

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

FEDERAL COMMUNICATIONS  
COMMISSION  
SECRETARY

MAR 21 '97

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**REPLY COMMENTS OF AMERITECH**

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March 21, 1997

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REPLY COMMENTS OF AMERITECH

**SUMMARY**

In its opening comments in response to the Further Notice of Proposed Rulemaking, Ameritech largely supported many of the Commission's tentative conclusions, but also urged that some proposals be modified. Ameritech asked the Commission, in designing reporting requirements, to balance three interrelated considerations: usefulness, protection against disclosure of proprietary information, and minimizing the burden on the BOC. Some commenting parties seek to enlarge the BOC reporting requirements beyond those proposed by the Commission, while of course other BOCs have taken the same stance as Ameritech. In general the Commission should adhere to its original proposals, except in those cases already identified by Ameritech in its opening comments.

The reporting of averaged data, as proposed by the Commission, is a meaningful safeguard and does not reveal sensitive proprietary information of the BOC's competitive affiliate. The fear expressed by some commenters that the use of average intervals might enable the BOC to "hide" violations is unrealistic because such "hiding" would require a detailed knowledge by the BOC of priorities among the

individual orders of its affiliate as compared to the priorities of a non-affiliate's orders.

Also, the Commission should adhere to its original intent that the rules in this docket pertain to interLATA services, not local services other than exchange access. The subject of local exchange service is adequately covered elsewhere, such as in the various proceedings under Section 251.

In addition, as originally proposed, the reports required under Section 272(e)(1) should be made available on the Internet, but need not be filed with the Commission, in order to protect the Commission from a blizzard of paper. Also, the reports should be made quarterly, on a statewide basis, and separate reports need not be made for individual BOC affiliates or for any non-affiliates.

Finally, as Ameritech contended in its opening comments, service categories 1 and 3 in the Commission's proposal should not be adopted. A BOC should not be measured on the customer's "desired" due date, which is beyond the BOC's control and subject to self-serving manipulation by competitors.

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In its opening comments in response to the Further Notice of Proposed Rulemaking, Ameritech largely supported many of the Commission's tentative conclusions, but also urged that some proposals be modified. Ameritech asked the Commission, in designing reporting requirements, to balance three interrelated considerations: usefulness, protection against disclosure of proprietary information, and minimizing the burden on the BOC. Some commenting parties seek to enlarge the BOC reporting requirements beyond those proposed by the Commission, while of course other BOCs have taken the same stance as Ameritech. In general the Commission should adhere to its original proposals, except in those cases already identified by Ameritech in its opening comments, as is further discussed hereinbelow.

**I. Averaged Data Is Meaningful and Does Not Reveal Competitively Sensitive Proprietary Information.**

Many of the parties responding to the Further Notice of Proposed Rulemaking take issue with the proposed use of averaged data in BOC reporting under Section 272(e)(1). AT&T, for example, contends (at p. 3), as it has contended previously, that a BOC may serve its affiliate's urgent requests quickly, and its non-urgent requests more slowly, while doing the opposite for non-affiliates, all of which would be "hidden" by the use of average intervals. Similar arguments are advanced by TCG, at pp. 6-7, and TRA, at pp. 9-10.

However, these arguments were already addressed in the initial comments of Ameritech and others.<sup>1</sup> There it was explained that "hiding" would be unlikely because it would require a minute degree of knowledge by BOC of the priorities among the individual orders of its affiliate and of each non-affiliate. In addition, the contrary argument assumes relatively insubstantial differences in treatment, in order to keep the averages close. The nature of systemic discrimination argues against such a supposition. Accordingly these arguments should not be accepted.

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<sup>1</sup> U S West (at p. 7) points out that averaging will help to protect competitively sensitive information, and provide all the information needed to assess performance in fulfilling service requests. Also, Pacific Telesis (at p. 9) asserts that averaged data is more meaningful because it takes into account reasonable variations based on complexity of the order, unique characteristics of the service, and geographic location, and that averaging is consistent with the Commission's ARMIS reporting requirements.

## **II. Local Exchange Service Should Not Be Included.**

In its opening Comments, Ameritech submitted that it would be appropriate to limit the scope of reporting requirements in this proceeding to access services provided by the BOC to its Section 272 affiliate. Ameritech thus agreed with the Further Notice that non-discriminatory provision of telephone exchange service is more appropriately addressed in the context of the interconnection proceeding. Those comments are supported by such parties as Pacific (at p. 2). Other parties, however, argue the contrary, such as MCI (at p. 4), Sprint (at p. 3), and TCG (at p. 4). Still, the Commission should adhere to its original intent that the rules in this docket pertain to interLATA services, not local services other than exchange access. The subject of local exchange service is adequately covered elsewhere, such as in proceedings under Section 251.

