BOULT CUMMINGS CONNERS & BERRY PLC

LAW OFFICES
414 UNION STREET, SUITE 1600
POST OFFICE BOX 198062
NASHVILLE, TENNESSEE 37219

Jon E. Hastings
(615) 252-2306
Fax: (615) 252-6306
Email: jhasting@bccb.com

TELEPHONE (615) 244-2582
FACSIMILE (615) 252-2380
INTERNET WEB http://www.bccb.com/

April 25, 1997

K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: BellSouth Telecommunications, Inc'.s Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996
Docket No. 97-00309

Dear Mr. Waddell:

Enclosed please find an original and thirteen (13) copies of the Brief of MCI Telecommunications Corporation which we would appreciate your filing in the above docket.

Thank you.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: Jon
Jon E. Hastings

JEH/th

Enclosures

cc: Martha McMillin, Esq.
Guy Hicks, Esq.

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee
April 24, 1997

In Re: **BellSouth Telecommunications, Inc.'s Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996**

Docket No. 97-00309

BRIEF OF MCI TELECOMMUNICATIONS CORPORATION

I. INTRODUCTION

On March 4, 1997, at a regularly scheduled Conference, the Directors of the Tennessee Regulatory Authority ("TRA") instituted a Formal Inquiry (the "Inquiry") for the purpose of determining the compliance of BellSouth Telecommunications, Inc. ("BellSouth") with the criteria and procedures set forth in Section 271 of the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat., 56, 47 U.S.C. Sections 151 et seq. (the "Act") for entry into the long distance (interLATA) market in Tennessee. At the same Conference, the Directors appointed Director Melvin Malone to preside as the Hearing Officer in a Status Conference, which was held on April 3, 1997 and resulted in the issuance, on April 18, 1997, of the "Report and Recommendation of Hearing Officer on April 3, 1997 Status Conference" (the "Report").

The Report directed the parties to submit briefs on certain legal issues which MCI contends are dispositive of this case. The first pertains to Section 271(c) of the Act, which establishes two routes for the Bell Operating Companies ("BOCs") to enter the in-region interLATA market, one under Section 271(c)(1)(A) and the other under Section 271(c)(1)(B). These are commonly referred to as "Track A" and "Track B" as a short-hand reference to the particular subparagraph of Section 271(c)(1) at issue. The legal issue presented is which statutory track is currently available to BellSouth for a 271 application in Tennessee.

Even if BellSouth is able to proceed along Track A or Track B at this time, another legal issue is dispositive of its 271 application. Section 252(d)(1) of the Act requires cost-based rates for interconnection and network elements. The legal issue which arises is whether permanent cost-based rates under this section must be established by the TRA before it can support any 271 application by BellSouth.

As more fully discussed below, it is MCI's position that BellSouth fails both legal tests at this time. The appropriate path for BellSouth on a 271 application is Section 271(c)(1)(A), which it cannot meet at this time for lack of evidence. Because this is the track which BellSouth must follow in its application, Section 271(c)(1)(B) is unavailable as a matter of law. Under either track, permanent cost-based rates are a condition precedent which must be met before BellSouth's 271 application can be granted. Because BellSouth cannot meet this standard, its 271 application must fail as a matter of law.

As a result, the TRA should issue an order finding that: (1) Section 271(c)(1)(B) of the Act is not available to BellSouth for purposes of any application to offer in-region interLATA services in Tennessee; (2) BellSouth must file its application under Section 271(c)(1)(A) of the Act; (3) BellSouth has no evidence to support an application under Section 271(c)(1)(A) at this time; (4) permanent cost-based rates under Section 252(d)(1) of the Act are a prerequisite for granting a BellSouth 271 application; and (5) because such permanent cost-based rates will not be established by the TRA until after the appeal of the FCC rules is concluded, BellSouth cannot, as a matter of law, meet the requirements of Section 271 at this time.

