some that have an alternative through a bundled package of a long-distance company if you are a large or a medium-sized business; but in terms of either residential users that GTE has been targeting for long distance or for what most of us think about local competition, the scales are way out of balance. GTE has already got 500,000 customers in their territory; they do not even serve every state. The entire rest of the country does not have 500,000 local exchange, competitive, alternative customers.

{8} That is one of the other things that I would like to point out, that it is interesting to look at USTA (United States Telephone Association) press releases. They had some coming out around the anniversary of the Act emphasizing the fact that there were some 500 interconnection agreements reached around the country by various companies, and that meant that definitively the local competition was here. But, on the other hand, they continue to say that the long-distance competition is here. So the fact that when I was in the Maryland Commission, we had 400 resellers in the State of Maryland that were certified, or the State of Florida that has over 500, and New York may be approaching 1,000 resellers. That is not competition, but 400 agreements that are signed even though no one is actually serving customers. That is what competition is. I think there is a little bit of, you know, myth-making in the process there about what is and is not local competition. So Number Two, I am going to come back to. Number Three, that there is more local competition than long distance, I do not think so.

{9} I wanted to mention again the myth that competition is purely about price. If you look at the long-distance market, it is not just about price. I mentioned MCI had a plan where you get a free airline ticket. Today, they are all offering 800 numbers. It is not the old days of simply long distance from Point A to Point B, but there are a number of alternatives beyond price, and again, I think there is price competition, but even

beyond price, we have to look and see some of the things that are out there today.

{10} Number Four. This one I am sort of sad to report because I worked at two state commissions, the Florida and the Maryland Commission, and I believe that states have a continuing and important role in the implementation of the Act. But I think that there is one myth that did not have to be a myth, but it has become that way--that states will matter when it comes to § 271 [3] applications. I do not think states will matter, and here is why. Two things: One is, if you look at the specific language of the act, the FCC must give deference, I believe "substantial weight" is the term, to what the Attorney General thinks, the Department of Justice. There is no such language about the state. The state has to report. The FCC does not have to give any deference, according to the language of the act. But, I believe they would have, except for Michigan and Oklahoma. Since I have to go to every state, I loath to speak ill of any commission; but the Michigan and Oklahoma Commissions were in such a hurry to approve such flawed applications that I believe it really gives additional weight to those that will go out there and say that the states should not be in this business, that the states are either, "in bed with the LECs" or that we need national policies, and only the Feds should be doing things. I think that if you read the comments of Oklahoma and Michigan, and of course, you recall that in Michigan, AmeriTech had to withdraw their application because it was flawed and the Oklahoma application, I feel rather certain that the FCC will reject it even though the Oklahoma Commission has accepted it as evidence of competition, and that is on the Track A side.

{11} Let me go to Myth Number Five. That Track B is okay generally for companies wanting to get into inter-LATA (Local Access Transport Area) business. As you may recall, Track A is for those who have actually offered competitive checklist items. Track B is sort of the statement of generally accepted terms, and I know that one of Mark's myths is sort of the reverse of that, but I think it is telling that the Department of Justice specifically gave it to where they did. It was said just last week at a conference that the opinion of justice was that Track B is more special cases. It is only for areas where either no one has requested interconnection, or if they have, then there is some problem on their part in regard to the requester of interconnection and why they are not offering service. But the fact that services may be offered under a Track A, and companies are not there yet; but they are about to get there. That is not sufficient to say Track B has to be the way to get into the market. You have to have a reasonable length of time for someone that has requested interconnection to be able to do the appropriate testing, to be able to begin to offer services . I do not think anyone is going to be jumping to Track B. I think the Department of Justice has already spoken and said that they are going to reject Track B filings except in special circumstances, and I do not think the FCC is going to be approving any Track B filings anytime soon. So that is Myth Number Five.

{12} Myth Number Six. Cable is not interested in getting into the telephone business. That is why I am here representing the National Cable Television Association. I think that it is easy to knock that down in Virginia because Virginia is actually one of the states where cable is most active. You have today Jones Intercable in Alexandria, which is offering a combined voice data video package. You have Cox, that is starting to roll here in the Hampton Roads area; Continental, in the Richmond area soon. We have some other smaller companies that are offering Internet access, cable modem service, things like that. So it is not true what you may have read in either the mainstream or the trade press, that cable is not interested in getting into telephony. Certainly, there was a big announcement from our two largest members, Time-Warner and TCI, about their temporary pull-back. Time-Warner has at least been moving ahead on the business side, if not on the residential side, and TCI has decided to go back and focus on its poor business for another year or two before rolling out, although they are still pursuing telephony in three markets around the country. So Myth Number Six is that cable is not interested in being in the telephony business. I think it is true that cable is interested, and particularly here in Virginia, cable is moving ahead on offering telephone services.

