



**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Review of the Section 251 Unbundling) WC Docket 04-313
Obligations of Incumbent Local) CC Docket 01-338
Exchange Carriers)
)

NOTE: This filing incorporates a Regulatory Flexibility Act and Data Quality Act challenge. We have also filed 2 other separate documents, also highlighted herein:

- Data Quality Act Challenge Pertaining to FCC's Triennial Review Data.
- Data Quality Act Challenge to the FCC's Broadband (706) Reports and Analysis.

COMMENTS

**VIOLATIONS OF THE REGULATORY FLEXABILITY ACT
VIOLATIONS OF THE DATA QUALITY ACT**

By

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October 19th, 2004



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INTRODUCTION

“The current Commission is on track to butcher the pro-competitive vision of the 1996 Act. And it is sticking consumers with higher telephone rates and fewer choices. The people who pay America’s phone bills deserve better.

“The majority characterizes this effort as a comprehensive plan to stabilize the market. The truth is just the opposite. In exchange for a standstill today, they commit to price increases tomorrow. After six months of stay, existing enterprise market loop and dedicated transport customers can expect rate increases of 15 percent. The news is even worse for new customers. For enterprise loops and transport, rates will race up to special access. This could mean price increases of more than 300 percent—a potentially lethal blow to any carrier that built its business plan on the core tenets of the 1996 Act. For carriers operating on slim margins in price sensitive markets, absorbing these increases may just not be possible.”¹

Dissenting Statement by Commissioner Michael Copps, August, 2004

The FCC’s Powell-Bush legacy will prove to be the destruction of competition in wireline phone and broadband services, and having directly helped to create the economic recession in the United states. It also has directly harmed every small telecom provider, as well as their clients. And with the series of proposed wrong-headed decisions pertaining to the Triennial Review, it will now finalize the process by eliminating all but the monopolies that own the wires.

It is one of the main reasons that 6000 Internet Service Providers have been put out of business, and why America is trailing 11 other countries in its sub-standard broadband deployments over 100 year old copper wiring.

It is the reason why every charge on most local phone bills has gone up over the last 4 years and it is the reason why competition in the US is running to stop offering services in many states.

We can say this because of the evidence we will now present. Since 1998, Teletruth and its members, including New Networks Institute, have filed over 14 comments petitions and complaints pertaining to broadband deployment, the lack of competitive enforcement of primary laws that impacted small telecom businesses, and the harms the FCC’s decisions have had and continue to have on every telephone and broadband customer in the United States.

As the opening quote from Commissioner Copps concludes



“The current Commission is on track to butcher the pro-competitive vision of the 1996 Act. And it is sticking consumers with higher telephone rates and fewer choices. The people who pay America’s phone bills deserve better.”

Instead of rewriting the same arguments we have filed since 1998, it is time for us to expose what the FCC’s decisions have done and will do and why they are harmful to competition and the public interest.

A Short Background For the Reader

“*When in doubt sue the FCC*” has been the standard used by the monopoly phone companies and their minions, including USTA, the main association that represents the Bell company interests. The competitors also have had to sue the FCC just to try to maintain their rights, which were granted under the Telecom Act of 1996.

After a series of back-and-forths, the current situation is that a decision by the DC Circuit, which was very friendly to the local monopolies, will:

- 1) Block any competitor from using any new fiber-optic based wiring that the Bells install.
- 2) Get rid of line sharing, which has allowed competitors, including Internet providers, to use the customer’s wireline phone service for DSL.
- 3) Block UNE-P services, which allows a competitor to lease parts of the network to offer their own local service or bundled with long distance.
- 4) Raise competitive the rates 15% or more, which will effectively put the competitors out of business, or to leave offering services.

Aside from this, the FCC has acted or proposed as follows:

- 5) It will block any Internet Provider from using the cable networks — and the FCC is appealing a current case, known as BrandX, which would open the cable networks to competitors.
- 6) It has essentially blocked all ISPs from being able to resell Bell DSL through a predatory pricing model. ISPs have shown that the Bells’ retail rates are lower than the wholesale rates being offered.
- 7) Almost every state is also planning increases to local phone service or is being asked to by the local phone companies.
- 8) The FCC’s Intercarrier Compensation Forum is requesting that the FCC Line Charge on every phone bill go up to \$10 a month, not counting taxes.
- 9) Neither the FCC nor the Bush Department of Justice appealed the DC Circuit’s opinion to the Supreme Court. — thus siding with the local phone companies over competitors.



The consequences of these actions are essentially to kill off competition on every level – it will leave only the local cable company and phone monopoly to offer America “Broadband” services at their own speed of deployment, but also with their own restrictions.

