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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 13, 1993

Richard C. Hartgrove
General AttorneyMr. William A. Blase, Jr.
Director-Federal Regulatory
Southwestern Bell Corporation
1667 K Street, N.W., Suite 1000
Washington, D.C. 20006

Dear Bill:

Re: Comments of Southwestern Bell Telephone
Company, CC Docket No. 93-6, RM 7736

Enclosed please find an original and four (4) copies of the above-referenced pleading to be filed with the Secretary of the Commission on Wednesday, April 14, 1993. Also enclosed is a copy of the pleading to be filed-stamped and returned to me.

Additional copies of the pleading are attached to be used as the courtesy copies and one is included for your files.

Please call to confirm that the pleading has been filed. Thank you for your assistance.

Very truly yours,

A handwritten signature in cursive that reads "Paul Walters".

(f) Richard C. Hartgrove

Enclosure

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Safeguards to Improve the) CC Docket No. 93-6
Administration of the Interstate) RM 7736
Access Tariff and Revenues)
Distribution Processes)

COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY

Southwestern Bell Telephone Company (SWBT) submits its Comments in response to the Notice of Proposed Rulemaking (NPRM)¹ in the captioned docket.

In preparing its Report and Order, the Commission should be mindful that NECA has made significant improvements to its operations by incorporating many of the recommendations in the Safeguard's Report.² SWBT supports the Comments filed by NECA in this proceeding.

In general, SWBT supports the Commission's proposals relating to outside directors. SWBT does not support, however, the proposals which would place upon NECA interpretation and enforcement responsibilities. Interpretation of Commission rules can best be handled by NECA *in cooperation* with subject matter experts from NECA member companies. Enforcement, on the other hand, is a job for the Commission.

¹ *Notice of Proposed Rulemaking*, C.C. Docket 93-6, released February 11, 1993.

² Ernst & Young, *Review and Recommended Pool Safeguards*, AAD-91-24, filed December 9, 1992 (Safeguards Report). See, also NECA Comments.

SWBT's Comments will list the NPRM's various proposals, then respond to each in turn.

1. Outside Directors. The NPRM proposes that at least two outside directors sit permanently on the NECA Board because of "concerns about the ability of a Board composed exclusively of LEC representatives to assure that NECA discharge its obligations under Commission rules."³ SWBT supports this proposal. NECA has found the addition of two outside directors to be beneficial, providing a valuable non-industry perspective.⁴ Although the NECA Board has always discharged its duty in conformity with Commission rules, the appointment of two outside Directors should rebut the unfounded criticism that NECA and its Board are responsive only to the concerns of NECA member companies.

2. Reduction of LEC Directors. The NPRM suggests that the present Board configuration "may not be optimal to address" NECA's "principal concern"--rule compliance.⁵ The NPRM then suggests that the number of member-company directors be reduced. The NECA Board has always stressed rule compliance. Reducing the number of member-company directors and adding outside directors will not further enhance the Board's performance, which is and has always

³ NPRM, ¶ 10.

⁴ NECA Comments, p. 11.

⁵ *Id.* ¶ 11.

been excellent. NECA's comments provide compelling rationale for not reducing the number of directors.⁶

SWBT insists upon adequate representation of Subset I companies. SWBT pays substantial support to other LECs through the NECA Long-Term Support program and participates in the Universal Service Fund (USF) and Lifeline Assistance programs. Therefore, SWBT does not believe that a reduction in the number of member-company directors will more readily achieve the goals identified by the Commission in the NPRM or better serve NECA or its member companies.

3. Selection Criteria. SWBT agrees with the proposed NECA candidate selection criteria for outside Directors. SWBT further agrees that former LEC officers and former employees of NECA should not be considered for outside Directors. The FCC proposes to eliminate consideration of all nominees with relatives who are currently working, or who have worked in the past, in the telephone

antagonistic directors would impair NECA's operational efficiency and disserve consumers."⁹

4. Multiple Candidates. The NPRM suggests that the Board make multiple nominations for each outside Director position so that NECA members will have "an opportunity to choose among a range of qualified candidates."¹⁰ SWBT agrees with this proposal if the Commission allows for sufficiently long terms or allows outside Directors to run unopposed for some shorter term.¹¹ Multiple nominations were made by the Board when the initial outside directors were named. A wide range of candidates will benefit the NECA Board.