II. BELLSOUTH MUST PROCEED UNDER TRACK A

Track A describes the normal requirements for BOC in-region long distance entry. It provides in relevant part:

> A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service...to residential and business subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier.1

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[1]In total, the Act provides four requirements that a BOC must satisfy before it may enter its in-region interLATA market under Track A: (1) there must be facilities-based competition with one or more interconnection providers that have entered into agreements that have been approved under Section 252 and that specify the terms under which the BOC is providing access and interconnection to its network facilities to one or more unaffiliated competing providers [Section 271 (c)(1)(A)]; (2) the BOC must be providing access and interconnection pursuant to one or more such agreements, and the access and interconnection provided must meet the requirements of the 14-point competitive checklist set forth under Section 271(c)(2)(B); (3) the requested authorization for the BOC to provide in-region interLATA services must be set up to comply with the separate subsidiary and nondiscrimination requirements of Section 272 [Section 271(d)(3)(B)]; and (4) the requested authorization is consistent with the public interest, convenience, and necessity [Section 271(d)(3)(C)].

It requires the BOC to "provide" and "fully implement" each of the fourteen checklist items. § 271(c)(1)(A); 271(c)(2)(B). It also requires the development of facilities-based competition serving business and residential customers. § 271(c)(1)(A). These requirements fulfill Congress's goal of ensuring significant, objective evidence that the local market is open to competition before allowing RBOC entry into long distance.

Track B is a limited exception to the normal entry requirements of Track A. Track B enables a BOC to apply for long-distance entry based on a qualified Statement of Generally Available Terms and Conditions ("SGAT"), without the prior development of facilities-based competition. Track B is available only in narrow circumstances, because it provides significantly less assurance of the openness of the local market than does Track A, and is subject to post-approval "gaming" by the BOC via technical disputes and implementation problems.

Congress adopted the limited exception of Track B because it was concerned that potential competitors might themselves "game" Track A by collectively deciding *not* to compete with a BOC for local business, in an effort to keep the BOC out of the long-distance market. To foreclose such a strategy, Congress determined that a BOC could apply for long-distance entry based on an approved SGAT if "no such provider has requested the access and interconnection described in subparagraph (A) before the date which is 3 months before the date the company makes its application under subsection (d)(1)." § 271(c)(1)(B). The language "no such provider" in this sentence refers back to the "unaffiliated competing providers" delineated in the first sentence of § 271(c)(1)(A). Indeed, the next sentence in

Section 271 (c)(1)(A) refers to these providers as "*such* competing providers." This reference to "such competing providers" is simply repeated when the first sentence of 271(c)(1)(b) again refers to "such providers."

As a result, Track B is available only if no "unaffiliated competing providers of telephone exchange service" have "requested the access and interconnection described in subparagraph (A)" in the relevant time period. This exception could not be more simple, or more simply stated: if potential competitors boycott the BOC and refuse to request interconnection agreements, then the BOC may proceed under Track B. Reinforcing the conclusion that Track B is aimed specifically at a boycott that results effectively in a refusal to negotiate, Section 271(c)(1)(B) also allows BOCS to rely on Track B if competitors accomplish a boycott by negotiating in bad faith or unduly delaying implementation of their agreements. Absent these three related forms of a boycott delineated by Congress, the BOC may not proceed under Track B.

These conditions are not present in Tennessee (or anywhere else, for that matter). Instead, the opposite is true: a considerable number of competitors requested access and interconnection more than three months before any date BellSouth may file its application. Nine competitors' agreements have been approved in Tennessee, and not less than three (3) are currently under review for approval. There is no claim that *any* such provider -- let alone *all* such providers -- negotiated in bad faith or failed to comply with implementation schedules in their interconnection agreements. As a result, Track B is unavailable to BellSouth, and BellSouth must rely on Track A instead.

