

United States Senate
WASHINGTON, DC 20510

March 15, 2004

The Honorable John D. Ashcroft
Attorney General of the United States
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear John:

As the authors of the Telecommunications Act of 1996, we are concerned that the decision earlier this month by the D.C. Circuit in *USTA v. FCC* will negate the Act's market-opening provisions and could cause 19 million Americans across the country to lose their local telephone service. The decision is fundamentally at odds with the statute, and we urge you to appeal it and seek an immediate stay before the current rules expire on May 3.

The appeals court invalidated the FCC's rules implementing the statute's requirement allowing competitive local telephone companies to lease portions of the incumbent carriers' networks – but at a fair price. The court found, wrongly, that the FCC could not ask the state public utility commissions to apply the FCC-mandated requirements. Congress plainly contemplated a role for the states in determining the extent of the incumbents' obligations to lease their networks. Section 251(d)(3) of the Act specifically provides that “in prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that establishes access and interconnection obligations of local exchange carriers...”

The decision failed to recognize the balance the Act sought to strike. The Bell companies were permitted to enter the long distance market if and only if they could show they made their networks available for competitors (including long distance companies) to enter the local telephone service market. Every Bell incumbent has now entered the long distance market while long distance and other competitors have leased the Bell networks to enter the local market. The result has been a wide array of service offerings at a much lower price for consumers. Competition has really worked. At this point, to allow the Bells to offer long distance using the long distance networks while denying the long distance companies comparable access to the Bell networks to provide local service would be patently unfair and anti-competitive. It could only result in less selection and higher prices for consumers.

The court decision could have a severe impact on consumers, who save \$10 billion a year by taking advantage of the all-distance plans first launched by competitive providers. America's small businesses, the engines of our national economy, saved \$4.4 billion in 2003 due to pro-competitive telecom policies, and will save up to \$6 billion this year if those policies remain in place. Competition has been good for customers, too. The Bells and other incumbent carriers have responded to new entrants by reducing prices and investing in new technology to remain competitive. If consumers no longer have a choice of local telephone service provider, however,

the incumbents will have little if any incentive to keep telephone rates competitive or to provide new and innovative services.

This issue is critical for jobs as well. Up to 70,000 jobs created by competitors are at risk, and millions of dollars in investment could be lost overnight. The dynamic nature of this industry means that participants require significant capital investments to keep pace with the innovative new technologies and services that customers expect. The capital market, however, will not fund companies that operate in a continuously changing regulatory environment.

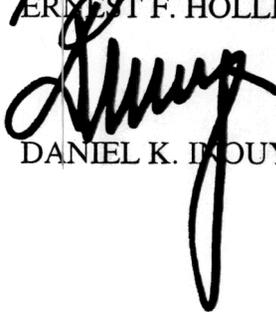
We believe it should continue to be the policy of this Administration to promote local telecommunications competition, enhance consumer choice, lower prices, and create a sure regulatory environment that will encourage robust investment, all while protecting good paying jobs. We respectfully urge the Department of Justice to seek *certiorari* from the Supreme Court to review this misguided decision.

We look forward to your response.

Sincerely,



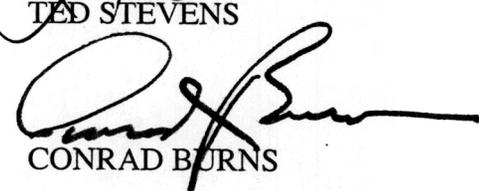
ERNEST F. HOLLINGS



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