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FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Price Cap Performance) CC Docket No. 92-134
Review For AT&T)

REPLY COMMENTS OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"),¹ by its attorneys, hereby replies to the comments filed in response to the Notice of Inquiry [hereinafter "Notice"] adopted by the Commission in the above-captioned proceeding.² The Commission initiated this proceeding to review its regulation of AT&T through a price cap system, including an evaluation of whether any adjustments or revisions to that system are warranted at this time.³

INTRODUCTION

CompTel is seriously concerned by the Commission's statement that "the decision to adopt the AT&T price cap plan reflected no conclusions about the state of the interexchange

¹ CompTel is the principal industry association of the nation's competitive interexchange telecommunications carriers, with approximately 120 member companies including large nationwide interexchange carriers as well as scores of smaller carriers.

² In the Matter of Price Cap Performance Review for AT&T, CC Docket No. 92-134, FCC 92-257, rel. July 17, 1992 (Notice of Inquiry).

³ See Notice at ¶ 12.

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telephone marketplace."⁴ The record belies that assertion. While the Commission clearly believed that price cap regulation promoted goals such as economic efficiency and service innovation, the record unambiguously demonstrates that the Commission designed AT&T's price cap system to align federal regulation of the interexchange market with the Commission's perception that AT&T's market power therein had declined.⁵ It would rewrite history to overlook the fact that the Commission formulated the AT&T price cap system in 1989 as a direct response to putative competitive forces in the interexchange market.⁶ Consequently, competitive conditions in the interexchange market are far and away the most important factor to be weighed in determining whether the AT&T price cap system should be retained in its current form or revised in some way.

⁴ Notice at ¶ 10.

⁵ See Policies and Rules Concerning Rates for Dominant Carriers, 2 FCC Rcd 5208, 5209-10 (1987) (Notice of Proposed Rulemaking); id., 3 FCC Rcd 3195 (1988) (Further Notice of Proposed Rulemaking); see also J.R. Haring and E.R. Kwerel, "Competition Policy in the Post-Equal Access Market," OPP Working Paper No. 22; K.B. Levitz, "Loosening the Ties that Bind: Regulating the Interstate Telecommunications Market for the 1990s," OPP Working Paper No. 23 (February 1987). Indeed, in seeking further fundamental revisions to the price cap system, AT&T relies chiefly upon arguments regarding the state of competition in the interexchange industry.

⁶ The "baskets" and "bands" that constitute the superstructure of AT&T price caps were expressly crafted by reference to the degree of market power which the FCC found AT&T to possess in various segments of the interexchange market. See Policies and Rules Concerning Rates for Dominant Carriers, 4 FCC Rcd 2873 (1989), modified on reconsideration, 6 FCC Rcd 665 (1990).

The Commission need not make (and the record compiled in this proceeding does not support) a comprehensive de novo inquiry into the state of competition in the interexchange industry. The Commission recently completed such an inquiry in CC Docket No. 90-132 and made substantial revisions to the regulatory regime governing AT&T, including AT&T's price cap regulations. In particular, Basket 3 was virtually eliminated and the Commission authorized AT&T to file novel (and legally suspect) single-customer, contract-based tariffs.⁷ The Commission's conclusions about the state of competition in the interexchange industry in CC Docket No. 90-132 should presumptively apply to the instant proceeding. Those conclusions demonstrate that no further liberalization of the AT&T price cap system is warranted given the current state of interexchange competition.

BASKET 1

Basket 1 currently includes AT&T's services targeted at residential and small business customers, such as standard Message Telecommunications Service ("MTS") and optional calling plans associated with the MTS schedule.⁸ Basket 1 also includes AT&T's

⁷ See Competition in the Interstate Interexchange Marketplace, Notice of Proposed Rulemaking, 5 FCC Rcd 2627 (1990); Report and Order, 6 FCC Rcd 5880 (1991) [hereinafter "Interexchange Order"]; modified on reconsideration, 7 FCC Rcd 2677 (1992). CompTel participated extensively in that proceeding and hereby incorporates its pleadings in CC Docket No. 90-132 into the instant record. For a discussion of CompTel's views regarding appropriate revisions which the Commission should implement in CC Docket No. 90-132, see the "Petition for Reconsideration" filed by CompTel on Nov. 25, 1991.

⁸ See Notice at ¶ 7.

operator ("0+") and international ("IMTS") services. In the Interexchange Order,⁹ the Commission concluded that AT&T's continued dominance in the 0+ and IMTS markets precludes any weakening of price cap restraints on these services. Based on the same reasoning, the Commission also retained price cap restraints on AT&T's provision of residential and small business services in Basket 1.¹⁰ Those conclusions are equally valid today.

Alone among the commenters in the instant proceeding, AT&T claims that the market for Basket 1 services is "fully competitive" and asserts that regulation of such services should be terminated as of July 1, 1993.¹¹ By AT&T's own admission, the arguments and evidence it presents in support of these claims already have been considered and rejected in Docket 90-132.¹² AT&T offers no legal or policy basis for transforming the instant proceeding into a reconsideration of the Interexchange Order and its contentions must be rejected summarily.