For a company anxious to get into a new market-in-region long distance-while it has a formidable advantage in its monopoly local market, this scenario is a "problem". BellSouth has admitted that it cannot meet the requirements of Track A at this time. This was conceded in the recent testimony of BellSouth witness Alphonso Varner in BellSouth's 271 proceeding before the Georgia Public Service Commission:

> In order to meet the requirements of Section 271(c)(1), a Bell Operating Company (BOC) must meet the requirements of Subparagraph (A) or Subparagraph (B) and the checklist. Subparagraph (A) applies where the BOC is providing access and interconnection to its network facilities to a facilities-based competitor. The requirement that the BOC is "providing access and interconnection:" means that the competitor has entered into a binding agreement with the BOC that has been approved under Section 252 and is operational. The competitor must be providing service either exclusively or predominately over its own network to residential and business customers.
>
> BellSouth has negotiated interconnection agreements with potential facilities-based carriers and is in the process of arbitrating interconnection agreements as well. <u>However, at this time, BellSouth is not aware of any facilities-based competitors offering local exchange service to both business and residential customers in Georgia and thus cannot satisfy the requirements of Subparagraph (A).</u>

Transcript, p. 1, Question 1, <u>In Re: BellSouth Telecommunications, Inc.'s Statement of Generally Available Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996,</u> Georgia Public Service Commission, Docket No. 7253-U (emphasis supplied). The same situation exists in Tennessee. As noted by counsel for BellSouth at the April 3 Status Conference:

> ...we're proceeding under the assumption that BellSouth is going to be filing for intra, interLATA relief under Track B. If in the interim, towards the end of this process, low (sic) and behold a provider, a facilities-based

> provider decides to serve residential customers, BellSouth may decide to apply to the FCC under Track A.

Tr. p. 36, l. 23 - 25; p. 37, l. 1 - 4.

Since it cannot satisfy Track A, BellSouth is trying to turn this statutory scheme on its head, insisting that Track B is nonetheless available to it. BellSouth's scheme would undermine the safeguards Congress built into Track A, rendering those safeguards inapplicable even when many carriers, which intend to become predominantly facilities-based competitors serving business and residential customers, are actively seeking to compete. If Congress had intended a result so at odds with the statutory scheme, it could and would have said so in clear terms.

Congress could have stated -- but did not -- that Track B is available if "*subparagraph (A) is not satisfied* before the date which is 3 months before the date the company makes its application under subsection (d)(1)." Instead, Congress stated that Track B is available if "no such provider has requested access and interconnection" by the relevant date.

Interpretating Section 271(c)(1) in way which allows Track B to be available to BellSouth in Tennessee today would be at odds with the structure and purpose of the statute. Among the key requirements of Section 271, Section 271(c)(1)(A) requires that, as a general rule, a BOC cannot enter the interexchange market unless and until it is actually providing interconnection and access to a facilities-based competitor that in turn is providing service to residential and business customers. In fact, in describing the predecessor to Section 271(c)(1)(A), the House Report on H.R. 1555 emphasized that the existence of such a competitor "is *the integral requirement of the checklist*, in that it is the tangible affirmation that the local exchange is indeed open to competition." *Id.* at 77 (emphasis added). This "integral requirement" should not be read entirely out of the statute. Under such an interpretation, the failure to meet this "requirement" does not preclude the BOC from long-distance entry. It simply places the BOC on Track B -- thus, actually making it *easier* for the BOC to gain entry into in-region long distance. But Congress did not enact the requirement of facilities-based competition in order to reduce the prerequisites for BOC entry into long distance.

Interpreting the Act to say BellSouth can follow Track B also fails to make sense of the requirement of full implementation of the fourteen point competitivechecklist. Congress intended the requirement of full implementation to ensure the development of real competitive practices prior to BOC entry into long distance. This requirement is especially important when many CLECs are attempting to compete but all remain largely dependent on the BOC to provide resold services and unbundled elements. Indeed, full implementation is one way of enabling those non-facilities based competitors to become strong enough that they can wean their dependence from the BOC and become facilities-based. In maintaining that it can follow Track B, BellSouth's position would render the full implementation requirement inapplicable in just such a situation. Under BellSouth's position, when no facilities based supplier of business and residential service already exists, the BOC does not have to fully implement the competitive checklist even with respect to non-facilities based competitors. This makes no sense. Congress did not impose the important requirement of full implementation only to eliminate that requirement when it is needed most.

