be applied to in-region, interLATA domestic offerings of BOC affiliates.[58] TRA supported the Commission's efforts in the Interexchange NPRM to develop more "refined analytical tools" to aid the Commission in "evaluating whether the BOCs possess market power with respect to the provision of interLATA services in areas where they provide local access service" and to assist it in identifying discrete markets in which one or more carriers retain market power.[59] TRA agreed with the Commission that although interstate, interexchange services should in most cases continue to be treated as "a single national market when examining whether a carrier or group of carriers acting together has market power," the Commission should retain the flexibility in special circumstances "to examine a particular point-to-point market (or group of markets) for the presence of market power if there is credible evidence suggesting that there is or could be a lack of competition in that market (or group of markets)."[60] Moreover, TRA agreed with the Commission that while "a narrower product market" would provide a "more refined analytical tool for evaluating whether a carrier or group of carriers together are exerting market power," administrative constraints warrant analysis of separate product markets only if "credible evidence suggest[s] that there is or could be a lack of competitive performance with respect to that service (or groups of services)."[61]

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[58] Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, FCC 96-123 (released March 25, 1996) ("Interexchange NPRM").

[59] Id. at ¶ 40.

[60] Id. at ¶¶ 51 - 53.

[61] Id. at ¶¶ 44 - 47.

Here, TRA agrees with the Notice's tentative conclusion that "all interstate, domestic, interLATA telecommunications services" should be treated as the relevant product market "for purposes of determining whether the BOC affiliates have market power in the provision of interstate, domestic, interLATA services."[62] With respect to the relevant geographic market, TRA also agrees with the Notice that the Commission should "evaluate a BOC's point-to-point markets in which calls originate in-region, for the purpose of determining whether a BOC interLATA affiliate possesses market power in the provision of in-region, interstate, domestic, interLATA services."[63] As the Notice correctly recognizes, "the BOC's current monopoly control of bottleneck facilities constitutes 'credible evidence suggesting that there is or could be a lack of competition' with respect to interstate, domestic, interLATA services originating in a BOC's in-region area."[64]

2. Regulatory Classification of BOC In-region, InterLATA Affiliates (¶¶ 130 - 152)

As noted above, the Notice seeks comment on whether BOC affiliates should be classified as dominant carriers in the provision of in-region, interstate, domestic, interLATA services.[65] In approaching this issue, the Notice properly focuses on the BOCs' continued control of local exchange/exchange access "bottleneck" facilities.[66] The Notice acknowledges that "BOCs

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[62] Notice, FCC 96-308 at ¶ 119

[63] Id. at ¶ 126.

[64] Id.

[65] Id. at ¶ 130.

[66] Id. at ¶ 134.

currently provide an overwhelming share of local exchange and exchange access services in areas where they provide such services -- approximately 99.5 percent of the market as measured by revenues."[67] Moreover, the Notice recognizes that the BOCs not only have an incentive as entrenched monopoly providers, but given their control of local exchange/exchange access "bottleneck" facilities, have the ability to disadvantage competing providers of interLATA service.[68] The Notice details the myriad ways in which the BOCs could use their "bottleneck" control to engage in unlawful discrimination and to misallocate costs.[69] Having so acknowledged the BOCs' power in the local exchange/exchange access market, the Notice succinctly summarizes the resultant issue:

> [T]he primary inquiry is whether the safeguards in the 1996 Act and any Commission rules implementing these safeguards, coupled with other provisions of the Communications Act and Commission regulations, will sufficiently constrain a BOC's ability to improperly allocate costs, discriminate unlawfully, or engage in other anticompetitive conduct such that its affiliate would not quickly gain the ability to raise price by restricting its output of in-region, interstate, domestic, interLATA services . . . [and that the] BOC could [not] cause increases in the prices for in-region, interstate, domestic, interLATA services by raising the costs of its affiliate's interLATA rivals.[70]

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[67] Id. at ¶ 7.

[68] Id. at ¶ 7 - 8, 125, 134.

[69] Id. at ¶ 135, 139, 141.

[70] Id. at ¶ 134.

In addressing this issue, the Notice takes note of price caps regulation, the accounting safeguards proposed in the Accounting Safeguards NPRM,[71] and the Section 272 structural and nondiscrimination safeguards and suggests that they may well thwart anticompetitive activities undertaken by the BOCs.[72] Indeed, the Notice submits that "existing safeguards "have worked reasonably well and generally have been effective, in conjunction with [the Commission]'s regular audits of the BOCs, in deterring the improper allocation of costs, and unlawful discrimination."[73] The Notice further questions whether competitors such as AT&T, MCI and Sprint could be driven from the market by BOC anticompetitive abuses.[74]

TRA submits that while the likes of AT&T, MCI and Sprint may be able to withstand BOC anticompetitive abuses, the hundreds of smaller carriers which currently populate the interexchange industry are far more vulnerable. TRA further submits that no regulation, no matter how well intentioned or how well designed, will constrain entities of the size and with the resources of the BOCs unless they voluntarily elect to comply with those regulations. And, despite their protestations to the contrary, the BOCs will not voluntarily comply with regulations designed to facilitate competitive entry into their monopoly bastions.

For TRA and its small to mid-size carrier members, the issue is not one of economic theory, but of intense practicality. The intricacies of the debate over whether a BOC

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[71] Accounting Safeguards for Common Carriers Under the Telecommunications Act of 1996, CC Docket No. 96-150, FCC 96-309 (released July 18, 1996).

[72] Notice, FCC 96-308 at ¶¶ 136, 138, 140.

[73] Id. at ¶¶ 146.

[74] Id. at ¶¶ 137.

affiliate will be able to raise prices by restricting output or by increasing its rivals' costs are meaningless in the marketplace. What is consequential to TRA's resale carrier members is what the BOCs will do to undermine their businesses through unlawful discrimination or misallocations of costs. Any regulation which will reduce even incrementally these adverse impacts is worthy of implementation from a small competitor's perspective.

Economic theory aside, the "bottlenecks" still exist and the BOCs are simply to large and powerful to be effectively constrained by regulation. Ultimately, only an intensely competitive marketplace can discipline the behavior of behemoths like the BOCs. Thus, TRA is strongly of the view that no regulation should be relaxed until competition emerges in the local telecommunications market. TRA thus encourages the Commission to classify as dominant BOC affiliates in their provision of in-region, interstate, domestic, interLATA services and to retain that classification until the local exchange/exchange access "bottlenecks" are a vestige of the past.

III.

CONCLUSION

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to adopt rules and policies in this docket consistent with these comments.

Respectfully submitted,

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August 15, 1996

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