The FCC is in fact picking the winners and the losers, not the marketplace. By creating laws that favor big-business, (with the hand of the monopolies behind it), the competitors are being killed off.

- AT&T in July, 2004 stated that because of these harmful (read unprofitable) laws, it would be pulling out of its residential markets — 4.9 million customers. Other competitors have stated they will be pulling out of various states because the wholesale prices are unprofitable. The entire long distance business, once vibrant, is now a series of companies looking to be sold or taken apart.
- 6000 ISPs have been put out of business since 2000 and the FCC hasn't even bothered to investigate how their own actions help speed this process. This will continue to slow down innovation in new services.
- Customers throughout the US have spent over \$120 billion dollars on fiber-based broadband services they will never receive, yet the FCC has never bothered to investigate the role of the as “defacto” investors.

Will the country and the FCC have ubiquitous universal broadband from the current Bell phone companies? According to Reuters, SBC is ready to spend \$6 billion if only they won't have to share these networks.

“SBC TIES BROADBAND BUILD TO FCC SHARING RULES
We will build it, if we can own it. That's the message from SBC, the second-largest U.S. telephone company, which has said it plans to spend \$4 billion to \$6 billion to run fiber-optic lines to neighborhoods and new homes over the next five years, offering video and high-speed data to half of the customers in its 13-state territory. SBC's upgrade would allow it to provide customers with a connection speed of 25 megabits per second, enough for four video channels, voice service and fast Internet access. But the company says it needs to know if the FCC will force the company to share those lines with competitors. FCC Chairman Michael Powell is backing a proposal that would allow SBC and other dominant local carriers to share at most only a small voice line if they run fiber-optic connections within 500 feet to homes. A vote on the proposal will likely occur Oct. 14.”²

What about VOIP and Wireless services? Of course these are important pieces of data to put in this discussion. We will address these issues within.



Part 1: Data Quality Act Challenge by Teletruth on Broadband Information.

We have filed a separate Data Quality Act Challenge for the FCC to redo their entire Broadband report series (Advanced networks Section 706) because they omitted critical data and therefore the report was neither reliable nor objective.

The FCC has given a false impression to the country and Congress about the deployment of Broadband services. As we demonstrate, the FCC has essentially left out thousands upon thousands of documents. These documents show

- An estimated \$120 billion was collected for fiber-based broadband networks that were never deployed. Since 1998, the FCC left out the most essential point — State laws were changed to give the Bells' financial incentives for these projects— customers are defacto investors.
- The FCC redefined broadband to suit political needs and dummed down the definition of broadband to speeds 50 times slower than those promised in 1992!
- The FCC left out entirely the role of the Internet Providers in the history or current broadband reports.

Fiber-Optic Broadband Plans, 1992-2004?

A simple example of what is missing in the FCC's analysis: By 2004, Verizon Pennsylvania was supposed to deploy to half of the entire state — rural, urban and suburban equally – a fiber-optic service to customers' home or office. This would be 45mps in both directions and NOT DSL over copper wire. This state agreement, reached in 1994, goes to 2015. In PA, Verizon received an estimated \$4 billion dollars in excess profits, tax perks, etc. None of these services exist today.

None of this material was included in any FCC broadband report. Therefore, we believe that the FCC has given a false impression of our entire digital future — is this why the country is 11th in countries offering broadband? Is this why "broadband" in 2004 still goes over copper wiring at speeds of 200K and can't handle HDTV?

Competitive Eraser?

In this complaint we also point out that the FCC erased the entire history of the Internet Service Provider and their role in bringing Internet/web services as well as broadband to the public.

One has only to scan the FCC's broadband reports to notice that except for a passing quote, the ISP has been erased.



The Internet Service Providers, some 7000+ companies in 2001, were the companies who brought America to the Internet and web, not the Bell companies. Their contribution has been an innovation engine, helping small companies go online, not to mention the majority of America's residential users.

We do not bring this issue up as part of history. We believe that it has impacted every law that the FCC has written — and will harm the future of broadband, since the innovation engine will be taken out and replaced by rehashed inferior monopoly products and services.

Harms to the Economy. Bad Data Lost Us a Generation of Innovation.

Imagine if the Bells had brought to the public the fiber-optic services are promised — by 2000, about half of the U.S. would be using services with speeds of 45mps or faster in both directions. Instead, what we had was over 6000 companies being put out of business, and no accountability about fiber-based broadband services.

A Brookings study (paid for by the Bell companies) stated that \$500 billion dollars annually would be added to the economy if the country had full broadband services.

Obviously, then, the harm to the economy was that the promised services never appeared —and the entire country's future was put on economic hold — or more to the point, in decline.

History as an Indicator of the Future— The Bells Lied and They are Now Gaming the System Again.

