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**PACIFIC**  **TELESIS**  
Group - Washington

April 19, 1996

William F. Caton  
Acting Secretary  
Federal Communications Commission  
Mail Stop 1170  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

APR 19 1996  
DOCKET FILE COPY ORIGINAL

RE: CC Docket No. 96-61, In the Matter of Policy and Rules Concerning the Interstate  
Interexchange Marketplace and Implementation of Section 254(g) of the  
Communications Act of 1934, as Amended

Dear Mr. Caton:

On behalf of Pacific Telesis Group, please find enclosed an original and six paper copies  
of its comments in the above referenced proceeding. Under separate cover, a paper copy  
of these comments as well as the comments on diskette have been sent directly to Ms.  
Janice Myles of the Common Carrier Bureau.

Please stamp and return the provided copy to confirm your receipt. Please contact me  
should you have any questions or require additional information concerning this matter.

Sincerely,



Enclosures

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

In the Matter of )  
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Policy and Rules Concerning the )  
Interstate Interexchange Marketplace )  
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Implementation of Section 254(g) of the )  
Communications Act of 1934, as amended )  
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CC Docket No. 96-61

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April 19, 1996

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## Summary

This proceeding will play a major role in determining whether the deregulatory and pro-competitive aspects of the Telecommunications Act of 1996 will in fact be achieved, and whether the Bell companies will be allowed to enter the interLATA market under pro-competitive conditions. The Commission must not erect unnecessary and unauthorized hurdles to the entry of the Bell companies into the interLATA market on a non-dominant basis.

The interLATA market is a national market consisting of all interLATA services. BOC interLATA affiliates will be non-dominant both in-region and out-of-region. There is simply no credible basis for believing that, given the comprehensive regulatory regime established by Section 271 and 272 of the 1996 Act and the Commission's existing rules, BOC interLATA affiliates will have any market power in the interexchange market.

All interLATA competitors should be subject to the same degree of regulation and the same safeguards. Until separate affiliate requirements for in-region interLATA and non-dominant treatment of out-of-region services are eliminated, the existing *Competitive Carrier* requirements should apply to the interLATA affiliates of all exchange telephone companies.

Finally, the Commission should implement the rate averaging and rate integration proposals of Section 254(g). In doing so, it should affirm that discount plans must be available throughout a provider's service area, consistent with the averaging requirement. However, there is no need for the Commission to attempt to regulate carrier's advertising practices.

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**COMMENTS OF PACIFIC TELESIS GROUP**

Pacific Telesis Group, Inc., hereby respectfully files these in comments in response to the Commission's *Notice of Proposed Rulemaking* ("*Notice*") in the above-captioned proceeding.<sup>1</sup> In the *Notice*, the Commission solicits comment on a number of issues relating to regulation of interstate interLATA telecommunications, and segregates the issues into two separate comment cycles. These comments address the issues discussed in Sections IV (market definition), V (separation requirements for LEC/BOC out-of-region services), and VI (rate averaging and integration) of the *Notice*.<sup>2</sup>

The Commission must not lose sight of the fact that the Telecommunications Act of 1996, which lays the framework for Bell Company entry into the interLATA

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<sup>1</sup> FCC 96-123 (released March 25, 1996, *summary published*, 61 *Fed. Reg.* 14,717 (April 3, 1996).

<sup>2</sup> Comments on the other issues in the *Notice* are due by April 25, 1996.

marketplace, establishes a "pro-competitive, de-regulatory national policy."<sup>3</sup> The Commission's decisions in this proceeding will fundamentally affect whether full competition will be allowed to develop in the interLATA market. As the history of interLATA services since divestiture demonstrates, full competition is unlikely to develop in the absence of Bell company entry. For this reason, the Commission should resolve the issues raised in the *Notice* in a manner most likely to lay the groundwork for greater competition in the interexchange marketplace.<sup>4</sup>

In particular, the Commission must not erect unnecessary and unauthorized hurdles to the entry of the Bell companies into the interLATA marketplace. Congress has already established -- in Sections 271 and 272 of the 1996 Act -- a comprehensive regulatory regime to govern BOC entry, covering both the timetable and a comprehensive set of conditions. Sections 271 and 272 establish the sole conditions that may be imposed on BOC interLATA services.<sup>5</sup> The Commission should neither expand the preconditions for BOC

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<sup>3</sup> Report No. 230, 104th Cong., 2d Sess. 113 (Joint Explanatory Statement of the Committee of Conference ["*Joint Explanatory Statement*"] at 1).

<sup>4</sup> The Commission recently concluded that the interstate interexchange marketplace is "not perfectly competitive." *Motion of AT&T to be Reclassified as a Non-Dominant Carrier*, FCC 95-427 at ¶ 35 (released Oct. 23, 1995). In fact, the interexchange marketplace is an oligopoly led by at most three or four incumbent carriers who act as price leaders.

