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EX PARTE OR LATE FILED

**Frank W. Krogh**  
Senior Counsel and Appellate Coordinator  
Federal Law and Public Policy

August 5, 1998

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

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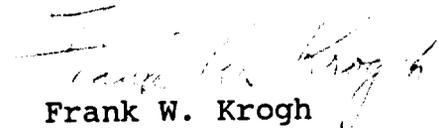
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Ex Parte in CC Docket No. 96-149; CC Docket No. 96-150;  
CC Docket No. 98-39

Dear Ms. Salas:

Attached is a response to questions raised at a meeting with the staff on July 13 concerning the need for performance reporting under Section 272 of the Communications Act. An original and 5 copies of this letter and the attachment are being filed for inclusion in the above-referenced dockets.

Yours truly,

  
Frank W. Krogh

cc: Melissa Newman  
Lisa Choi  
Eric Bash  
Anthony Dale  
Ron Kaufman



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August 5, 1998

Ms. Melissa Newman  
Deputy Chief  
Policy & Program Planning Division  
Federal Communications Commission  
1919 M Street, N.W.  
Room 544  
Washington, D.C. 20554

Re: Ex Parte in CC Docket No. 96-149; CC Docket No. 96-150;  
CC Docket No. 98-39

Dear Ms. Newman:

In our meeting three weeks ago to discuss the BOCs' obligations under Section 272 of the Act, you asked whether the ARMIS 43-05 service quality report or the new reports proposed in the Performance Measurements Notice<sup>1</sup> were sufficient to monitor BOC compliance with the nondiscrimination requirements of Section 272. Those reports are not sufficient for that purpose, for the following reasons.

The Commission has already found that the information necessary to verify BOC compliance with Section 272 is not currently disclosed by the BOCs. In the Non-Accounting Safeguards Order,<sup>2</sup> the Commission specifically concluded that "absent Commission action, the information necessary to detect violations of [Section 272(e)(1)] will be unavailable to unaffiliated entities."<sup>3</sup> It was for this reason that the Commission included the Further Notice with the Non-Accounting Safeguards Order in CC Docket No. 96-149, requesting comment on a

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<sup>1</sup> In the Matter of Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance, Notice of Proposed Rulemaking, CC Docket No. 98-56, RM 9101 (rel. April 17, 1998) (Performance Measurements Notice).

<sup>2</sup> Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996), recon. pending (subsequent history omitted).

<sup>3</sup> Non-Accounting Safeguards Order at ¶ 242.

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proposed format for a new report that the BOCs would use to report provisioning intervals for exchange access services.<sup>4</sup>

The ARMIS 43-05 report is inadequate because it does not permit the Commission to compare the intervals in which the BOC provides service to itself or its affiliate with the intervals in which the BOC provides service to unaffiliated entities. The 43-05 report presents only an aggregate measure of the BOC's provisioning intervals; it does not show separately the provisioning intervals for services provided to the BOC or its affiliate and the provisioning intervals for services provided to unaffiliated entities. Without such disaggregated reporting, the Commission and interested parties would have no way of determining whether the BOC was installing access services more quickly for its affiliate than for unaffiliated carriers.

Furthermore, the ARMIS 43-05 report format was intended only to provide broad measures of service quality, not the detailed information that is required to detect discrimination in the provision of key access services. For example, the ARMIS report combines all types of access circuits in a single reporting category; the reporting format proposed in the Further Notice, by contrast, requires the BOCs to report separately on provisioning intervals for DS0, DS1, and DS3 services.<sup>5</sup> Similarly, the ARMIS report only requires the BOCs to report the percentage of commitments met and the average missed commitment, while the Further Notice proposal includes a much more comprehensive set of measures.<sup>6</sup>

ONA reports are also inadequate for monitoring BOC compliance with the nondiscrimination provisions of Section 272. As the Commission discussed in the Further Notice, ONA reports address only the provision of ONA unbundled elements to enhanced service providers, not the provision of exchange access to

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<sup>4</sup> Further Notice of Proposed Rulemaking, supra n. 2, at ¶¶ 368-82.

<sup>5</sup> Further Notice, Appendix C, items 1-3, 5.

<sup>6</sup> The Further Notice proposal would require the BOCs to report successful completion according to the customer's desired due date, while the ARMIS report measures completion relative to the BOC's promised due date. The Further Notice proposal would also require the BOC to report "time to firm order confirmation," a key step in the access provisioning process, and "time from PIC change request to implementation."

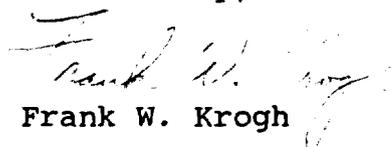
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interLATA service providers.<sup>7</sup> In their comments on the Further Notice, even the BOCs admitted that ONA reports were not sufficient to detect violations of Section 272 of the Act. SBC, for example, stated that it agreed with the Commission that the Further Notice's proposed service categories and units of measure "are more appropriate in the context of Section 272(e)(1) compliance than are ONA installation and maintenance reports."<sup>8</sup>

Finally, performance measures such as those proposed in the Performance Measurements Notice would not permit detection of BOC discrimination in the provision of exchange access services. The performance measures proposed in the Performance Measurements Notice address only local services and unbundled network elements provided pursuant to Section 251 interconnection agreements, not services provided under the BOC's access tariffs. For example, while provisioning intervals for unbundled transport may be included within the scope of the proposed reports, these reports would not include provisioning intervals for BOC provision of transport services purchased from access tariffs. Thus, these reports would not permit the Commission or interested parties to determine if the BOC were in compliance with Section 272(e)(1)'s requirement that it not discriminate in the provisioning of exchange access services.

We appreciated the opportunity to meet with you and your staff. Please let us know if you have any further questions on these or related issues.

Yours truly,



Frank W. Krogh

Magalie Roman Salas  
Lisa Choi  
Eric Bash  
Anthony Dale  
Ron Kaufman

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<sup>7</sup> Further Notice at ¶ 375.

<sup>8</sup> Comments of SBC Communications, Inc., CC Docket No. 96-149, February 19, 1997, at 6-7.