

Susanne Guyer
Executive Director
Federal Regulatory Policy Issues

DOCKET FILE COPY ORIGINAL

NYNEX

October 23, 1996

Ex Parte

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

RECEIVED
OCT 23 1996
Federal Communications Commission
Office of Secretary

**Re: CC Docket No. 96-149; Implementation of Non-Accounting
Safeguards**

Dear Mr. Caton:

The purpose of this letter is to respond to questions raised by the staff of the Policy and Program Planning Division of the Common Carrier Bureau. NYNEX was asked by the staff to address in writing the following three areas:

SHARED ADMINISTRATIVE SERVICES

In its Comments and Reply Comments, NYNEX demonstrated that the Act does not, and should not be read to, preclude the provision of corporate governance and administrative support functions on a centralized basis to both the BOC business and a Section 272 subsidiary by a holding company or service subsidiary of the holding company. NYNEX acknowledged that the Act requires the operations of the BOC and its Section 272 affiliate to be separate (Section 272(b)(1)). For this reason, we agreed with the Competitive Carrier requirement that the affiliate and the BOC not jointly own switching and transmission facilities. [NYNEX Reply Comments, p. 17.]

The physical infrastructure which supports the centralized governance and administrative functions activities, including buildings, computer platforms, etc. will, by definition, support both the BOC and its Section 272 affiliate. It is unlikely that this infrastructure will be jointly owned by the BOC and its 272 affiliate, since the services and functions will be provided by the holding company or a service subsidiary of the holding company. The Commission should not use this proceeding to establish requirements with respect to the ownership of that infrastructure, for two reasons. First, such infrastructure costs are dealt with by the Commission's existing rules.



Second, shared ownership of such facilities, even if it occurred, would not contradict the policy judgment underlying the statute's "operate independently" requirement, since the statute does not preclude the centralized provision of the services which require the infrastructure.

The separate infrastructures which are utilized by the separate operations of the BOC and its Section 272 affiliate — principally switching and transmission equipment and related land and buildings — should not, consistent with the "operate independently" requirement, be jointly owned by those entities. Such joint ownership would also be inconsistent with the requirement of Section 272(c)(i) that the BOC not discriminate between its affiliate and others in the provision of, among other things, services and facilities. This does not, however, preclude the Section 272 affiliate from providing intraLATA services on an integrated basis with its interLATA services, whether it owns the facilities, obtains wholesale BOC services and resells them, or purchases unbundled elements. AT&T and MCI continue to cloud the issue, leaving the impression that Section 272 requires not only a separation between the BOC and its Section 272 affiliate, but also a separation between the Section 272 affiliate's inter- and intraLATA business activities. (AT&T ex parte dated October 4, 1996 and MCI ex parte dated September 30, 1996). There is simply nothing in the Act that requires this uneconomic result.

EQUAL ACCESS OBLIGATIONS

AT&T argues that under the MFJ's equal access provisions, the BOCs were prohibited from "marketing" long-distance service and were only allowed to advise customers of the long-distance carriers that provide service in an end office. AT&T confuses the MFJ's restriction on "marketing" with the MFJ's "equal access" requirements.

Under the MFJ, the BOCs were required to provide new customers (customers seeking service in an office already converted to equal access) with information about AT&T and other interexchange carriers.¹ In an Order released on August 20, 1985,² the Commission also ruled that the BOCs should provide new customers who do not select a carrier with the names and, if requested, the telephone numbers of interexchange carriers (ICs) and should devise procedures to ensure that the names of ICs were provided in random order. Thus, under the MFJ and the Commission's rules, BOCs were required to provide new customers, upon request, with the names of carriers that offered long-distance service in an end office.

Under the MFJ, the BOCs were also prohibited from "marketing" long-distance services. This prohibition, however, did not arise out of the MFJ's equal access requirements, but rather because of the MFJ's prohibition against BOC provision of

¹ United States v. Western Elec. Co., Inc., 578 F.Supp. 668 (D.D.C. 1983).

² 101 FCC 2d 935, 950 (1985).

interexchange services.³ The Court and Department of Justice viewed BOC marketing of interexchange service as constituting the provision of interexchange service, which the BOCs were not permitted to do under the MFJ.

Thus, contrary to AT&T's claim, Section 251(g) of the Act (which continues the MFJ's and the Commission's equal access requirements) does not continue the MFJ's prohibition against "marketing." It only continues the requirement to advise new customers of available carriers if the customer does not name a long distance carrier. The MFJ's prohibition against marketing long-distance service goes away as soon as the BOCs are permitted to provide long-distance service in-region.