{13} Myth Number Seven is my last myth and relates to Myth Number Nine from Mark Mathis' package, which was sort of "chicken little", that the IFC (World Bank International Finance Corporation) has been claiming that if Bell Atlantic gets into the, or any RBOC gets in a long-distance market, that the RBOC will

act anti-competitively, and that competition will never happen. Mark describes this as the "chicken little" strategy or the "chicken little" theory, and the reason that I want to pick that up is because, three years ago, when I was at the Maryland Commission, and Maryland was one of the first states to be working on local exchange competition; we had an application from MFS (Metropolitan Fiber Systems). In responding to Bell Atlantic testimony, I gave my own testimony. I described the "Doom's Day" scenario. And the "Doom's Day" scenario was essentially the "chicken little" theory, and it is really what Bell Atlantic and all of the other RBOCs were touting all along: If you let these guys into local competition, universal service will collapse. We will not be able to offer services to the rural areas of the state or the country, and interestingly enough, in Maryland, it turns out there are not all that many high-cost or rural areas. I mean, we have western Maryland up in the mountains, part of the Eastern Shore, but overall, Maryland is a relatively low-cost state. So certainly, in Maryland, we believe that what Bell Atlantic was saying at the time was the "Doom's Day" scenario, that if you let someone in either the business or the residential market suddenly, the whole house of cards would collapse, and that we would not be able to continue offering good service to rural customers.

{14} Let me mention very quickly non-reportability which is something that is happening on multiple levels. Today, there are regional limited liability corporations (LLCs), one in essentially each RBOC region, but I think there may be some delay. There is some confusion between how those LLC's fit in with the North American numbering council, and interestingly, of all the RBOCs, Bell Atlantic is the one, and maybe Mark will tell us why, that has been insisting that there is no authority for an LLC to issue vendor contracts. All of the LLCs, I believe, have now selected a vendor. I think that we ended up with three or four Lockheed and three Perot systems. Maybe that is reversed. I think in the Bell Atlantic region, they selected Lockheed, but Bell Atlantic, for some reason, has continued to insist that the limited liability corporation has no authority to enter into that contract, that only the North American Numbering Council should be the one that is working on non-reportability. So we see that as a delay strategy. Although some of their engineers have been very helpful in working through the process, it's going to be interesting to see what happens since the FCC has opposed a deadline for the 100 major markets. A deadline has already slipped once, but a deadline for when non-reportability has to be implemented. It will be interesting what kind of delays we may see on the legal front there.

{15} I know we had a panel earlier about municipal barriers. I think that is somewhat of a sleeper issue. We are going to continue to see more municipal barriers erected, and on this one, I think that all of those in the business are in the same boat, the RBOCs and the new entrants. Because cities, I think, have misunderstood some of the language of the act. I think they have briefly mentioned that in our first panel, the Troy, Michigan situation. We expect the FCC to come out with a decision very soon. It is our expectation that they are not going to take a broad approach, as we had originally hoped, but rather, our expectation is that they will say that Troy can have a rights-of-way ordinance, but was wrong to impose it on TCI. Here you have a company that has been all over the trade press saying, "Hey, we're getting out of the telephony business", but Troy, Michigan said to TCI, "If you want to . . . if you want to upgrade your cable plant," which is what TCI came in and said, "we want to put some fiber in our cable plant. Let us upgrade." The city said, "Well, you know, you're putting fiber in. You might be able to use that for telecommunications in the future; therefore, you have to get a telecommunications franchise and meet the terms of this ordinance." TCI said, "Hey, we're not getting into telephony", but the municipality said, "Well, you might, and therefore, you'd have to meet the terms of this ordinance." I think the FCC is going to say that they have overstepped their bounds in that regard, and we are expecting that probably by the end of the month.

{16} I wanted to talk briefly about new technologies, and specifically, Internet-related technologies, and cable modem services. That is one of the most exciting things out there, particularly for the cable industry, because unlike telephony, where you are fighting an entrenched competitor, it is not clear what market share you are going to be able to achieve, what the cost is going to be to get in, and what kind of revenue you are going to be able to get when you do get in. Cable modems are a whole new ball game. They are a vastly superior product to ISDN or to most offerings of the local phone companies. They are superior even to what we are

still waiting for, the xDSL (Digital Subscriber Line, the "x" denotes all the DSL variations) technology that's not out yet. Just to give you one quick comparison to ISDN (Integrated Services Digital Network), in most of the Bell Atlantic states, battles were fought in state commission level about ISDN pricing, flat-rate pricing, at least in Maryland, for unlimited use of ISDN for \$200 a month for 128K access if you are using both channels. Compare that to cable modems as Jones has rolled out in Alexandria, or Comcast is rolling out today in Baltimore for a theoretical 10 megabit throughput and more likely on a loaded system--2 megabits for \$39 or \$49.95 a month that is, let us say seventy times faster than a ISDN line which would cost you \$200 a month. So, one-fifth the price, seventy times the speed.