As quoted from our 1995 broadband complaint against NYNEX (now Verizon) for not deploying its fiber optic services in Massachusetts, Ivan Seidenberg, now CEO of Verizon, testified in front of Congress in 1991 about the "broadband electronic highway" and the need to remove laws so it would be built. As we wrote:

"On June 21, 1991, NYNEX CEO Ivan Seidenberg testified to of the House Committee on Energy and Commerce stating that "the public switched network is burdened by a number of restrictions which frustrate our ability to deploy new technology as rapidly as possible." Seidenberg also was "concerned" that if new laws weren't forthcoming, then the "ability of the broadband electronic highway to play a critical role in defining our strength as a nation in a global information economy" was at stake."

In 2003, Verizon said it would be delivering 100mps services to customers. According to Barons (March 24, 2003)



"Verizon plans to start replacing its copper wires with fiber-optic lines that reach all the way to a customer's door -- in the beginning of next year (2004)."

"I talk about it with my engineers as 'The 100 Megabit Challenge,' " says Greg Evans, the vice president in charge of Verizon's access technologies. "It puts this almost infinite capacity out there."

In 2004, the country, under Verizon's current FIOS plan, will be lucky to get 5-10 mps in one direction for a decent price. (Upstream is supposedly only 2mps). Forget about 45mps in both directions – if it's ever delivered.

What's seriously troubling is the fact that this broken record has not been documented by the FCC. The FCC has bothered to remember that Verizon's promises were for fiber-to-the-curb — in 1996. In 1996, Verizon cut a 6 and 1/2 year deal with Lucent (good through 2003) to build fiber-optic based equipment. Imagine being a company planning for a future that was not going to exist. (Bell Atlantic press release, July 1996)

"Later this year, Bell Atlantic will begin installing fiber-optic facilities and electronics to replace the predominantly copper cables between its telephone switching offices and customers.... The company plans to add digital video broadcast capabilities to this "fiber-to-the-curb," switched broadband network by the third quarter of 1997, and broadband Internet access, data communications and interactive multimedia capabilities in late 1997 or early 1998."

In fact, according to the release, the entire Bell Atlantic region would be rewired.

"Bell Atlantic plans to begin its network upgrade in Philadelphia and southeastern Pennsylvania later this year. The company plans to expand this Full Service Network deployment to other key markets over the next three years. Ultimately, Bell Atlantic expects to serve most of the 12 million homes and small businesses across the mid-Atlantic region with switched broadband networks."

With thousands of other documents missing, pertaining to this Data Quality Act challenge, it is clear that the FCC never supplied the public with accurate data about deployment and therefore has harmed the country in multiple ways.



Remedies

- While the Bells and cable companies are holding American's broadband future in their hands, we believe that any new financial incentives to the infrastructure monopolies should be stopped immediately and a full accounting of what was collected by state be instituted.
- We request the FCC redo its reports to include the role the Internet Service Provider in the country's Internet and broadband deployments, as well as the harms currently being inflicted on this market segment.
- We request that the FCC redo the Triennial Review's analysis to include this new data and perspective.



**Part 2) Regulatory Flexibility Act and Data Quality Act Violations:
8 Year Old Data Is Still Being Used to Determine New Regulations.**

NOTE: Teletruth has filed a Separate Data Quality Act Complaint about the use of outdated, 8 year old data for new rulemakings in that it gives a totally distorted picture to the American public and Congress about the entire Internet and broadband deployments.

In the most current Triennial Review, August 2004, there exists something called a "Initial Regulatory Flexibility Analysis (IRFA). The FCC's information provided for ISPs is dated 1997.

"Internet Service Providers. The SBA has developed a small business size standard for Internet Service Providers. This category comprises establishments "primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others." Under the SBA size standard, such a business is small if it has average annual receipts of \$21 million or less. According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year. Of these, 2,659 firms had annual receipts of under \$10 million, and an additional 67 firms had receipts of between \$10 million and \$24,999,999. Thus, under this size standard, the great majority of firms can be considered small entities."

The footnote:

"U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191 (issued October 2000)."

In the original 2001 Triennial for 01-338 pertaining to the Unbundling rules, the FCC totally neglected to include any reference to the Internet Provider markets. In other related dockets, the FCC did include data – however, they were quoting data from 1997. This quote above is almost identical to that original information.

As we pointed out in our comments of 2002, this data was way to old to accurately represent the ISP marketplace. We also pointed out that other data, including independent research from Jupiter Research/ISP Planet, as well as the Small Business Administration's Office of Advocacy revealed that there was over 7000+ ISPs. Boardwatch/ISPPlanet wrote:

As of March 2001, 7,288 ISPs in North America have registered on our Web site." (Emphasis added)



Teletruth has filed a Separate Data Quality Act complaint. Teletruth requests:

- *How many Internet Service Providers were there from 1997 through 2004 and how many companies did the FCC's policies help to put out of business?*
- *Why didn't the FCC change its analysis to update 8 year old data and how has it impacted every law the FCC has written or will consider?*



Part 3) Regulatory Flexibility Act Challenge: New Complaint: The FCC has Ignored its Responsibilities to the Entire ISP Marketplace.

