

# New Networks Institute

---

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Inquiry Concerning the  
Deployment of Advanced  
Telecommunications Capability  
to All Americans in a  
Reasonable and Timely Fashion,  
and Possible Steps to  
Accelerate Such Deployment  
Pursuant to Section 706 of the  
Telecommunications Act of 1996

CC Docket 98-146

COMMENTS OF NEW NETWORKS INSTITUTE

Bruce A. Kushnick  
Executive Director  
New Networks Institute  
826 Broadway, suite 900  
New York, New York, 10003

212-777-5418

Dated: September 24, 2001

# New Networks Institute

---

## Questions:

- Is America really going to have the inferior ADSL product over the 100 year-old-copper wire as its broadband future?
- Did the American public pay in excess of \$58 billion dollars for a fiber-optic network they will never receive? And are they still paying for it in the form of excessive phonerates?
- Why hasn't the FCC investigated the issues of the Bells' failed broadband deployment?
- Why hasn't the FCC investigated and enforced the laws to protect competitors?

The deployment of broadband has been neither timely or reasonable --- and the FCC has, to date, done nothing to fix the problem. It just continues to issue politically correct reports that report everything is OK.

While we hope that the new FCC commissioners will address these issues and take actions, there is little indication that this FCC will do anything more than promote "deregulation" of a monopoly i.e., the removal of regulations that safeguard customers--- even though history and the data clearly shows that it has not brought America new broadband networks, competition, or lower prices.

NOTE: Instead of submitting thousands of pages in backup documentation, we have used web links for pertinent reports, studies and other materials.

## Introduction:

Since 1998, New Networks Institute (NNI) has filed Comments in these Section 706 (of the Telecom Act) broadband proceedings. However, it is clear that the FCC continues to release information about broadband deployment that ignores the facts and covers over the harm that has been perpetrated by the Bells --- harm that effects every customer, every competitor, and America's Digital Future.

To read our previous Comments see: (Filed 1998)

[http://www.newnetworks.com/NNI\\_FCC\\_9-98.txt](http://www.newnetworks.com/NNI_FCC_9-98.txt)

[http://www.newnetworks.com/NRPM\\_98-147\\_NNI.txt](http://www.newnetworks.com/NRPM_98-147_NNI.txt)

White Paper--- Analysis of the FCC 1999 Advanced Network Report

<Http://www.newnetworks.com/alonefccrefute4.html>

According to the FCC's most recent findings, only 4.3 million homes have broadband services that pass the simple test of providing speeds over 200K in both directions. These services are either offered through cable companies, or over the 100 year old copper phone networks.

"About 4.3 million of the 7.1 million high-speed lines provided services at speeds of over 200 kilobits per second (kbps) in both directions."

# New Networks Institute

---

Unfortunately, America should have already had over half of the country's homes, and most of the country's schools and libraries, hospitals and government agencies with a fiber-optic wire that would have delivered speeds of over 45 MPS in both directions --- that's a speed 225 times faster than what is currently being considered as 'broadband' today. The higher the bandwidth, the more services, such as full-motion video services, can be offered to customers. Instead, America's has been left with jerky-slow-low resolution services via ADSL. We also estimate that over \$58 billion has been collected for these fiber-optic services in the form of excessive phone rates.

## **What Was Delivered to Date and What Customers Were Promised.**

	Current Bell Rollout---Copper	Promised Bell Rollout --Fiber	Missing
Households	4 Million Households	51 Millions Households	93%
Speed	200K In Both Directions	45 MPS Both Directions	99%
Cost		\$58 Billion and Counting	

Secondly, the FCC has continually neglected to fix the problems Internet Service Providers (ISPs) and Competitive Local phone Companies (CLECs) have that are caused by the Bell companies. This includes predatory pricing, anti-competitive behavior and downright illegal acts. We will address these issues later. However, everyone reading these comments should be made aware that the FCC needs to better handle these issues if the entire competitive industry is going to survive. How bad is it? Dave Robertson, president of the Texas ISP Association (TISPA) recounted his recent meeting with Chairman Powell and senior staffers at the FCC Enforcement Bureau.

"The meeting was Tuesday May 8th. In a nutshell, all the "bad acts" submitted to them to date have resulted in exactly "ZERO" dollars in fines, and little delay in their 271 approvals for the Bells to jump into the long distance market. We asked for something blatant as handwriting on a wall as to the future of the complaint process as we are approaching it. We got it. WE SHOULD EXPECT NOTHING FROM THE INFORMAL COMPLAINT PROCESS. We should expect nothing from any complaints we have submitted to date.

