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

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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)
_____)

CC Docket No. 96-149

COMMENTS OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION

TELECOMMUNICATIONS
RESELLERS ASSOCIATION

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SUMMARY

The Telecommunications Resellers Association ("TRA"), a national trade association representing more than 500 entities engaged in, or providing products and services in support of, telecommunications resale, generally supports the reporting requirements proposed by the Further Notice to ensure Bell Operating Company compliance with the non-discrimination directives of Section 271(e)(1), but urges the Commission to modify the method, increase the frequency, and enhance the detail of the mandated disclosure. To this end, TRA submits the following recommendations for the Commission's consideration:

- In seeking to avoid imposing unnecessary administrative burdens on the BOCs, the Commission should exercise care not to negate the utility of the Section 272(e)(1) compliance data. Maintenance of Section 272(e)(1) compliance data in multiple locations across the country in less than hospitable surroundings would severely hinder the ability of small to mid-sized carriers to determine whether they are being afforded the quality of service to which they are lawfully entitled. Such entities simply do not have the resources to regularly visit every site at which the BOCs unilaterally determine they will house their respective Section 272(e)(1) compliance data. TRA, accordingly, recommends that the Commission mandate one of two approaches which will "facilitate the access and use of [Section 272(e)(1) compliance data] by . . . small entities." The Commission should either require the BOCs to file such data with the Commission so that small entities may have access to all pertinent information at a centralized location or it should, as suggested by the Further Notice, direct the BOCs to make the data available on the Internet or through other readily-accessible electronic media.
- In determining the frequency with which the BOCs should update Section 272(e)(1) compliance data, the Commission must strike a balance between the administrative burden more frequent updates will impose on the BOCs and the additional competitive harm that any built-in delays in data availability will potentially inflict on competitors. TRA submits that the need for frequent updates in the near term exceeds that in the long term and that whatever updating requirements are adopted here can likely be relaxed in future years. In the near term, however, monthly updates are imperative. Simply put, quarterly or less frequent update requirements would allow too much damage to be inflicted before the information necessary to allow for enforcement of the Section 272(e)(1) nondiscrimination mandate became available.

- TRA generally endorses the Further Notice's list of service categories as a solid basis for assessing BOC compliance with Section 272(e)(1). While TRA submits that the more extensive service category list proposed by AT&T would provide additional useful information, the Further Notice's service category list represents a legitimate (if conservative) compromise, balancing well the administrative burden imposed on the BOCs and the compelling need of competitors (and the Commission) to ensure compliance with Section 272(e)(1). Critically, these service categories reflect service installation, modification, restoration and availability. Moreover, as presented in Appendix C, the service categories are disaggregated into facility-based subcategories. TRA, however, is concerned that the Further Notice's service categories rely on percentages, means and averages which can cover strategic manipulation of the service provisioning/repair process by the BOCs.

- TRA submits that given the critical importance of BOC compliance with the Section 272(e)(1) nondiscrimination requirements, the Commission should err on the side of more, rather than less, disaggregation. At a minimum, BOCs should be required to maintain Section 272(e)(1) compliance data "for each affiliate and themselves separately" and by individual state. Data aggregated beyond these gross levels would fail to reflect sources of noncompliance; indeed, it would likely mask noncompliance altogether. TRA submits that the value of the Section 272(e)(1) compliance data would be greatly enhanced if disaggregation at the exchange level were required.

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**COMMENTS OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby submits its Comments in response to the Further Notice of Proposed Rulemaking, FCC 96-489, released by the Commission in the captioned docket on December 24, 1996 (the "Further Notice"). In this further phase of the proceeding instituted to implement the non-accounting safeguards mandated by Sections 271 and 272 of the Communications Act of 1934 ("Communications Act"),¹ as amended by Section 151 of the Telecommunications Act of 1996 ("1996 Act"),² the Commission will adopt the reporting requirements necessary to assess and ensure compliance with the nondiscrimination requirements of Section 272(e)(1).³

¹ 47 U.S.C. §§ 271, 272.