{17} A more proper comparison might be for a T-1 line, a dedicated 1 ½ megabit line, costing you about \$1,000 a month from your local phone company for the same throughput you could get for \$49.95, one-fiftieth of the price. I am excited about cable modem technology. Cable companies do need to implement some technical fixes and upgrades on some of their systems--that is beginning to happen. I think the cost of Continental systems are in pretty good shape already here in Virginia, and so they will be rolling out later, but I think that for Internet service and ultimately Internet telephony, something we have not really talked about today--that is probably the wave of the future, and so I am excited about it.

{18} So, let me just focus again on Myth Number One, local competition, effective local competition. When will we have effective competition? Effective competition is not around the corner, because there remains a tremendous amount of work to be done, both at the municipal, the state, and the federal levels.

**John Langhauser[\*]**

*Regional Vice-President of law and Government Affairs at AT&T*

{19} Throughout this conference, you have been hearing a lot about the potential benefits and promises of the Telecommunications Act: [4] lower prices, more choices, better service, innovations, and more investment. But what I would like to do is give you a little status report on how we are doing in achieving those benefits.

{20} I would like to start with the good news. The Act has already encouraged technological innovation and investment. And I am going to take you through one aspect of what my company is doing, but there are certainly other examples. Rick Cimerman spoke about cable modems. I am sure Mark Mathis is going to want to talk about what his company is doing. Our contribution, and we think it is a major one, is a totally new fixed wireless technology. We need a better term for that, fixed wireless is not the opposite of broken wireless. What it is a way of bringing high quality, high capacity service to customers in stationary locations, like your house, in comparison to the current cellular service, which focuses on mobile customers, principally people zooming around in cars. In late February, at the NARUC (National Association of Regulatory Utility Commissioners) Winter Meetings, AT&T's new president, John Walter, announced something we had code-named Project Angel, which we had been working on in the greatest secrecy since 1994.

{21} Let me tell you what the Angel Technology does. It is a wireless system with the sound quality, reliability, and security of our best wired services. Even in its initial deployment, it will offer customers greater capacity than they get with their current conventional telephone service. Initially, we will use Angel to provide two separate phone lines to each customer with Internet access at 128 kilobits per second. That is just the initial offer. This technology has the potential for much higher speed, and data applications, including full-motion video. It is simply a better substitute for the copper wire that currently connects almost every home to the telephone network. Angel will initially be a residential offering, ending the myth that new entrants are only interested in high-volume business customers. It will be fully compatible with your current telephones and the current wiring in your house. We will not have to hang massive antennas on your roof to make it work; rather, all that is going to be needed is the installation of a small square antenna below your roof line. It has been described as a pizza box--it is about twelve inches square and about two inches thick.

There is a lot of innovative technology here, but probably the most impressive technological feat was doing all of this over a very narrow slice of the radio spectrum. This technology will only use 10 megahertz of spectrum. This small spectrum requirement means that AT&T currently has the spectrum licenses that would enable us to potentially serve over 90% of the population in the country. It is exciting, groundbreaking technology that has the potential to truly change the way we communicate. We are committed to it, and we are investing the resources to develop it into a successful platform for superior local service. Already, we have expended more than \$2 billion to acquire the necessary wireless licenses, much more in development, and we will be spending many times that in deployment.

{22} Now the bad news. I cannot take your orders yet. We are going to start beta testing later this year in Chicago, but generally this technology is a 1999 and beyond application. Deployment is simply a massive effort that's going to take some time. In the meantime, where are we in bringing local competition to Virginia? Where do we stand in realizing the important customer benefits of the Act? Well, as has been discussed, the truth is that customers have yet to see many of the benefits in their localities. Indeed, the first major benefit customers in Virginia are likely to see is the dramatic reduction in their long-distance bills, provided, of course, that later this week, the FCC starts to reduce access charges. Customers are not seeing benefits for the simple reason that there is virtually no competition in the Commonwealth. Recently, we, together with seven other C-LECs (Certified Local Exchange Carrier), commissioned a survey of the extent of competition in Virginia. The results show that competition is at its earliest phase. As of March 31, less than 2,000 lines throughout Virginia were served by competitive carriers. This translates to a market share for the C-LECs of about five-hundredth of one percent, with of course, Bell Atlantic and its territory having the remaining 99.95%. In short, under any objective measure, local competition is not yet here. But why has it not happened? You hear and read a lot of accusations from the press. Accusations that the new entrants are purposely delaying. Well, I can clear that one up quickly for AT&T. We are totally committed to local service. We are running as fast and as hard as we can to get into the market.