As we have shown, the data presented by the FCC is so seriously flawed as to be useless in making new laws. This flaw includes the entire removal of a class of telecom service providers from history. But it gets worse.

In 2002, Teletruth filed a Regulatory Flexibility Act complaint, claiming, among other items, that the FCC has failed in multiple ways to accurately analyze the market, but also it did not address actual alternatives to their bad decisions.

In the 2003 Triennial decision the FCC responded, claiming that their regulations are not impacting ISPs and they do not regulate them.

"775. Internet Service Providers. **While internet service providers (ISPs) are only indirectly affected by our present actions, and ISPs are therefore not formally included within this present analysis (FRFA),** we have addressed them informally to create a fuller record and to recognize their participation in this proceeding." (Emphasis added)

The Office of Advocacy realized there would be harms and in their Ex Parte letter to the FCC outlined their concerns with the FCC's proposed broadband rulings on the small business Internet providers. To read their full Comments http://www.sba.gov/advo/laws/comments/fcc02_0827.html

The Office of Advocacy wrote:

"After reviewing the Commission's proposed rule, the IRFA (initial Regulatory Flexibility Analysis) and comments, Advocacy is concerned the Commission has understated the impact on small ISPs of its tentative conclusion classifying broadband access service as an information service. Classifying broadband access service as an information service would remove the requirements set forth in the Commission's Computer II and Computer III rulemakings that provide carriage to ISPs. Such an action will severely hamper the ability of small ISPs to provide broadband service, stifling competition and slowing down deployment. Although Advocacy shares the Commission's commitment to deregulation to bolster competition and spur economic growth, in this instance, complete deregulation will create impenetrable barriers to entry, eliminating competition from small businesses and removing consumer choice."



Kate Lynch, President of the National Internet Alliance and CEO of Bway.net, an independent, New York City based ISP, explained that almost every action the FCC takes has a direct impact on the Internet providers. Here are a few examples.

- They create the fundamental definitions of types of services, such as whether broadband is an "Information" service or a "Communications" service, which impacts virtually every part of our business, from taxation to the use of various networks. (An information service has different regulations than a communication service.)
- They accept complaints from ISP's and will mediate disputes, such as those between the carriers and Internet providers
- The claim jurisdiction over DSL and "the Internet", which is our only means of proving broadband (since we're not allowed on cable), and as "providers" of Internet service, any regulation pertaining to the Internet is a regulation of ISP's (under DMCA, CALEA, etc.)
- They oversee reciprocal compensation, which, by failing to enforce, has put ISPs and CLECs out of business and ended the trend towards a "free Internet", at least for dialup.
- They proactively included ISPs as DSL providers in Federal Universal Service Fund (FUSF) payments (but not receipts since we're not CLECs) which is a form of taxation but without representation.
- By "forbearing" (meaning not making regulations or changing current regulations) in relation to cable they are regulating away our access to those common carrier networks.

We will go through some of these items in more detail

Violation: No Outreach or Trying to Provide Alternatives.

One has only to scan the current Triennial 01-338 list of commentors to see that they are a collection of lawyers representing various phone companies or the state commissions and government agencies. **Virtually No small telecom business representation was presented** in any of these discussions, nor was there any effort to do the proper outreach to make sure that Internet providers or other related groups were represented.

And certainly, there was no outreach to the millions of small business customers who are going to be impacted by the decisions made.

The Federal Register is NOT Outreach.

The Regulatory Flexibility Act requires the FCC do outreach of those impacted by the laws and the FCC claims that posting something to the Federal Register alleviates the problems of actually contacting those impacted by the laws that are about to be written.



In our informal survey of ISPs and small businesses we found that virtually no one reads the Federal Register, much less would be informed that the current rulings being presented would impact them. Large companies have legal staff to inform them of what is in the Federal Register, not small firms.

Also, as we pointed out in our previous filings, the FCC has made little effort to have any ancillary information that is “customer friendly” to target the average small business, much less small competitive ISPs from understanding what is at stake.

Therefore, the FCC should prove through a survey or some other means that they are correct – that the Federal Register notification satisfies their obligation under the law.

Violation: Data Quality Act as Part of the Regulatory Flexibility Act

The FCC is still using boilerplate language, implying reliance on old and useless data to make its decisions on competition. An example as previously pointed out, the FCC’s Internet provider data is from 1997!

