

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In The Matter of)
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Local Competition Survey)
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_____)

CC Docket No. 91-141

CCB-IAD File No. 98-102

**REPLY COMMENTS OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"), through undersigned counsel hereby submits the following comments on selected modifications recommended by other commenters¹ to the "local competition survey" the Common Carrier Bureau ("Bureau") proposed in *Public Notice*, DA 98-839 (released May 8, 1998) ("*Notice*"), as a means of gathering information regarding "the state of local competition in diverse areas of the nation."² As it did in its comments, TRA continues to support the Bureau's ongoing efforts to obtain "timely and reliable information on the pace and extent of development of local competition in different geographic markets," and wholeheartedly agrees with the Bureau that such data is essential to meaningful evaluation by the

¹ Comments were filed by a Allegiance Telecom, Inc. ("Allegiance"), Ameritech, the Association for Local Telecommunications Services ("ALTS"), AT&T Corp. ("AT&T"), Bell Atlantic, BellSouth Corporation ("BellSouth"), the General Services Administration ("GSA"), GNVW, Inc./Management ("GNVW"), GTE Service Corporation ("GTE"), KMC Telecom, Inc. ("KMC"), MediaOne Group, Inc. ("MediaOne"), MCI Telecommunications Corporation ("MCI"), the National Telephone Cooperative Association ("NTCA"), the Rural ILECs, SBC Communications Inc. ("SBC"), the Southern New England Telephone Company ("SNET"), Teleport Communications Group Inc. ("Teleport"), the United States Telephone Association ("USTA"), and U S WEST Communications, Inc. ("U S WEST").

² Notice, DA 98-839 at ¶ 7.

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Commission of “the effectiveness of decisions taken to implement the pro-competition provisions and to achieve the universal service goals of the 1996 Act.”³

Of all the commenters, BellSouth takes the most extreme positions, arguing that neither the Bureau nor the Commission has the authority “to saddle the local market with its proposed reporting obligation,”⁴ and that moreover, any such reporting obligation would be unduly burdensome, duplicative and unlikely to yield any useful results.⁵ As to the former contention, the Commission previously delegated to the Bureau the authority to design and implement an information collection program which would gather empirical data regarding the extent of competition facing local exchange carriers (“LECs”), authorizing the Bureau to “formulate the detailed elements of this reporting program, decide which carriers must provide information, and specify the format and timing of these reports.”⁶ While in so doing, the Commission made specific reference to “competition in interstate access markets,” this was merely the specific context in which the delegation to establish a broad competition monitoring program was made. After all, access competition was the only competition faced by incumbent LECs at that time. As to the doubts expressed by BellSouth regarding the Commission’s authority to gather data to determine whether incumbent LECs are complying with the rules it adopted in implementing Section 251 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (“Act”),⁷ Section

³ Id. at ¶ 3.

⁴ BellSouth Comments at 2.

⁵ Id. at 3 - 6.

⁶ Expanded Interconnection with Local Telephone Company Facilities (Memorandum Opinion and Order), 9 FCC Rcd. 5154, ¶ 79 (1994).

⁷ 47 U.S.C. §§ 251; Pub. L. No. 104-104, 110 Stat. 56, §§ 101 (1996).

4(i) of the Act empowers the Commission to “perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.”⁸ As the Commission has recognized, "vigilant[] and vigorous[] enforce[ment]" will be required "during the transition from monopoly to competition,"⁹ and certainly accurate and complete data is necessary to fulfillment of this function.

As to BellSouth’s claim, vigorously supported by U S WEST, that the local competition survey proposed by the Bureau would be unduly burdensome,¹⁰ TRA submits that the Bureau has obviously streamlined the survey, endeavoring in so doing to “minimiz[e] filing burdens on respondents.”¹¹ Apparently, the Bureau was successful in these efforts because incumbent LECs such as Bell Atlantic, GTE, SBC and SNET generally endorse the proposed survey.¹² As described by Bell Atlantic, “the survey generally seeks appropriate information.”¹³

⁸ 47 U.S.C. § 154(i).

