Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2000 Biennial Regulatory Review –	)	
Comprehensive Review of the	)	CC Docket No. 00-199
Accounting Requirements and	)	
ARMIS Reporting Requirements for	)	
Incumbent Local Exchange Carriers:	)	
Phase 2 and Phase 3	)	

PHASE 3 COMMENTS OF THE OHIO CONSUMERS' COUNSEL AND THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

Introduction

The Ohio Consumers' Counsel ("OCC") and the National Association of State Utility Consumer Advocates ("NASUCA") offer these comments in response to Phase 3 of the Notice of Proposed Rulemaking ("Notice") released in this docket on October 18, 2000. The OCC is the statutory representative of Ohio customers of investor-owned utilities.[1] NASUCA is an association of 41 consumer advocates in 39 states and the District of Columbia. NASUCA's members -- including the OCC -- are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts.

Phase 2 of the Notice requested comments on "various measures to eliminate or streamline existing accounting and reporting requirements" included in the current rules

[1] See Ohio Rev. Code Chapter 4911.

of the Commission. Notice, ¶ 2.[2] In Phase 3, the Commission stated that it would "consider the appropriate indicia for more significant deregulation in this area." *Id*. As explained later in the Notice, the Commission seeks

> to undertake a broader examination of Part 32 and ARMIS requirements with the goal of determining what additional changes can be made as competition develops, and addressing ultimately what, if any, specific accounting and reporting requirements are necessary when local exchange markets become sufficiently competitive.

Id., ¶ 87.

The OCC and NASUCA are pleased to offer these comments in this long-range phase of the Commission's inquiry. The key initial question is the level of "meaningful economic competition" that may justify additional changes in accounting and reporting requirements. "Meaningful economic competition" will not develop uniformly across the nation; hence the Commission may (and should) tailor its regulation to the local operating company level. Indeed, it is unlikely that competition will develop uniformly even on a local operating company level. Thus it should be up to the states to determine whether meaningful competition exists for a specific carrier in that particular state.

The Commission correctly focuses on "whether there are certain triggers that will allow the Commission to significantly modify or relieve certain accounting and reporting requirements that currently apply to the incumbent LECs." Notice, ¶ 89. The OCC's and NASUCA's comments herein will address those "appropriate indicia" rather than the various possible accounting and reporting requirements themselves. We expect to respond to other parties' proposed changes in reply comments.

---

[2] The OCC and NASUCA filed initial and reply comments in Phase 2 on December 21, 2000 and January 30, 2001 respectively.

The current state of competition

Phase 3 of this proceeding, like Phase 2, is part of the Commission's inquiry pursuant to the directive of 47 U.S.C. § 161, which requires the Commission biennially to review its regulations pertaining to telecommunications service to "determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service." See Notice, ¶ 10. The starting point for any long range inquiry, then, must be the current state of competition between local exchange providers. The OCC and NASUCA are not aware of any evidence that shows that, for residential customers at least, meaningful economic competition exists anywhere in the United States.[3]

A report from the New York Public Service Commission, "Analysis of Local Exchange Competition in New York State," shows that as of December 31, 1999, 5.3% of the residential lines in the state were served by CLECs. By contrast, 18% of the business lines were served by CLECs.[4] A report from the Public Utility Commission of Texas, "Report to the 77th Texas Legislature: Scope of Competition in Telecommunications Markets of Texas," shows CLECs serving 3.3% of the residential lines in the state, and 10.3% of the business lines.[5] Without a doubt, the ILECs maintain market power even in these states where competition has taken hold.

---

[3] Certainly, in their Phase 2 initial comments, the ILECs provided no such information.

[4] Available at http://www.dps.state.ny.us/telanalysis.htm. For information on CLECs, see p. 14; for information on ILECs, see pp. 31-102.

[5] Available at http://www.puc.state.tx.us/telecomm/reports/scope/index.cfm. See p. 42.

In other states, the numbers are lower. In Florida, for example, CLECs serve 2.7% of the state's residential access lines.[6] In Maryland, ILEC market share in the small business and residential market remains over 99%.[7] In Ohio, as of June 30, 1999, Ameritech Ohio had sold 0.5% of its residential lines to a competitor.[8] Other Ohio companies with nearly a million access lines have only trace amounts of residential competition.[9] The OCC and NASUCA submit that even for customers in New York and Texas, local exchange competition is not yet "meaningful"; other states have even further to go.