Violation: FCC Does Regulate the ISP Markets — Stop Kidding Yourself.

The FCC has just ruled that local phone companies are allowed to close their fiber-based networks to competitors. However, there are no alternative means of access presented for the small ISP companies or CLECs.

If the FCC is not the agency of record about Internet Service Providers, then obviously the following issues would not be in their jurisdiction.

Details:

- **The Resale of DSL: Predatory Pricing 101, Goes Unchallenged.**

The FCC has helped to shut down the entire ISP industry’s ability to use the customer funded-Bell networks. The FCC has failed to take action on the various complaints and petitions over the years to examine the Bells’ predatory pricing, which has directly kept the ISPs from broadband expansion.

ISPs have presented data that clearly showed that the Bells’ wholesale price to ISP to resell DSL was above the retail price of the Bells’ service — so, an ISP would lose money on every sale.

Also, the FCC declared DSL an “interstate information service”, and did NOT separate the telecommunications part, the bandwidth, from the application part, the Internet service (IP protocol layer). By doing this, the FCC claims that ISPs are no longer entitled



to use these networks because they are no longer “telecommunications products” — Semantics to regulate the ISPs out of business.

Also, ‘forbearance’, where the Commission doesn’t act or create new rulings, is still a form of regulation, even if the FCC doesn’t want to believe it. While one company gets forbearance – meaning that the FCC won’t deal with enforcing the current laws, thousands of companies have had new regulations applied —thus blocking their ability to use existing networks, which all telephone ratepayers have subsidized.

In our “Small Telecom Business Impact Study”, published in 2003, we found that of the 40% of ISPs who do not offer DSL, the majority were priced out of the market by the Bell companies or had severe problems with installations. And the FCC did nothing, even though the Texas ISP Association, the American ISP Association, the California ISP Association and others have filed both data and complaints with the FCC.

In fact, when SBC decided to raise its wholesale rates for ISPs, the FCC granted them approval without requiring any cost support – causing certain harm to ISPs. Our survey found that:

- **At least 30% of ISPs stopped offering DSL because it was not profitable.**

One Texas ISP wrote:

“We tried reselling Bell DSL but stopped because SBC pricing guarantees no one, even an efficient and profitable ISP can make money reselling DSL. Then there is the ordering process, which is a guaranteed time waster for your staff and insures that if we made any profit reselling DSL, you then lose it through the ILEC's laborious ordering process. We dropped DSL in May as just about ALL ISPs.”

- **The Removal of Line Sharing Directly Impacts ISPs.**

Do you know the song “Wipe Out”, that 1960’s classic? With this decision, the FCC is closing down every ISP who currently uses Line Sharing or who would use Line Sharing in the future. This doesn’t simply hurt the competitive CLECs that are also being put out of business — This directly harms every ISP who has been able to manage to stay in business to this point and offers their broadband service using Line Sharing.

Closing off line sharing has DIRECT impacts to ISPs, but it will also harm every small business that would use these services.



- **What's In a Critical Definition? "Communications Service" vs an "Information Service".**

Without a long and detailed discussion of laws impacting ISPs, the Triennial Review's basic premise is that broadband has been declared an "interstate, information Service", vs a "communications" service. The main difference is that an information is not taxed the same way as a communications service. It is not, currently, required to pay, for example, various taxes. More importantly, an information service does not have to share it's facilities as with a communications service. This fundamental distinction can block the ISPs from using the Bell companies 'communications' service products.

Of course, declaring DSL or broadband an information is ridiculous, since it has both an application, the ISP Internet component that connects the user to the Internet, as well as a 'transport' component, which is the bandwidth and should have remained a communications service. However, the FCC's changes of this directly impacts the rights of ISPs on multiple levels.

- **The Wishful FCC —Wireless ISPs.**

The FCC has made a big deal of having ISPs go wireless. What a shame the FCC didn't interview the ISPs to see if wireless services would work for them. In surveys with ISPs, who have already invested in wireline products, the clear message is that a) wireless doesn't work well in specific areas, especially cities, and b) these companies have already invested the money to offer wireline products — as promised in the Telecom Act, and other related decisions, such as Computer II and Computer III.

We make no argument that the wireless broadband industry should grow, especially where wireline services are not available or has deployment problems. However, this is not a solution for the majority of ISPs who are currently being frozen out of this marketplace.

Remedy: Regulatory Violations: Start All Over with Accurate Data and Correct the Regulatory Framework.

- The FCC has harmed the ISPs in virtually any context. It has erased the entire industry from history, it is in denial that its action will harm ISPs, and it has left this entire industry out of ALL rulemakings.
- The FCC should start the entire Triennial all over since every action is a violation of the basic tenets of the Regulatory Flexibility Act and Data Quality Act.



