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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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 U S WEST, INC.

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February 19, 1997

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SUMMARY

In these Comments, U S WEST proposes several modifications to the notification plan proposed in the Further Notice of Proposed Rulemaking. We agree with much of what the Commission proposes here. The Commission is quite correct in proposing to limit reporting to the BOCs' responses to internal service requests. An entity submitting a complaint of discrimination under §272(e)(1) will undoubtedly have the data regarding the BOC's response to the complainant's service requests, and it would not likely take the BOC's data at face value in any event. We also support the Commission's plan to require reporting only of averages and percentages, which will help the BOCs to avoid divulging competitively sensitive information. For the same reasons, and to ensure meaningful reports, the data should be aggregated across BOC affiliates and across all the BOC's states; otherwise, the results for a small affiliate, or in a small state, could present a distorted picture. We believe annual reporting is adequate for the needs of §272(e)(1), and the requirement need extend only until the separation requirements expire.

The changes U S WEST proposes relate primarily to the seven reporting categories suggested in the Notice. In several cases, we believe the specific proposal would not provide the most relevant information or might be subject to manipulation. In those cases we propose alternative reporting categories that we believe will resolve the problems we note.

We also suggest that the Commission not adopt its proposal to require each BOC to maintain the information at a single business office within its territory. Rather, we believe the Commission should rely exclusively on the electronic publication of this information. Maintaining this information in paper format will be expensive for the BOCs; making it available at a single business office will be inconvenient for most of those who would have an interest in reviewing it. The better approach will be to have the BOCs provide the information electronically. Experience has shown that this is an efficient, effective and economical means of providing information of this sort. The Commission is correct in proposing not to require the BOCs to file the information with the Commission; doing so would merely increase the BOCs' expense to no useful purpose.

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As noted in the Further Notice of Proposed Rulemaking,[1] the Federal Communications Commission ("Commission") proposes in this proceeding to determine the reporting requirements that it will impose on the Bell operating companies ("BOC") to demonstrate their compliance with §272(e)(1). That section requires a BOC to --

> fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates.[2]

In the Report and Order in this proceeding, the Commission concluded that specific public disclosure requirements would be necessary to implement this provision.[3]

In these Comments, U S WEST proposes several changes to the Commission's reporting proposals.

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[1] First Report and Order and Further Notice of Proposed Rulemaking, 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 (December 24, 1996), ¶¶362-89 (hereinafter, "Notice" or "Report and Order").

[2] Id., ¶362 (citation omitted).

[3] Id., ¶242.

I. THE COMMISSION SHOULD REQUIRE THE BOCs TO REPORT ONLY SERVICE-QUALITY DATA FOR THEMSELVES AND THEIR AFFILIATES. (Notice, ¶368)

The Notice appropriately proposes to limit the BOCs' reporting requirements to data relating to the BOCs' performance in fulfilling their own service requests, including those of their affiliates. The enforcement of §272(e)(1) requires nothing more.

In order to submit a complaint of a violation of §272(e)(1), a party will need to know how the BOC has performed in fulfilling its own service requests, as compared to how the BOC has performed in fulfilling the complainant's service requests. Data regarding the former will reside exclusively with the BOCs, and U S WEST has no objection to providing that data – if it includes the appropriate categories and is properly aggregated.

But the BOCs have no monopoly on data relating to their fulfillment of the service requests of other entities: those entities will presumably track the BOCs' performance in fulfilling their service requests, regardless of what the BOCs do by way of reporting these data. We therefore concur with the Commission's proposal to limit the reporting hereunder to the BOCs' performance in fulfilling their own (and their affiliates') service requests.

Limiting the BOCs' data-reporting obligations in that fashion will impose no hardship on those who seek redress for a violation of §272(e)(1). That entity will know how the BOC has performed in fulfilling the entity's service requests, and it will have available to it the BOC's reports of its performance in fulfilling its own

service requests. If these data reveal a disparity favoring the BOC, the complainant will have presumably made out a prima facie violation, at which point the burden will shift to the BOC to produce evidence to disprove the complainant's case.[4]

II. SPECIFIC PROCEDURES. (Notice, ¶¶369-82)

A. Method Of Information Disclosure. (Notice, ¶¶369-70)

The Commission tentatively concludes that it should require a BOC -- once it has received §271 certification to provide in-region, interLATA services -- to submit a signed affidavit stating --

- it will maintain the required information in a standardized format;
- it will update the information as required by the Commission's rules;
- it will maintain the information accurately; and
- how it will make the information available to the public.

The Commission would have the BOCs submit an affidavit each year reaffirming their compliance with these conditions during the preceding year. U S WEST supports this aspect of the proposal.

Under the Commission's proposal, the BOCs would have no obligation to submit their compliance information to the Commission. Rather, they would keep the information on file in at least one business office, the location of which would be specified in their annual affidavits. The Notice asks whether the Commission

[4] Id., ¶345.

should require the BOCs to publish the information electronically, *e.g.*, on the Internet.