5. Two Year Terms. SWBT does not strongly oppose the NPRM's proposal to increase the terms of outside Board members to two years; SWBT does not believe, however, that a two-year term is the most appropriate alternative.¹² The rotation mechanism with the right of waiver has created, in some instances, the equivalent of multi-year terms for Subset I Directors. The NPRM notes that "many NECA initiatives last more than one year."¹³ Some NECA matters last more than two years. SWBT suggests that, for the sake of continuity, the Commission consider longer terms for outside Board

⁹ NPRM, ¶ 13.

¹⁰ *Id.*, ¶ 17.

¹¹ NECA, pp. 15-17.

¹² NPRM, ¶ 19.

¹³ *Id.*

members or allow outside Board members to be re-elected annually without opposition.¹⁴

6. Committees. The NPRM proposes that each NECA Board committee include as a voting member at least one outside director, and that both the CL and TS committees include as voting members at least one director from non-pooling LECs.¹⁵ SWBT supports these proposals, particularly with regard to the CL and TS committees. Representatives from non-pooling LECs will go far toward maintaining equitable representation within NECA. SWBT supports the proposal that NECA subcommittees should be appointed by committee resolution, should keep formal minutes, and should report all actions to the full committee.¹⁶

7. Rule Interpretation and Enforcement. The NPRM contains several proposals regarding rule interpretation and enforcement which cause SWBT concern. For example: "We expect NECA to make reasonable efforts to interpret our rules correctly and to implement those interpretations."¹⁷ Interpretation of Commission rules is a task required of regulated carriers and the Commission itself. Numerous rules, including Separations (Part 36) and Cost Allocation (Part 64), provide general principles which carriers

¹⁴ NECA, pp. 15-17.

¹⁵ *Id.*, ¶ 22.

¹⁶ *Id.*, ¶ 24. In fact, the NECA Board has already adopted this Commission proposal. NECA, p. 19.

¹⁷ NPRM, ¶ 26.

must interpret and apply to widely disparate circumstances. NECA cannot and should not be required to perform the regulatory function of guaranteeing that its member companies are in compliance with rules which may permit multiple good-faith interpretations.¹⁸ The Commission should not delegate its regulatory authority to NECA.

The NPRM suggests that NECA review data submitted by member companies, and "if NECA concludes that LEC data do not comply with our rules, we expect NECA to correct the data in its revenue requirement and revenue distribution computations."¹⁹ This proposal would put NECA in the role of regulator. There may be reasonable differences over the interpretation of certain relevant Commission Rules. At some point, NECA and a member company may disagree over the interpretation and application of a rule. The NPRM suggests that NECA should have the final say. Such a requirement could cause NECA and its members to become adversaries and place NECA in the role of regulator without affording member companies due process in the regulatory arena.

"Industry consensus," according to the NPRM, is "unlikely to lead to a correct interpretation" of FCC rules.²⁰ The unstated premise is that, if a consensus exists within the industry regarding a rule interpretation, it must be wrong. SWBT suggests

¹⁸ The Commission has already concluded that NECA should not perform governmental functions. MTS and WATS Market Structure, Third Report and Order, CC Docket No. 78-72, Phase I, 93 FCC 2d 214, para. 343. See, also MTS and WATS Market Structure, Order, CC Docket No. 78-72, Phase, 97 FCC 2d 682, para. 180.

¹⁹ NPRM, ¶ 26.

²⁰ *Id.*, ¶ 28.

that industry consensus is the target at which the Commission, NECA and its member companies should aim.

NECA should "make reasonable efforts"²¹ to interpret Commission rules. It is "reasonable" for NECA to contact various industry experts whose primary job is to interpret and implement Commission rules.

Indeed, if NECA were to exercise independent judgment on Commission rules without availing itself of industry knowledge, NECA would not have the benefit of the significant expertise (regarding specific aspects of company operations) necessary to ensure proper application of rules. The "reasonable" approach to rule interpretation is the present one in which NECA takes advantage of industry experts.