<sup>5</sup> Congress gave the Commission no discretion to "limit or extend" the competitive checklist established in Section 271. 1996 Act, Section 271(d)(4).

entry nor otherwise hamper the ability of the BOCs to compete vigorously in the interLATA market.

For these reasons, the Commission should not approach the issues in this proceeding with a predisposition that it must "restrain" the BOCs to an even greater degree than the 1996 Act. Rather, the Commission should recognize that Congress has already set the groundrules, and that minimal regulation of the BOCs will best bring to fruition the full interLATA competition Congress intends.

In particular, we submit that, for the reasons stated below:

- the relevant market for interLATA services is nationwide and consists of all interLATA services, and the Commission should not adopt a narrow geographic test;
- for reasons of equity, other local exchange carriers should be subject to the Commission's separate subsidiary requirement for so long as the Section 272 affiliate requirement applies to a BOC's interLATA offering; and
- the Commission should adopt its rate averaging and integration proposals, and not extend its regulation to advertising practices.

## I. THE INTERLATA MARKET IS A NATIONWIDE MARKET

The *Notice* revisits, for purposes of assessing market dominance, the definition of the interLATA market adopted in the *Competitive Carrier* proceeding.<sup>6</sup> The Commission tentatively concludes that it will continue to treat the interstate, interexchange market as "one national market" as in the *Competitive Carrier* proceeding.<sup>7</sup> However, the Commission proposes to change its underlying analytical approach to defining markets by replacing its current, and recently reaffirmed in the *AT&T Non-Dominance* proceeding, approach with the 1992 Merger Guidelines of the Department of Justice and Federal Trade Commission, which focus more on the substitutability of services. The Commission states that a reexamination is in order due to a belief that "more sharply focused market definitions will aid us in evaluating whether the BOCs possess market power with respect to the provision of interLATA services

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<sup>6</sup> In the *Competitive Carrier* proceeding, the Commission adopted a test for assessing market dominance that considered factors such as "the number and size distribution of competing firms, the nature of barriers to entry, and the availability of reasonably substitutable services." *Competitive Carrier Proceeding*, 85 F.C.C.2d 1, 21 (1980). It defined the market, for purposes of assessing the market power of interexchange carriers, as comprised of "(1) interstate, domestic, interexchange telecommunications services" and consisting of the entire United States geographic area. *See Notice*, ¶ 40.

<sup>7</sup> *Id.* at 42.

in areas where they provide local access service."<sup>8</sup>

While the Commission is correct in its conclusion that interexchange services constitute one national market, its proposed new analysis is flawed and appears to proceed from a thoroughly unsubstantiated concern that BOCs could have market power in in-region interLATA services. In particular, the Commission should not examine a "particular point-to-point market (or group of markets)" -- such as a BOC's local service region -- where there is "credible evidence suggesting that there is or could be a lack of competition" and that "geographic rate averaging will not sufficiently mitigate the exercise of market power (if it exists)."<sup>9</sup> Such an approach is inconsistent with both the 1996 Act and recent Commission precedent, and simply ignores the reality that BOC interLATA affiliates will have no market power at all.

First, industry pricing conventions illustrate that the interLATA market is nationwide. Increasingly, pricing of interLATA services is moving to a uniform national rate

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<sup>8</sup> *Notice*, ¶ 40. The *Notice* also suggests that more narrowly drawn definitions might allow a "more refined analysis" of whether a particular carrier or group of carriers has market power, citing evidence that AT&T has the ability to raise and sustain prices for 800 directory assistance and analog private line services. *Id.* Certainly, if the Commission redefines its test, it should reassess its recent ruling regarding AT&T's dominance.

<sup>9</sup> *Notice*, ¶ 53.

for all IXC's, while distance is becoming a less significant pricing factor.<sup>10</sup> This undermines any notion that interLATA services are something less than a national market.

Second, in addition to these market trends, focusing on particular "point-to-point" markets would be inconsistent with the 1996 Act. In the rate averaging and integration provisions of Section 254(g) of that Act, Congress effectively decreed that the market is a national one. These provisions require service providers to charge high and low cost subscribers the same rates for interexchange services, and to integrate their interstate interexchange rates on a nationwide basis. As the *Notice* aptly suggests,<sup>11</sup> these requirements make sense only if the market is a national one.<sup>12</sup>

Third, focusing on a particular "point-to-point" market is misguided, and could lead to an entirely erroneous assessment of a BOC's interLATA affiliate as dominant due solely to the affiliated local exchange carrier's market position. Structural separation -- as required by Section 272 -- precludes a need for this excessively narrow assessment.

