

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

SEP 13 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of the Non-)
Accounting Safeguards of Sections)
271 and 272 of the Communications)
Act of 1934 as amended)
)
and)
)
Regulatory Treatment of LEC)
Provision of Interexchange)
Services Originating in the LEC's)
Local Exchange Area)

CC Docket No. 96-149

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF THE
UNITED STATES TELEPHONE ASSOCIATION

Mary McDermott
Linda Kent
Charles D. Cosson
Keith Townsend

1401 H Street, N.W., Suite 600
Washington, DC 20005
(202) 326-7249

September 13, 1996

No. of Copies rec'd
List ABCDE

0211

TABLE OF CONTENTS

SUMMARY **ii**

INTRODUCTION **1**

I. The Comments of the Independent LECs' Competitors Fail to Present Evidence Supporting Their Assertion that Independent LEC-Provided Long-Distance Service Operations Should Be More Heavily Regulated **2**
Notice, paragraphs 125-126, 131-141, 153

II. Stricter Regulation of Independent LEC Long-Distance Service Would Harm the Public Interest by Producing Severe Market Distortions **4**
Notice, paragraphs 153-154

III. The Commission Should Move Toward Greater Deregulation in the Long-Distance Market **6**
Notice, paragraphs 153-158

CONCLUSION **9**

SUMMARY

The initial comments submitted by the Independent LECs' competitors apply a leveraging argument in their assertion that LECs should be more heavily regulated because they possess market power. However, they fail to offer any evidence supporting their assertion. Furthermore, the leveraging argument they use is fatally flawed in that it does not take into account the new economic, statutory, and regulatory realities of the marketplace.

The Independent LECs' competitors also seek to burden the Independent LECs with a host of reporting requirements, such as lengthy tariff notice periods and extensive cost support requirements. These suggestions are clear attempts to handicap their Independent LEC rivals. Adopting these suggested requirements would create severely anti-competitive market distortions in the long-distance service market.

Suggestions to apply to Independent LECs requirements similar to those applicable to the BOCs contained in Sections 271/272 of the Telecommunications Act of 1996 are attempts to write new law and circumvent both Congressional intent and process. Congressional intent should be respected on this matter, especially in light of the fact that the BOC requirements will sunset in three years.

Present separation requirements impede greater competition in the long-distance market by imposing unnecessary costs on Independent LECs and eliminating the economies of scope enjoyed by the Independent LECs' competitors. The prohibition against joint ownership of switching and transmission facilities is particularly burdensome and does not address the underlying cost allocation concerns. Greater deregulation is needed to increase competition in the long-distance service market.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Non-)	CC Docket No. 96-149
Accounting Safeguards of Sections)	
271 and 272 of the Communications)	
Act of 1934 as amended)	
)	
and)	
)	
Regulatory Treatment of LEC)	
Provision of Interexchange)	
Services Originating in the LEC's)	
Local Exchange Area)	

**REPLY COMMENTS OF THE
UNITED STATES TELEPHONE ASSOCIATION**

INTRODUCTION

The United States Telephone Association ("USTA") respectfully submits these reply comments in the above referenced proceeding. USTA is the major trade association of the local exchange carrier ("LEC") industry, with over 1,000 members. This proceeding addresses whether the regulatory regime applicable to the domestic, interstate, interexchange ("long-distance") service operations of Independent LECs should be altered. The initial comments demonstrate that additional safeguards for Independent LEC long-distance service operations are unnecessary and would disserve the public interest. Commentors supporting additional safeguards fail to present any evidence supporting their generalized statements.

I. The Comments of the Independent LECs' Competitors Fail to Present Evidence Supporting Their Assertion that Independent LEC-Provided Long-Distance Service Operations Should be More Heavily Regulated.