² Pub. L. No. 104-104, 110 Stat. 56, § 151 (1996).

³ 47 U.S.C. § 272(e)(1).

I.

INTRODUCTION

A national trade association, TRA represents more than 500 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services. Although initially engaged almost exclusively in the provision of domestic interexchange telecommunications services, TRA's resale carrier members have aggressively entered new markets and are now actively reselling international, wireless, enhanced and internet services. TRA's resale carrier members are also among the many new market entrants that are, or will soon be, offering local telecommunications services, generally through traditional "total service" resale of incumbent local exchange carrier ("LEC") or competitive LEC retail service offerings or by recombining unbundled network elements obtained from incumbent LECs, often with their own switching facilities, to create "virtual local exchange networks."

TRA has been an active participant in this proceeding, prompted by its strong interest in securing for its resale carrier members viable competitive opportunities in the provision of local telecommunications services. To this end, TRA has supported here and elsewhere rules and policies designed to speed the emergence and growth of not only resale and non-facilities-based, but facilities-based, competition in the local exchange/exchange access market. Thus, in the initial phase of this proceeding, TRA generally supported the manner in which the

Commission proposed to implement the non-accounting separate affiliate and nondiscrimination safeguards prescribed by Section 272, although it urged the Commission to more aggressively define both the structural and transactional requirements embodied in Section 272(b) and the safeguards against discriminatory conduct set forth in Sections 272(c)(1) and (e), as well as to refrain from relaxing dominant carrier regulation of the provision by Bell Operating Company ("BOC") affiliates of "in-region," interstate, domestic, interLATA, as well as "in-region," international, telecommunications services, until such time as the BOC local exchange/exchange access "bottlenecks" had been dismantled.⁴ Of particular pertinence here, TRA also strongly recommended that the Commission designate as a high priority the creation of mechanisms by which to detect and adjudicate violations of the non-accounting safeguards adopted in this proceeding.

In its First Report and Order, the Commission, among other things, held that Section 272(e)(1) "requires the BOCs to treat unaffiliated entities on a nondiscriminatory basis in completing orders for telephone exchange service and exchange access."⁵ Noting that Section 272(e)(1) "unambiguously states that a BOC must fulfill requests from unaffiliated entities at least as quickly as it fulfills its own or its affiliates' requests," the Commission directed the BOCs to "fulfill equivalent requests within equivalent intervals."⁶ The Commission further required the

⁴ Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended (Notice of Proposed Rulemaking), CC Docket No. 96-149, FCC 96-308, 11 FCC Rcd. 9051, ¶ 7 (released July 18, 1996) ("NPRM").

⁵ Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, FCC 96-489, ¶ 239 (released December 24, 1996) ("First Report and Order").

⁶ Id. at ¶¶ 240 - 41.

BOCs to "make available to unaffiliated entities information regarding the service intervals in which the BOCs provide service to themselves or their affiliates."⁷ Reasoning that without such a disclosure requirement, unaffiliated entities would be unable to compare "their own service intervals with those provided to the BOC or its affiliates," the Commission concluded that "meaningful enforcement of Section 272(e)(1) . . . [required that] interval response times must be disclosed more frequently than the biennial audit required by section 272(d)."⁸

Having so concluded, the Commission elected to seek further comment on the specific information disclosure requirements it should adopt in implementing Section 272(e)(1).⁹ TRA generally supports the disclosure requirements proposed in the Further Notice, but urges the Commission to modify the method, increase the frequency, and enhance the detail of the mandated disclosure.

II

ARGUMENT

A. Method of Disclosure

Emphasizing its desire to "avoid imposing any unnecessary administrative burdens on the BOCs, unaffiliated entities, and the Commission," the Further Notice tentatively concludes that "the BOCs need not submit directly to the Commission the data that must be disclosed under

⁷ Id. at ¶ 242.