{23} Let us turn to the real reasons why local entry is not occurring. I think it is really simple-- transforming a \$100 billion market from monopoly to competition is hard and messy work. It is obvious that, despite all the work on new technologies and the billions invested so far, near-term market entry will be largely, if not exclusively, dependent on local entrants and local networks. Because we are going to be relying on these networks, it is essential that the pricing be finalized at the right levels. Just as important, the systems must be developed to allow new entrants to place orders and service their customers at an equal level with the ability of the incumbents. Figuring out the incumbent's forwarding-looking incremental costs is an extraordinarily complex task, but getting the pre-ordering, ordering, provisioning, maintenance, and billing systems right may be even more difficult. Insuring that the systems work is as important to the development of competition as pricing. We will not have meaningful local competition unless the computer systems needed to process the tens of thousands of orders expected each day, can process the orders accurately and without delay.

{24} Here is what we need: First, industrial strength systems capable of handling the expected volumes and process orders without mistake or delay. Second, systems that are fully tested and shown to work. Obviously, I trust Bell Atlantic, but in the words of President Reagan, "trust but verify."<sup>[5]</sup> We need processes and procedures that are designed to make competition work, not an endless series of "catch-22s". We need cooperation and advance notice before systems and procedures are changed.

{25} Where are we? I will not take you through all the boring details, but essentially we have been offered manual order processing systems. We will submit our orders electronically to Bell Atlantic, and then they will manually re-enter all of the information, sometimes as many as three times. We are very concerned about errors, delay, and the ability to handle large volumes. Our experience in California, where PacTel is using a similar manual process, tells us that these concerns are a lot more than theoretical. In California, the reject rate for delays and the backlogs has been so extreme that we have been repeatedly forced to stop active marketing in local service. Real testing is just beginning. Until recently, we were not permitted to test. Bell

Atlantic took the position before another commission that a test which involved eight customers, six of whom were Bell Atlantic employees, where they transmitted fourteen orders via fax and electronically, was a full and sufficient test of the order processing system. I am glad they do not do airline flight checks because they would check a couple of the seat backs, make sure the reading light works, and then claim the airline flight-worthy. Third, we have processes and practices that seemed more designed to fail than succeed. For example, when an order is submitted that may contain twenty or thirty lines of information, Bell Atlantic is going to perform its normal edit checks, but instead of checking the entire order, what they propose to do is stop at the first mismatch and reject the order. Now, this leaves open the possibility that one order could be rejected multiple times. Finally, we were notified just last Friday that Bell Atlantic has decided to fundamentally alter the information it will require in order to process an order.

{26} Systems work goes both ways. We have to develop our own systems to meet Bell Atlantic's and have been going in this direction now for about a year, only to be told that "what you need to do is change course, scrap your prior work, and do something completely different." Clearly, more work is needed. The current systems are going to make it very difficult, if not virtually impossible, for new competitors to enter on a meaningful basis. I am afraid they are going to result in rampant customer dissatisfaction.

{27} Lastly, pricing is still somewhat up in the air, even the prices we thought were resolved in last year's arbitrations. Most of the arbitrations included some final rates, usually as resale area, and some interim rates, usually for pricing of unbundled, network elements. The commissions, including the State Corporation Commission, did a commendable job in meeting these deadlines. It was hard work, but a lot more needs to be done. Commissions throughout the region are now assessing the prices CLECs will pay for unbundled network elements. And again, Bell Atlantic and GTE have not been shy. In some cases, Bell Atlantic and GTE are asking for rates five, six, and seven times the current interim levels. These are the levels that the FCC determined, constituted a reasonable benchmark. It is very difficult to start a business when you do not know whether your costs are going to be "X" or six times "X."

{28} We have also found some surprises in the resale area. This is the one area where we thought the prices were finalized; but as we have tried to conclude our interconnection agreement, we are seeing some new charges surface. These changes are principally for access to operating support systems, and I am sure it is a coincidence. These new charges, however, reduce our effective wholesale discount to almost precisely the level that Bell Atlantic had argued for in the arbitration proceedings.

{29} So where are we? Well, clearly, it is a work in progress. It is clear that most of the expected benefits have yet to be realized and that a lot more work needs to be done by all industry participants, but there are some encouraging signs that the promise of fully competitive market will be achieved and that customers will be the big winners. We think there is an exciting future out there, where customers will have the benefit of real competition and vastly expanded technology. We are committed to that future.

**Phillip McClelland[\*]**

*Assistant Consumer Advocate, Pennsylvania Office of the Consumer Advocate*

{30} I also appreciate this opportunity to address the National Regulatory Conference. I work for a consumer advocate and want to provide that perspective. My remarks are also my own in that regard. I hope these remarks are worthwhile and can add something to the panels you have heard. I hope they also will provoke some discussion on some issues.