Providing this information electronically would be superior to providing it on paper. U S WEST thus supports the provision of this compliance information electronically. We believe, however, that this should be the exclusive means of provision. Maintaining and updating paper copies would be difficult and expensive.

Moreover, having a paper copy in a single business office is a peculiarly inefficient way to convey information, particularly within U S WEST, given the huge expanse of territory it covers. Those who have an interest in reviewing this material will be scattered across U S WEST's territory. No matter which of its business offices U S WEST were to select, it would inevitably be inconvenient for most. The certain result would be frequent requests to dispatch the information by mail or facsimile, which would force U S WEST to expend the resources to comply with these requests or risk appearing uncooperative. Once posted electronically, however, the information would be available to all who might wish to see it virtually instantaneously. Anyone with an interest in this information will have the wherewithal to access it electronically.

Given its superiority, we believe electronic posting of this information should be the <u>only</u> means of making it available.

B. <u>Service Categories And Units Of Measure. (Notice, ¶¶371-78)</u>

The <u>Notice</u> proposes that the BOCs be required to report seven categories of information. We address each in turn.

1. Successful completion according to desired due date, measured in a percentage. "Desired" due date is a highly subjective concept and incapable of precise definition. Such a measure is susceptible to "gaming." For example, if an entity routinely requests same-day installation, knowing the standard installation interval is, say, a week, will the BOC have failed every time it is unable to comply with such an unreasonable request? This is a meaningless measure.

The better course, we believe, would be to measure the BOC's success in meeting its promised due date, as suggested in the Notice, and to measure the due dates themselves.[5] This will enable a comparison of the BOCs' performance in meeting their commitments and a comparison of the commitments themselves.

2. Time from the BOC-promised due date to circuit being placed in service, measured in terms of the percentage installed within each twenty-four hour period until ninety-five percent complete. U S WEST agrees this is a relevant measure of the BOCs' compliance with §272(e)(1).

3. Time for firm order confirmation, measured in terms of the percentage received within each successive twenty-four hour period until ninety-five percent complete. U S WEST believes this is not a relevant measure of BOC compliance with §272(e)(1). Customers have differing methods to issue orders: some are mechanized, others are manual (by telephone or facsimile). These different processes generate inconsistencies that could be construed as discriminatory.

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[5] Id., ¶¶373-74.

A better measure, we believe, would be the interval between the application date and the original due date. The application date is the date a customer formally notifies U S WEST of a service order; the original due date is the negotiated formal date when service is promised. The relationship and interval between these two dates are constant for a given service, regardless of the method a customer uses to place its order with U S WEST, and will provide a consistent measure of the BOCs' responsiveness to service orders.

4. Time from PIC change requests to implementation, measured in terms of percentage implemented within each successive six hour period until ninety-five percent complete. U S WEST agrees this is a relevant measure. Its ability to track the information will, however, be somewhat limited. If an order involves only a PIC change, U S WEST can track the length of time required to implement the order. If, however, the order involves other work as well, U S WEST cannot track it accurately because its systems will show the order completed only when all the work on the order has been completed. Given that a PIC change will typically require less time to complete than most other work that would likely appear on an order, the result will typically be to overstate the amount of time required for a PIC change. To assure the most accurate data, U S WEST believes this information should be reported only when a PIC change is the only item on the service order.

5. Time to restore and trouble duration, measured in terms of the percentage restored within each successive one hour interval until ninety-five percent of incidents are restored. U S WEST agrees this information for network events is a relevant measure of the BOCs' compliance with §272(e)(1).

6. Time to restore PIC after trouble incident, measured by percentage restored within each successive one hour interval until ninety-five percent restored. On the assumption that a "PIC trouble incident" is a PIC dispute, U S WEST agrees that this is a relevant measure of the BOCs' compliance with §272(e)(1).

7. Mean time to clear network and the average duration of trouble, measured in hours. U S WEST agrees that this is a relevant measure of the BOCs' compliance with §272(e)(1).

With the changes noted above, U S WEST supports the provision of these categories of information. Attached to these Comments (Attachment A) is the Commission's "Format for Information Disclosures Pursuant to Section 272(e)(1)," revised to reflect the changes suggested herein. The changes are *italicized.*

U S WEST wholeheartedly endorses the notion of reporting percentages and averages, rather than absolute numbers. As the Notice acknowledges, revealing the number of requests submitted by a BOC's affiliates could provide competitively-sensitive information to its competitors. The percentages and averages the Commission proposes will provide all the information anyone needs to compare a BOC's performance on internal requests to its performance on external requests.

The Notice expresses a belief that these reporting requirements will not impose a significant administrative burden on the BOCs. It asks, however, whether state regulators require similar information and whether the BOCs will need to modify their current tracking systems to comply with the Commission's proposal.

