Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	
1996 Annual Tariff Filing	CC Docket No. 87-313 DA 96-28
Treatment of Video Dialtone Service Under Price Cap Regulation	CC Docket No. 94-1

REPLY REGARDING BELL ATLANTIC'S PETITION FOR WAIVER

The New Jersey Cable Telecommunications Association ("NJCTA")[1] hereby submits its Reply regarding the Petition for Waiver of Sections 61.42, 61.45, 61.47, and 61.48 of the Commission's Rules requiring separate price cap basket treatment for Bell Atlantic's video dialtone services filed by Bell Atlantic on February 16, 1996.

In its Petition, Bell Atlantic asserts that because the Telecommunications Act of 1996 ("1996 Act")[2] required the termination of the Commission's video dialtone regulations, there is no video dialtone service for Bell Atlantic to include in a separate basket.[3] As other

[1] NJCTA is the primary trade association for the owners and operators of cable television systems in New Jersey. In response to Bell Atlantic's Dover Township, New Jersey video dialtone system, NJCTA has actively participated in all proceedings regarding Bell Atlantic's Dover system, including the still-pending investigation of Bell Atlantic's tariff for the Dover system.

[2] Telecommunications Act of 1996, Pub. L. No. 104-104, § 302(b)(3), 110 Stat. 56.

[3] Petition at 2.

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parties demonstrated in their Comments and Oppositions, Bell Atlantic is incorrect in its interpretation of the 1996 Act.

First, despite Bell Atlantic's off-hand assertions that "video dialtone" no longer exists, to the extent that Bell Atlantic continues providing service pursuant to the authorization granted in the Dover Order, and under its tariff, Bell Atlantic is providing "video dialtone" service — no matter what they want to call it. Indeed, Bell Atlantic's statment that it will "operate its service under the terms of its tariff and the Commission's rules for common carrier services" supports the conclusion that the Commission's video dialtone rules must continued to be enforced on Bell Atlantic's Dover system. The terms of Bell Atlantic's tariff were for the lease of video transport facilities on a common carrier basis to unaffiliated programmers — *i.e.* video dialtone service. The Commission's "rules for common carrier services," to the extent those services are video transport, are the "video dialtone" rules. The Commission has no other rules regarding the provision of video services on a common carrier basis. Accordingly, until a time when the Commission has adopted rules implementing the 1996 Act's Open Video System concept, Bell Atlantic can only continue to operate its Dover system pursuant to the Commission's previous video dialtone rules.

Second, as other parties pointed out, the 1996 Act only requires the termination of regulations adopted as part of CC Docket No. 87-266.[4] The regulations requiring separate price cap baskets when LECs provide video dialtone service were adopted in CC Docket No. 94-1. Indeed, it is entirely consistent for the Commission to continue to require LECs who provide video transport services on a common carrier basis, no matter what the label, to track their costs using separate price cap baskets for those services. The 1996 Act explicitly states that LECs who provide "transmission of video programming on a common carrier basis . . . shall be subject to the requirements of title II and section 652. . . ."[5] Since Bell Atlantic admits that it will be providing video transmission services on a common carrier basis in Dover, it is entirely appropriate for the Commission to continue to apply its separate price cap basket requirement to such services, especially since the service will be provided under its separate video dialtone tariff.

Finally, Bell Atlantic's argument that the Dover system is too small to justify separate basket treatment is based on incorrect premises. Bell Atlantic asserts that video dialtone service in Dover only existed from January 29, 1996 to February 8, 1996 (the date the Act was enacted). As demonstrated above, however, Bell Atlantic's common carrier video service will continue until at least August, 1996, when the Commission is required to adopt OVS rules. Not until that time can Bell Atlantic decide to convert its video dialtone system

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[4] National Cable Television Association Comments at 2; MCI Comments at 2-3; Adelphia Comments at 2-4.

[5] 1996 Act Sec. 651(a)(2).

to an OVS. In the meanwhile, Bell Atlantic consistantly asserted in support of its video dialtone application that within the first year of service its Dover system would capture substantial numbers of subscribers. Bell Atlantic should not now be allowed to assert that its system has not developed fast enough to support a separate price cap basket.

CONCLUSION

Based on the foregoing, and the comments filed by other parties, the Commission should deny Bell Atlantic's Petition.

Respectfully submitted,

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