{31} As the panel explains, the essential question is how to get competition to consumers. It is also part of the essential political logic of the 1996 Act[6] and that is, we were going to offer industry competitive opportunities that had never before been offered to them. Then, that was going to offer all consumers the benefit of that competition. And then we were also going to hold consumers harmless through the goal of

universal service. This is easier said than done. I think it is a real regulatory challenge, and we are all going to struggle with this for years to come. If we can bring all of these benefits to the consumers, then I think everyone will be thrilled. If we cannot, this could be another promise more hoped for than real.

{32} Competition at this point, as all of the panelists have been saying so far, remains uncertain. Particularly, and I want to emphasize, I think the regulatory process cannot command competition. It can allow it. It can open the door for it. It can wait and watch and see if it develops. That regulatory role is more difficult than when the commission could say, "Here's where we're going exactly." Obviously now, you are in a different ball game, and you are talking to people you want to compete but cannot exactly compel competition from them. Therefore, I think a lot of this is going to be trial and error, and we are all going to have to wait and see how it works out.

{33} I think at this point, too, we have to be very modest about the competitive accomplishments. And when it comes to competition, we have a great deal to be very modest about. There simply is not much competition. In Pennsylvania, we have been litigating local competition since MFS (Metropolitan Fiber System) filed a case in December of 1993.<sup>[7]</sup> We have now completed our third phase of that. We should soon have what we would like to call permanent interconnection rates. I am not sure they are, but maybe they will be.

{34} I think that the lawyers and regulators have a natural tendency to be proud of the products of all of the litigation we do, and I know of one lawyer who talks about Pennsylvania being the "land of 10,000 dockets." It almost is true. There is some feeling of accomplishment in watching these briefs and orders pile up and fill a filing cabinet, but it really only means to competition. And I think consumers will judge us by the amount and quality of the competition that we produce, regardless of how much regulatory paper we have produced.

{35} I do have a concrete suggestion and perhaps in line with some things John Langhauser was saying. It is important to keep track of how competition is going. In Pennsylvania, our state commission recently did that; they asked all C-LECs to file information to tell us how many customers they had. It was interesting to see; it helps dispel some of the myths about how far competition has gone. They asked for both business and residential. It was also particularly handy as we did the § 271 hearing.<sup>[8]</sup> Out of the whole Commonwealth and all of the places where competition is now permitted, essentially that is Bell Atlantic and GTE, for business, we have about 11,000 lines, that is 11,000 out of 7.5 million. I guess we are ahead of Virginia, but I do not feel real good about that fact. On the residential side, we have two trial loops going; they happen to be loops to the president and vice-president of some, one of our larger facilities' basic competitors. So we are not doing too well on the residential side. How far residential goes, whether we get any real residential competition, I believe, leaves little to be too excited about at this point.

{36} The next question that comes up, "Well, how do we make that competition happen?" Obviously, it has to be a profitable opportunity. The loop rates remain essential in that way. I am not going to dwell on it, but I think we are all moving toward those permanent loop rates, and those have to be economic loop rates. There is also some discussion of technology, and I think John Langhauser did a lot of that anyway. I will not add too much, but perhaps, and particularly if we can avoid using the ILEC (Incumbent Local Exchange Carrier) loops, some other technology makes it more efficient. It becomes easier, and maybe there is a bright light there.

{37} I want to add a couple of things not on the outline though and ask you to think about what you need to get competition going. Maybe it is not obvious, but one thing that I would ask you to pay attention to is the 911 system, enhanced 911 and 911. We have had some problems with that, particularly, I think this is one of those things that may fall between the regulatory cracks. It is largely municipal, yet somewhat private. It is a lot telecom providers. It is a little bit the regulatory commission, but not much. At the same time, I think consumers think 911 service is absolutely critical. If a competitive LEC (Local Exchange Carrier) cannot do that right, or if there is any failure in that process, competition gets set back dramatically. And so I think it is

worth watching, making sure that system works well. I think it is obviously more difficult for a municipality to deal with bunches of local providers than one, but I think that is the challenge that everybody has, particularly the 911 system.

{38} The other thing I want to mention, too, is numbering. Numbering remains a big problem. I never realized until this year how hard numbering could be. This year, we have been all over it. We have got five area codes in Pennsylvania, we are soon going to nine. We have competitive LECs coming in demanding numbers, exhausting area codes rapidly. It is a system that badly needs to be fixed. It was a system that was never intended to support more than one LEC, but that is exactly what we are going to do now. Perhaps, you can encourage the companies involved to try to become more efficient in number use. I think there is a regulatory problem in that the commissions who are feeling most of the pain of this, that is, the state commissions, are the commissions who are least able to fix that system. I think you have to impress upon the companies nationally that that system needs to be fixed.

{39} For competition to succeed, and I want to emphasize this point, I think that consumers have to understand what these markets are. I think that is a big problem. Telecom markets are extremely complex, and I think the residential customer really understands those markets very little. Consumers, I suggest, are drowning in a sea of information about telecom providers and services, but probably do not understand very much of it at all. Something that we never hear consumers tell us is, "What I really want you to do is make telephone service more complex. It's too simple; make it harder." But I think that is really about what we are going to do very soon.

