

May 4, 2001

The following is the text of the letter sent by Chairman Michael Powell to the leaders of the Senate and House Commerce and Appropriations Committees on Friday, May 4, 2001

In the wake of the difficulties that have confronted many of the nation's competitive local exchange carriers ("CLECs") during the past several months, I would like to raise with you several issues that I believe are critical to the Commission's effective enforcement of the provisions of the 1996 Telecommunications Act. First, let me emphasize the seriousness with which I take the Commission's responsibility to implement and enforce the provisions of the Act. A vibrant competitive local exchange carrier industry is central to Congress's vision for opening local markets to competition. To this end, it is imperative that the Commission and State commissions, as partners in the enforcement scheme of the 1996 Act, be vigilant in ensuring that incumbent local exchange carriers ("ILECs") meet their obligations under the statute.

In my view, the difficulties currently facing the CLEC industry stem from a variety of conditions. Investors who were previously optimistic about the business plans of certain CLECs have (and sometimes inexplicably) turned cold on those plans at the very time that they have begun to bear fruit. Although there are examples of CLECs with workable plans, other CLECs appear to have steadfastly adhered to business plans that show little or no promise of profitability. And in some cases, CLECs may have been stymied by practices of incumbent local exchange carriers that appear designed to slow the development of local competition.

Although the Commission is working hard with our existing resources to enforce the local competition provisions of the 1996 Act, I believe there is more that we can do with the help of Congress. Currently, under 47 U.S.C. § 503(b)(2)(B), the Commission's forfeiture authority against common carriers for any single continuing violation of the Act or the Commission's rules is limited \$1.2 million, including inflationary adjustments. Given the vast resources of many of the nation's ILECs, this amount is insufficient to punish and to deter violations in many instances. Congress should consider increasing the forfeiture amount to at least \$10 million in order to enhance the deterrent effect of Commission fines.

In addition, Congress should consider other mechanisms to compensate harmed CLECs and to enhance deterrence in this area. For example, Congress could give the Commission the authority to award punitive damages, attorneys fees and costs in formal complaint cases filed under Section 208 of the Communications Act, or require that interconnection agreements include liquidated damages provisions.

Moreover, under 47 U.S.C. § 503(b)(6)(B), the statute of limitations for forfeiture actions against common carriers is one year from the date of the alleged violation. This time period has often proven insufficient, especially given that the carriers whose actions are being investigated usually possess much of the information needed to determine whether a violation has occurred. A longer statute of limitations period would afford the Commission a better opportunity to thoroughly investigate an alleged violation. I would also like to work with Congress to help identify those areas in which clarification of the Commission's jurisdictional and enforcement authority would better equip the Commission to fulfill its enforcement mission. Finally, I look forward to working with Congress to ensure that the Commission has the investigative resources necessary to accomplish this mission.

I am committed to achieving Congress's goal of opening local markets to competition, with the attendant benefits to consumers. Toward that end, the Commission must vigorously enforce the local competition provisions of the 1996 Act. I look forward to the assistance of the Congress in this endeavor, and to continuing our dialogue over these very important issues.

Sincerely,

Michael K. Powell
Chairman