Finally, adopting BellSouth's reading of the statute would create perverse incentives for the BOCs. Under BellSouth's view, Track B would create an incentive for a BOC to apply to enter long distance quickly, *before* any local facilities-based competition has developed, and, therefore, before the BOC would have to satisfy the Track A entry requirements. This stands the statute on its head -- Congress required that facilities-based local competition would develop *before*, not after, BOC in-region long distance entry, and it structured the Act's incentives to accomplish just this purpose.2

BellSouth cannot deny that all of these perverse consequences flow from its reading of the statute. Only one policy argument has been offered by BOCs in favor of such a strained reading of the statute : Track B must apply whenever the requirements of Track A have not been met; otherwise, there will be times that a BOC is denied entry into long distance through no fault of its own.3 This concern, however, is both vastly overstated and evinces a profound

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[2]BellSouth's interpretation not only creates an incentive for BOCs to file their Section 271 applications prior to the development of facilities-based business and residential competition, but also creates an incentive for BOCs to prevent the development of such competitors at all, thus ensuring the BOCs the opportunity to file under Track B. For example, beginning from the date of adoption of the Telecommunications Act, the BOC could demand prices that make it unrealistic to provide residential service, or it could delay implementation of adequate operations support systems. At the same time, the BOC could file an SGAT promising to correct these problems and then, once the SGAT was approved, it could immediately file a Section 271 application. The RBOC could thus rely on the very limitations on competition for which it was responsible, such as the absence of a predominantly facilities-based competitor, as a justification for filing a Section 271 application under the less rigorous standards of Track B.

[3]Congressman Tauzin complained in a dissenting statement that Congress should have passed a different law, allowing the BOCs easier access to Track B. In the law as passed, he complained, Track A was too difficult to meet and "each of the Bell Companies may have to wait to apply for long distance relief until some competitor has duplicated the Bell Company's network" or that it might prove "impossible" for the BOCs to enter long distance. *See* H.R. Rep. No. 204, 104th Cong., 1st Sess. 210, 212 (1995) ("Additional Views" of Reps. Dingell, Tauzin, Boucher, Stupak).

misunderstanding of the Act.

There is every reason to expect that facilities-based competition for residential and business customers will develop. MCI, for one, is firmly and publicly committed to providing local service nationwide to both business and residential customers over its own facilities. The possibility of a conspiracy among many CLECs -- *many of whom do not even provide long distance service* -- to forego profits in order to keep a BOC out of in-region long distance is far-fetched. To distort a statute beyond recognition to account for a hypothetical problem that has not arisen, and for all it appears is not likely to arise, makes no sense, even assuming the legitimacy of creating statutory exceptions Congress did not enact.

Equally to the point, it was not the judgment of Congress that the BOCs had a right to immediate in-region long distance entry, so long as they engaged in no blameworthy behavior. The objective status of local competition, as measured by compliance with the checklist and the requirements of the public interest, is the relevant statutory consideration for BOC entry -- not the BOC's or its competitors' "good faith." The only exception to this objective test is found in the alternate route of Track B, which is not, as BellSouth would have it, triggered by BOC good behavior, but by proof of bad behavior of boycotting competitors. Absent evidence of such misbehavior, Congress mandated interconnections fully implementing the fourteen point competitive checklist as a prerequisite for BOC in-region entry.

Thus, on the Track A/Track B legal issue, the TRA should conclude the following: (1) for purposes of a Section 271 application, Track B is not available to BellSouth; (2) any Section 271 application filed by BellSouth must be filed under Track A; and (3) BellSouth has no evidence at this time to support a Track A filing.4

III. PERMANENT COST-BASED RATES MUST BE ESTABLISHED BEFORE THE TRA CAN APPROVE A BELLSOUTH SECTION 271 APPLICATION

Section 252(d)(1) of the Act clearly requires cost-based rates for interconnection and network elements. This interplays with Section 271 of the Act, for whether BellSouth files under Track A or B, it must still meet the fourteen-point competitive checklist, in which some items require compliance with Section 252(d)(1). Specifically, Section 271(c)(2)(A) provides as follows:

> (A) AGREEMENT REQUIRED.- A Bell operating company meets the requirements of this paragraph if, within the State for which the authorization is sought -
>
> (i)(I) such company is providing access and interconnection pursuant to one or more agreements described In paragraph (1)(A), or
>
> (II) such company is generally offering access and interconnection pursuant to a statement described In paragraph (1)(B), and
>
> (ii) such access and interconnection meets the requirements of subparagraph (B) of this paragraph.