Several of the Independent LECs' competitors seek to apply a leveraging argument in general terms against Independent LECs. However, the comments of AT&T, MCI, and TCG ignore the economic, statutory, and regulatory realities of the marketplace. As USTA demonstrated in its initial comments in this proceeding, the present local exchange market is not a natural monopoly, and any attempt to leverage alleged market power in the local exchange into the long-distance market by an Independent LEC is economically irrational. The large, established interexchange carriers ("IXCs") and competitive access providers ("CAPs") are clearly attempting to utilize this proceeding to handicap their Independent LEC rivals. There is no evidence or policy support for their position.

AT&T asserts that Independent LECs possess "monopoly control over essential facilities in their local markets enabl[ing] them to exercise market power in the interexchange market." (Comments of AT&T at p. 5.) MCI alleges that this monopoly control gives Independent LECs the ability to raise their rivals' costs through excessive access charges. (See Comments of MCI at p. 5.) Some of the Independent LECs' competitors also argue that this alleged monopoly control over local facilities gives Independent LECs the ability to cross-subsidize their long-distance service through cost misallocation, thereby again raising their rivals' costs. (See e.g. Comments of TCG at p. 2, Comments of AT&T at p. 8.)

Whatever "local bottleneck" that may have existed has been eliminated by three things:

- 1) enactment of the Telecommunications Act of 1996 ("Telecom Act) and the general interconnection requirements contained in Sections 251/252; 2) continuing technological advances that do not depend upon local wireline facilities to provide local service; and, 3) the interexchange carriers' increasing emphasis on establishing their own local facilities (e.g. AT&T/McCaw and WorldCom/MFS). (See Statement of Professor Daniel F. Spulber, at pp. 22-32, Comments of USTA, Appendix A.) In addition to the competing access networks that have been built in cities and towns throughout the country, Congressional action also permits interexchange carriers and other carriers to provide competing access services by leasing facilities or reselling services from Independent LECs.

Furthermore, the leveraging theory is economically irrational. There is no incentive for a LEC to engage in leveraging because extending a hypothetical monopoly from local service into long distance service produces no additional profits, either through vertical foreclosure or tied products. Moreover, raising access prices does not produce additional profit because of required imputation, and only serves to spur competitors to bypass access charges completely through the unbundling requirements precipitated by the Telecom Act. (See Comments of USTA at pp. 5-9 and attached Statement of Professor Daniel F. Spulber at pp. 32-40, Comments of USTA, Appendix A. See also Statement of Professor Jerry A. Hausman at ¶ 23-24, earlier Comments of USTA (August 15, 1996), Appendix A.) Accusations of leveraging of local facilities into the

long-distance market are unfounded.

II. Stricter Regulation of Independent LEC Long-Distance Service Would Harm the Public Interest by Producing Severe Market Distortions.

The Independent LECs' competitors seek to burden Independent LECs with a host of reporting requirements. They claim that advance notice tariffing, tariff review, and cost support studies for every tariff are necessary to guard against cross subsidization and ensure proper cost allocation. (See Comments of AT&T at p. 9; and Comments of MCI at pp. 6-7.) At least one commentator would also have the Independent LECs file quarterly reports listing, among other things, "all facilities, services, or information provided to [their] affiliates and the terms and conditions under which they were provided; [and] all charges made directly or imputed to itself for providing an affiliate with telephone exchange service and exchange access..." (Comments of TCG at pp. 4-5.)

As Professor Spulber has explained, requiring Independent LECs to submit advance notice tariffs, cost support studies, and other onerous reporting requirements for offering long-distance service would create severely anti-competitive market distortions. Non-dominant IXC are currently able to file tariffs on one day's notice, extend service automatically, reduce services if desired, and are not required to file carrier-to-carrier contracts or submit cost support data for above-cap or out-of-band filings. A situation where IXCs enjoy maximum flexibility and none of the reporting burdens while Independent LECs enjoy no flexibility and suffer all of the

reporting burdens is patently uncompetitive. (See Statement of Professor Daniel F. Spulber, at pp. 54, Comments of USTA, Appendix A.)