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<sup>10</sup> The SPRINT Sense and MCI Minutes pricing plans are distance insensitive, as is AT&T's current rate structure for calls to Canada.

<sup>11</sup> *Notice* at ¶ 51.

<sup>12</sup> Under the new law, interLATA service providers must average their rates between high and low cost areas so that subscribers in both areas are charged the same rates, and must also integrate their rate schedules so that interstate subscribers in one state pay the same rates as those in another. 1996 Act, Section 254(g). See Section III, *infra*.

In particular, the Pacific Telesis interLATA affiliate -- Pacific Bell Communications ("PB Com") -- will be a separate company to the full extent required by Section 272 of the 1996 Act. There is simply no reason why it should have its market power assessed in a manner that ignores its structural separation from Pacific Bell and Nevada Bell -- a separation that is far greater than required today under the *Competitive Carrier* policy for non-dominant status. PB Com will no more have the ability to raise price or restrict output than would any other new entrant beginning with zero market share.<sup>13</sup>

Indeed, a comprehensive set of regulations -- including Sections 271 and 272 and the Commission's Part 69 access charge regime -- currently governs the relationship between the BOCs' interLATA affiliates and their local companies. PB Com will not be able even to begin to offer in-region service until a lengthy list of requirements are satisfied, including, *inter alia*, the competitive "checklist" and intrusive regulation of matters ranging from joint marketing and affiliate transactions to separate personnel and credit arrangements. Moreover, the 1996 amendments require competition in the local exchange *before* the BOCs may enter the in-region interLATA market, thereby further reducing any speculative and

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<sup>13</sup> Interexchange carriers opposed to BOC interLATA entry are not concerned that BOC interLATA affiliates will set rates too *high*; rather, their concern is that BOC entry will reduce their profits by forcing them to reduce their rates to truly competitive levels. For this reason, searching for BOC "market power" is ludicrous; the IXCs are not in the least concerned that BOC interLATA affiliates will have the ability to sustain a "small but significant and nontransitory" increase in price. Their concern is quite the opposite.

theoretical possibility that the BOC's interLATA affiliate could benefit from a BOC's conduct.<sup>14</sup>

Fourth, PB Com will enter the market with zero market share. Given that the Commission recently found that AT&T, despite a market share of 60 percent, is non-dominant, there can be no basis in law, fact or logic for a conclusion that a new entrant with no customers can possibly have the power to raise price or restrict output.

In view of these facts, it is extremely unlikely that there ever could be "credible evidence" that PB Com has market power, and use of a "point-to-point" test merely invites regulatory mischief by competitors seeking protectionism. Rather than venturing down this road, the Commission should reaffirm that the relevant geographic market for assessing dominance in interLATA services in the nationwide U.S. market. It should also recognize that the extensive regulatory structure established by the 1996 Act, including Sections 254(g) and 272, ensure that BOC interLATA affiliates will be nondominant.

**II. OTHER LECS SHOULD PROVIDE INTERLATA SERVICES THROUGH A SEPARATE AFFILIATE AS LONG AS BOC IN-REGION SERVICES MUST COMPLY WITH THE SEPARATE AFFILIATE REQUIREMENTS OF SECTION 272**

Section V of the *Notice* invites comment on possible changes to the structural separation requirements imposed by the *Competitive Carrier* proceeding on out-of-region LEC

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<sup>14</sup> For this reason, the laundry list of theoretical ways in which a LEC could injure its interexchange affiliate's competitors (*see Notice*, n.120), no longer has whatever merit it previously might have had.

activities as a condition for non-dominant status. As we explained in our comments in CC Docket No. 96-21, the *Competitive Carrier* standards should apply to the interLATA affiliates of *all* exchange telephone companies, including the BOCs, whether in-region or out-of-region, until all separate affiliate requirements are eliminated.<sup>15</sup>

To maintain a level playing field, all interLATA competitors should be subject to the same degree of regulation and meet the same safeguards. As long as Pacific Telesis must provide interLATA services through a Section 272 separated affiliate, regulatory symmetry requires that newly authorized LECs from other regions offer competing service through a separate affiliate.<sup>16</sup> Consistent with this position, the Pacific Telesis Group will offer service in other regions through a Section 272 affiliate as long as the in-region requirement remains in effect.

Pending elimination of the Section 272 separate subsidiary for in-region interLATA services, there is no need to modify or eliminate the *Competitive Carrier* separation requirements currently imposed on independent LECs as a condition for non-dominant treatment of their provision of interstate, interexchange services outside of their local exchange service areas. While eventually the separate affiliate requirement will need to be

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<sup>15</sup> See *Comments of Pacific Telesis Group*, CC Docket No. 96-21 at 5-7 (filed March 13, 1996); *Reply Comments of Pacific Telesis Group*, CC Docket No. 96-21 at 1 (filed March 25, 1996).