"A couple of weeks ago we met with a senior person in the ENFORCEMENT BUREAU. After a one-hour meeting and receiving some heartfelt empathy for the plight of ISPs and the consumers who are being victimized by the illegal, anti-competitive behavior, I suggested that our best move might be to just jump out a window. He suggested we might want to consider throwing a chair out of the window first, so we wouldn't get cut on the glass as we jumped."

# New Networks Institute

---

This lack of enforcement or attention to ISP and CLEC issues is not new. In our previous September 1998 Comments we stated.

"Competitors are not receiving fair and equal access to advanced networks. Based on extensive interviews, NNI has found that the ILECs are stifling competition and delaying the deployment of advanced network services. Our findings support the complaints outlined in the NOI comments submitted by the ISP/C and other ISP groups. (CC 98-146)."

Therefore, we believe that there continues to be a serious injustice to the American phone and broadband customer, not to mention the harm to competitors. It is clear that broadband services have not been rolled out in a timely or reasonable fashion, and this is harming all US phone and broadband customers.

In fact, as we have discussed in other reports, NNI believes that the Bell's failed deployment of the promised fiber-optic networks and the harm to competition has caused the current Tech Sector crash, as well as the help fuel the current recession.

While the Bell companies would like the American public to believe that they are "delivering on the Broadband promise" and while regulators have not examined all the facts and therefore do not investigate the issues, the Public is looking to our regulators to protect America's interests.

However, America, through the FCC's lack of action, will be a third rate telecom country, relegating our customers to an inferior product over a 100 year old copper network that can't even handle the simplest of services.

## **Some of The Details and Backup Documentation**

1) The FCC's previous Advanced Network 706 reports have ignored all of the state broadband agreements that were available state by state. In many states, Alternate Regulations were applied to give the phone companies more money to be used in new construction of a broadband network replacing their older copper wiring with fiber-optics. These agreements were for 5 or more years --- thus extending from 1995 through the year 2000!

To date, America should have had over half of customers using a fiber-optic line to their home and office. In many states, customers already paid for these services, and continue to do so in the form of higher phone rates. We estimate that over \$58 billion has been collected for services customers will never receive. The New Jersey Ratepayer Advocate wrote in 1997 (4/97)

"...low income and residential customers have paid for the fiber-optic lines every month but have not yet benefited."

# New Networks Institute

---

"Bell Atlantic-New Jersey (BA-NJ) has over-earned, underspent and inequitably deployed advanced telecommunications technology to business customers, while largely neglecting schools and libraries, low-income and residential ratepayers and consumers in Urban Enterprise Zones as well as urban and rural areas."

To see our documentation, see "**How the Bells Stole America's Digital Future**"

<http://www.netaction.org/broadband/bells/>

To read the New Jersey' Ratepayer Advocates' study about the states' fiber optic fiasco.

<http://www.rpa.state.nj.us/onj.htm>

To read other information, go to:

<http://www.newnetworks.com/BroadbandandDSL.htm>

2) There are many regulators/congressmen who ponder "how do we get rural and low income areas" wired and there are numerous bills in Congress that would give the Bells more money to supply broadband to rural areas. However, in many states, monies were already collected to do just that. These services were never delivered, even though monies were collected. For example, The Bell Atlantic, Pennsylvania Bell Annual Report 1998 states:

"The Pennsylvania Plan requires deployment of a universal broadband network, which must be completed in phases: 20% by 1998... **Deployment must be reasonably balanced among urban, suburban and rural areas.**"

Ohio Alternate Regulation Plan, September 20, 1994

"21. INFRASTRUCTURE COMMITMENTS The Company's infrastructure commitment in this Plan shall consist of the commitment to deploy, **within five years** of the effective date of the Plan and within the Company's existing service territory, broadband two-way fully interactive high quality distance learning capabilities to **all state chartered high schools including vocational, technical schools, colleges and universities; deploy broadband facilities to all hospitals, libraries, county jails and state, county and federal court buildings...**"

3) The FCC' stated speed of Broadband is "200K" in both directions. Unfortunately, ADSL, (the "A stands for Asymmetrical) is a mostly one-way product and therefore, doesn't even meet the criteria for broadband. However, the promises made by the Bells in their state regulations were that the delivered would be 45MPS in both directions--- which has speeds that are 225 faster than the 200K threshold.