Moreover, such regulation exhibits a historical bias against Independent LECs. Under these rules, two identical firms serving the local and interexchange markets would be regulated differently depending solely on the history of the respective firms. Rather than allowing the market to "pick winners," these regulations preordain the outcome by imposing higher administrative costs on Independent LECs while also denying them the freedom to compete effectively.

Independent LECs need the maximum amount of flexibility to respond vigorously to competition from large, national competitors like AT&T and MCI. Lengthy tariff notice periods and extensive cost support requirements deprive Independent LECs of this needed flexibility by forcing them to signal their intentions to long-distance competitors. The market distortions caused by such signaling will be particularly aggravated if the Commission adopts some form of detariffing, as proposed by the Commission in the Interexchange NPRM.¹ The Commission should not impose the burdensome reporting requirements advocated by other commentors when these same commentors are not subject to such requirements, yet possess far greater resources in

¹ CC Docket No. 96-61, FCC 96-123, In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace ("Interexchange NPRM) at ¶ 34.

the long-distance market.²

III. The Commission Should Move Toward Greater Deregulation in the Long-Distance Market.

MCI makes the claim that it is "impossible" to declare the long-distance service operations of any Independent LEC as non-dominant. It then argues that, as dominant interexchange carriers, Independent LECs should be subject to the full panoply of tariff filing requirements, apparently in perpetuity. (See Comments of MCI at pp. 5-7.) AT&T also suggests that Independent LEC long-distance service operations should be regulated as dominant. (See Comments of AT&T at p. 9.) The suggestion to subject Independent LEC long-distance service operations to new levels of regulation as "dominant" carriers ignores the actual experience of these Independent LEC long-distance operators, who have provided service as non-dominant carriers for over ten years.

The Commission established its dominant carrier regulatory regime as a means to address market power. (See Notice at ¶ 132.) However, no party demonstrates any evidence of such market power in the decade of actual experience with Independent LEC participation in the

² The resources of the IXCs are not just greater than the long-distance service operations of Independent LECs, they are several orders of magnitude greater. For instance, in 1994, AT&T, MCI, and Sprint had a mean number of 45 million presubscribed lines, just under \$13 billion in plant investment, and \$18.5 billion in operating revenue. In stark comparison, Independent LECs had a mean number of just 89 thousand presubscribed lines, \$185 million in plant investment, and \$62 million in operating revenue. (See Statement of Professor Daniel F. Spulber, Tables 3-5 at pp. 14-22, Comments of USTA, Appendix A.)

long-distance market. USTA has provided persuasive evidence that no such exercise of market power could occur. Again, the competitive framework for local service established by the Telecom Act, technological advances, and the actions of IXCs have eradicated the foundation upon which market power might once have been exercised.

The fact that local exchange market power no longer exists has not deterred the Independent LECs' competitors from proposing new regulations that would subject Independent LECs to safeguards similar to those found in Section 271/272 of the Telecommunications Act and applicable only to the Bell Operating Companies ("BOCs"). (See Comments of AT&T at pp. 2-3, 8-9 and 11-12; Comments of TCG at pp. 2-3 and p. 5.) USTA strongly urges the Commission to reject the suggestion that Independent LECs be subjected to these regulatory burdens. Such suggestions by AT&T and TCG are attempts to write new law and circumvent both Congressional intent and process. While considering the language of the Telecommunications Act of 1996, Congress had ample opportunity to adopt provisions that would have been applicable to Independent LECs. It did not. This is indicative of a Congressional belief that Independent LECs do not possess the ability to impede competition in the long-distance market. This belief extends equally to all Independent LECs, regardless of size. The FCC should respect Congressional intent on this matter. Additional separation requirements are not necessary and run contrary to Congressional intent, especially in light of the fact that even the BOCs' requirements will sunset in three years. It would not be in the

public interest to have a situation three years hence where the Independent LECs are regulated more strictly than the BOCs and the IXCs.

Indeed, USTA believes that the current separation requirements impede greater competition. The tariff restrictions and reporting requirements entail administrative costs. The maintenance of separate books and the prohibition of jointly-owned transmission or switching facilities increase Independent LECs' total operating costs by precluding the economies of scope that IXCs offering identical service packages enjoy.