⁹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499, ¶ 20 (1996), *recon.* 11 FCC Rcd. 13042 (1996), *further recon.* 11 FCC Rcd. 19738 (1996), *further recon.*, FCC 97-295 (Oct. 2, 1997), *aff’d/vacated in part sub. nom. Iowa Util. Bd v. FCC*, 120 F.3d 753 (1997), *cert. granted sub. nom AT&T Corp. v. Iowa Util. Bd* (Nov. 17, 1997), *pet. for rev. pending sub. nom., Southwestern Bell Tel. Co. v. FCC*, Case No. 97-3389 (Sept. 5, 1997).

¹⁰ BellSouth Comments at 4 - 5; U S WEST Comments at 3 - 6.

¹¹ Notice, DA 98-839 at ¶ 1.

¹² Bell Atlantic Comments at 3 - 6; GTE Comments at 7 - 10; SBC Comments at 2 - 6; SNET Comments at 2 - 5.

¹³ Bell Atlantic Comments at 2.

BellSouth's contention, echoing that of USTA, that the survey is "duplicative" is no more meritorious.¹⁴ BellSouth is correct that there currently exists a veritable hodge podge of information regarding the state of local competition. As detailed by BellSouth, "state public service commissions have instituted local competition surveys . . . [and i]n addition, ILECs, CLECs, consulting groups, economists and stock market analysts publish substantial information about local market developments."¹⁵ The obvious problem is that the information available through these sources neither covers all, nor is consistent across, markets and carriers. Apart from being hit or miss, the available data is often of questionable reliability because it has not been produced under any kind of verification requirement; indeed, much of the available data has been intentionally skewed for strategic regulatory or financial reasons.

In sharp contrast, the Bureau's local competition survey is designed to generate data which is not only reflective of all markets and all carriers, but consistent in content, detail and format. The data should be reliable not only because it will be certified as accurate to a federal agency, but because, as the Bureau correctly notes, data submitted by one industry segment will serve as a "cross-check" to data submitted by another industry segment. Moreover, the data will be collected as part of a single regulatory docket, readily available to, and usable by, regulators, the industry, the investment community, public officials, academics and the public.

BellSouth's contention that the local competition survey will not produce meaningful results,¹⁶ while somewhat confused and contorted in its presentation, appears to echo at least in part

¹⁴ BellSouth Comments at 5 - 6; USTA at 3 - 5.

¹⁵ BellSouth Comments at 5 - 6.

¹⁶ BellSouth Comments at 3 - 4.

a theme advocated by Ameritech and U S WEST¹⁷ -- *i.e.*, that the local competition survey will only produce data related to market share. First of all, this is not an accurate assessment. Certainly, the survey will generate data from which relative market share can be ascertained, and BellSouth's gratuitous remark that the Commission may not legally compute "state-wide market shares" under Section 271 notwithstanding, market share data is highly pertinent to any analysis of competition in a market.¹⁸ The survey, however, will also produce other meaningful data, revealing whether "new entrants are actually offering competitive local telecommunications services to different classes of customers (residential and business) through a variety of arrangements (that is, through resale, unbundled network elements, interconnection with the incumbent's network, or some combination thereof), in different geographic regions"¹⁹

The suggestions espoused by BellSouth and Ameritech that the local competition survey should be redesigned to measure market power, including such factors as "elasticity of supply and demand," "profitability and gross revenues," and "order activity and churn," or the stock performance of various market participants²⁰ simply miss the point. Such factors may or may not be pertinent to a Bell Operating Company's public interest showing under Section 271, but they

¹⁷ Ameritech Comments at 4 - 10; U S WEST Comments at 6 - 7.

¹⁸ Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, 12 FCC Rcd. 20543, ¶ 391 (1997).

¹⁹ Id.

²⁰ BellSouth Comments at 8; Ameritech 4 - 10.

would not reveal “the nature and extent of actual local competition.”²¹ Nor would they show whether incumbent LECs were complying with their Section 251 market-opening obligations. As the Commission has recognized, “[t]he most probative evidence that all entry strategies are available would be that new entrants are actually offering competitive telecommunications services”²²

TRA does not disagree with BellSouth and a number of other commenters that smaller reporting areas would produce more meaningful data. As TRA pointed out in its comments, the smaller the geographic reporting area, the more valuable the data in illustrating trends in the development of local exchange/exchange access competition. TRA nonetheless endorsed the Bureau’s proposal to limit reporting disaggregation to state boundaries, reasoning that states constitute the most practical reporting areas for the types of data the Bureau is seeking. This endorsement notwithstanding, TRA would not oppose use of smaller geographic reporting areas such as local access and transport areas (“LATAs”) or metropolitan statistical areas (“MSAs”).²³ TRA, however, strongly opposes BellSouth’s suggestion that competitive LECs, but not incumbent LECs, report on a far more disaggregated geographic basis.