Part 4) The Data Quality Act Violations Surrounding Unbundling Issues

The Issues of Unbundling:

- 1) Massive Decreases in the Actual Costs of Local Phone Service.
- 2) Access Line Equivalents Consistently Go UP, Not Down.
- 3) FCC Data on Competitive Lines is Not Accurate According to Bell Annual Reports.
- 4) There is Massive Cross Subsidization of Local Phone Service and other Businesses.
- 5) Are Bells' Products are Not Paying Their Fair Share? — Adding to "Below Cost" Issues.
- 6) There is No Local Phone Service Competition.
- 7) Massive Fraud in Accounting has Gone Unchallenged.
- 8) Who Owns the Networks? – The FCC's Plan to Give Customer Funded Networks to a Private Company for Exclusive Use.
- 8) VOIP craze — Stop kidding yourself.

Ma Bell (AT&T) is up for sale, MCI has its own problems and Sprint is also hurting – How is it that the 3 largest long distance companies are either up for sale or have serious financial problems?

The Bell companies are crying that prices are "below costs" and that they shouldn't have to open their networks to competitors.

What the FCC nor anyone else has bothered to explain then is — didn't the Bell companies make a deal under the Telecom Act. The deal was to open their networks to competition in exchange for being allowed into new businesses – which include both long distance as well as DSL.

And, as we will show, the Country does not know what the actual cost of local phone service, there is adequate proof that the Bells are cross-subsidizing local phone service to fund their other businesses, including Long distance and DSL, the "loss of lines" is something of an urban legend, and basic data about the cost of local phone service, including audits, have been left out of these discussions. Also, the cost of service should be falling, since the actual expenses are being slashed, and the number of competitors has been greatly exaggerated.



Basic Facts Left Out of the Discussion

1) Massive Decreases in the Actual Costs of Local Phone Service.

- Since 2000, the Bells have cut their wireline construction expenditures over 50%.
- Since 1984, there has been a 65% reduction in the employees per line.
- Since 2000, Verizon has cut 27% of the staff -- some 65,000 people.

When we hear Verizon is going to give us our new broadband future, well, — just smoke and mirrors. Construction is down since 2003, and way down since 2000. The company will spend an estimated \$5.9 billion for telecom in 2004 from \$12.1 billion in 2000.

Verizon's Wireline Construction Expenditures for 2000, 2004

(Estimate based on 2ndq 2004)
(In the billions)

	2004	2000
Annualized (estimate full year)	\$5.9	\$12.1

Out of this construction budgets are supposed to be that robust new building Verizon has been planning. Two things, however, are clear. First, Verizon is not putting its money where its mouth is. Simply put, expenditures were being predicted as flat for 2004.³

"Wireline capital spending will be essentially flat, ranging from \$6.5 billion to \$7.0 billion in 2004, including spending for the company's fiber optic and VOIP initiatives."

Obviously if they are building this fiber-optic service, the actual cost of local phone service has dramatically been cut. This is the same situation with all of the Bell companies.

2) Access Line Equivalents Consistently Go UP, Not Down.

Then we keep hearing that the number of lines is going down... Really? According to Verizon's second quarter report for 2004, the number of lines is dramatically increasing.

"Voice-grade equivalents (switched access lines and data circuits) grew 3.2% in the six months ended June 30, 2004, compared to the similar period in 2003, as customer chose more high-capacity digital services. We added 625,000 new DSL lines in the six months ended June 30, 2004, including 280,000 in the second quarter, for a total of 2.9 million lines at June 30, 2004, representing a 52.5% increase from a year ago."



Remember, DSL replaces the second line anyway — The customers doesn't need a second line with Line-Sharing, so who cares about copper wire numbers? Adding long distance as well to every line is just more revenue.

"As of June 30, 2004, approximately 50% of Verizon's residential customers have purchased local services in combination with either Verizon long distance or Verizon DSL, or both."

"We added 632,000 long distance lines in the second quarter of 2004 and 1,470,000 long distance lines in the six months ended June 30, 2004, for a total of 16.8 million long distance lines nationwide, representing a 21.4% increase in long distance lines from a year ago."

For more about this see: "Verizon's Second Quarter Report, 2004 -- A New Comedy? The joke is on us". http://www.newnetworks.com/verizon's_2ndquarter_repor.htm

If the number of lines is going up (as well as revenues per line and channels) then what about the competitive threat?

More to the point: Here's the data for the Bell companies from Annual Reports and 10Qs, for 2002-2003. If the Bells are losing so many lines, where are they exactly? According to these stats for BellSouth, Verizon, SBC and Qwest, the number of copper wires may be dropping, but the overall "access line equivalents" has gone up 4%, the DSL business has increased 90%, while the long distance markets are up 65% — all of which uses the same customer phone line.