Non-dominance -- the ultimate test[10]

The greatest degree of relaxation of accounting and reporting requirements could come when the incumbent LECs are no longer dominant in their former monopoly service territories.[11] That may be a long time coming.

In the *AT&T Non-dominance Order*, the Commission discussed its sixteen-year

---

[6] See Mark N. Cooper, "Florida Consumers Need Real Local Phone Competition: Fair Access to Monopoly Wires is the Key," Consumer Federation of America (January, 2001), available at http://www.consumerfed.org/fl.telecom.0101.pdf, at 2.

[7] See Mark N. Cooper, "Maryland Consumers Need Real Local Phone Competition: Fair Access to Monopoly Wires is the Key," Consumer Federation of America (December, 2000), available at www.consumerfed.org/mdtelecom1200.pdf, at 6.

[8] *Trends in Telephone Service: March 2000*, Industry Analysis Division, Common Carrier Bureau, Table 9.5, available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/trends.html.

[9] Communications with the author.

[10] This section of the comments addresses questions raised in ¶ 89 of the Notice.

[11] This is not the time for a discussion of whether accounting and reporting requirements can ever be eliminated, but they probably cannot: The growing public interest in the national telecommunications network means that the Commission must maintain some level of accounting and reporting standards to be met by all carriers.

effort to recognize the growth of competition in the interstate interexchange market.[12] In that order, the Commission found that AT&T lacked market power, and declared AT&T to be non-dominant. *AT&T Non-dominance Order,* ¶ 1.

Some of the indicia that the Commission examined for AT&T show just how far from meaningful economic competition is the current local exchange market. The Commission found excess capacity in the interexchange market. *AT&T Non-dominance Order*, ¶ 58. Excess capacity depends on the existence of widely-available competitors' facilities. *Id.*, ¶¶ 59, 61. No such facilities are ubiquitously available in the local exchange market.[13]

The Commission found that long-distance customers showed significant demand elasticity, as they switch carriers at will. *Id.*, ¶ 63. Of course, in the local exchange market in most places in the nation, residential customers still lack any ability to switch local carriers even if they wanted to.

In the end, the Commission found that AT&T had an overall market share of 60 percent. *Id.*, ¶ 68. The Commission discussed the facts that made AT&T non-dominant at a 60 percent market share:

- Lack of control of bottleneck facilities (*id.*, ¶ 70);
- Facing "at least two full-fledged facilities-based competitors" (*id.*); and
- Customers having "numerous" choices (*id.*, ¶ 71).

---

[12] *In the Matter of the Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier,* Order (October 23, 1995), 11 FCC Rcd 3271 ("*AT&T Non-dominance Order*").

[13] The leasing of the incumbent LEC's unbundled network elements ("UNEs") may involve excess capacity when it is used to serve new customers, not current ILEC customers. Even then, the existence of that capacity is dependent on the *incumbent LEC's* plan to maintain its dominance, not a competitive carrier's estimates of the market. Thus UNE leasing does not rise to the level of true competition as measured by the *AT&T Non-dominance Order* standard.

Clearly, none of these factors can be found in the current local exchange market, particularly for residential customers.[14]

It is to be hoped that it takes less than sixteen years from the opening of the local market for the incumbent LECs to become non-dominant. Many local markets have not yet been "opened up," however; even where opened, the level of competition varies considerably. This is why, as mentioned above, the analysis of non-dominance -- and the relaxation of accounting and reporting requirements -- must be conducted on an incumbent carrier-by-incumbent carrier basis.

Section 271, § 272, and pricing flexibility are not effective triggers for relaxation of accounting and reporting requirements.

The Commission requests comment "on the effect of BOCs receiving section 271 authorizations to provide in-region interLATA services." Notice, ¶ 90. Section 271 establishes "market-opening" conditions; the Bell Operating Companies ("BOCs") are required to show only that their local markets are open to competition, not that there is any actual competition above a threshold level. 47 U.S.C. § 271(c)(1)(A). Hence § 271 approval does not *per se* establish the existence of "meaningful economic competition"; indeed, as discussed above, reports from New York and Texas, the two states where BOCs have received § 271 authority, show that although there is competition for residential customers, that competition has not yet ubiquitously reached "meaningful"

[14] Another factor the Commission examined was the impact of competition on the former monopolist's prices. The Commission found that AT&T's residential rates had decreased. *Id*., ¶ 78. This is another impact from competition that is lacking on the local exchange level.

levels. It may be more aptly stated that § 271 approval should be seen as a predecessor to any consideration of whether there is meaningful competition in a BOC's local market.[15]

Given the importance of gauging the level of actual competition, it is clear that the sunsetting of § 272 requirements is useless in that regard. See Notice, ¶ 90. Section 272 imposes a three-year period for the separate affiliate requirements that does not involve any consideration of the level of competition. 47 U.S.C. § 272(f)(1).