TRA agrees with some suggestions by other commenters, including some incumbent LECs, for inclusion of additional questions in the local competition survey and disagrees with other such recommendations. In its comments, TRA recommended inclusion of one or more reporting

²¹ Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, 12 FCC Rcd. 20543 at ¶ 391.

²² Id.

²³ *See, e.g.*, Comments of KMC at 1 - 2.

items related to the so-called "advanced services," a suggestion echoed by ALTS.²⁴ TRA also recommended including in the survey an identification of those cities, towns and municipalities within which an incumbent LEC is providing one or more competitive LECs (i) wholesale services, (ii) unbundled loops and/or switch ports, and (iii) collocation. TRA disagrees with Ameritech's proposal to include reporting items addressing the "capacity of switches and transport facilities, both in-service and on order"²⁵ because such data is meaningless unless the capacity is being utilized to provide local exchange or exchange access service. TRA, however, agrees with Bell Atlantic that requiring carriers "to report the number of interconnection trunks installed with incumbent local exchange carriers, with competing carriers, and with interexchange carriers . . . [would] allow the Commission to monitor the development of competition . . . [through physical network interconnection]."²⁶

TRA strongly disagrees with the many commenters which advocate limiting survey responses to once or twice a year.²⁷ As TRA emphasized in its comments, even data reported quarterly, with the lag in time required to prepare the survey responses, will be stale for purposes of regulatory action. The "vigilant[] and vigorous[] enforce[ment]" the Commission has committed to provide "during the transition from monopoly to competition"²⁸ requires constant oversight

²⁴ Comments of ALTS at 3, 8.

²⁵ Comments of Ameritech at 8.

²⁶ Comments of Bell Atlantic at 6.

²⁷ See, e.g., Comments of GTE at 10; Comments of SNET at 4 - 5; Comments of U S WEST at 8 - 9; Comments of USTA at 9 - 10.

²⁸ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499 at ¶ 20.

accompanied by prompt action, which in turns necessitates the availability of up-to-date data regarding the state of local competition in individual markets. Annual or semi-annual reports will be useless for this purpose.

TRA also strongly disagrees with GTE that all submissions of data should automatically receive confidential treatment and with other commenters that urge relaxed availability of such confidential treatment.²⁹ As even SBC acknowledges, “the results of these surveys should be made public.”³⁰ As TRA argued in its comments, confidential treatment of reported data would serve only one purpose – *i.e.*, to reduce the visibility of the limited extent to which local exchange/exchange access competition has developed. Given that the industry as a whole (including prospective market entrants, as well as current providers of local exchange service), the investment community and the general public all have cognizable interests in the development of local competition, each has a legitimate right to know whether Congressional market-opening mandates are being fulfilled.

TRA further disagrees with GTE that incumbent LEC affiliates should be treated as competitors for reporting purposes.³¹ GTE’s assertion that “the sale of UNEs or resold lines to affiliates is any less demonstrative of the existence of competition than the sales of these elements to unaffiliated competitors,”³² could only have been made by an entity which does not understand the nature of competition. While TRA would not oppose the creation of a separate category for

²⁹ See, e.g., Comments of GTE at 4 - 5; Comments of Ameritech at 16; Comments of U S WEST at 9 - 11.

³⁰ Comments of SBC at 6.

³¹ Comments of GTE at 5 - 7.

³² Id. at 8.

affiliated competitors,³³ inclusion of data related to such entities in a survey designed to determine the state of local competition would serve only to distort the generated data.

By reason of the foregoing, TRA once again urges the Bureau to continue its ongoing efforts to generate data revealing of the state of local competition and encourages the Bureau to adopt and implement its proposed reporting requirements in a manner consistent with the TRA's recommendations as set forth herein and in its earlier-filed comments.

Respectfully submitted,

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³³ See Comments of Teleport at 2 - 3.

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