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Before the
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
REVISIONS TO PRICE CAP RULES) CC Docket No. 93-197
FOR AT&T)

REPLY COMMENTS
OF AMERICAN TELEPHONE AND TELEGRAPH COMPANY

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SUMMARY

The Commission proposes in this proceeding to streamline its regulation of residential optional calling plans ("OCPs") and of Commercial Long Distance. The record clearly supports the Commission's efforts to streamline the burdensome and unnecessary price cap regulation of AT&T, but the proposal to streamline regulation of residential OCPs is unreasonable unless it is coupled with similar treatment for AT&T basic schedule residential services.

AT&T's competitors submitted comments opposing streamlined regulation of OCPs because AT&T's basic schedule services and residential OCPs are subject to the same levels of competition and should be regulated on a consistent basis. These competitors are right: AT&T's basic schedule residential services face the same vigorous and effective competitors as AT&T's residential OCPs. Moreover, the record of price decreases for AT&T's basic schedule residential services under price cap regulation has been comparable to the record of price decreases in AT&T's OCPs. Thus, there is no basis for artificially separating the continuum of residential services which includes the basic schedule and OCPs and applying streamlined regulation solely to the OCPs. All of AT&T's residential services should be subject to reduced regulation.

Similarly, it is unreasonable to regulate AT&T's Commercial Long Distance Service under price caps when the related small business OCPs, which are offered to the same customers, are subject to streamlined regulation. There is a compelling and unrefuted record showing that Commercial Long Distance Service faces vigorous competition and should be subject to reduced regulation.

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RULES FOR AT&T)

REPLY COMMENTS OF AMERICAN
TELEPHONE AND TELEGRAPH COMPANY

American Telephone and Telegraph Company ("AT&T") hereby submits its reply comments pursuant to the Notice of Proposed Rulemaking released by the Commission on July 23, 1993 ("Notice").¹

This proceeding continues the Commission's scheduled review of the price cap regulation of AT&T. As AT&T's comments in this proceeding and in the Performance Review clearly demonstrate, there is no basis for the continued price cap regulation of any of AT&T's Basket 1 services. The Commission, however, proposes more limited relief, in particular, streamlined regulation of residential Optional Calling Plans ("OCPs") and Commercial Long Distance.

¹ Notice of Proposed Rulemaking, In the Matter of Revisions to Price Cap Rules for AT&T, FCC 93-327, CC Docket No. 93-197 (released July 23, 1993).

In addition to AT&T, only four parties submitted comments.² The parties commenting on Basket 1 issues are all competitors of AT&T who seek to handicap AT&T in the competitive marketplace. These competitors raise two issues which warrant comment here. First, they question the reasonableness of AT&T's Commercial Long Distance classification and claim that Commercial Long Distance does not face effective competition. Second, they claim that AT&T's OCPs are no more competitive than AT&T's other Basket 1 residential services and should not be streamlined.³

I. THE RECORD DEMONSTRATES THAT AT&T'S COMMERCIAL LONG DISTANCE IS A REASONABLE SERVICE OFFER WHICH FACES INTENSE COMPETITION

Sprint, CompTel and WilTel all question whether a commercial service classification is reasonable, whether regulation of the service should be streamlined, and whether commercial classification conflicts with the Commission's

² The four other parties submitting comments were: Sprint Communications Company LP ("Sprint"); Competitive Telecommunications Association ("CompTel"); Aeronautical Radio, Inc. ("ARINC"); and WilTel, Inc. ("WilTel").

³ ARINC submitted comments concerning Basket 3 services, but simply repeated issues that are already pending before the Commission in CC Docket No. 90-132 and do not warrant duplicative analysis here.

positions on the use and resale of tariffed services.⁴ As shown in AT&T's Comments (pp. 10-22) the commercial long distance classification is reasonable. Indeed, that classification is expressly authorized by Section 201(b) of the Communications Act⁵ and is consistent with Commission precedent.⁶

Moreover, no comments contradict AT&T's showing that its Commercial Long Distance Service should be subject to reduced regulation just like AT&T's other business services. Commercial Long Distance Service and AT&T's small business OCPs are closely related services offered to the same customers in competition with offers from the same competitors. As such, these services are part of a continuum of services that should not be subject to disparate regulatory treatment. Indeed, when the Commission created the price cap baskets it intended to put only the "services used primarily by residential customers" in Basket 1 and wanted to ensure that AT&T could not "raise prices on residential services as a group in order to lower prices on business services."⁷ The inclusion of Commercial

⁴ WillTel, p. 2; Sprint, p. 3; CompTel, p. 2.

⁵ 47 U.S.C. § 201(b).

⁶ AT&T Comments, pp. 13-15.

⁷ In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, 6 FCC Rcd. 2873, ¶¶ 50, 368 ("AT&T Price Cap Order"). This Commission objective is

Long Distance in Basket 1 and the failure to streamline regulation of it in Docket 90-132 (because it did not then exist) thus appears to be a historical anomaly.