The NPRM suggests that NECA, when faced with a difficult rule interpretation, might contact the FCC staff informally or file a Petition for Declaratory Ruling.²² NECA and its member carriers currently work closely with Commission staff to resolve rule interpretations. The invitation to file a Petition for Declaratory Ruling does not and should not preclude NECA from seeking industry expertise. In any event, NECA should never file such a petition *before* seeking the advice of its member experts. Because NECA's responsibilities include provision of relevant information and advice to its members in the management of the NECA revenue distribution, such actions would not be acceptable to SWBT or in any way desirable.

²¹ *Id.*

²² *Id.*, ¶ 29.

8. Commission Access to Databases. The Commission desires on-line, dial-up access to NECA's databases.²³ SWBT does not support on-line access to NECA databases. The data contained in NECA's internal databases are mostly preliminary and continually being revised and updated. Commission access to such data would unduly burden NECA; the data would have limited use as a safeguard. NECA currently provides the Commission with detailed final data on diskette as support for all NECA tariff filings.²⁴ Thus, on-line access to internal NECA databases would not meaningfully supplement existing safeguards.

9. Certification. Responsible LEC officers or employees may be required to certify that data submitted to NECA complies with Commission rules.²⁵ This approach, which SWBT supports, places responsibility for compliance where it belongs--with the carrier. Other proposals in the NPRM would incorrectly require NECA to enforce Commission rules.

10. Compensation Plan. The Commission wants NECA to submit its compensation plan for review and to cease paying any officer or employee based on the rate of return earned by the CL and TS pools.²⁶ The first point to be made is that the Commission cannot apply this proposal to NECA's 1992 operations because 1992 results

²³ *Id.*, ¶ 32.

²⁴ NECA Comments, p. 25.

²⁵ *Id.*, ¶ 37.

²⁶ *Id.*, ¶¶ 39-41.

determine the support payments to be made in 1993 and early 1994. As a general principle, SWBT recommends that some portion of the compensation of NECA officers and employees be based on an "at risk" component. Such incentive compensation programs, used throughout American industry, give employees a stake in the business and a reward for superior performance. The Safeguards Report concludes that achievement of the highest allowable earnings is a reasonable goal for NECA.²⁷ Moreover, NECA has already made revisions to its compensation plan to reduce the compensation affected by earnings performance.²⁸

CONCLUSION

SWBT supports numerous aspects of the Commission's recommended rule changes. In fact, NECA has already made significant improvement to its safeguards that incorporate many of the recommendations in the Safeguards Report.

NECA has functioned well. The Commission's concerns have arisen not because of NECA's inefficiencies but rather because of legitimate differences of opinion over rule interpretations. Such differences will not be reduced if NECA distances itself from industry expertise. NECA, its member carriers and the Commission

²⁷ Safeguards Report, p. 32.

²⁸ NECA Comments, pp. 32-33.

should work *together*, not at cross purposes, to ensure equitable application of Commission rules.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By

A handwritten signature in dark ink, appearing to read "Paul Walters", is written over a horizontal line. The signature is stylized and somewhat cursive.

James E. Taylor
Richard C. Hartgrove
John Paul Walters, Jr.

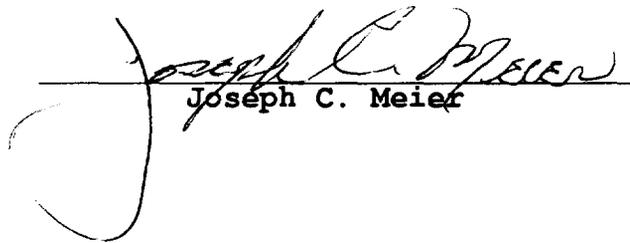
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April 14, 1993

CERTIFICATE OF SERVICE

I, Joseph Meier, hereby certify that the foregoing "Comments Of Southwestern Bell Telephone Company" in File No. CC Docket 93-6, RM 7736, has been served this 14th day of April, 1993 to the Parties of Record.


Joseph C. Meier

April 14, 1993

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