In fact, only 17 million lines have UNE-p competition, representing only 12% of lines, or 6% for 2003 if you count this against access line equivalents. And this number represents ALL competition —business, small business and residential customers.

Bell Company Number of Lines of Service, 2002-2003

(In the millions)

	2002	2003	% Change
Access Lines	151,472	144,343	-4.71%
Long Distance	21,650	35,719	64.98%
DSL	6,614	12,541	89.61%
	179,736	192,603	7.16%
Access Equivalents	270,418	280,654	3.79%
Competitive lines	13,668	17,087	25.01%
	9%	12%	31.19%
Compared to Equivalents	5%	6%	



With the removal of AT&T and others from this equation, this number will be dropping significantly.

Lines going down? Well, I guess that at least gullible reporters and regulators still buy that story.

We are not saying that there isn't some competition, nor are we claiming that cannibalization of the Bells products – i.e., the removal of a second line because of line sharing, or wireless service eating into the Bells' wireline business, is not causing some losses of copper-wire deployments. However, we are claiming that allowing the Bells into various new businesses, including long distance or DSL, including the Internet Service provisioning is more than compensating the Bells' wireline losses.

However, there is one other item that we think is significant — Why hasn't the Bell companies ever deployed a service that allows 2 separate phone services over the same wire, instead of requiring someone to get another copper-wire installed? (We are not talking about ISDN, a mostly failed data service.) The answer, we believe, is that the companies made more money from putting in a second wire to the home, and thus, the customer paid for this lack of innovation through higher prices.

3) FCC Data on Competitive Lines is Not Accurate According to Bell Annual Reports.

The FCC's statistics for the number of UNE-P and competitors does not match the data from Bell Annual Reports. The FCC has UNE-P competition at 21.3 million, and total competitor lines at 29.6 million.

FCC Stats on Competition for the Local Markets, 2003 (In the millions)

UNE-P & Resale	21,256
Cable	3,220
Other?	5,124
Total	29,600

So what if the FCC's numbers are off by 4.2 million or 25% for UNE-P, greatly exaggerating the current competition?

But the flawed information reveals more serious problems when examined closely.



4) There is Massive Cross Subsidization of Local Phone Service and Other Businesses.

Today, we don't know the actual cost of local phone service. Based on the numbers presented, if local construction is seriously down and so is the number of employees who work for local service, then why haven't local phone service prices plummeted?

It seems no one has bothered to figure out that the phone companies are now using their local phone service revenues to subsidize their other lines of business, — to the detriment of local phone costs to customers

In examining phone bills in a survey of New York and New Jersey Verizon phone bills, we uncovered a simple fact – the Bell companies no longer use the monies once allocated for advertising local phone service for that purpose. Everything from the “insert” (the phone bill stuffer) to the advertisements all focus on growing their other lines of business, including long distance and local phone service.

To be blunt, it means that while local phone charges continue to rise, the cost-shifting is not being taken into account. If the advertising is now dedicated to other services, then all of the previous costs should not be paid for by local phone customers — or built into the costs to competitors.

The FCC has never investigated this issue, even though we have brought it up in previous filings.

Thus, not only are competitors being disadvantaged, but every residential customer whose rates continually climb while costs continually fall, are paying to illegally subsidize the Bell companies other businesses.

Isn't illegal for local service to fund an interstate, or information product? Should these expenses be put into local phone rates?

5) Are Bells' Products are Not Paying Their Fair Share? — Adding to “Below Cost” Issues.

Besides the various products getting a free ride for many of the expenses, one of the largest losses to the Bell companies appears to be its own losses from the other products not paying their fair share. Simply put, competitors pay numerous, multiple fees to use the networks. They cannot use, for example, the staff that answers the phones for the incumbent to take orders or to have them refer them. They pay multiple charges to be placed on the phone bill for say, billing for long distance, and they can't piggyback their DSL service onto a local phone bill.



If the Bell companies' separate divisions paid what competitors paid, we believe that the revenues for local phone service would dramatically increase. This would of course include paying for usage in all advertising and hundreds of other charges.

6) There is No Local Phone Service Competition.

And what about packages, bundled services of local, long distance and broadband services?

In our survey of New York and New Jersey we found that while 50% may have a package from Verizon, the average customer DOES NOT benefit from a package and worse, about 15-25% of those on a package are paying more.

Also, there is virtually no one selling local basic phone service to most customers and packages are "all they are showing" when it comes to competitive offerings, such as AT&T and MCI. Packages are focused for 'active' phone users, who like feature-rich offerings and make lots of calls.