# New Networks Institute

---

The New Jersey Opportunity Plan (as well as Pennsylvania, Texas, etc.) defined Broadband as

"Switching technologies matched with transmission capabilities than can support data rates up to 45,000,000 bits per second which enable services, for example, that will allow residential and business customers to receive high definition video and to send and receive interactive (i.e., two way) video signals."

This is a far cry from the 200,000 (200K) that is currently the standard.

4) We believe that the failure of the Bells to roll out the fiber optic networks caused the Tech Sector crash, and the recession of the economy. To read our analysis of this, see: <http://www.newnetworks.com/fiberopitcfiasco.htm>

Of course, there are those who have not done their homework and keep repeating that there was no tie to the failed Bell deployments and the current problems of companies, such as Lucent or Corning. They also state that the Bell never promised any fiber optic services. The Bell Atlantic press release, July 15, 1996 "BELL ATLANTIC SELECTS EQUIPMENT SUPPLIER FOR INITIAL SWITCHED BROADBAND NETWORK DEPLOYMENT" documents a 6 and a half-year contract with Lucent for "fiber to the curb" based on fiber optics.

"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. Fiber optics provides higher quality and more reliable telephone services at lower operating and maintenance costs. 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.

"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."

5) Because the FCC has not examined the state regulatory issues, it has not attempted to block the anti-competitive, cross-subsidization issues, where ratepayers in specific states, such as Louisiana and Washington are actually funding the non-regulated Bell DSL services --- This is obviously cross-subsidization because customers are funding competitive services --- services they may never want, need, or can't even get because of technical difficulties due to the Bell's aging networks.

# New Networks Institute

---

## Competition Issues

6) The FCC has ignored the hundreds of complaints filed by the Internet Service Providers. NNI has conducted numerous surveys of Internet Providers and we have found that the Bell companies have continually harmed competitors trying to offer broadband Services. In fact, many other companies, organizations and customers have also complained vigorously about the Bell caused problems to the CLEC and ISP businesses.

To read our summary report "The Bells Harmed Competition" See:

<http://www.newnetworks.com/clecharm.htm>

To read some of the surveys, go to:

<http://www.newnetworks.com/ispandclecissues.htm>

The Bells also made false and misleading statements about their own competitive plans. As we have documented in the above report, SBC Communications was supposed to have already been in three cities with competition by 2000, and over 30 cities nationwide by 2002. (St. Louis Post-Dispatch [2/5/99])

"SBC aims to expand to Boston, Miami, Seattle" "SBC Communications Inc., the No. 2 U.S. local phone company, said Thursday that Boston, Miami and Seattle will be the first three markets where it provides services as part of its plan to buy Ameritech Corp."

"SBC said in May that it will buy Ameritech, an acquisition currently valued at \$81.7 billion, and named 30 U.S. local markets the companies would enter outside of their home regions under their "national-local" strategy."

7) The FCC has not fixed the predatory pricing and anti-competitive issues surrounding the DSL resale to Internet Providers. The situation in the US is that the Bell caused problems have brought the industry to a point of life-support. To read more about these problems, see the Comments and Complaints filed by the California ISP Association (CISPA)

<http://www.cispa.org/f1008.html>

Just the outline of some of the topics should give the reader a clear viewpoint that at every possible turn, the Bell company (BOC) is giving their own services preferential treatment, even though it is illegal to do so. It is also harming all competitive offerings

- BOCs Are Using Control of DSL Infrastructure to favor their 8 Affiliated ISPs
- BOC-affiliated ISPs Receive Preferential Pricing for DSL
- BOCs are Forcing ISPs to Accept Predatory DSL Contracts
- BOC ISPs Enjoy Superior Access to BOC Ordering and Billing Systems

# New Networks Institute

---

- ISPs Suffer More from Inaccurate BOC Billing than do Affiliated ISPs
- Independent ISPs are Stonewalled by BOC Representatives
- BOCs are Using Their Still Existent Telephone Monopoly to Promote Their Affiliated ISPs
- BOCs Are Changing their Network Architecture to Monopolize the Emerging Enhance Services Market
- BOCs are Preventing Customers from Switching to Competing ISPs

These problems are unfortunately, not unique to California, but are occurring across the United States and it has caused many companies to go out of business or stifled the industry's growth. To see our surveys on this topic or related issues see:

<http://www.newnetworks.com/ispandclecissues.htm>

And besides these obvious violations to competitors, there is also the **"DSL Chain-Of--Pain"** When a customer orders a services from the competitive ISP, the customer, the ISP and the competitive local phone company are all at the mercy of the Bell companies. In our surveys, we found that 50% of all orders had problems, regardless of what the Bell companies presented as data to show that everything was OK.