{40} I think we want to encourage consumers to try competition; we want to encourage them to be innovative and aggressive about it, but that is not the way your typical consumer approaches long- distance competition at the pay phone. Sometimes consumers can get burned badly in competition, and then occasionally, they never want to go back to it. We do not want to frighten them so badly that they think, "This is something that I don't want to have any part of."

{41} Just trying to understand the boundaries of these services, I want to just try to illustrate that with toll competition. We hope to be doing intra-LATA (Local Access and Transport Area) toll competition fairly soon in Pennsylvania. We have had it for a long time, but we are now going to do pre-subscription. Inter-LATA and intra-LATA are extremely confusing. Quite literally, I think no one knows where LATAs are, outside a lot of the people in this room. The public certainly does not know, and also, I think, it is one of our last opportunities to do Latin in public. If you have ever tried to talk to anybody about inter-, intra-LATA competition, it is even hard to explain what that is. Maybe they would know, but probably not. In surveys I have seen, it is remarkable, a lot of consumers still believe that AT&T provides local service. And so, whenever AT&T gets back into local service, they will have a lot of consumers that will never know that they left.

{42} I think we are going to have a lot of these problems when it comes to picking local carriers. We, in Pennsylvania, for example, are going to offer one pick inter-LATA, one pick intra-LATA, one pick local. You could have three separate carriers in each one, if that is the way you want to do it. I think, and of course, we are going to do this all over the telephone, just to make it as clear as possible.

{43} Will consumers understand what that means? I think they are going to have great difficulty understanding that. In surveys and focus groups, what consumers seem to be saying is, "Make it simpler; make it easier; make it a lot more convenient." I think consumers are going to have to understand local service competition to pick these carriers and not be frozen in place by fear of "I have no idea what's going on here."

{44} I encourage the Virginia Commission to try to make service and pricing information as available as

possible to try to help consumers as much as you can in that regard. Better information may allow effective competition. I hope that consumers find that competition is just what they wanted and avoid any gaps between what the consumers want and what our regulatory goals may be.

**Mark Mathis**<sup>\*</sup>

*Vice-President and General Counsel of Bell Atlantic Network Services*

{45} I think what probably would be most profitable would be to respond to some of the things that have been said before me. I am sure that some of them would like to respond to what I have to say.

{46} Let me first start with the comment that was made about the complexity, and the fact that people do not know the difference between inter-LATA, intra-LATA, and all these other things. I want to tell you that the fastest way to eliminate that complexity is to let us enter into long distance, and we will not need LATAs anymore.

{47} One of the things we are supposed to talk about is, "What do we need to have competition?" Our good friend, Mark Keffer asked the Dean a question yesterday about whether we should be in long distance, and he said, "Yeah, once they had equal access, that's all you need." We would agree with that, the Congress did not. They passed the Telecommunications Act and set up a checklist that we have to meet. But that is what we have to meet, unlike not some of the things that John Langhauser and Rick Cimerman have mentioned. They want to have a market share test. They want to have a test that says, "Can everybody in the Commonwealth have an alternative for local service before we can get into long distance?" Some congressmen and senators who wanted to have that test, too, but that is not what was enacted into law. We do not have to show that everybody in the Commonwealth has an alternative for local service. I am not going to stand here in front of you and say that everybody here has an alternative for local service, because you do not. I know it, and you know it. But that is not relevant. That is not what is required. We have a fourteen-point checklist. That is what we have to meet, and that is what we are going to meet. We are going to demonstrate this to the Commission.

{48} Let me mention one of the myths. I had ten myths. I guess I am the only one who watches David Letterman because Rick had seven myths and John Walter had four. He said that one of his myths is that states matter for the § 271 application, and he said that that is a myth. Well, we disagree, and there is a clear reason. The FCC will have ninety days to rule on any application for long distance service. In ninety days, you cannot make a record. We know that whether an application is granted or denied, it is going to be appealed with the review in the Circuit Court being based upon a record before the FCC. Where are they going to get that record? They have said that the only way they can have a record is to rely on the states. We sat in Harrisburg on April 3, and watched the start of that process in Pennsylvania. I am sure this Commission is going to do what it thinks it needs to do to develop the record to be able to make a determination. The Commission will say what it is going to say to the FCC twenty days after we file for long distance in Virginia. So anyone who thinks that this state or any state does not matter, they can call it a myth, but that does not make it a myth. It is not a myth. If this commission says we are not checklist-compliant, we do not have a prayer with the FCC. On the other hand, if they have made a record that shows that we are compliant, you would think it goes a long way to helping us sustain the burden that we bear to the FCC.

