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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
)	
Amendment to The Bell Atlantic)	Transmittal Nos. 741, 786
Telephone Companies)	Amended
Tariff FCC No. 10)	
)	CC Docket No. 95-145
Video Dialtone Service)	

Opposition to Motion for Extension of Time

Bell Atlantic¹ opposes MCI's motion for an extension of time to file comments on Bell Atlantic's Direct Case in this proceeding, and to obtain access to highly proprietary and competitively sensitive vendor pricing information on terms dictated by MCI.

Contrary to MCI's assertions, interested parties do not need this information to "determine the reasonableness of Bell Atlantic's purported investment costs, and therefore...its ...rates."² As Bell Atlantic explained in detail in its Direct Case filing,³

Disclosure of vendor pricing data for each specific component of the equipment that will be used to provide video dialtone service is unnecessary for any regulatory purpose. Bell

¹The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

²MCI Motion for Extension of Time, Transmittal No. 741, 786, CC Docket 95-145 (Nov. 20, 1995) ("MCI Motion") at 2, n.3.

³Bell Atlantic Direct Case, Transmittal No. 741, 786 (amended), CC Docket No. 95-145 (Oct. 26, 1995), Introduction and Summary at 7-8 ("Direct Case").

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Atlantic has already provided cost support material for this tariff that goes beyond that repeatedly accepted by the Commission in other tariff filings. For example, Bell Atlantic separately identified, by account, the amount of incremental investment allocated to video, voice and joint use, as well as total video dialtone investment per potential subscriber. Bell Atlantic has also previously supplied aggregate cost information for the facility and equipment investments included in each rate element. In its Direct Case...Bell Atlantic has further disaggregated its cost study data by providing additional details, including total construction and operations costs by network component and by category of investment (video only, voice only or joint use); additional quantities and unit investments; and investments and cost components resulting from various allocation methodologies. Given the detailed information already on the record and that evaluation of tariff prices is based on total service costs applicable to each rate element, there is no need to reveal competitively sensitive vendor-negotiated prices of *individual* equipment components within each rate element in order for the Commission or third parties to determine whether Bell Atlantic's tariffed rates lawfully cover its costs to provide video dialtone service. [footnotes omitted]

The only purpose to be served by permitting interested parties to view this information under the terms of Bell Atlantic's proposed nondisclosure agreement would be to permit them to verify Bell Atlantic's arithmetic: they could affirm that the prices of the individual equipment components and subcomponents add up in total to Bell Atlantic's aggregate investment numbers for each piece of equipment. Of course, the Commission and its staff already have access to this data and can verify that the math is correct.

Bell Atlantic does not object to giving interested parties the opportunity to review its calculations, but has requested that such parties agree to abide by the terms of the nondisclosure agreement attached as Exhibit C to Bell Atlantic's

Direct Case. The nondisclosure agreement fairly and reasonably balances the need to give interested parties an opportunity to review all of Bell Atlantic's pricing material while protecting Bell Atlantic and its vendors from unnecessary competitive harm,⁴ and is consistent with Commission precedent.⁵

MCI erroneously asserts that the terms and conditions of this nondisclosure agreement, under which MCI could have obtained access to this information three weeks ago, would preclude MCI from obtaining this cost information. In fact, MCI's in-house counsel and experts are permitted to review and evaluate almost 600 pages of detailed tariff rate and cost support material without restriction and, under the terms of the nondisclosure agreement, MCI would be allowed to obtain the benefit of review of this small subset of extremely competitively sensitive information through outside counsel or experts.⁶ It strains credulity for MCI to suggest that it requires any extension, let alone an additional 30 days, to prepare its comments after performing this math verification exercise, given that its in-house personnel have had full access since October 26 to all of the relevant data required

⁴ See Direct Case at 8-11.

⁵ Id. at 11, n. 24.

⁶ Given the very limited purpose such review would serve -- essentially a math verification exercise -- it is highly doubtful that MCI would need to hire outside counsel to perform this task, which could be performed by any numerically literate outside consultant. Moreover, the limited nature of the exercise would by definition keep the costs of hiring such outside assistance to a minimum.

to determine that Bell Atlantic's proposed rates cover its costs of providing this service.