Once such relief has been obtained, Section 272 of the Act expressly allows the BOCs to market their long-distance affiliate's services. And, under Section 272(g)(3), the BOCs would be permitted to engage in such marketing for their affiliate only. They would not have to engage in marketing for other carriers.

Although the Act does not define marketing, it is clear that it is something more than merely providing customers with the names of carriers. If that activity itself constituted marketing, then the BOCs would not have been permitted to advise new customers of available ICs under the MFJ. NYNEX believes that the procedures generally described below comport with the BOCs' equal access obligation and at the same time give meaningful effect to the Act's authorization of joint marketing.

In the process of a new customer completing his or her order for local service, the NYNEX customer service representative would inform the customer that a number of companies provide long-distance service, including NYNEX Long Distance Company, and offer to send material regarding NYNEX Long Distance.

We envision three categories of responses from the customer:

- 1) If the customer indicates that he or she wants another long-distance carrier (e.g., MCI, Sprint, etc.), NYNEX would then process the presubscription request;
- 2) If the customer wanted to hear more about NYNEX Long Distance, the representative would then provide information on NYNEX Long Distance products and services; and
- 3) If the customer indicates that he/she is not sure as to which carrier to choose, the representative would offer to read a randomly-generated list of available carriers including NYNEX Long Distance.

We believe that the foregoing procedure ensures that NYNEX is able to market its long-distance services, while giving customers the ability to obtain the names of other available carriers that offer long-distance service. NYNEX, however, believes that the Commission should revisit the requirement that BOCs advise customers of the list of

³ United States v. Western Electric, 627 F.Supp 1090, 1099-1103 (D.D.C. 1986), rev'd on other rounds, 797 F.2d 1082 (D.C. Cir. 1986), cert. denied, 480 U.S. 922 (1987).

available carriers. Such a requirement is no longer necessary twelve years after divestiture. The purpose of the requirement was to let customers know that there were long-distance carriers, beside AT&T, that provide service. NYNEX believes that customers know this now. What they don't know is that NYNEX can now also provide long-distance service. Nevertheless, if such a requirement is continued by the Commission, it should be imposed upon all competitive local exchange carriers, including local affiliates of interexchange carriers. Indeed, the Commission's own equal access requirements arguably apply to such carriers and require such disclosure already.⁴

REPORTING REQUIREMENTS

The Commission need not and should not adopt additional reporting requirements for the purpose of detecting alleged BOC discrimination in the provision and maintenance of telephone exchange service and exchange access (*i.e.*, network services) to nonaffiliates as compared with the BOC and affiliates. If the Commission deems it necessary to adopt reporting requirements, the reports should be similar to those required under the Computer III/ONA⁵ regime for enhanced services and the BOC CPE Relief regime. (See NYNEX Reply Comments, pp. 23-24.) AT&T has proposed in its Comments (pp. 37-38) and in its Ex Parte filed October 3, 1996 that the Commission impose elaborate and detailed reporting requirements on the BOCs to mitigate potential BOC abuse of any residual market power BOCs may continue to possess if and when they are permitted to provide in-region interLATA services. For the reasons discussed below, AT&T's proposed reports would impose costly regulatory burdens to the competitive disadvantage of the BOCs, AT&T's competitors.

First, AT&T attempts to place the BOCs in a no win situation. At the same time AT&T argues for an elaborate reporting scheme⁶ using inappropriate criteria (as discussed below), AT&T also states that "reports can never fully detect nor completely deter BOC discrimination" and that such reports "are useful in only a very limited way"(AT&T Ex Parte, p. 1 of attachment). Thus, if the reports show there has been no discrimination, AT&T preserves an argument that the reports were not useful in

⁴ MTS and WATS Market Structure, Phase III, FCC 85-98 (March 19, 1985) (extending equal access obligations to independent telcos). The FCC's ballot and allocation order also applied to independent telcos. 101 FCC 2d 911, 924 (1985).

⁵ Significantly, the Act does not require any additional reporting relating to the provision and maintenance of BOC network services. (See Section 272.) It is reasonable to infer that Congress recognized that the impending competitive marketplace for local services would negate any BOC incentive or ability to discriminate.

