

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on April 30, 1997

COMMISSIONERS PRESENT:

John F. O'Mara, Chairman
Eugene W. Zeltmann
Thomas J. Dunleavy

CASE 96-C-0647 - Proceeding on Motion of the Commission to
Monitor the Development of Competition, filed
in C 94-C-0095.

CASE 96-C-0511 - Joint Petition of Cellco Partnership, SMSA
Limited Partnership and Orange County -
Poughkeepsie MSA Limited Partnership for a
Declaratory Ruling that Cellular Providers are
no Longer Required to Submit Annual Reports
Pursuant to Section 641 of 16 NYCRR.

ORDER ADOPTING TELECOMMUNICATIONS
COMPETITION MONITORING REPORT

(Issued and Effective May 20, 1997)

BY THE COMMISSION:

INTRODUCTION

By order issued July 19, 1996, we instituted this proceeding to formulate reporting requirements applicable to all carriers for the purpose of monitoring the development of competition. In so doing, we stated that we would consider what new information should be collected from competitive local exchange companies (CLEC), and resellers of all services, and also what changes should be made to existing reporting requirements applicable to telephone corporations. We also stated our belief that record keeping and reporting requirements should be streamlined to the extent possible in recognition of evolving competitive markets.

After an extensive collaborative and comment process, involving all interested parties, on December 24, 1996, we issued the draft Telecommunications Competition Report (TCMR) for formal

comment. We issued the modified TCMR for formal comment. Comments were received from seven parties on February 24, 1997.¹

DISCUSSION

After reviewing the comments, we will make several substantive changes to the TCMR suggested by the parties. In addition, we will make a number of minor changes to the TCMR to incorporate several clarifications requested by commenters and to present certain schedules in a more concise format. Discussion of these changes follows.

Telecommunications Network Plant in Service (schedule 4)

Several carriers contended that this schedule provides little information for competition monitoring purposes. However, the information reported in this schedule continues to provide data regarding the level and rate of investment being made in New York State by facilities-based carriers.

Network investment data provides an insight into the potential for competition that other information can not accomplish. Market share analyses, based on revenues or access lines, provide a valuable snapshot of a carrier's presence and status in the market at a given point in time. However, they do not allow us to draw conclusions as to the potential for future competition. For example, a carrier may have few access lines and revenues (thus appearing to be a small player) while, at the same time, be making significant investment in the network. We could draw an important conclusion based upon this information that while that carrier may not be exhibiting much market presence today, it clearly intends to be a major player. Without investment information, a valuable forecasting tool would be lost.

¹ The commenters are AT&T, ACC, Time Warner Communications Holdings, Inc. (Time Warner), Vanguard Binghamton, Inc. and Binghamton CellTelCo (collectively Vanguard), Bell Atlantic NYNEX Mobile, Inc. (BANM), New York State Telephone Association, Inc. (NYSTA) and New York Telephone (NYT).

Nevertheless, in an attempt to further streamline the TCMR schedules where possible, without sacrificing the collection of useful information, we will eliminate the accumulated depreciation reporting requirement as suggested by NYSTA. This change will remove our ability to determine net investment based upon the filed information; however, we believe that the filing of gross network investment will provide a sufficient basis for measuring the level and rate of network investment by facilities-based carriers during the transition to competition.

New York State Operating Revenues (schedule 5)

In response to NYT's comments which indicated that, based on an industry survey initiated by the United States Telephone Association, unbundled network element revenues should be considered as rent revenue and booked to account 5240 - Rent Revenue, which is in the Miscellaneous Revenue category, this schedule will be modified to remove unbundled network element revenues from the local service revenue category and include them in Miscellaneous Operating Revenue category.

NYT also suggested that this schedule be expanded to identify residence and business long distance revenues. As originally proposed, these revenues would be reported in the aggregate. NYT claims that the potential competition for intraLATA toll service can be very different for business and residence customers and should be a key area for analysis. While we appreciate NYT's concern, a further breakdown of long distance toll revenues is unnecessary. Adequate information concerning the mix of residence and business intraLATA toll customers can be obtained from access line information filed in Schedule 7 - Presubscribed Access Lines by Type of Long Distance Service.

NYT also suggested that the access revenue category be defined by our Uniform System of Accounts account structure. However, those accounts aggregate all intrastate access revenues into one account. For purposes of monitoring the various intrastate markets, the original access revenue categories are best. Since carriers bill for these access services using

distinct, service-specific rate schedules, identification of carrier access revenues, by the categories originally proposed by staff, should not prove burdensome.

Finally, following a recommendation by NYT, an "other" category will be added to local and long distance service revenues to account for revenues that are neither residence nor business in nature.

Minutes of Use - By LATA (schedule 8)

Several parties expressed concern over the costs associated with the requirement that actual local minutes of use (MOU) be reported in this schedule. The parties claimed that a significant portion of their local customers are billed on a flat rate basis for local service. Therefore, the companies do not routinely measure and record actual local MOU. The schedule, as proposed, did allow carriers to estimate local MOU if actual data did not exist. However, several parties continued to express concerns over the costs of estimating MOU and the applicability and usefulness of estimates that are derived using different methodologies. This same concern does not apply to carrier access and long distance MOU since these services are generally charged for on a per MOU basis and detailed records exist from which to obtain the requested information.

In an attempt to strike a reasonable balance between the need for local usage information and the costs and burdens cited by the carriers regarding collection of this data, we will adopt the following alternative which is based, in large part, on discussions with the parties during the collaborative meetings. Instead of reporting all local MOU, facilities-based carriers will be required to report (1) local MOU that they terminate on other facilities-based carriers' networks and (2) local MOU terminated on their network by other facilities-based carriers. Since carriers record and, in most instances, bill one another for local MOU terminated on their networks, this information should be readily available.

