

1 **I. Competitive Concerns**

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3 **Q. Please turn to the first part of your testimony. Is it your view that the**
4 **Telecommunications Act of 1996 was intended to foster competition?**

5 A. Yes. The 1996 Act mandates local competition and declares invalid all state rules that restrict
6 entry or otherwise limit competition in telephone service. Section 253(a) of the Act provides:

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8 No State or local statute or regulation, or other State or local legal requirement,
9 may prohibit or have the effect of prohibiting the ability of any entity to provide
10 any interstate or intrastate telecommunications service.
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12 The Act also provides that the FCC may preempt any state or local requirements that
13 violate this subsection. [1996 Act, Section 253(d)]. While state laws and regulations blocking
14 competition are no longer allowed, states retain considerable freedom to develop and
15 implement policies concerning the telephone industry which are not inconsistent with the pro-
16 competitive thrust of the 1996 Act. For example, the states may impose, on a competitively
17 neutral basis, requirements necessary to preserve and advance universal service, protect the
18 public safety and welfare, ensure the quality of telecommunications services, and safeguard the
19 rights of consumers. [Id., Section 253(b)].

20 Among other things, the 1996 Act requires all local exchange carriers to interconnect
21 with new entrants on reasonable terms, unbundle their networks and offer the unbundled
22 components to competitors at reasonable rates, and allow resale of their services by
23 competitors, in order to promote an effectively competitive local exchange market.
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25 **Q. To refresh everyone's memory, would you explain what kinds of telecommunications**
26 **competition the 1996 Act was designed to encourage?**

27 A. Yes. The 1996 Act was designed to encourage telecommunications providers to engage in
28 competition of three kinds:

29 The Act contemplates three paths of entry into the local market -- the
30 construction of new networks, the use of unbundled elements of the incumbent's
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1 network, and resale. The 1996 Act requires us to implement rules that eliminate
2 statutory and regulatory barriers and remove economic impediments to each.
3 We anticipate that some new entrants will follow multiple paths of entry as
4 market conditions and access to capital permit. Some may enter by relying at
5 first entirely on resale of the incumbent's services and then gradually deploying
6 their own facilities. ... Some competitors may use unbundled network elements in
7 combination with their own facilities to serve densely populated sections of an
8 incumbent LEC's service territory, while using resold services to reach customers
9 in less densely populated areas. [FCC, *Local Competition Order*, ¶12.]

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12 The FCC's three-path approach recognizes that the public interest will best be served
13 by encouraging competitive entry in as many ways as are feasible, thereby ensuring that a wide
14 variety of different potential competitors are attracted to enter the market, including pure
15 resellers, mixed-mode carriers, and carriers that attempt to completely duplicate the ILEC's
16 network. Even the latter firms will find it necessary to purchase unbundled loops and other
17 network components from the ILEC during the start-up phase, while their networks are under
18 construction.

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20 **Q. It's been two years since passage of the 1996 Act. Aren't we through the start-up**
21 **phase?**

22 A. By no means. Although computerization is producing new marvels every day, no one has yet
23 invented a toggle switch to instantly convert near monopoly to effective competition. Events of
24 the past two years have clearly shown that neither the enactment of the 1996 Act, nor the
25 subsequent granting of more than 1,000 certificates of public convenience and necessity to
26 alternative suppliers in the local exchange markets has created widespread effective local
27 competition. According to *tele.com*, Merrill Lynch Global Telecom Research estimates that
28 CLECs have captured only 2.3 percent of the market. Even this small percentage is almost
29 entirely attributable to facilities based carriers that serve businesses in major urban/suburban
30 areas. [February 1998, p. 59.]

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1 **Q. How quickly will full competition emerge?**

2 A. To date, competition has been slow developing in most markets nationwide. However, the
3 pattern is not entirely even, nor would one expect it to be. Some urban markets (e.g, New
4 York City, Hartford, Boston) are already seeing a fair amount of competitive activity, while
5 customers in rural markets may have to wait a very long time, indeed, before they are given
6 many competitive choices. Along the Concord-Manchester-Nashua corridor, the potential
7 exists for a transition to effective, facilities-based local competition. On the other hand, in many
8 of New Hampshire's small business, residential, and rural communities, the transition to
9 effective competition is likely to take much longer, if it is ever achieved, because cost
10 considerations will discourage or preclude new entrants from installing the plant needed to
11 aggressively contest the market. Absent technological breakthroughs, effective competition in
12 such areas may largely be limited to one or another form of resale of the incumbent carrier's
13 network.

14 To achieve effective competition, barriers to entry must be reduced, and new carriers
15 must enter the market and gain a substantial share of the market. The most likely source of
16 competition for incumbent LECs, at least in the short term, was expected to be resellers--
17 competing carriers that purchased wholesale services, or leased components of the LEC's plant
18 in addition to, or in lieu of, their own distribution, switching and other facilities. Unbundling
19 provisions in the 1996 Act encourage this form of competition and are specifically designed to
20 remove barriers to this type of entry.

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