AT&T presents no evidence that its dominance over the services in Basket 1 has declined appreciably since the Interexchange Order.¹³ Indeed, evidence submitted by AT&T in

⁹ 5 FCC Rcd at 5906-08.

¹⁰ Id., 5 FCC Rcd at 5908.

¹¹ See AT&T Comments at 5.

¹² Id. at 5-14.

¹³ AT&T also claims that "Basket 1 services are part of a single, unitary market." See AT&T Comments at 14. Such an assertion subverts AT&T's recent request to streamline price cap regulation of Basket 1 services targeted at business customers based on the argument that AT&T's business

Continued on following page

other proceedings demonstrates that its 0+ market power actually has increased.¹⁴ Moreover, the factors underlying the Commission's conclusion in CC Docket No. 90-132 that the IMTS market segment is not competitive -- i.e., AT&T's "high market share" and the closed (or only recently opened) nature of many key foreign markets¹⁵ -- remain evident today.¹⁶ Finally, no one seriously questions AT&T's continued dominance of the residential MTS market, where demand is relatively more inelastic and the danger of anti-competitive cross-subsidization remains acute.

Absent price cap restraints, AT&T will continue to have strong economic incentives to increase rates for Basket 1 services, thereby harming Basket One consumers and empowering it to leverage its Basket 1 market power against competing carriers who lack a similar base of customers with relatively inelastic

Continued from previous page

services, as distinct from other AT&T services, face intense competition. See AT&T Petition For Waiver, filed September 1, 1992.

14 Just recently, AT&T informed the Commission that its share of the 0+ calling card market increased from 59% to 64% during the period from March 31, 1991 through March 31, 1992. See Letter from R. Castellano, AT&T, to D. Searcy, FCC (Sept. 24, 1992) (Ex Parte Submission in CC Docket No. 92-77). The record in that proceeding and in CC Docket No. 91-115 proves that AT&T is using its proprietary "0+" calling cards to re-monopolize the operator services industry. See "Emergency Motion for an Interim Order Requiring AT&T to Cease Further Distribution of 'Proprietary' CIID Cards and Permit Validation and Billing of Existing Cards," CC Docket No. 91-115, filed by CompTel on Dec. 20, 1991; Comments of Competitive Telecommunications Association, CC Docket No. 92-77, filed July 7, 1992.

15 Interexchange Order, 6 FCC Rcd at 5907.

16 See Sprint Comments at 5-7.

demand. The Commission has previously recognized the ability of dominant carriers to harm consumers and undermine competition through market segmentation and cross-subsidization.¹⁷ Thus, there is no basis for removing existing price cap regulation of AT&T's Basket 1 services.

On the other hand, the Commission would be well advised to tighten its existing Basket 1 regulations to limit AT&T's ability to leverage its market power over Basket 1 services. CompTel recommends that the Commission consider placing restraints on AT&T's ability to manipulate the rates for those services by selectively lowering rates where competition is evident and raising other rates to fuel such decreases. Placing these services in separate baskets and/or tightly banding the services within Basket 1 services would protect consumers and competition from being harmed by such activities without unduly restricting AT&T's pricing flexibility.

BASKET 2

Basket 2 contains AT&T's inbound 800 services.¹⁸ In the Interexchange Order,¹⁹ the Commission concluded that price cap regulation of Basket 2 services should be retained at least until 800 number portability is a reality. The Commission also

¹⁷ E.g., Private Line Rate Structure and Volume Discount Practices, 74 FCC 2d 226, 228 (1979); see also MCI Telecommunications Corp. v. AT&T, 708 F.2d 1081, 1145, 1153-58 (7th Cir. 1983).

¹⁸ See Notice at ¶ 7.

¹⁹ 6 FCC Rcd at 5905-06.

determined in that proceeding that AT&T's dominance over 800 service provisioning was so great as to warrant adopting additional regulations, including a partial prohibition on the bundling of AT&T 800 services with other AT&T service.

CompTel strongly disagrees with the suggestion in the Notice (at ¶ 10) that Basket 2 price cap restraints already are scheduled to be eliminated during the first six months of 1992. In the Interexchange Order, the Commission stated:

"[W]e intend to implement, on our own motion or on petition, further streamlined regulation for AT&T's 800 services when 800 number portability is generally available."²⁰

By any fair reading, this statement clearly contemplates that Basket 2 price cap regulation will remain in place until such time as 800 number portability is a reality and its impact can be assessed. That state of affairs incontrovertibly does not exist today, nor is there any basis for concluding it will exist by the July 1993 tentative deadline the Commission apparently has established for completing the instant proceeding.²¹

CompTel supports Sprint's request that the Commission, before removing existing 800 regulatory protections, avail itself of the opportunity to consider record evidence concerning the operation and competitive effects of local exchange carrier ("LEC") 800 database services.²² Such caution clearly is warranted. As Sprint points out, serious concerns have been

²⁰ 6 FCC Rcd at 5905 n.223.

²¹ See Notice at ¶ 11.