Based on its discussions with state commission, U S WEST believes the states will impose their own reporting requirements, all of which will likely differ from the Commission's plan and from each other. U S WEST could be faced with up to 15 different compliance reporting schemes, each measuring the same intervals for the same services for the same customers in different ways in different jurisdictions. Such a Balkanized reporting scheme could lead to results that appear inconsistent (and confusing) due simply to differing reporting requirements.

U S WEST believes these reports will be least burdensome on the BOCs and most meaningful to other parties if they are as consistent as possible. This will provide all parties with the most meaningful view of the data and will reduce the possibility for erroneous comparisons between state and Commission data. Therefore, U S WEST urges the Commission to take whatever steps it can to achieve the greatest level of uniformity possible. At a minimum, the Commission should sustain its tentative conclusion that it should limit the scope of the reporting required in this proceeding to what is necessary to measure compliance with §272(e)(1).

C. Other Issues. (Notice, ¶¶379-82)

The Notice seeks comments on the frequency with which the BOCs should update the data they must maintain. U S WEST believes the BOCs should update these data annually. Reporting on an annual basis should be sufficient to demonstrate the level of each BOC's compliance. The experience with ONA reporting is instructive in this regard. Though the Commission initially required quarterly reports and annual affidavits, it subsequently eliminated the requirement

for CPE reporting as unnecessary.[6] U S WEST believes the reporting requirement should terminate with the sunset of the separate-affiliate requirement.

The Notice also asks how long the BOCs should be required to retain the information they are required to maintain. U S WEST sees no need for a mandated retention period, but if the Commission believes otherwise, U S WEST suggests that it impose only a short retention period -- no more than two years. The data behind a BOC's reports will be useful only if the BOC's compliance with §272(e)(1) is challenged. If a BOC's performance for a particular period is to be challenged, that challenge will surely arise well short of two years after the data were gathered.

The Commission seeks comment on the appropriate level of aggregation for the BOCs' reports. U S WEST believes the BOCs should report a single set of data across all their states. Disaggregating the data for each state will significantly increase the difficulty and expense of reporting. Moreover, the results in small states with little competition could be skewed by a small number of incidents. Aggregating the results across all states will provide a truer picture of the BOC's performance. In any case, state-specific results would likely be redundant to the reports required by the state commissions.

U S WEST also believes the BOCs should be allowed to aggregate the data for all their affiliates. If the BOCs are required to report the data for each affiliate, their competitors will have access to proprietary, competitive data. Moreover, the

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[6] See, Report and Order, Revision of Filing Requirements, CC Docket No. 96-23, DA 96-1873 (November 13, 1996), ¶¶16-17.

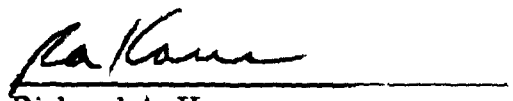
results for a very small affiliate could be skewed by a small number of abnormal occurrences.

III. CONCLUSION

The Commission should limit the reporting required hereunder to the minimum necessary to measure compliance with §272(e)(1). U S WEST believes that can be accomplished by having the BOCs report the indicators described in these Comments. Each BOC should be required to report these data on an aggregated basis: a single annual report covering all BOC entities across all states. Such a report will provide all the information needed to enable a competitor to assess the BOCs' compliance with §272(e)(1).

Respectfully submitted,

U S WEST, INC.

By: 

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February 19, 1997

Attachment A

Format for Information Disclosures
Pursuant to Section 272(e)(1)

Service Category	Types of Access	Outcome for BOC and BOC Affiliates
1) Successful Completion According to *Promised* Due Date (measured in a percentage)	DS3 and above	
	DS1	
	DS0	
2) Time from BOC Promised Due Date to Circuit being placed in service (measured in terms of percentage installed within each successive 24 hour period, until 95% completed)	DS3 and above	
	DS1	
	DS0	
3) Time *from Application Date to Original Due Date* (measured in terms of percentage received within each successive 24 hour period, until 95% completed)	DS3 and above	
	DS1	
	DS0	
4) Time from PIC Change request to implementation (measured in terms of percentage implemented within each successive 6 hour period, until 95% completed)	*Not applicable*	
5) Time to Restore and trouble duration (percentage restored within each successive 1 hour interval, until resolution of 95% restored)	DS3 and above	
	DS1	
	DS0	
6) Time to restore PIC after trouble incident (measured by percentage restored within each successive 1 hour interval, until resolution of 95% restored)	*Not applicable*	
7) Mean time to clear network/average duration of trouble (measured in hours)	DS1 Non-Channelized	
	DS0	

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 19th day of February, 1997, I have caused a copy of the foregoing **COMMENTS OF U S WEST, INC.** to be served via hand-delivery upon the persons listed on the attached service list.

Kelseau Powe, Jr.

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