

Original

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

MAR 1 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

DOCKET FILE COPY ORIGINAL

1996 Annual Access Tariff Filing

CC Docket No. 87-313

DA 96-28

Treatment of Video Dialtone Service
Under Price Cap Regulation

CC Docket No. 94-1

OPPOSITION

The National Cable Television Association ("NCTA"), by its attorneys, opposes Bell Atlantic's petition for waiver of Sections 61.42, 61.45, 61.47 and 61.48 of the Commission's rules with respect to its offering of video transmission services in Dover Township, New Jersey. Bell Atlantic seems to believe that the enactment of the Telecommunications Act of 1996 ("Act"), by its terms, relieves the company of any requirement to comply with procedures that protect telephone ratepayers against bearing the costs of the company's video transmission venture in Dover Township. Bell Atlantic is wrong.

Bell Atlantic claims that "The Telecommunications Act of 1996 eliminated video dialtone regulation of telephone company video services."¹ But this bald assertion overstates the scope of the Act's impact, and is plainly in error. Bell Atlantic presumably refers to Section 302(b)(3), which states in relevant part:

The Commission's regulations and policies with respect to video dialtone requirements issued in CC Docket No. 87-266 shall cease to be effective on the date of enactment of this Act.²

¹ Bell Atlantic Petition for Waiver, CC Docket No. 87-313, Feb. 20, 1996, at 1.

² Telecommunications Act of 1996, Sec. 302 (b) (3) (emphasis supplied).

No. of Copies rec'd 019
List ABCDE

By its terms, the Act does not “eliminate[] video dialtone regulation of telephone company video services “issued in” proceedings other than CC Docket No. 87-266. If Congress had intended to “eliminate” video dialtone regulations issued in other proceedings, it presumably would have said so by identifying these other proceedings, or by describing the scope of its action in broader terms. For example, the legislation could have declared that “video dialtone requirements shall cease to be effective on the date of enactment.”

The regulations that Bell Atlantic claims to have been eliminated by the legislation were not issued by the Commission in CC Docket No. 87-266. Rather, the video dialtone price cap basket procedure was adopted in Price Cap Performance Review for Local Exchange Carriers; Treatment of Video Dialtone Services Under Price Cap Regulation.³ As is made plain from the face of the Commission’s decision in that proceeding, these regulations were “issued in” CC Docket No. 94-1, not CC Docket No. 87-266. These regulations stand unless repealed through the rulemaking process.

Independently of its flawed statutory interpretation, Bell Atlantic claims a “practical impediment” to the implementation of a video dialtone price cap basket. It asserts that since commercial service did not commence in Dover Township, New Jersey until January 29, 1996, “demand quantities for 1995 price cap calculations are zero.”⁴ The company reasons that “Because Commission rules would require that Bell Atlantic would have to divide by the zero revenue and demand components--a mathematical impossibility--Bell Atlantic is unable to calculate either the Price Cap Index (PCI) or Actual Price Index (API) for the video dialtone basket.”⁵

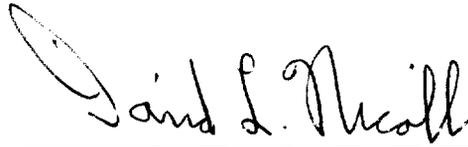
³ Price Cap Performance Review for Local Exchange Carriers; Treatment of Video Dialtone Services Under Price Cap Regulation, 10 FCC Rcd. 11098 (1995).

⁴ Supra n. 1, at 2.

⁵ Id. at 2.

If the facts are as stated by Bell Atlantic, the separate price cap basket requirement will not impose any burden at all upon Bell Atlantic. Bell Atlantic will face no burden because it will not incur revenues that form the basis for calculating the PCI and API for the coming year. If Bell Atlantic faces no burden, there is no reason for a waiver. It follows that, for this independent reason, the waiver should be denied.

Respectfully submitted,



Daniel L. Brenner
David L. Nicoll
1724 Massachusetts Avenue, NW
Washington, DC 20036
(202) 775-3664

Counsel for the National Cable
Television Association, Inc.

March 1, 1996

CERTIFICATE OF SERVICE

I, Leslie D. Heath, do hereby certify that on this 1st day of March, 1996, copies of the foregoing "**OPPOSITION.**" were delivered by first-class, postage pre-paid mail upon the following:

Edward Shakin
Edward D. Young, III
Michael E. Glover
Bell Atlantic
1320 North Court House Road
8th Floor
Arlington, VA 22201

David Krech*
Federal Communications Commission
1919 M Street, NW
Room 518
Washington, DC 20554

James Schlichting*
Federal Communications Commission
1919 M Street, NW
Room 544
Washington, DC 20554

John Scott*
Federal Communications Commission
1919 M Street, NW
Room 518
Washington, DC 20554

Geraldine Matisse*
Federal Communications Commission
1919 M Street, NW
Room 518
Washington, DC 20554

Les Seizer*
Federal Communications Commission
1919 M Street, NW
Room 518
Washington, DC 20554

Meredith Jones*
Federal Communications Commission
2033 M Street, NW
Room 918
Washington, DC 20554

Greg Vogt
Federal Communications Commission
2033 M Street, NW
Room 918
Washington, DC 20554

ITS, Inc.*
1919 M Street, NW
Room 246
Washington, DC 20554



Leslie D. Heath

*By Hand