MCI suggests⁷ that its only interest in having its own in-house staff see this highly proprietary pricing data is concern that its access rates may rise due to improper cross-subsidization.

In fact, verification that there is no cross-subsidy can be made from the data publicly available to MCI. Moreover, MCI may well become a direct competitor of Bell Atlantic in the near future -- either on its own or through joint venture agreements or partnerships -- in the market for integrated delivery of video and telephone services over broadband networks like the Dover system. MCI is building its own competing local access networks through its subsidiary, MCI Metro.⁸ In addition, MCI is partnering with cable operator Jones Intercable and Scientific-Atlanta to test delivery of telephone services over cable networks in Bell Atlantic's

⁷ MCI claims that "meetings scheduled between the two parties and Commission staff" to mediate this dispute have not yet occurred due to the Federal government's temporary shutdown last week. Bell Atlantic has never been asked to attend any meeting with MCI and Commission staff to discuss this subject. See MCI Motion at 2.

⁸ Recently MCI entered into the local exchange market by announcing a "six-year, \$20 billion spending plan aimed at upgrading the company's networks and breaking the Baby Bells' monopoly over local phone service." See John Keller, *MCI Proposes a \$20 Billion Capital Project--Investors, Partners Sought to Upgrade Networks, Battle Baby Bells*, Wall Street Journal, Jan. 5, 1994.

service region.⁹ Moreover, on the same day that MCI filed its motion, a senior executive at Time Warner Communications, one of the nation's largest cable MSOs, was quoted as saying that Time Warner would "most likely...partner with AT&T or MCI" to provide telephone service over Time Warner's broadband networks.¹⁰ Knowledge by internal MCI officials of the exact prices Bell Atlantic negotiated with specific vendors for each piece part of its broadband network would no doubt be very valuable information to MCI.

The Commission has already required Bell Atlantic to disclose extremely detailed investment and cost numbers for this service that far exceed any information Bell Atlantic has ever been required to provide for its other services. It is particularly ironic that such detailed disclosure has been required for video dialtone service, given that it has zero market share and is seeking to enter a market already dominated by the incumbent cable operators. What is currently on the public record has already put Bell Atlantic and its vendors at a significant disadvantage to their competitors, who are not required by the Commission to disclose publicly similar investment and pricing information. In fact, the Commission has tentatively decided to waive even the limited rate regulation requirements currently applicable to cable

⁹ See "MCI Dips Toe into Local Service Waters with Cable Venture," Report on AT&T (Dec. 6, 1993).

¹⁰ See Communications Daily (Nov. 20, 1995) at 4.

operators for Bell Atlantic's cable competitors in Dover, once Bell Atlantic begins to offer video dialtone service.¹¹

The Commission should therefore reject MCI's attempt to insist on obtaining access to this data under terms that inflict further competitive harm on Bell Atlantic and its vendors, and order MCI to agree to the terms of Bell Atlantic's nondisclosure agreement if it wishes to obtain such access.

If MCI's real problem is that their in-house staff have not had sufficient time to review and analyze the voluminous cost support and pricing information that Bell Atlantic was required to file on October 26, Bell Atlantic might take a different position with regard to their request for an extension of time to respond. MCI, however, appears implicitly to disavow that that is the case. Since it would not be time-consuming to have an outside expert verify Bell Atlantic's arithmetic, there would appear to be no reason MCI could not file on time next week if it promptly agrees to comply with the terms and conditions of Bell Atlantic's nondisclosure agreement.

¹¹Order Requesting Comments, Waiver of the Commission's Rules Regulating Rates for Cable Services, CUID Nos. NJ0213, NJ0160 (Nov. 2, 1995) at 1.

Conclusion

The Commission should deny MCI's motion for an extension of time to file its response to Bell Atlantic's Direct Case in this proceeding.

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November 22, 1995

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Opposition of Motion for extension of Time" was served this 22nd day of November, 1995, by first class mail, postage prepaid, on the parties on the attached list.


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