Based on stats from our survey, it is clear that the majority of customers — **do not make enough calls or need the features to justify the cost!**

Therefore, as we discuss the access issue, isn't it supposed to be about the cost of LOCAL service and not every ancillary charge being added to the costs of LOCAL service?

7) Massive Fraud In Accounting Has Gone Unchallenged.

The FCC dropped the Continuing Property Record audits in 1999, which showed \$19 billion dollars in missing or unfindable equipment — "vaporware" and it is estimated that it would have amounted to \$80 billion worth of equipment is missing if the FCC had continued these audits.

The FCC never completed its own audits and instead passed the responsibility to the states. Remember, the price of ALL phone service started with the actual equipment in the networks — this means that every service cost has been inflated for 2 decades, from the costs to every competitor to the costs of service for schools and libraries, hospitals and government offices.

Of course the Bell companies will argue that this old news, not applicable under the current regulations and that a different method of calculations of the costs, known as "forward-looking" costs, make these audits moot.

Nothing could be further from the truth, since the development of even forward-looking



costs has, at its core, the costs of network equipment — those numbers had to come from somewhere.

Also, anyone who examined the books knows that they were cooked books, having given to the FCC thousands upon thousands of records with “Undetailed Investment” as the only datapoint for millions of dollars with no explanation or tracking of what that investment was for.

See: <http://www.teletruth.org/auditupdate.html>

Phone Charges Have Been Impacted By Vaporware.

This data is also missing from every other analysis about the costs of services, including the FCC Subscriber Line Charge, located on every wireline phone bill. The FCC Line Charge is unmarked revenue directly back to the phone company, although it is disguised as a charge that most people believe funds the FCC or government.

In our recent Data Quality Act Complaint about this charge, we found that the FCC had raised the cap of this non-service from \$3.50 to \$6.50 with virtually no cost support and the FCC never justified the rate. And now, in 2004, the FCC Intercarrier Compensation Forum is requesting a raise to \$10.00, not counting numerous taxes.

We bring this up because the FCC Line Charge’s original cost of \$3.50 was based on the equipment in the network – and if that equipment is missing, it means that the cost of this service has been inflated for decades and continues to be so.

So, when the phone companies argue that the costs to competitors are “below costs” — we don’t know the costs.

8) Who Owns the Networks? – The FCC’s Plan to Give Customer Funded Networks to a Private Company for Exclusive Use.

In previous filings we have pointed out that customers, not the Bell companies, funded the upgrades of networks. And in many cases, the customers are still waiting for the services they have yet to receive, but have paid for. It was also understood that these state agreements were based on “common carrier” obligations since customers are defacto investors in these networks.

As we pointed out in our Data Quality Act challenge of the FCC’s broadband reports, the FCC neglected to not only examine the thousands of documents about the promised deployments of fiber-based services, but it also neglected to discuss who funded these



networks, even though investments and incentives are at the heart of every broadband policy currently being discussed.

9) **VOIP Craze — Stop Kidding Yourself.**

While everyone would like to think that VOIP is about to once again revolutionize telecommunications, get a grip. The problem with VOIP is that it requires broadband and since the FCC is giving control of broadband to the cable and telephone companies, they will, of course, be selling their own local and long distance service and will most likely force the customer to get their own brand of service. Or, they will degrade the VOIP traffic for other competitors but not themselves.

If VOIP makes it past that hurdle, it is guaranteed that if it competes with local or long distance service it will pay all of the current unjust taxes and surcharges, thus removing any cost advantage.

Conclusion: Remedies for the Unbundling Issues

- **Get the \$120 billion back** and use the money to create customer-owned networks. Do not let the Bell companies – companies who never fulfilled their obligations — have exclusive use of what should remain “common carrier” based networks for open access by competitors at reasonable prices.
- **Investigate the Massive Cross-Subsidization of the Bell companies** local phone service and every other service offered to residential and business customers.
- Finish the Continuing Property Record audits and do an investigation into the costs of the networks.
- **Investigate the FCC Line Charge’s costs before raising the cap.**
- **If the FCC Removes UNE-P, then Revoke the Bells Long Distance Licenses —** The Bell companies we allowed to enter long distance because they had supposedly opened their networks. If this part of the agreement has not been met or is revoked, then the Bells’ long distance agreement should also be revoked..



ENDNOTES

¹ In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313 CC Docket No. 01-338, Order And Notice Of Proposed Rulemaking, Released: August 20, 2004

² [SOURCE: Reuters, AUTHOR: Justin Hyde]

<http://www.reuters.com/newsArticle.jhtml?type=internetNews&storyID=6431404>”

³ <http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=83519>

Verizon Outlines Strategies To Build On 2003 Results To Maintain Leadership Position In A Transforming Industry , Company Highlights Business-Unit Plans At Analyst Meeting And Provides Outlook For 2004, January 29th, 2004