Retail Long Distance Billing Information (schedule 10)

The schedule will be modified to eliminate much of the directory assistance (DA) service information originally requested. Upon further consideration, we conclude that a measure of DA revenues only (as opposed to DA revenues and number of DA calls handled and charged, as originally proposed) will suffice for purposes of monitoring DA service competition.

Counties Served (schedule 12)

NYT stated that it is not clear how this schedule would assist us in our monitoring efforts. The schedule requires each local carrier to place an "X" next to those counties in which it provides local service. For competition monitoring purposes, disaggregation at the county level will be valuable in providing a more focused view of where competition is, and is not, occurring in New York State. This schedule does not ask for specific numbers of customers and should, therefore, not be burdensome to complete.

Filing Transition Period and Thresholds for CLECs

AT&T claimed that CLECs, newly entering the local market, should be provided a transition period that would delay the new CLEC's reporting obligations for a period adequate to enable the CLEC to institute the necessary systems and process changes to provide the required reports. No transition period is warranted. This order will provide ample notice of the reporting requirements new entrants will be faced with. Additionally, every attempt has been made to develop the schedules based on information that carriers would likely maintain on their own in a competitive market. Finally, the first TCMRs filed by March 31, 1998 will be required to contain information only for the six month period July 1 through December 31, 1997.

AT&T also stated that CLECs should be given an exemption similar to that given to Incumbent Local Exchange Carriers (ILECs) that experience little or no competition. AT&T

argued that such an exemption applies at least as much to new competitors as to incumbents and claimed that the cost of regulatory compliance where competition is in such an early stage as to be below the proposed ILEC threshold may turn into a barrier to entry for CLECs. AT&T claimed that this is particularly true for CLECs such as AT&T that will have to capture and report much of the local data requested in the TCMR, while the ILEC may be exempt. AT&T concluded that such a situation would not be competitively neutral and urged the application of a filing threshold for CLECs similar to that proposed for the ILECs.

AT&T's position is unpersuasive on several grounds. First, under the proposed ILEC threshold, it is likely that an exempt ILEC would still be serving a significant portion of its customers in a monopoly environment. However, customers served by the CLEC would, by definition, be 100% competitive. A CLEC exemption from filing the TCMR would cause us to lose valuable information regarding the initial development of local competition at a stage where monitoring is most valuable. Second, CLECs would not have to develop entirely new systems in order to comply with our requirements. As stated earlier, much of the information requested would likely be kept by carriers for their own marketing and analytical purposes even if it were not required in the TCMR. Finally, AT&T's argument that it is not competitively neutral to require CLECs to file the TCMR in situations where the ILEC may be exempt is unfounded. AT&T fails to recognize that ILECs, whether in competitive markets or not, continue to be required to file the PSC Annual Report, a report significantly larger and more comprehensive than the TCMR.

We will nevertheless provide an exemption from filing certain TCMR schedules for very small CLECs. CLECs with annual regulated intrastate revenues of less than \$50,000 will be allowed to file an abbreviated version of the TCMR -- namely, schedules 1, 2, 5 (limited to the total operating revenue line only), 6A and 6B. These schedules provide important information concerning the structure and affiliations of the company, as well

as access lines, number of customers and total operating revenue data. The schedules that would not be filed, while potentially valuable, are not as likely to provide significant amount of information due to the relatively small size of the CLEC.

Cellular Reporting Requirements

Commenters representing cellular companies expressed support for staff's proposals that the existing cellular communications annual report be eliminated and that cellular carriers not be required to file the TCMR. In addition, however, the commenters urged us to decide now that cellular carriers need not file the cellular communications annual report for 1996. Under the circumstances presented, it is appropriate to reduce the reporting requirements to the extent possible. Sufficient information on the cellular communications industry can be gained from publicly available statistics, surveys performed by staff and customer complaints.¹

Trade Secret Status

BANM argued that we should decide that data collected in cellular communications annual reports for the years 1991 to date should not be released to the public. On a related subject, Time Warner Communication Holdings, Inc. argued that information provided in TCMR filings must be granted trade secret status and be adequately aggregated prior to any release to the public. With respect to information contained in previously-filed cellular communications annual reports, the Records Access Officer made an initial determination on December 16, 1996 as to which information is entitled to an exception from disclosure as trade secrets or confidential commercial information, pursuant to §87(2)(d) of the Public Officers Law (POL), and appeals of this decision were filed with the Secretary Crary on January 24, 1997. Under the circumstances, there is no reason why the normal

¹Given this decision, the petition to eliminate cellular communications annual reports, filed in Case 96-C-0511, is moot.

regulatory process should not be followed. Regarding information to be contained in future TCMR reports, the POL and our regulations specify the applicable procedure for seeking, and determining the entitlement to, exceptions from disclosure of information contained in records filed with this agency.

CONCLUSION

The informal comments, meetings and formal comments greatly assisted us in developing a TCMR that will be most useful in monitoring the development of competition. Accordingly, the TCMR, as modified herein, will be adopted.

The Commission orders:

1. The attached telecommunications competition monitoring report is adopted.
2. By March 31, 1998, each telephone corporation, unless specifically exempted therein, shall file such report (or portion thereof if applicable), covering the period July 1 through December 31, 1997.
3. By March 31 of every succeeding year, each telephone corporation, unless specifically exempted therein, shall file such report (or portion thereof if applicable), covering the immediately preceding calendar year.
4. Case 96-C-0511 is closed; Case 96-C-0647 is continued.

By the Commission,

(SIGNED)

JOHN C. CRARY
Secretary