⁸ Id.

⁹ Further Notice, FCC 96-489 at ¶¶ 244, 362 - 82.

section 272(e)(1)."¹⁰ In lieu of such a filing requirement, the Further Notice proposes to require each BOC to make Section 272(e)(1) compliance data "available to the public in at least one of their business offices during regular business hours," and to submit annual affidavits verifying the availability, accuracy and timeliness of the data.¹¹ In seeking comment on these proposals, the Further Notice queries whether such a decentralized data availability scheme would "facilitate the access and use of [the Section 272(e)(1) compliance data] by unaffiliated entities, including small entities."¹²

TRA submits that in seeking to avoid imposing unnecessary administrative burdens on the BOCs, the Commission must exercise care not to negate the utility of the Section 272(e)(1) compliance data. As the Commission has acknowledged, absent timely access to such data, competitors "will be unable readily to ascertain how long it takes a BOC to fulfill its own or its affiliates' requests for service," and that without such comparative analysis, "meaningful enforcement of section 272(e)(1)" will likely be impossible.¹³ Maintenance of Section 272(e)(1) compliance data in multiple locations across the country in less than hospitable surroundings would severely hinder the ability of small to mid-sized carriers to determine whether they are being afforded the quality of service to which they are lawfully entitled. Such entities simply do not have the resources to regularly visit every site at which the BOCs unilaterally determine they will house their respective Section 272(e)(1) compliance data. The limited resources of

¹⁰ Id. at ¶ 369.

¹¹ Id. at ¶¶ 369 - 370.

¹² Id. at ¶ 370.

¹³ First Report and Order, FCC 96-489 at ¶ 242.

small to mid-sized carriers would be far better expended on providing competitive local telecommunications services than on traversing the country to police BOC activities.

Moreover, "meaningful enforcement of section 272(e)(1)" requires ready access by Commission personnel to Section 272(e)(1) compliance data. The Commission cannot afford to play a passive role in enforcing the 1996 Act, depending upon competitors to conduct enforcement activities for it. The Commission must be proactive, informing itself of industry activities and promptly acting upon such information. As the Commission acknowledged in implementing Sections 251 and 252 of the Communications Act:¹⁴

We recognize that during the transition from monopoly to competition it is vital that we and the states vigilantly and vigorously enforce the rules that we adopt today and that will be adopted in the future to open local markets to competition. If we fail to meet that responsibility, the actions that we take today to accomplish the 1996 Act's pro-competitive, deregulatory objectives may prove to be ineffective.¹⁵

TRA, accordingly, recommends that the Commission mandate one of two approaches which will "facilitate the access and use of [Section 272(e)(1) compliance data] by . . . small entities."¹⁶ The Commission should either require the BOCs to file such data with the Commission so that small entities may have access to all pertinent information at a centralized location or it should, as suggested by the Further Notice, direct the BOCs to make the data

¹⁴ 47 U.S.C. §§ 251, 252.

¹⁵ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325, ¶ 20 (released August 8, 1996), *pet. for rev. pending sub nom. Iowa Utilities Board v. FCC*, Case No. 96-3321 (8th Cir. Sept. 5, 1996), *recon.* FCC 96-394 (Sept. 27, 1996), *further recon. pending* ("Local Competition First Report and Order").

¹⁶ Further Notice, FCC 96-489 at ¶ 370.

available on the Internet or through other readily-accessible electronic media.¹⁷ Neither mechanism would impose any significant additional burden on the BOCs, given that the BOCs must compile and make publicly available Section 272(e)(1) compliance data in some form. Either mechanism would permit small to mid-sized carriers to ascertain BOC compliance with Section 272(e)(1) without expending undue resources.