{49} What are we going to have to do to show that we are checklist-compliant? John complained about prices, so this Commission has a proceeding going on now to set permanent prices. They are going to be in hearings for two weeks in June. It is not just some game we are playing here. We are not saying that this is going to be some rush to judgment. This Commission is taking its time, it is conducting its proceeding, and we are going to have permanent prices set in compliance with the Act. And so, we will have prices.

{50} He is concerned about the operation's support systems and whether or not we are going to be able to process the requisite number of orders. And I find this really ironic because on the one hand, they say,

"You've got to process all of the orders that we are going to generate," and on the other hand, they complain when we say, "Okay, look, the system that we were using which was similar to Pacific, that they hate because it ended up not being able to process those orders. We are going to switch to one that NYNEX is using, which is actually one of the benefits of this merger." There are some things that we can learn from NYNEX. They are a little bit farther ahead of us, and so, it is not a matter of just of going to some new system they never heard of at AT&T; it is a system that NYNEX has been developing for a long time. We think the NYNEX system gives us the ability to try and process a lot more orders than the system they were complaining about.

{51} AT&T complained about the resale discount. He said that all of a sudden they woke up and found out that resellers like unbundlers. People who use the unbundled elements, are going to have to pay to use these electronic systems. I do not understand why this is such a mystery to them. They knew that this charge was going to be there. They knew that the FCC said that the use of the operations support systems was an unbundled element. For them to complain now that all of a sudden they are going to have to pay this charge, is really pretty ironic.

{52} I do not want to focus only on John. Rick talked about competition purely relating to price. "This is a myth," he says. Well, we know that the only way people are going to use us for long- distance service, is if we charge less than AT&T, MCI and Sprint. Why would you pay us more? I cannot conceive of it. Long distance is a commodity service. When you make that long- distance call, is the same, whether you are using the "dime lady," MCI or AT&T. Our quality is going to have to be just as good as theirs, and the only remaining difference is price. Similarly, when they come into our market, they are going to have to provide the same quality service. The only reason you are going to switch to them is going to be price. They will be able to get the same quality switches if they are using their own facilities. If they are reselling our service, it is going to be the same quality that we provide. Why are you going to switch to AT&T, MCI or Sprint unless they charge you less. Price competition is not a myth.

### **Comments and Questions:**

{53} **Judge Moore:** When we started, we agreed that the speakers would have time to respond. If you each want to take a minute or so for questions, as part of your minute, I would like to have an idea of, based on what you know now, when you think we will get to widespread local competition. I am not arguing about the relevancy of this, but I would like for you to suggest Dave Headen talk about this, but I do not think that is relevant to § 271 regulations. So I would like, with part of your time, each of you to give us an idea as to when you think competition is going to happen.

{54} **Rick Cimerman:** To begin with, I never said that there is a market share test. There is a public interest test, and I think that the FCC and the Department of Justice are going to be hard-pressed if there are zero residential customers. They will be hard-pressed if, as in Oklahoma, there are four residential customers which are resale only, test customers, and employees of the provider, to say that the service meets a public interest test.

{55} And I am glad that I have had an opportunity to clarify my remarks about whether states matter or not. States will produce a record. The record will matter. The decision, if they say that the test has been met, will not matter because, as we saw in Michigan, it did not matter. The Commission said "yes," AmeriTech had to withdraw their application, and the FCC never had the opportunity to say "no." Similarly, in Oklahoma, the Commission said "yes". I do not think they did Southwestern Bell any favors. I do not think they developed a sufficient record there to withstand an appeal. If AT&T were to appeal an FCC decision that said, "Yes, Southwestern Bell is okay," the record would be insufficient. So an easy decision by a commission is not necessarily a favor to the RBOC trying to get in. So, states will matter. They probably matter more if they say "no" than if they say "yes." Again, that is not the way I think it should be. Unfortunately, it is the way I think it is turning out. Finally, as far as widespread competition, I think that within three years, in the Hampton

Roads area, in part of northern Virginia, and maybe in Richmond, competition will exist. I certainly do not see widespread competition in southwestern Virginia or areas of Virginia that are close to West Virginia. But in Hampton Roads area and northern Virginia, I would say that within three years, you will be getting calls on the phone about phone service that you do not want to get. I did not say that. Of course, you may be getting unwanted calls about your phone service.