Subparagraph (B) is the fourteen-point competitive checklist, of which four of the items - (i) interconnection; (ii) network elements; (iii) poles, ducts, conduits and rights-of-way; and (xiii) reciprocal compensation - cannot be met by BellSouth, for the TRA has only been able

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4 The Kentucky Public Service Commission recently reached a similar conclusion for that state, determining that Track A, not Track B, is the avenue which BellSouth must use for purposes of any Section 271 application. Order dated April 16, 1997 In the Matter of: Investigation Concerning the Propriety of Provision of InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996, Case No. 96-608.

to establish rates based on proxies. The issue of how cost studies should be performed to establish cost-based rates under the Act is In limbo at this point. The FCC rules which addressed this matter were appealed and their pricing portion stayed by the United States Court of Appeals for the Eighth Circuit.

The TRA Staff Draft Report properly concluded that "BellSouth should not be certified as In compliance with these [checklist] items until the cost studies are complete, and permanent rates set." Staff Draft Report at p. 4. This is In accord with the requirements of the Act. Section 252(d)(1) requires that interconnection and network element charges be set at just and reasonable rates which shall be based on cost and nondiscriminatory and may include a reasonable profit. Since those rates will not be set by the TRA until after the appeal from the FCC order runs its course, the checklist items which require compliance with the Act's pricing provisions cannot be met. The rates now In effect In Tennessee are temporary and based on proxies, which falls short of the competitive checklist's requirements.

Given the Act's mandate that the checklist compliance is essential before a BOC can be allowed into In-region long distance, it is evident that a partial compliance is insufficient. If BellSouth attempts to rely on temporary, proxy-based rates for the pricing components if the checklist items, however, that is exactly what it will attempt to do: try to persuade the TRA that a partial compliance passes muster. This the TRA must resist, and insist that BellSouth can have any 271 application granted only after permanent cost based rates are established. Because this will not occur until the appeal of the FCC rules is concluded, BellSouth cannot, as a matter of law, meet the requirements of Section 271 at this time.

IV. CONCLUSION

It is important for the TRA to consider the legal issues In this proceeding at this early stage, for they are dispositive of any 271 application BellSouth might file at this time. There is no need for the parties and the TRA to undertake a time-consuming, exhaustive examination of the many issues presented by a 271 application, when on its face, anything BellSouth might file must fail as a matter of law. Track B is not available to BellSouth. Track A, it concedes, it cannot meet. And even if that were not the case, the critical element of permanent cost based rates must be met to satisfy Section 271's 14 point competitive checklist, which cannot be satisfied at this time.

DATED this 25th day of April, 1997.

Respectfully submitted,

Jon E. Hastings, Esq.
Boult, Cummings, Conners & Berry, PLC
Suite 1600, 414 Union Street
Nashville, Tennessee 3 7219
(615) 252-2306

Martha P. McMillin, Esq.
MCI Telecommunications Corp.
780 Johnson Ferry Road
Atlanta, Georgia 30342
Attorneys for MCI Telecommunications

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 1997, a copy of the foregoing was served on the party of record, via hand delivery or facsimile, addressed as follows:

Guy Hicks, Esquire
BellSouth Telecommunications, Inc.
333 Commerce Street
Suite 2101
Nashville, TN 37201-3300
(615) 214-7406

Jon E. Hastings

104TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPT. 104–204
Part 1

COMMUNICATIONS ACT OF 1995

JULY 24, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce, submitted the following

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 1555]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 1555) to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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tions at the time, the courts strongly affirmed the FCC's resale policy and attached great weight to the Commission's interpretation that the policy was deregulatory.

However, the Commission's policy has never required that an underlying carrier create a resalable product. Instead, the Commission has only required that carriers cannot limit the resale of the products they create. This is an extremely important distinction in light of H.R. 1555's intent to impose, for the first time, an affirmative obligation on the local carrier to create a product that is "economically feasible"—a resalable product. It is particularly ironic that, for almost two decades, long distance carriers have relied upon repeated FCC statements and decisions that affirm that carriers have no obligation to create a resalable product when they are defending themselves against charges that particular tariffs make the resale of a particular service "unresalable".