B. Frequency of Updates and Length of Retention

The Further Notice seeks comment "on how often the BOCs should be required to update the data they must maintain" and "how long the BOCs must retain the data they must maintain."¹⁸ In a fast-paced competitive environment, the only meaningful data is current data. If a BOC is preferring itself or its affiliates in the service provisioning/restoration process, it is inflicting immediate and serious harm on unaffiliated competitors. Competitive reputations are being damaged and business opportunities are being lost on a daily basis. Such damage cannot be undone; remedies will have a prospective effect only. Hence any and all lags in time in updating Section 272(e)(1) compliance data are detrimental to competitors and are particularly harmful to the more vulnerable small and mid-sized providers.

In determining the frequency with which the BOCs should update Section 272(e)(1) compliance data, the Commission must strike a balance between the administrative burden more frequent updates will impose on the BOCs and the additional competitive harm that any built-in delays in data availability will potentially inflict on competitors. TRA submits that

¹⁷ Id.

¹⁸ Id. at ¶ 379.

the need for frequent updates in the near term exceeds that in the long term and that whatever updating requirements are adopted here can likely be relaxed in future years. In the near term, however, monthly updates are imperative. Simply put, quarterly or less frequent update requirements would allow too much damage to be inflicted before the information necessary to allow for enforcement of the Section 272(e)(1) nondiscrimination mandate became available.

Monopolists do not readily relinquish market power. As the Commission has recently noted, "[b]ecause an incumbent LEC currently serves virtually all subscribers in its local serving area, an incumbent LEC has little economic incentive to assist new entrants in their efforts to secure a greater share of that market."¹⁹ Hence, "the transformation from monopoly to fully competitive markets will not take place overnight."²⁰ In the interim, much damage can be done through strategic manipulation of the provisioning process:

[I]f competing carriers are unable to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially the same time and manner that an incumbent can for itself, competing carriers will be severely disadvantaged.²¹

Timely enforcement of Section 272(e)(1) is required to avoid this eventuality and monthly (ultimately to be replaced by quarterly) updates of Section 272(e)(1) compliance data is necessary to provide for "meaningful enforcement of Section 272(e)(1). Such "meaningful enforcement" also necessitates a retention requirement of at least three years.

¹⁹ Local Competition First Report and Order, FCC 96-325 at ¶ 10.

²⁰ Ameritech Operating Companies: Petition for Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region, FCC 96-58, 11 FCC Rcd. 14028, ¶ 130 (released Feb. 15, 1996).

²¹ Local Competition First Report and Order, FCC 96-325 at ¶ 518.

C. Service Categories and Units of Measure

The Further Notice also seeks comment on the data the BOCs should be required to maintain to demonstrate compliance with the mandates of Section 272(e)(1), as well as the format in which such data should be maintained.²² The Further Notice proposes seven service categories and associated units of measurement as a basis for assessing Section 272(e)(1) compliance.²³ The Further Notice also proposes a specific format for presentation of this data.²⁴

The seven service categories recommended by the Further Notice are:

1. successful completion according to desired due date, measured in a percentage;
2. time from the BOC-promised due date to circuit being placed in service, measured in terms of the percentage installed within each successive twenty-four hour period until ninety-five percent complete;
3. time to firm order confirmation, measured in terms of the percentage received within each successive twenty-four hour period until ninety-five percent complete;
4. time from PIC change requests to implementation, measured in terms of the percentage implemented within each successive six hour period until ninety-five percent complete;
5. time to restore and trouble duration, measured in terms of the percentage restored within each successive six hour period until ninety-five percent of incidents are resolved;
6. time to restore PIC after trouble incident, measured by percentage restored within each successive one hour interval until ninety-five percent restored; and

²² Further Notice, FCC 96-489 at ¶¶ 371 - 378.

²³ Id. at ¶ 372.

²⁴ Id. at ¶ 371, Appx. C.