## **III. Reports Should Be Made Available on the Internet, But Not Be Filed with the Commission.**

Some parties assert that reports should be made available on the Internet in a standardized format, and also filed with the Commission. For example AT&T (at pp. 14-16) claims that filing with the Commission will ensure that reports are not surreptitiously altered after initial posting on the Internet. MCI (at p. 2) says that the additional burden of filing with FCC would be minimal. These arguments are without merit. The Commission's conclusion that it

should keep itself from being buried under a paper mountain is correct. Most parties agree that posting reports on the Internet provides accessibility by all parties who have an interest. Further, the allegation that paper filing is necessary to prevent surreptitious alteration is highly speculative, and is based on an erroneous assumption that such conduct could go undetected by unaffiliated IXCs, who are bound to be vigilant. Moreover, even in the unlikely event that a problem develops in this area in the future, the Commission will be fully able to deal with it at that time.

#### **IV. Reports Should Be Made Quarterly.**

Ameritech supports quarterly updates of the Section 272(e)(1) information. Other BOCs do so too, such as Bell Atlantic and NYNEX (at p. 4) and Pacific Telesis (at p. 12). Although AT&T (at pp. 17-18) states that reports should be prepared monthly, and should be posted and filed no more than 10 days after the close of the month, other parties in similar circumstances support quarterly reporting, prominently MCI (at pp. 9-10) and TCG (at p. 8).<sup>2</sup>

In deciding this issue the Commission must weigh the benefits of more frequent reporting against the effort and resources required

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<sup>2</sup> In addition, although TRA asserts that quarterly updates would not be frequent enough in the beginning, it concedes that the rule could be relaxed in future years. (TRA, at pp. 7-8)

and the likelihood that more frequent reporting will undoubtedly introduce more variability which will be decried as discrimination. when in fact it may be caused by seasonal or other legitimate factors such as the total number of orders. Ameritech submits that this balancing compels the conclusion that the reports should be made quarterly.

**V. Separate Reports Need Not Be Made for Individual BOC Affiliates or for Any Non-Affiliates.**

Some commenters urge the Commission to require a multiplicity of reports pertaining to various kinds of entities. For example, according to AT&T (at pp. 18–20), the plain language of 272(e)(1) requires separate reporting for BOC and each BOC affiliate. MCI (at p. 7) advocates that BOCs should be required to report results for non-affiliates on an aggregated basis. Sprint (at pp. 2–3) says both that reporting should be by BOC and each affiliate separately and that non-affiliates' results should be reported in the aggregate.

BOC responses to these points are well taken. BellSouth (at pp. 4–5) shows that Congress's reference to provision by a BOC to "itself or its affiliates" merely recognizes that a BOC may provide such services to itself or to an affiliate. The language was therefore not meant to recognize each affiliate separately, but rather to be inclusive and comprehensive. Accordingly, the BOCs should not be required to maintain or provide separate data for each affiliate.

U S West adds (at p. 9) that the reporting of data for each affiliate separately would give competitors access to proprietary, competitive data, as well as potentially skewing results for a small affiliate with a small number of abnormal occurrences.

In regard to the issue of non-affiliates, U S West correctly states (at p. 2) that the BOCs have no monopoly on data relating to their fulfillment of service requests for non-affiliated entities, and should not be required to report such information.

The remarks of those LECs on these issues are well advised. Greater disaggregation would divert more BOC resources from serving customers into serving regulatory requirements, with no added benefit in terms of monitoring for systemic discrimination. Also, reporting for non-affiliates, even in the aggregate, would duplicate information already collected by or made available to those non-affiliates, and therefore would serve no regulatory purpose.

## **VI. Reports Should Be Done on a Statewide Basis.**

Most parties who commented support Section 272(e)(1) reporting on a statewide basis. These include AT&T (at p. 20), MCI (at pp. 9–10), and TRA (at pp. 11–12). However, Sprint (at p. 5) asserts that reports should be made both by state and by MSA (*i.e.*, by LATA), TCG advocates providing the data “on an exchange area-by-exchange area basis” (TCG at pp. 16–17), and TRA seeks “disaggregation at the exchange level” (TRA at p. 12).