²² See Sprint Comments at 9-11.

raised about the reliability of the LEC 800 database system. CompTel, among others, also has made the Commission aware of the very real and non-trivial risk that the new system will not be deployed in a timely, reliable and non-discriminatory manner.²³ Certainly, 800 number portability will not be "generally available" in a market sense until these concerns and risks are alleviated. In any event, the instant record provides no basis for precipitously deregulating Basket 2 services immediately, or arbitrarily ordering such result to occur within one year, as proposed by AT&T.²⁴

BASKET 3

As initially constituted, Basket 3 contained most of AT&T's generally-available services targeted at business users. In the Interexchange Order,²⁵ the Commission streamlined the regulation of Basket 3 services, including digital private line services. However, the Commission retained price cap regulation of AT&T's analog private line services due to AT&T's continued market power over that industry segment.

In its comments, ARINC demonstrates that AT&T is manipulating the digital/analog distinction established in the

²³ See, e.g., CompTel Comments On The Implementation Plan For 800 Service, CC Docket No. 86-10, filed March 31, 1992. In addition, CompTel raised other issues related to the implementation of 800 number portability in its "Petition for Expedited Declaratory Ruling" in CC Docket No. 86-10 on June 19, 1992.

²⁴ See AT&T Comments at 28-29.

²⁵ 6 FCC Rcd at 5893-97.

Interexchange Order, thereby evading the analog private line pricing restraints.²⁶ As a direct result of such manipulation, certain analog private line rates have increased almost 1,000% in less than one year.²⁷ In this case, price cap regulation appears to be affording no meaningful protection whatsoever to customers of AT&T's analog private line services.

The deleterious effects of AT&T's activities are not limited to the analog private line market. Competition for digital private line services also is being undermined. AT&T is using the monopoly rents it extracts from analog customers to fuel steep rate decreases for AT&T's digital private line services. Indeed, AT&T's practice of whipsawing the non-competitive analog and more competitive digital private line markets is becoming an annual event.²⁸

CompTel believes that the Commission must take whatever action is necessary to prevent such abuses by AT&T. At a minimum, the Commission must retain price cap regulation in its current form for Basket 3 services. More broadly, the Commission must accord close scrutiny to AT&T's tariff filings in which such whipsawing is evident and otherwise remain vigilant to prevent

²⁶ See ARINC Comments at 2-5.

²⁷ Id. at 3-4; see also AT&T Communications, DA 92-1356, rel. Sept. 30, 1992.

²⁸ See AT&T Communications, DA 92-1356, rel. Sept. 30, 1992 (analog increase accompanied by digital decrease); AT&T Communications, 6 FCC Rcd 6690 (1991) (analog increase accompanied by digital decrease).

AT&T from harming consumers and interexchange competition through abuse of its market power over private line services.

CONCLUSION

For the foregoing reasons, CompTel urges the Commission not to further liberalize the AT&T price cap system and indeed to consider strengthening that system in ways specified herein.

Respectfully submitted

COMPETITIVE TELECOMMUNICATIONS
ASSOCIATION

By: 

Robert F. Aamo
REED SMITH SHAW & McCLAY
1200 18th Street, N.W.
Washington, D.C. 20036
(202) 457-6100

Genevieve Morelli
Vice President and
General Counsel
Competitive Telecommunications
Association
1140 Connecticut Avenue, N.W.
Suite 220
Washington, D.C. 20036
(202) 296-6650

Its Attorneys

October 5, 1992

CERTIFICATE OF SERVICE

I, Jenny Lee Lewis, do hereby certify that I have caused true copies of the foregoing "Reply Comments of Competitive Telecommunications Association" to be served on this 5th day of October, 1992, by U.S. mail, first-class postage, or by hand delivery, upon the following parties:

Cheryl A. Tritt, Chief*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Kathleen B. Levitz*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

James D. Schlichting*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

Mary L. Brown, Deputy Chief*
Tariff Division
Federal Communications Commission
1919 M Street, N.W., Room 518
Washington, D.C. 20554

Francine J. Berry
Robert J. McKee
Michael C. Lamb
AT&T
295 North Maple Avenue
Basking Ridge, NJ 07920

Leon M. Kestenbaum
Michael B. Fingerhut
1850 M Street, N.W., St. 1110
Washington, D.C. 20036

Michael F. Hydock
Senior Staff Member
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

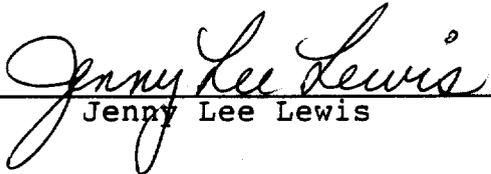
John L. Bartlett
Robert J. Butler
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Durward D. Dupre
Richard C. Hartgrove
Southwestern Bell
1010 Pine St., Room 2114
St. Louis, MO 63101

Robert B. McKenna
Lawrence E. Sarjeant
U S West Communications
1020 19th St., N.W., #700
Washington, D.C. 20036

John Morgan
Communications Workers of America
501 3rd Street, N.W., St. 1066
Washington, D.C. 20001

Downtown Copy Center
1919 M Street, N.W., Room 246
Washington, D.C. 20554


Jenny Lee Lewis

* denotes hand delivery