The prohibition against jointly-owned switching or transmission facilities is especially burdensome. USTA does not agree with the comments of Sprint that the "requirement that a non-regulated activity take local service only at tariffed rates can, and should, be read to preclude the sharing of switching and transmission facilities used to provide local service with any interexchange service." (Comments of Sprint at p. 6.) USTA does not disagree that an Independent LEC must impute its access tariffs, but expanding this reading to preclude joint ownership completely only imposes higher costs through the preclusion of economies of scope without addressing the underlying cost allocation concerns. In fact, requiring duplicative switching and transmission facilities could be considered a form of regulator-mandated "gold-plating." Present competition and the interconnection requirements of the Telecom Act are sufficient to discourage any cost misallocation from long-distance to local services. Greater

deregulation is needed to increase competition, and subjecting the long-distance operations of Independent LECs to asymmetric separation requirements borne out of historical bias does not move toward this goal.

CONCLUSION

The initial comments which argue for more onerous regulation of Independent LEC long-distance service operations fail to present any evidence supporting their arguments. Stricter separation or cumbersome tariffing procedures are inappropriate in an environment of greater and greater competitiveness. USTA respectfully urges the Commission to recognize that Independent LECs do not possess market power in the long-distance market by any measure. Given the increasingly competitive environment, the Commission should, in fact, reduce its current regulations for Independent LEC long-distance service operations, and encourage other Independent LECs to enter the market, thereby providing their subscribers with additional competitive alternatives.

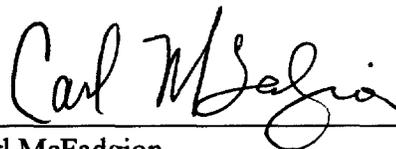
Respectfully submitted,
UNITED STATES TELEPHONE ASSOCIATION

BY 
Mary McDermott
Linda Kent
Charles D. Cosson
Keith Townsend

1401 H Street, N.W., Suite 600
Washington, DC 20005
(202) 326-7249

CERTIFICATE OF SERVICE

I, Carl McFadgion, do certify that on September 13, 1996 copies of the Reply Comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the person on the attached service list.

A handwritten signature in cursive script that reads "Carl McFadgion". The signature is written in black ink and is positioned above a horizontal line.

Carl McFadgion

Janice Myles (diskette)
Federal Communications Commission
1919 M Street, NW
Room 544
Washington, DC 20554

Timothy Fain
OMB Desk Officer
10236 NEOB
725 17th Street, NW
Washington, DC 20503

Howard J. Symons
Christopher J. Harvie
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, PC
701 Pennsylvania Avenue, NW
Suite 900
Washington, DC 20004

Brian Conboy
Sue D. Blumenfeld
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036

Leon M. Kestenbaum
Jay C. Keithley
Sprint Corp.
1850 M Street, NW
Suite 1110
Washington, DC 20036

Frank W. Krogh
Donald J. Elardo
MCI
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Durward D. Dupre
Mary W. Marks
SBC
One Bell Center - Room 3536
St. Louis, MO 63101

Dorothy Conway
Federal Communications Commission
1919 M Street, NW
Room 234
Washington, DC 20554

Herta Tucker
Association of Telemessaging Services Intl.
1200 19th Street, NW
Washington, DC 20036

Daniel L. Brenner
Neal M. Goldberg
David L. Nicoll
NCTA
1724 Massachusetts Avenue, NW
Washington, DC 20036

Michael G. Jones
Gunnar D. Halley
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036

Kent Y. Nakamura
Norina T. Moy
Sprint Corp.
1850 M Street, NW
Suite 1110
Washington, DC 20036

James D. Ellis
Robert M. Lynch
David F. Brown
SBC
One Bell Center - Room 3536
St. Louis, MO 63101

Robert B. McKenna
Richard A. Karre
U S WEST
1020 19th Street, NW
Suite 700
Washington, DC 20036