The Commission should follow the recommendation of the majority of commenters and require only statewide reporting. The value to competitors of exchange-level or LATA-level data would not be in the detecting of discrimination, but in learning the BOC interLATA affiliate's detailed business plans. Accordingly the providing of BOC statewide data will adequately comply with Section 272(e)(1).

**VII. Service Categories 1 and 3 in the Commission's Proposal Should Not Be Adopted.**

In its opening comments filed February 19, Ameritech showed that two of the service categories contained in the proposal outlined in the Further Notice were of uncertain value relative to ensuring compliance with Section 272(e)(1)'s nondiscrimination requirements and should be dropped or modified. One of these categories, item 1 in the proposal, measures completion of installation according to the customer's desired due date. The second category, item 3 in the proposal, measures completion of the Firm Order Confirmation, or due date, negotiation.

As Ameritech then pointed out, these categories are unsuitable because the BOC has no control over the customer's desired due date and because the power to complete negotiations for a Firm Order Confirmation (*i.e.*, due date) is shared equally by the BOC and the customer. Other parties have also demonstrated the defects of these

measurements. Thus Pacific Telesis Group states that instead of establishing BOC compliance, "the data resulting from this measurement would just as easily show that IXCs make unreasonable requests" (Pacific at p. 5). U S West (at p. 5) adds that " 'Desired' due date is a highly subjective concept and incapable of precise definition," as well as being "susceptible to 'gaming'".

Because a BOC should not be measured on parameters outside its control, and because of the high potential for competitive manipulation by rivals, the proposed items which measure BOC performance against the customer's desired due date and relative negotiation periods should be deleted from the Commission's final reporting requirement.

#### **VIII. Service Categories 4 and 6 Need Not Be Broken Down By Carrier Identification Code.**

The Further Notice asked whether BOCs should provide the information required in service categories 4 and 6 by carrier identification code (CIC). In its opening Comments (at p. 14), Ameritech observed that while this can be done, the value of such a requirement is questionable. For an affiliate with multiple CICs, even if service provided to one CIC were superior or more timely than service provided to that same BOC affiliate's other CICs, it would not have any competitive significance for the affiliate *vis-à-vis* its rivals,

which is what lies at the heart of Section 272(e)(1).<sup>3</sup> Therefore the proposed PIC breakdown is unnecessary.

### **IX. Service Quality Reporting Should Not Be Required.**

AT&T's Comments (at pp. 9-10) seek further measurements for "Incidence of New Circuit Failures," "Failure Frequency," and "Network Repeat Failure." These would supposedly guard against such practices as quick fixes for non-affiliates *vs.* more thorough troubleshooting for affiliates. MCI, too, contends (at pp. 5-6) that BOCs should be required to report service quality, to ensure that their rivals' service quality is not degraded.

Such measurements should not be adopted. In the first place, they have nothing to do with Section 272(e)(1),<sup>4</sup> the main focus of the current proceeding, which is concerned with service intervals, not service quality standards. In addition, ARMIS 43-05 includes categories for initial trouble reports, repeat trouble reports, trunk blockage, and switch downtime. Any attempt to engage in the types

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<sup>3</sup> Similarly, Bell Atlantic and NYNEX observe (at p. 6) that maintaining data by CIC would be voluminous and burdensome, and would provide no additional information concerning the relationship between the BOC and its affiliate.

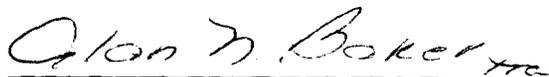
<sup>4</sup> The exact words used in Section 272(e)(1) are: "A Bell operating company and an affiliate that is subject to the requirements of section 251(c) . . . (1) shall fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates." See also Pacific Telesis Group comments at p. 2.

of activities speculated upon by AT&T and MCI would undoubtedly show up in ARMIS as increases of occurrences, making any further reporting superfluous.

**X. Conclusion.**

For the above and foregoing reasons, and also for the reasons expressed in Ameritech's opening comments of February 19, 1997, the Commission should adopt its proposed Section 272(e)(1) rules subject only to the exceptions that have been noted.

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March 21, 1997

PROOF OF SERVICE

I hereby certify that on this 21st day of March, 1997, the foregoing Reply Comments of Ameritech were served by depositing copies thereof in the U.S. Mail at Hoffman Estates, Illinois, addressed to each person shown on the following list.

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