We have characterized this provision as "pernicious." For the local telephone industry in general, and the Bell Companies in particular, that is an accurate description. It requires that the local telephone industry subsidize its competitors; the very companies with which the local telephone industry wishes to compete for long distance business. And in the case of the Bell Companies, it forces them to subsidize competitors for a substantial period of time when the Bell Companies cannot even apply for long distance relief, much less offer long distance services.

The branch of faith to which we referred also extends well beyond requiring the Bell Companies to subsidize their competitors. As we noted above, before the Bell Companies are permitted to ask state and federal regulators to allow them to enter the long distance market, they must implement a series of market opening measures to permit competition in their home market. In order to prove that their local networks have been adequately opened to competitors, and in order to obtain authority to enter the long distance business, each company must demonstrate that it is providing access to and interconnection with its network facilities to the facilities of a competing carrier. This competing carrier must offer, over its own facilities, competitive service that is comparable in price, features, and scope to both residential and business subscribers.

It is possible that this requirement can never be met. It appears that each of the Bell Companies may have to wait to apply for long distance relief until some competitor has duplicated the Bell Company's network and offers service of comparable "scope" throughout the service territory of the Bell Company.

Curiously, H.R. 1555 fails to provide a means by which the Bell Companies ever could obtain permission to offer long distance services that originate in states (or nations) in which they do not provide local telephone service. During the course of the Committee's consideration of the bill, a colloquy on this point did little to clarify how a Bell Company can obtain out-of-region and international relief. In fact, the bill's treatment of this issue goes beyond breach of faith to pure Catch–22.

The facts are these. H.R. 1555 adds a new section 245(f)(1) to the Communications Act. This section prohibits a Bell Company from offering interLATA services with two exceptions, neither of which is relevant here. Section 245(f)(2) provides that a Bell Company, in any State to which its verification under section 245(a) applies, may offer interLATA services after the effective date of the Commission's approval of such verification. In other words, a Bell Company cannot originate interLATA traffic in any state unless the FCC has approved a state verification that the company has complied with the provisions of section 245(a).

Section 245(a) requires a Bell Company to provide the FCC with a certification from a state public utility commission that its local network has been opened and complies with the provisions of the section. Certifications are based on *facts*. If a Bell Company does not operate a network in any given state, that state's public utility commission cannot in good faith certify in fact to the Commission that the company's network has been fully opened if the company has no such network in that state. And unless the FCC has approved a state's certification, the prohibition on Bell Company provision of interLATA services remains in force.

Thus, while there is a mechanism in place that ultimately will permit a Bell Company to offer interLATA services for traffic that originates within states in which it offers local telephone service, there is no way that the Bell Companies can obtain relief for interLATA traffic that originates outside of their service territories.

We look forward to the debate in the House on this issue. We anticipate with particular interest the discussion of how the Bell Companies can obtain relief to carry U.S.-bound traffic that originates overseas, where not only are there no state public utility commissions, but there are no states at all.

Finally, the Committee adopted an amendment that requires the Bell Companies, for three years after enactment, to provide interLATA services only through a separate subsidiary. This is a burden uniquely imposed on the Bell Companies. Sprint, which offers both local and long distance service, is not so constrained, nor is AT&T, nor is any other company, even after they enter the local exchange business in direct competition with the Bell Companies.

The lack of parity between the bill's treatment of the Bell Companies and all others is striking. It will also lead to some rather ludicrous results, particularly since the separate subsidiary requirement extends to all long distance services, including those previously authorized by the Judgment Court and those authorized by section new 245(h) as added by this bill. New section 245(h) exempts from the prohibition on Bell Company provision of interLATA services a series of services that contain a long distance component, which component is incidental to the provision of an unrelated service. Among these services containing an incidental long distance component are cellular and other commercial mobile services, cable services, and signalling services.

The Committee's decision to adopt a separate subsidiary requirement will require that when a Bell Company provides cable service that includes a long distance component, that long distance transmission will have to utilize facilities owned by another company.