## **What Should Happen Next?** (From the Fiber-optic Fiasco:)

We have ended phase one of competition. It didn't work for most customers, especially the residential customer. The primary reason it didn't work is because there was no enforcement of the laws and prices to competitors are predatory. This blocks competitors from offering both phone as well as broadband services on a competitive basis.

Therefore,

**Enforcement:** The FCC and the states need to administer a serious, penalty oriented, data-based, fast process for customers and competitors to be reimbursed for the time lost and money spent. How bad is it today? The "Rocket Docket" takes two+ years, and take \$50,000-\$100,000 in legal fees, and still not work.

We have developed the **"Broadband Bill of Rights"** to address these customer issues, See: <http://www.newnetworks.com/broadbandbill.htm>

**The Pricing Shell Game Needs End. Prices To Competitors Need to be Fixed.** The other part of the equation has to be an examination and reregulation of the current discount pricing structure of Bell services offered to competitors, from CLECs to ISPs. Filings in numerous states and testimony by virtually every large competitor to enter local services, from AT&T and MCI, to Covad and Rhythms have shown that the prices for voice service or resale of DSL are so high that competitors lose money on every order.



# New Networks Institute

---

The FCC also has to address how it is possible that the Bell companies are now some of the most profitable companies in America, yet they can also rig their books to show that local service is "not profitable".

If there is a clear sign that competitors and customers are being handled properly and the laws are enforced, then the capital markets will reexamine these competitive companies and invest. This would then spur competitors to purchase more equipment, services, and the market sector would become more vibrant.

**Make the Bells Accountable for Their Past Deeds.** There has been virtually no accountability for the Bell companies' failed deployment plans --- virtually no penalties, fees, lower prices, even though there is clear documentation that the Bells have made over \$58 billion in extra phonebill charges. (We have also found a series of very serious violations that effect not only the price of service but also the costs to competitors. The Bell companies actually took massive deductions, \$21 billion dollars, stating that they were replacing the copper wiring to fiber-optics.

See: <http://www.newnetworks.com/irsrelease.html>

And please don't be fooled by the likes of such Bell funded congressional bills as "Tauzin-Dingell". The claim that the Bell companies will bring America broadband if they are 'freed from regulation has been disproven by hard cold facts. That bill and others like it are nothing more than another way to give the monopoly more money. Before the Bells receive 'regulatory' freedom, it's time for the customer to be represented, the problems fixed and accountability in place.

**"Broadband 'True-up'"** If nothing else, a **"Broadband True-up"** needs to occur --- one that accounts for:

- All monies collected to date in the name of broadband by state,
- All other monies collected in the name of the wiring of schools, libraries,
- government agencies, etc. --- this should include all state plans as well as the
- E-Rate, Universal Services, or additional state 'school-wiring' taxes and surcharges.
- The amount of money actually spent in that state for regulated and non-regulated construction. --- I.e.; the amount customers paid vs the amount the phone company shareholders paid.
- All monies collected and paid for by the state for the DSL rollouts (some states are allowing the basic service rates to include the costs of rolling out
- DSL, which is illegal in that it allows the monopoly to fund the 'non-regulated' services through every phone customer.)
- The difference between the amount of money collected from ratepayers and what customers received for that money
- The changes to state and federal laws that gave the Bells extra monies for broadband should be redone in light of these findings.

# New Networks Institute

---

**Accountability** needs to go even further than what was promised over the last decade. Is America going to be a third-rate technology country because the Bell companies have defended their copper wiring and are not bringing to America a fiber-based network that they paid for?

There are clear signs that the older-dial-up services are bursting at the seams with high-bandwidth needs. One has only to look at the "Napster" application, the use of web-cams, the downloadable movies, or having your own TV-like channel, to know that there's more out there than a slow-jerky-low-res. picture to our future. Joe Plotkin, director of DSL marketing for Bwaynet, talks frequently about 'the "Imagination Bottleneck". He says we won't know what the next major broadband application is until we have the technology in hand to dream.

Will ADSL be America's "finest hour" and we no longer get to dream of a fiber-optic future? Has it all been one big lie? Congress should step in and find out exactly what happened... and where do we go from here to make America a first rate concern, allowing our entrepreneurial companies to dream and not be tied down by a monopoly, defending their 20th century, seventy-five-year old wiring.

Bruce Kushnick,  
Executive Director,  
New Networks Institute,  
September 24<sup>th</sup>, 2001