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

In the Matter of	)	
	)	
Implementation of Section 273 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996	)))	CC Docket No. 96-254

COMMENTS OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") submits these comments in support of the Notice of Proposed Rulemaking ("NPRM"), FCC 96-472, released December 11, 1996. The NPRM proposes rules to implement Section 273 of the 1996 Telecommunications Act.[1]

NTCA is a national association of approximately 500 local exchange carriers ("LECs"). These LECs provide telecommunications services to end users and interexchange carriers throughout rural America. NTCA has a substantial interest in the rules implementing Section 273 and a history that evinces a concern and active involvement in the regulatory and legislative processes that have shaped the safeguards now contained in Section 273.

Twenty-one years ago, the Administrative Law Judge hearing AT&T's rate case, Docket No. 19129 (Phase II) adopted NTCA recommended findings that concluded Bell system sales

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[1] Telecommunications Act of 1996, Pub. L, No. 104-104, 110 Stat. 56, *to be codified at* 47 U.S.C. §§ 151 *et. seq* (1996 Act). Hereinafter, all citations to the 1996 Act will be to the 1996 Act as codified in the United States Code.

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policy, at the time, harmed independent companies. The ALJ found that the policy generally precluded sales of Western Electric equipment to non-Bell companies.[2] More recently, NTCA actively supported the adoption of rural safeguards in legislation relieving the BOCs of the manufacturing restriction in the Modification of Final Judgment.

NTCA's interest in this rulemaking is that the rules the Commission adopts prevent a reversion to the situation it complained of twenty-one years ago. Although, times have changed and many manufacturers are producing the switches and other telecommunications equipment necessary for the provision of services by independents, vigilance is still required to ensure that small carriers like NTCA's members are not precluded from purchasing choices by absolute prohibitions or by default due to technical problems created by manufacturers with undue leveraging power. As the BOCs become free to acquire the present suppliers to the independent LEC industry, independents must retain the option to supply their needs from BOC affiliated manufacturers. Competition in the local exchange market is an added fact that should affect the way the Commission regulates BOC affiliate manufacturing operations.

Specifically, NTCA suggests that the joint network planning and design provisions of Section 273(e)(3) be interpreted for the benefit of LECs that are "qualifying carriers" under

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[2] *In the matter of AT&T Charges for Interstate Telephone Service*, Initial Decision, Docket No. 19129, 64 F.C.C. 2d 131, 174-176 (1977). Bell objected to this finding and argued on exception to the ALJ's decision that "its policy of not selling to Independents except in exceptional circumstances serve[d] the public interest by insuring that the BOC's equipment needs are always met." *In the matter of AT&T Charges for Interstate Telephone Service*, Final Decision and Order, Docket No. 19129, 64 F.C.C. 2d 1, 7 (1977). The Commission concluded that it lacked information to determine that the public interest required unrestricted Western sales to Independents or a change in Bell System sales policy. However, it said, "[w]e note..., as did the ALJ, that the only impediment to sales of Western equipment to Independents appears to be the policies of Bell management. Nothing prevents Bell from undertaking Western sales to Independents on its own initiative." *Id.* at 25.

Section 259, the infrastructure sharing provision in the Act. The Commission tentatively concludes that the obligations imposed by Section 273 (e)(3) are separate from, and consistent with those imposed by Section 259.[3] NTCA agrees with this conclusion. For the Commission, the consequence of this conclusion impels an interpretation of Section 273(e)(3) that places preeminent emphasis of "qualifying LECs" needs for early involvement in planning efforts that affect their ability to gain access to "providing LECs" facilities and technologies that they require to provide services included in universal service. Recently, in the Report and Order adopting rules implementing Section 259, the Commission adopted the tentative conclusion made here, namely that Section 259 applies in areas that do not involve competition between carriers.[4] The Commission tentatively concludes that Section 273 (c)((4)'s reference to "interconnecting carrier" means that BOCs must provide timely notice of the planned deployment of telecommunications equipment to all telecommunications carriers with whom they have an interconnection arrangement.[5] This interpretation of "interconnecting carrier" should be expanded to include "qualifying carriers" that have infrastructure sharing agreements with the BOCs. In its infrastructure sharing order, the Commission permits non-competing carriers that meet the requirements of Section 259 to interconnect under the infrastructure sharing provisions of the Act. These carriers have the same need for information that carriers interconnecting under Section 251 have. Since Section 273 is not restricted in any way by references to Section

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[3] NPRM, ¶ 71.

[4] *In the Matter of implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996,* Report and Order, CC Docket No. 96-237, FCC 97-36, at ¶ 6 (rel. Feb. 7, 1997).

[5] NPRM, ¶ 29.

251, the Commission should take the approach that best fits Congress' intent that carriers providing telephone exchange service receive timely information to accommodate service to the public. Congress did not intend to deprive the public of the benefits that come from carrier cooperation and coordinated deployment based on whether interconnection agreements were reached on the authority of Section 251 or 259. The Commission should adopt an interpretation that promotes the objective of service to the public.

Section 273(e)(4) prohibits the BOCs from restricting sales to any LEC of telecommunications equipment, including software integral to the operation of such equipment and related upgrades. The Commission interprets this language as unambiguous and asks what specific measures it should adopt to enforce it.[6] NTCA agrees that the language is unambiguous. Despite this clarity, the Commission may need to indicate what particular sanctions it will impose for violations of Section 273. The public as well as the BOCs should be assured that the Commission will take appropriate and specific measures to enforce Section 273.

CONCLUSION

For the above stated reasons, NTCA urges the Commission to adopt rules that specifically recognize the need for timely information and joint network planning by "qualifying carriers" under Section 259. The rules should also provide adequate enforcement mechanisms to ensure

[6] NPRM ¶ 73.

hat independents are not precluded from obtaining from BOC affiliated manufacturers, equipment, equipment upgrades and software needed to provide services.

Respectfully submitted,

NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

By: _____
David Cosson
(202) 298-2326

By: _____
L. Marie Guillory
(202) 298-2359

Its Attorneys

2626 Pennsylvania Avenue, N.W.
Washington, D.C. 20037

February 24, 1997

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Associaiton in CC Docket No. 96-254 was served on this 24th day of February 1997, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

Gail C. Malloy

Gail C. Malloy

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814-0101
Washington, D.C. 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802-0106
Washington, D.C. 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844-0105
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832-0104
Washington, D.C. 20554

Mr. Kent Nilsson, Chief
Network Service Division
Common Carrier Bureau
Federal Communications Commission
2000 L Street, N.W., Room 253
Washington, D.C. 20554

International Transcription Service
2100 M Street, N.W.
Suite 140
Washington, D.C. 20037

Secretary
Network Services Division
Common Carrier Bureau
Federal Communications Commission
2000 M Street, N.W., Suite 235
Washington, D.C. 20554