It will be interesting to see how this requirement will affect, for example, the operation of SWB's (formerly Southwestern Bell Telephone Company) cable system in Montgomery County, Maryland. Montgomery County is divided into two LATAs; SWB serves cable customers in each. Perhaps the company could divest itself of inch-long sections of its system each place it crosses the LATA line, and then lease the sections back from the new owner.

H.R. 1555 compels the same silly result with respect to the Bell Companies' provision of commercial mobile services, including cellular telephone and paging services. Presumably, the Bell Companies will have to divest themselves of little pieces of their existing networks wherever they cross a LATA boundary, and then lease the pieces back from the new owners. The public interest rationale for this nonsensical requirement is difficult to discern.

In sum, H.R. 1555 is a deregulatory bill except when it comes to shielding the long distance industry from competition from the Bell Companies. It caters to the long distance industry by unilaterally and one-sidedly abrogating the agreement into which the U.S. Government entered in 1982. In our view, this breach of faith makes 't considerably more difficult—and in some cases impossible—for .he Bell Companies to obtain long distance relief. It imposes obligations that will mandate that the local telephone industry subsidize its local competition, even when the competitors are among the largest companies in the world.

While we support many of the market-opening initiatives embodied in this bill, we will continue our efforts to ensure that the long distance industry does not succeed in preventing competition from its most likely competitors: The Bell Companies. The provisions we have discussed here must be improved substantially in order to achieve the fairness that is essential in a rewrite of the Communications Act and the free market principles on which this legislative exercise, we had thought, was originally premised.

JOHN D. DINGELL.
W.J. "BILLY" TAUZIN.
RICK BOUCHER.
BART STUPAK.

ADDITIONAL VIEWS OF REPRESENTATIVE BART GORDON

I am happy that the House Commerce Subcommittee on Telecommunications and Finance unanimously accepted my bill, H.R. 1559, the Freedom From Toll Fraud Act, which seeks to crack down on abuses in the 1–800 industry, as an amendment to H.R. 1555, the Communications Act of 1995.

Three years ago, Congress passed a piece of legislation that I was integrally involved with, the Telephone Disclosure and Dispute Resolution Act (TDDRA), which put the brakes in abuses in the 1–900 pay-per-call industry by requiring price-per-minute disclosure and making 1–900 call blocking available to parents. Regulations by both the FCC and FTC have since put the law into effect.

Rather than comply with the law, many of the 1–900 abusers have simply moved their sex and psychic hotlines to 1–800 numbers. Now consumers are being charged high prices for making calls to 1–800 numbers that they expect to be toll-free.

Consumers call 1–800 numbers and are unknowingly transferred to either 1–900 numbers, numbers offshore, or have their charges reversed to the phone line through Automatic Number Identification (ANI). Many of these calls are being placed by children calling teleporn and psychic hotlines without their parents' knowledge.

While TDDRA gave 1–800 numbers special legal status as free to caller to prevent this problem, an exemption was made to protect legitimate businesses using 1–800 numbers if they obtained a "pre-existing agreement" with the caller. Scam operators are abusing this loophole, and my legislation seeks to cease these abuses.

H.R. 1559 protects unsuspecting callers from being charged for calls they expect to be toll-free—thereby preserving the toll-free status and integrity of the legitimate $8 billion 1–800 industry—by requiring stricter cost disclosure requirements to ensure that consumers clearly know when there is a charge for a call, how much the charge will be, and how they will be billed.

Information providers (Ips) operating over 1–800 numbers must obtain legal, informed consent through either a written preathorize contract with the caller, or through the use of a preamble at the start of all non-toll-free 1–800 calls.

The written contract between the IP and the caller must include the rates of service, the IP's name, business address and phone number, the IP's pledge to notify subscribers of future rate changes, and the signature of a legally competent subscriber. Importantly, the contract must allow the subscriber to choose the method of billing: the phone bill, credit card, calling card or prepaid card.

In the absence of a written presubscription agreement, callers may be given access to information services over 1–800 numbers only after first hearing an introductory message that clearly states that there is a charge for the call and the service's total cost per