7. mean time to clear network and the average duration of trouble, measured in hours.²⁵

TRA generally endorses the Further Notice's list of service categories as a solid basis for assessing BOC compliance with Section 272(e)(1). While TRA submits that the more extensive service category list proposed by AT&T Corp. ("AT&T") would provide additional useful information,²⁶ the Further Notice's service category list represents a legitimate (if conservative) compromise, balancing well the administrative burden imposed on the BOCs and the compelling need of competitors (and the Commission) to ensure compliance with Section 272(e)(1). Critically, these service categories reflect service installation, modification, restoration and availability. Moreover, as presented in Appendix C, the service categories are disaggregated into facility-based subcategories.

TRA, however, is concerned that the Further Notice's service categories rely on percentages, means and averages which can cover strategic manipulation of the service provisioning/repair process by the BOCs.²⁷ As AT&T pointed out in Comments submitted in response to the NPRM:

The use of average response times would allow BOCs to obtain improper advantages by providing access for its services rapidly when the customers' needs are highly time-sensitive . . . while

²⁵ Id. at ¶ 369.

²⁶ Letter from Charles E. Griffen, Government Affairs Regulatory Director, AT&T Corp., to William F. Caton, Acting Secretary, Federal Communications Commission, filed October 3, 1996.

²⁷ TRA finds unpersuasive claims by BOCs that "disclosure of absolute figures for the number of orders placed by an affiliate would reveal competitively sensitive proprietary information." Further Notice, FCC 96-489 at ¶ 378. TRA submits that the BOCs will have like information for most, if not all, of its competitors. Moreover, numbers of orders without identification of customers provide no competitively useful information.

maintaining relatively longer average response times by providing slower service to itself in areas where response times are less significant -- and doing the opposite when requests are made by competitors.²⁸

TRA is also concerned that the Further Notice's reliance upon "the BOC-promised due date," as opposed to the "customer's requested due date," will allow for further strategic manipulation of data by BOCs. This concern would be mitigated in part by disclosure by BOCs of "the length of the interval promised by the BOCs to their affiliates at the time the order is placed."²⁹ TRA, however, agrees with the Further Notice that the duration of any delay is far more pertinent information than the mere fact that a due date has been missed, and that more precise data of this nature is substantially more useful than more generalized information.³⁰

D. Levels of Aggregation

Finally, the Further Notice seeks comment on the extent to which the BOCs should be permitted to aggregate their Section 272(e)(1) compliance data. Specifically, the Further Notice queries whether "BOCs should aggregate their own requests and the requests of all of their affiliates for each service category," whether BOCs should be required to disaggregate data by region, state or exchange area, and whether additional facility-based subcategories should be included in the Appendix C disclosure format.³¹

²⁸ Comments of AT&T in CC Docket No. 96-149 at 36 (filed Aug. 15, 1996).

²⁹ Further Notice, FCC 96-489 at ¶ 374.

³⁰ Id. at ¶ 373.

³¹ Id. at ¶¶ 380 - 381.

TRA submits that given the critical importance of BOC compliance with the Section 272(e)(1) nondiscrimination requirements, the Commission should err on the side of more, rather than less, disaggregation. The only constraints imposed on this general principle should be an assessment of diminishing returns for substantial increases in the administrative burden imposed on the BOCs. At a minimum, BOCs should be required to maintain Section 272(e)(1) compliance data "for each affiliate and themselves separately" and by individual state. Data aggregated beyond these gross levels would fail to reflect sources of noncompliance; indeed, it would likely mask noncompliance altogether. TRA submits that the value of the Section 272(e)(1) compliance data would be greatly enhanced if disaggregation at the exchange level were required. This level of disaggregation would permit competitors and the Commission to pinpoint and address specific problem areas, rather than having to deal in generalities. Further division of the DS0 subcategory into voice grade and digital would have a like result. The Commission, accordingly, should require a compelling showing by the BOCs that further disaggregation of Section 272(e)(1) compliance data would require substantial investments of capital and expenditure of personnel resources to warrant adoption of a more aggregated disclosure requirement.

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,

**TELECOMMUNICATIONS
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