The Commission should eliminate this anomaly and streamline regulation of the commercial basic schedule services on the same basis that it streamlined the rest of AT&T's commercial services: there is vigorous effective competition for these services.

The three competitors that submitted comments predictably claim that no AT&T services, including Commercial Long Distance, should be streamlined because AT&T allegedly has not made an adequate showing of changed competitive circumstances since the Commission released its October 1991 IXC Rulemaking Order in Docket 90-132.⁸ For example, CompTel claims "[j]ust two years ago, the Commission concluded that it should retain price cap regulation over AT&T's Basket 1 residential and small business services," and that AT&T has not demonstrated

(footnote continued from previous page)

defeated by leaving Commercial Long Distance in Basket 1 unnecessarily because Commercial Long Distance rate decreases could be used to create headroom for a residential rate increase.

⁸ WilTel, p. 3; Sprint, pp. 2-3; CompTel, p. 2. See In the Matter of Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd. 5880 (1991) ("IXC Rulemaking Order").

adequate market changes in the past two years.⁹ CompTel and the other competitors misconstrue the nature of the IXC Rulemaking Order and ignore the marketplace changes that have occurred since the record in Docket 90-132 was created.

The Commission made absolutely no finding in Docket 90-132 that the level of competition for Basket 1 services did not warrant streamlined regulation.¹⁰ To the contrary, the Commission stated that AT&T's basic schedule and OCP services appear to be competitively provided, and simply elected to defer whether these services should be streamlined.¹¹ With respect to the other services then in Basket 1, the Commission declined to take action due to a desire to "proceed with particular caution", and stated no conclusion whether these services were insufficiently competitive. Id. Further, the Commission made no finding with respect to competition for AT&T's Commercial Long

⁹ CompTel, p. 2.

¹⁰ Moreover, most of the competitive data on which the Commission based its IXC Rulemaking Order was from 1989, not from the date the order was issued.

¹¹ IXC Rulemaking Order, 6 FCC Rcd. at 5908. Specifically, the Commission declined to adopt regulatory changes for operator and international services because of "unresolved issues and insufficient information", not because of any conclusion concerning competition for these services. Id.

Distance in Docket 90-132 because that service classification did not exist at that time.¹²

In all events, contrary to the claims of commenters here, AT&T has demonstrated that there in fact have been significant changes since the 1989 market data reflected in the IXC Rulemaking. AT&T's 1992 waiver petition demonstrated that AT&T Commercial Long Distance faced numerous strong competitors, that demand elasticity was very high as evidenced by substantial churn among commercial customers, and that AT&T's market share had fallen by 15 percentage points in a four-year period to 39 percent.¹³ No commenting party offered data contradicting this showing.

Finally, the Commercial Long Distance classification presents no conflict with the Commission's use and resale policies. As with its other tariffed services, AT&T does not restrict the use or resale of Commercial Long Distance service. A commercial AT&T

¹² The Commission's own Report in the Performance Review incorrectly states that in the IXC Rulemaking the Commission "concluded that the level of competition in Basket 1 service did not warrant removing these services from price cap regulation." Report, Price Cap Performance Review For AT&T, CC Docket No. 92-134 ("Performance Review"), ¶¶ 17, 35 (emphasis added).

¹³ AT&T Petition For Waiver of Price Cap Regulations For New Commercial Long Distance Service Classification, filed September 1, 1992.

customer remains free under the tariff to resell Commercial Long Distance to any type of customer.

II. THE COMPETITIVE FORCES CONFRONTING AT&T'S OCPs ALSO CONFRONT AT&T'S OTHER BASKET 1 RESIDENTIAL SERVICES

AT&T's competitors who oppose the Commission's proposal to streamline the residential OCPs in Basket 1 argue that these services are no more or less competitive than the remainder of AT&T's Basket 1 residential services.¹⁴ These competitors are absolutely right in questioning whether residential OCPs should be regulated differently than basic schedule residential services.

When it created the price cap baskets, the Commission recognized that residential OCPs and basic schedule services are all part of a related continuum of AT&T residential services. The Commission rejected proposals to separate the residential OCPs from residential MTS because it was reasonable to protect customers of "residential services as a group" (i.e., customers of both residential basic schedule and OCP services).¹⁵ Consistent with that rationale, residential OCPs and basic schedule services should not be divided artificially between price

¹⁴ WilTel, p. 4; Sprint, p. 3; CompTel, p. 2.

¹⁵ AT&T Price Cap Order, 6 FCC Rcd. 2873, ¶¶ 366 n.811, 368, 373.

cap regulation and streamlined regulation absent a compelling basis for disparate regulatory treatment.

