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Federal Communications Commission
Washington, D.C. 20554

April 30, 2002

Genevieve Morelli
Kelley Drye & Warren LLP
1200 19th St., N.W., Suite 500
Washington, D.C. 20036

01-339
96-98
98-147

Re: Freedom Of Information Act Request
Control No. 2002-246

Dear Ms. Morelli:

On March 5, 2002, you filed with the Federal Communications Commission ("Commission") a document styled "*Petition to Release Certain Form 477 Data Filed by Bell Operating Companies*" on behalf of the Promoting Active Competition Everywhere ("PACE") Coalition. In that Petition, you requested that the Commission release certain BOC information submitted in response to the Commission's Form 477 data gathering program. Specifically, you request the responses to Part II – Questions One through Five of the Local Competition and Broadband Reporting Form 477 ("FCC Form 477"). As discussed more fully below, we have construed your petition as seeking RBOC information not submitted pursuant to a request for confidentiality, and grant your request pursuant to the Freedom of Information Act ("FOIA").

The information you seek was submitted in response to the Commission's March 24, 2000 Report and Order in CC Docket No. 99-301.¹ Pursuant to that Report and Order, the Commission made clear that our rules for requesting non-disclosure of confidential information will be available to all filers of the FCC Form 477. The Commission stated that we would not release information subject to confidentiality claims until the person requesting confidential treatment is afforded all of the procedural safeguards under our confidentiality rules (*See* 47 C.F.R. § 0.459(d)). For this data collection, the Commission simplified the procedures for requesting confidential treatment of data. Parties need only check a box on the first page of the form and submit both a complete and redacted version of the form. However, if the Commission receives a request pursuant to the FOIA,² for disclosure of the information contained in the FCC Form 477, the provider will be notified and required to make a full showing under our rules. In the case of local competition data in particular, the Commission noted that carriers should seek protection only for such data that they have not otherwise treated as public.

Notwithstanding the Commission's policy regarding Form 477 information submitted pursuant to claims of confidentiality, you assert that we should release RBOC responses to Part II – Questions One through Five, in response to your petition, because there can be no legal or policy

¹ *See Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, 15 FCC Rcd 7717, 7757-62 (2000) (*Data Gathering Order*).

² *See* 5 U.S.C. § 552.

grounds to withhold those responses.³ Further, you go on to claim that “no one could claim that responses contained therein contain proprietary or confidential information.”⁴ However, at least two of the RBOCs have submitted some information in response to Part II – Questions One through Five, pursuant to claims of confidential treatment. Given your statements in the petition and following conversations with you by Commission staff, we have construed your petition as a request, made pursuant to the FOIA, for RBOC information in response to Part II – Questions One through Five, but not submitted pursuant to a request for confidential treatment. We have, in fact, already determined that much of the information was not submitted pursuant to claims of confidentiality, or is currently not asserted to be confidential, and may be released immediately.

The enclosed compact disc contains Excel spreadsheets of RBOC responses, for incumbent local exchange carrier (LEC) operations, to each component of Part II – Questions One through Five, which the RBOC does not now assert to be privileged and confidential. If a filer revised a particular component of these data following that filer’s initial submission, the compact disc contains the most recent revision of that particular component. Therefore, these data include data reported in our most recently published statistical summary, *Local Telephone Competition: Status as of June 30, 2001* (Industry Analysis Division, Common Carrier Bureau, rel. Feb. 2, 2002).

More specifically, the enclosed compact disc contains an Excel workbook comprised of five sheets: December 31, 1999 data; June 30, 2000 data; December 31, 2000 data; June 30, 2001; and December 31, 2001 data. State-level data for some current incumbent-LEC components of the four RBOCs -- BellSouth, Qwest, SBC, and Verizon -- may be identified by a pre-merger entity name. We have used the notation WH to indicate that a particular component of the Part II – Questions One through Five, data is withheld because the filer asserts that information is privileged and confidential. Some of the spreadsheets have additional explanatory notes. We have labeled the columns of the spreadsheets for convenience. You should not interpret a column label as a complete description or explanation of the data element. We refer you to FCC Form 477 and to the detailed Instructions, which you can download.

If you wish to seek access to other information not disclosed pursuant to our action here, we urge you to file a formal FOIA request denominated as such. Such a filing should specifically identify that information and documents to be released and otherwise conform to the requirements set out in section 0.461 of the Commission’s rules.⁵

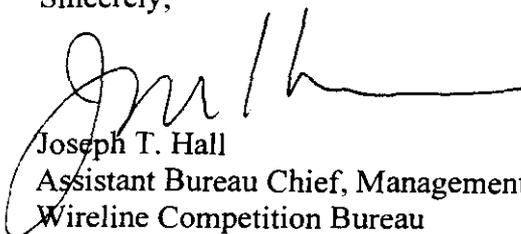
³ Pace Petition at page 4.

⁴ *Id.*

⁵ FOIA fees may be applicable.

We, therefore, GRANT your request for information under the FOIA, to the extent described herein, and release to you the information described above on the enclosed compact disc pursuant to section 0.461(f)(3) of the Commission's rules (47 C.F.R. § 0.461(f)(3)). Pursuant to section 0.461(j) of the Commission's rules (47 C.F.C. §0.461(j)), you may seek review of our decision by filing an application for review with the Office of General Counsel, Federal Communications Commission, 445 - 12th Street, SW, Washington, D.C. 20554, within thirty days of the date of this letter.

Sincerely,



Joseph T. Hall
Assistant Bureau Chief, Management
Wireline Competition Bureau

W/Enclosure