Pricing flexibility, per the *Pricing Flexibility Order*, is granted for interstate special access and dedicated transport services based on a showing of collocation in a Metropolitan Statistical Area ("MSA").[16] Although the number of collocated offices may represent sufficient CLEC sunk investment to allow pricing flexibility for the ILEC, this really says nothing about whether the ILEC is dominant for other access services that IXCs use to serve residential customers. On the other hand, the *Pricing Flexibility Order* grants flexibility for common line and traffic sensitive service where the competitor provides service using its own facilities to 15% of the incumbent's customer locations in an MSA. *Pricing Flexibility Order*, ¶ 113. This is closer to a competitive standard, although the competition could be for only business customers within the MSA. Residential customers within the MSA might lack competitive alternatives, and rural

---

[15] The Commission's recent § 271 approvals for SBC in Kansas and Oklahoma are recent enough to allow an examination of the actual level of local exchange competition -- especially for residential customers -- before competitors react to SBC gaining access to the interLATA long distance market. *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket 00-217, Memorandum Opinion and Order (rel. January 22, 2001).

[16] *Access Charge Reform*, CC Docket No. 96-262, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221 (1999) ("*Pricing Flexibility Order*"), at ¶ 77. The *Pricing Flexibility Order* was recently upheld by the U.S. Court of Appeals for the District of Columbia Circuit. *WorldCom, Inc. v. Federal Communications Commission*, CADC No. 99-1395 (February 2, 2001).

customers -- both residential and business -- might also lack alternatives. The limited scope of competition required by the *Pricing Flexibility Order* is clearly not enough to justify relaxing accounting and reporting requirements across the board.

Asymmetric regulation makes sense; achieving greater symmetry may require increasing regulation for CLECs.

The Commission asks whether "asymmetric regulation" (having accounting and reporting requirements for incumbent LECs but not CLECs) "makes sense as we move to a more competitive environment…." Notice, ¶ 92. As discussed above, so long as the incumbent LECs remain dominant, they must continue to be subject to accounting and reporting requirements. Mere "movement" to a more competitive environment is not sufficient to justify relaxation of the accounting and reporting requirements. As non-dominance is approached, relaxation can occur, and the asymmetry can be decreased.

On the other hand, another means of reducing the asymmetry may be applying accounting and reporting requirements to the CLECs. As CLECs grow, and their basic local exchange service is extended to more customers (including residential customers), the need for reporting on their operations will increase.[17]

Conclusion

The Commission asks commenters to discuss "whether and how the Commission and the states can carry out their respective statutory mandates without uniform and

[17] See the New York Report cited at n.4, supra.

accurate accounting and reporting information." Notice, ¶ 98. The OCC and NASUCA suggest that the answer can be found in the various state commission comments in Phase 2, and the answer is that the mandates *cannot* be carried out without "uniform and accurate" information.[18] It may be that an increased level of competition -- above the current minimal level -- will reduce the need for regulators to have certain information. Only the advent of "meaningful economic competition" should result in a substantial reduction; only incumbent carriers becoming non-dominant will result in even more significant reductions in accounting and reporting requirements. Even when the local exchange market is fully competitive for residential customers, however, there will still be a need for regulators to have some level of uniform accounting and reporting information.

Respectfully submitted,

ROBERT S. TONGREN
CONSUMERS' COUNSEL

____
David C. Bergmann
Assistant Consumers' Counsel
Bergmann@occ.state.oh.us

Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Phone (614) 466-8574
Fax (614) 466-9475

[18] Of course, support for this proposition is also found in the Phase 2 comments of the OCC and NASUCA, as well as other non-ILEC commenters.

Michael J. Travieso
Chair, NASUCA Telecommunications
Committee

NASUCA
8300 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380