The record in the Performance Review demonstrates no basis for such disparate treatment of OCPs. To the contrary, the proposal to streamline only the OCPs is inconsistent with marketplace realities and inconsistent with the record before the Commission. AT&T demonstrated in the Performance Review that all residential services in Basket 1 face numerous strong competitors with a multitude of competing alternate offerings and excess capacity, and that customers freely choose between services offered by AT&T and its competitors. Because the record here and in the Performance Review contains no competitive data justifying unique regulatory treatment of basic residential services, it would be arbitrary and capricious to streamline just the residential OCPs.¹⁶

The Commission appears to base its proposal to streamline regulation of the residential OCPs solely on OCP price changes under price cap regulation. The Commission states, inconsistently, that "AT&T has maintained overall

¹⁶ Indeed, AT&T's recently-filed motion seeking nondominant carrier status for AT&T confirms that continued price cap regulation of any AT&T service is unwarranted. Motion For Classification of AT&T As A Nondominant Carrier, Policy and Rules Concerning Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252 (filed Sept. 22, 1993).

Basket 1 prices at or near the price cap maximum," and also that AT&T has priced some of its Basket 1 services "below the cap, notably OCPs such as ReachOut."¹⁷ Basket 1 has a single price cap which applies with equal force to all services in the Basket. Thus, to the extent that any services are priced "below the cap", all services are priced below the cap.

Moreover, in no year since the beginning of price cap regulation has AT&T imposed price increases that put all or even most basic schedule service bands near the service band maximum.¹⁸ To the contrary, the Service Band Indices ("SBIs") for the basic schedule bands have often been well below the band maximum. For example, SBI for night/weekend services is currently several million dollars below the mid-point of the allowable band for those services, while the SBI for the ReachOut America band is several million dollars above the mid-point of its allowable pricing range.

The Commission also suggests that, within Basket 1, OCPs received proportionately more price decreases than basic schedule services, citing the changes since 1989

¹⁷ Report, Performance Review, ¶ 22.

¹⁸ The price cap rules limit annual price increases and decreases in each service band to four or five percent. 47 C.F.R. § 61.47(e) and (f).

in the SBI for the ReachOut America service band.¹⁹ This conclusion is also unsupported by the record. OCP rates and basic schedule rates have both been reduced significantly under price cap regulation and both categories of service should be subject to reduced regulation. The Commission's Report in the Performance Review shows that the SBI for the ReachOut America service band fell from 97.1 to 83.3 under price cap regulation, a 13.8 point decrease.²⁰ However, the SBI for the basic schedule evening service band fell by a comparable amount, dropping by 12.6 points (from 99.5 to 86.9). Id. Moreover, any argument based on SBI changes for the ReachOut America service band does not even apply to OCPs such as ReachOut World which are not even in that service band.

The foregoing analysis refutes the Commission's suggestion that price changes for AT&T's basic schedule services provide a basis for retaining these services under price caps while streamlining residential OCPs. Most fundamentally, however, pricing at the cap or below the cap are not valid indicators of the presence or lack of competition. Instead, prices near the cap simply reflect the distortions inherent in the price cap rules. First, the

¹⁹ Report, Performance Review, ¶¶ 22, 36; Notice, ¶ 3.

²⁰ Report, Performance Review, Chart 1.

Commission's price cap rules over-allocate access charge reductions to Basket 1, which artificially lowers the cap.²¹ Second, the rules fail to reflect "effective" price decreases resulting from customer migration to lower-priced services within the basket. When a basic schedule customer switches to ReachOut America, that customer receives a significant price reduction which is not reflected as a price reduction in the Actual Price Index ("API").²²

In short, the Commission's proposal to streamline only OCPs among Basket 1 residential services falls far short of the relief warranted by the record -- streamlining all Basket 1 services. The Commission's conclusion that OCPs "appear to be subject to more effective competition than other services in that Basket" is simply not supportable.²³ All AT&T Basket 1 residential services face intense competition and all should be subject to reduced regulation.

²¹ See AT&T Petition For Limited Reconsideration, In the Matter of Policy and Rules Concerning Rates For Dominant Carriers, CC Docket No. 87-313 (filed June 8, 1989), pp. 2-12.

²² AT&T's comments in the Performance Review (pp. 40-45) demonstrated that effective price reductions from such migration to lower-priced services, not captured by the price cap formula, were at least \$600 million during the first three years of price cap regulation.

²³ Report, Performance Review, ¶ 22.

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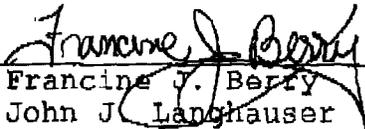
CONCLUSION

WHEREFORE, for all the reasons set forth above, AT&T respectfully requests the Commission to implement the rule changes proposed in AT&T's initial comments and in these reply comments, including greater streamlined regulation and the elimination of the productivity offset for the remaining price cap baskets.

Respectfully submitted,

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October 21, 1993

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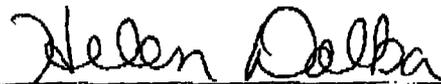
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