⁶ In its Ex Parte, in addition to certain detailed reporting which aggregates LEC data for services provided to all carriers, AT&T recommends that a LEC should be required to develop and file detailed reports on a confidential basis with respect to each carrier to which it provides service. Because such carrier will clearly be aware of and monitor results for the LEC services provided to it, AT&T's recommendation would place a wholly unnecessary burden on LECs and the Commission, and should be rejected

detecting discrimination in the first place. If anything, AT&T's arguments militate against the establishment of reports, although for the wrong reason. Second, as has been recognized by the Commission in various contexts (e.g., BOC CPE and ONA Compliance Filings approved by the Commission), NYNEX's service design, provisioning and maintenance procedures for network services -- similar to the situation of other BOCs -- represent complex, highly automated and highly structured processes that are nondiscriminatory by design.⁷ In order to give preferential treatment to its own long distance affiliate, a BOC would necessarily have to involve multiple organizations and personnel and/or extensively modify computer processing software to specifically discriminate in favor of the BOC affiliate. Such a "conspiracy" would surely not go undetected for long, especially given the scrutiny of regulators and parties such as AT&T. The reality is that, like any high-volume operation, in order for a BOC to operate efficiently and handle the thousands of orders⁸ processed daily, a BOC must have automated and manual procedures that facilitate a "flow-through" process and avoid the "special handling" of any particular order or customer. Such "special handling" would be extremely costly, slow down operations generally and increase costs. The end result would be to make BOC network services more expensive and less competitive, resulting in the loss of significant revenue to competitors. It is therefore a misconception on AT&T's part that a BOC will seek to discriminate or have the capability to do so without detection.

Lastly, the particular reporting scheme and its elements put forth by AT&T would generate substantial work and complexity for the BOCs, but not produce meaningful analytical data to detect potential discrimination. AT&T simply proposes the reporting of data that AT&T uses for its own internal diagnostic purposes.⁹ The data tracking proposed by AT&T would not be useful to detect possible discrimination, and should

⁷ This is supported by the general lack of complaints, despite parity reports being filed for BOC CPE and enhanced services for a number of years. The arguments being raised in this proceeding are no different than those raised by NYNEX competitors in the CPE and Computer III proceedings. Significantly, the Commission did not require BOC reporting under its Computer II structural separation framework (for CPE and enhanced services) which affords similar structural separation protections as those under Section 272 and currently under review.

⁸ For example, each month NYNEX typically processes over 500,000 PIC changes, 2,000 special access orders, and 1700 switched access orders.

⁹ In its Ex Parte, AT&T states that its proposed measurements are already used by LECs and Interexchange Carriers and therefore would create no additional burden. AT&T is incorrect. All of NYNEX's carrier customers request (and sometimes require) that NYNEX provide certain performance data in support of the carrier's internal tracking mechanisms. Carriers typically ask for different data based on their own internal measurement criteria. AT&T's data requests/requirements have historically gone far beyond those of other Interexchange Carriers. The generation of such data is burdensome and no basis is provided for applying such reporting requirements with respect to carriers other than AT&T.

not be adopted in FCC rules.¹⁰ This area is best left to voluntary industry practices in the competitive marketplace, rather than detailed regulation.

While NYNEX believes that reporting is not required, if the Commission should find otherwise, then the industry standards used for BOC CPE and enhanced services (CI-III/ONA) reports may offer a useful model. The design of those reports resulted from significant industry input and Commission analyses, and was meant to address issues similar to those raised in this proceeding, *i.e.*, to detect potential BOC discrimination in the provision and maintenance of BOC network services.¹¹ If the Commission follows this course, it should conduct further analysis and proceedings, including issuing a proposed reporting format for public comment.

Sincerely,



cc: Mr. R. Metzger
Ms. C. Matthey
Ms. R. Karmarkar
Ms. C. Leanza
Ms. L. Kinney
Ms. B. Scinto
Ms. S. Whitesell

¹⁰ For example, rather than suggesting the industry standard of due dates missed which provides the percent of the time an order is missed **within the standard installation interval** for the particular service **after** a BOC is notified of an order request, AT&T proposes to measure the percent of time that a BOC completes an order within the time interval requested by the customer, regardless of whether the customer's request is reasonable or realistic. As such, a customer asking for service in one day would be considered not met even if the standard interval is 6 days when facilities are available. AT&T's proposed measurement based on the requested customer completion date is therefore inappropriate and meaningless relative to detecting possible discrimination.

¹¹ The industry-developed measures used in those reports were: average service interval and due dates missed (or met) for provision, and mean-time-to-repair and percent missed (or met) for maintenance. Significantly, these are data that NYNEX uses to report to its State commissions on its access services.