{56} **John Langhauser:** A couple of points. First, I actually agree with Mark, the states do matter, and I agree with Rick. The record in § 271 regulations is going to be crucial. The states have an awfully important responsibility in putting that record together. Second, I did not talk about a market share test. What I was talking about was getting the systems to work, and work in a way that they are going to handle the contemplated volumes. A system that is going to handle the peaks and valleys that you expect when new entrants enter a market. Right now, the systems are manual. They take a lot of people. In Pennsylvania, Bell Atlantic's witness said each rep could process ten to fifteen orders a day. Think of the number of people you're going to need when ten or twenty thousand orders a day come rolling in. This business about switching to the NYNEX system. I guess Mark is referring to the a computerized system similar to NYNEX's and frankly, that is news to us because, as of Friday, we were not talking about a switch to a NYNEX system. We were still talking about using Bell Atlantic's three manual order processing centers and submitting orders in a very different way than had been contemplated for a year. Finally, the pricing on the OSS systems is a surprise. I mean, we agreed that in an unbundled environment, we need to pay something for access to an OSS systems. They are an unbundled element. The problem in resale is they, the OSS system, have already been factored into the resale price at least a couple of times. Double-charging may be okay; triple and quadruple recovery is a little bit too much. In terms of when you are going to see in competition, if we can get these systems straightened out, if we can get the pricing straightened out, we would like to enter the market late this year or early next. So there will be a phased entrance, but, Judge Moore, you can expect the phone calls to begin around February or March.

{57} **Phillip McClelland:** I think on getting widespread competition, it still matters a lot where the lead rate is fixed. I think, we are moving along pretty well in the business area. The residential area, obviously, has a lot thinner margin, so I think there is a big question mark whether we are going to get there at all. As far as § 271 regulation records, I think the State Commission can create a sufficient record. I think our experience with working in Pennsylvania was a great display of "give and take." We have employed a paper record, but the live record was much better, particularly with commissioners asking questions of people as they spoke. It was as important in the question of when everybody is going to get into long distance as well. My office in Pennsylvania said, "Look, we know that more inter-LATA competition is good for consumers. We realize that. At the same time, we do think Track A says that you have to be serving residential customers as a requirement. We think local competition is good. We do not want to pick between the two, have one and not the other. We want to have both in Pennsylvania.

{58} **Mark Mathis:** Let me just address the one issue of when you will likely see widespread competition. Frankly, I think that cable companies are sending lots of people bills every month. It would be very easy for them, if they really wanted to, as a reseller, call up their customers, and say, "Hey, do you want 20% off your phone bill? I'll put right on your cable bill, and you can get it just like that." And over time, as they put in their facilities, and the same thing would be true with the long distance companies, every single long distance company has a customer in Virginia. So, certainly in a resale manner, I think that competition can come very quickly, and it will come in the rural as well as the urban areas.

{59} **Judge Moore:** How soon do you think we are going to get the calls at night?

{60} **Mark Mathis:** Do you have to ask that? I do not know.

{61} **Judge Moore:** Rick, why are you not doing that?

{62} **Rick Cimerman:** A couple of reasons exist. One is that we do not think that resale is necessarily a good strategy, particularly at the rates that Bell Atlantic and others want to charge for resale. Your position, I think like most of the regulators, is that we think that the discounts that AT&T and others have asked for are too high. So we are somewhere in between, but our strategy is to leverage our assets. Our assets are facilities-based connections to the home. So, it does not make sense to us to get in the business as a resale player if it is not going to be a long-term strategy for us, and we do not think we are really going to be able either to retain those customers or believe that solution really is competition. Resale of simply those facilities is not competition, particularly, when we are looking for is one-stop shopping provided over the same wire.

{63} **Judge Moore:** Are there any questions? We have got a couple of minutes.

{64} **Ms. Wong:** I have a question for Mr. Mathis. When does Bell Atlantic intend to follow the FCC for defending a case?

{65} **Mark Mathis:** Well, we do have to get affirmative rights from the commission. We cannot go there before that happens. We begin hearings in June, so that tells me, at the earliest, third quarter we will see a change, and we are probably looking for third quarter. Get those rates established, and systems that we have applicable to other states are equally applicable to Virginia. Then we will be ready to go.

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[1] Iowa Utilities Bd. v. Federal Communications Comm'n, 120 F.3d 753 (8th Cir. 1997), *amended by* No. 96-3321, 96-3414, 96-3424, 96-3406, 96-3416, 96-3430, 96-3410, 96-3418, 96-3436, 1997 WL 658718 (8th Cir. Oct. 14, 1997).

[2] Telecommunications Act of 1996, 47 U.S.C.A. § 252(c)(2), (d) (1997).

[3] *Id.* at § 271(d).

[4] Telecommunications Act of 1996, 47 U.S.C.A. §§ 151-614 (West Supp. 1997).

[5] David B. Ottoway, *Shultz Says U.S. Will Pursue Aborted Agreements of Summit*, Wash. Post, October 14, 1986, at A20.

[6] Telecommunications Act of 1996, 47 U.S.C.A. §§ 151-614 (West Supp. 1997).

[7] *In re Phar-Mor, Inc. Securities Litigation*, 1993 WL 623308 (W.D. Pa. December 6, 1993).

[8] Telecommunications Act of 1996, 47 U.S.C.A. § 271 (West Supp. 1997).