<sup>16</sup> See *Comments of Pacific Telesis Group*, CC Docket No. 96-21 at 6.

lifted, they should be lifted for all LECs at the same time. The 1996 amendments establish a straightforward timetable for eliminating the separate subsidiary requirements. To avoid creating an unequal competitive regulatory landscape, however, the Commission should remove structural separation requirements from all service providers at the same time.

**III. THE COMMISSION SHOULD ADOPT THE RATE AVERAGING AND INTEGRATION PROPOSALS, AND NOT INFRINGE ON THE FREEDOM OF CARRIERS TO ADVERTISE PROMOTIONS AS BEST SUITS THEIR BUSINESS NEEDS**

Section VI of the *Notice* proposes to implement the rate averaging and rate integration provisions adopted in Section 254(g) of the 1996 Act. For the most part, the adoption of rate averaging and integration requirements -- which is mandated by Section 254(g) of the Act -- is a straightforward matter. However, two issues -- geographic discounts and advertising -- require additional comment.

The 1996 Act requires the Commission to adopt rules to require geographic rate averaging for interexchange telecommunications services. The *Notice* proposes such a rule for both intrastate and interstate service, and rate integration for interstate interexchange services. Pacific Telesis supports rate averaging and integration for interexchange services, which benefit rural ratepayers and customers of high cost local exchange carriers. In addition, such rate averaging advances the Commission's longstanding objective of fostering a universal,

nationwide telecommunications network.<sup>17</sup> Accordingly, the Commission should adopt its proposed rules.

The *Notice* asks whether (1) an interexchange carrier's failure to make a promotional plan available in the entirety of its service area constitutes geographic deaveraging, and (2) whether discount rate plans should be required to be "made available and advertised in the entirety of an interexchange telecommunications service provider's service area."<sup>18</sup> As to the first inquiry, the failure to make a discount plan available to subscribers throughout an IXC's service area constitutes improper rate deaveraging. As to the second, a service provider should have the latitude to advertise its rates in the manner it believes appropriate without regulatory interference, and should not be subject to a regulatory obligation to conduct its advertising campaign in any particular area.

First, it should be patently obvious that if a carrier limits the availability of a discount from its general rate to a particular geographic area, geographic rate deaveraging is occurring. For example, if AT&T were to offer a discount only to urban area subscribers, it would effectively deaverage its rates in violation of the Section 254(g) requirement that urban and rural customers be charged the same rate. Although the Conference Report acknowledges

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<sup>17</sup> We note, however, that the 1996 Act did *not* confer the Commission with authority to preempt intrastate rate policies, and did not authorize the Commission to require the integration of intrastate rates across more all states.

<sup>18</sup> *Notice* at ¶ 72.

that the Commission has, in the past, tolerated some rate deaveraging in the context of Tariff 12 contracts, it provides no support for a policy of restricting the geographic availability of rate discounts.<sup>19</sup>

Regulation of a service provider's advertising practices, however, is a different matter. While Section 254(g) forbids service providers from limiting the geographic availability of discount plans, it does not contemplate regulating the conduct of their advertising campaigns. There are a number of legitimate reasons why an interLATA carrier may choose to advertise a discount plan on a less than service area-wide basis, even while the plan is in fact available to subscribers throughout the service area. For example, an IXC may well prefer to focus its advertising investment in a particular area where it may desire to increase its market share in order to become a greater competitive presence, rather than spread its message less intensively though a wider area. Furthermore, the cost of advertising a particular discount plan throughout an IXC's entire service region may be prohibitive.<sup>20</sup>

While a discount plan should be *available* to subscribers throughout a carrier's service area, there should be no regulatory burden to advertise such a plan coextensively with its availability. This Commission is neither the Federal Advertising Commission nor an

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<sup>19</sup> *Joint Explanatory Statement* at 132.

<sup>20</sup> Many interLATA carriers advertise through direct mail. Taken literally, a requirement that a nationwide rate discount be advertised throughout a service area could require nationwide carriers to mail a promotional piece to every mail receptacle in the nation -- more than 100 million addresses.

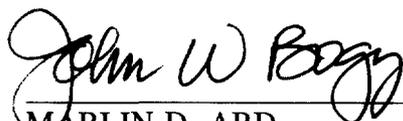
advertising review board, and it should resist the temptation to strain its limited resources by second-guessing carriers' marketing and advertising judgments.

#### IV. CONCLUSION

This proceeding marks an important opportunity for the Commission to lay the groundwork for true competition in interLATA services. The Commission should not inadvertently thwart the promise of BOC entry into the interLATA marketplace by imposing constraints that Congress did not specifically adopt, or by imagining market power where none exists.

Respectfully submitted,

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