Gregory L. Cannon
Sondra J. Tomlinson
U S WEST
1020 19th Street, NW
Suite 700
Washington, DC 20036

David G. Frolio
David G. Richards
BellSouth
1133 21st Street, NW
Washington, DC 20036

Joseph P. Markoski
Jonathan Jacob Nadler
Marc Berejka
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, NW - P.O. Box 407
Washington, DC 20044

Dave Ecret
Office of the Governor
Commonwealth of the Northern Mariana Islands
Capitol Hill
Saipan, MP/USA 96950

Catherine R. Sloan
Richard L. Fruchterman
Richard S. Whitt
WorldCom, Inc. d/b/a/ LDDS WorldCom
1120 Connecticut Avenue, NW - Suite 400
Washington, DC 20036

Matthew J. Flanigan
Grant E. Seiffert
Telecommunications Industry Assn.
1201 Pennsylvania Avenue, NW - Suite 315
Washington, DC 20044

Theodore Case Whitehouse
Michael F. Finn
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036

William B. Barfield
Jim O. Llewellyn
SBC
One Bell Center - Room 3536
St. Louis, MO 63101

Saul Fisher
Donald C. Rowe
NYNEX
1111 Westchester Avenue
White Plains, NY 10604

Richard J. Metzger
Association for Local Telecommunications
Services
1200 19th Street, NW
Suite 560
Washington, DC 20036

Thomas K. Crowe
Michael B. Adams, Jr.
Law Offices of Thomas K. Crowe, PC
2300 M Street, NW
Suite 800
Washington, DC 20037

Cheryl L. Parrino
PSC of Wisconsin
610 N. Whitney Way
P.O. Box 7854
Madison, WI 53707

Philip L. Verveer
John L. McGrew
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036

Robert D. Collet
Commercial Internet Exchange Assn.
1751 Pinnacle Drive
Suite 1600
McLean, VA 22102

Ronald L. Plessner
James J. Halpert
Mark J. O'Connor
Piper & Marbury, LLP
1200 19th Street, NW - Seventh Floor
Washington, DC 20036

Wayne A. Leighton
Citizens for a sound Economy Foundation
1250 H Street, NW
Suite 700
Washington, DC 20005

Gary L. Phillips
John Gockley
Steve Schulson
Ameritech
1401 H Street, NW - Suite 1020
Washington, DC 20005

Jim Radar
Owens & Minor
4800 Cox Road
P.O. Box 27626
Richmond, VA 23261

Robert Cohen
Economic Strategy Institute
1401 H Street, NW
Suite 750
Washington, DC 20005

Edward C. McGarr
UGI Utilities, Inc.
225 Morgantown Road
P.O. Box 13009
Reading, PA 19612

Marlin D. Ard
Lucille M. Mates
John W. Bogy
Pacific Telesis Group
140 New Montgomer Street - Room 1529
San Francisco, CA 94105

Daniel C. Duncan
Information Industry Association
1625 Massachusetts Avenue, NW
Suite 700
Washington, DC 20036

J. Manning Lee
Teresa Marrero
Teleport Communications Group, Inc.
Two Teleport Drive
Suite 300
Staten Island, NY 10311

Richard Hetke
Michael S. Pabian
Ameritech
1401 H Street, NW
Suite 1020
Washington, DC 20005

LaDonna W. Shedor
Centra Health
1820 Atherholt Road
Lynchburg, VA 24591

Erik R. Olbeter
Economic Strategy Institute
1401 H Street, NW
Suite 750
Washington, DC 20005

Edward Shakin
Lawrence W. Katz
Bell Atlantic
1320 North Court House Road
Eighth Floor
Arlington, VA 22201
Patricia L.C. Mahoney
Jeffrey B. Thomas
Pacific Telesis Group
140 New Montgomer Street - Room 1529
San Francisco, CA 94105

ITS
1919 M Street, NW
Room 246
Washington, DC 20554