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

In the Matter of	)	
	)	
Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services	)	CC Docket No. 96-21

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AT&T Reply

Pursuant to the Commission's Public Notice,[1] AT&T Corp. ("AT&T") hereby replies to the comments on the Commission's Notice of Proposed Rulemaking ("NPRM") regarding the regulatory classification of Bell Operating Company ("BOC") affiliates which provide out-of-region interstate, interexchange services.[2]

Summary

The comments confirm that, if the Commission wishes to proceed in this docket, the best course is to consider granting interim waivers of the existing dominant

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[1] 61 Fed. Reg. 6607, February 14, 1996.

[2] Comments were filed by Ameritech, Association for Local Telecommunications Services ("ALTS"), Bell Atlantic, BellSouth Corporation, Cable & Wireless, Inc. ("CWI"), Competitive Telecommunications Association ("CompTel"), Excel Telecommunications, Inc. ("Excel"), MCI Telecommunications, Inc. ("MCI"), NYNEX Corporation, Ohio Public Utilities Commission ("Ohio PUC"), Pacific Telesis Group ("Pacific"), SBC Communications, Inc. ("SBC"), Sprint Telecommunications Company, L.P. ("Sprint"), Telecommunications Resellers Association ("TRA"), U S WEST, Inc., UTC, The Telecommunications Association ("UTC"),and Vanguard Cellular Systems, Inc. ("Vanguard").

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carrier rules, rather than purporting to change the rules themselves, which the NPRM cannot support. If the Commission wishes to consider issuing interim waivers, moreover, it should condition such waivers on the conditions proposed in the NPRM and also prohibit BOCs from joint marketing, or sharing information on local service customers, with their out-of-region affiliates. In addition, the BOC out-of-region affiliates should be treated as non-regulated affiliates under the Commission's affiliate transaction rules and be required to conduct periodic independent audits to assure compliance with those rules.

Argument

The comments overwhelmingly acknowledge, as they must, that the Commission's existing rules define the domestic interstate interexchange market as a single market with no relevant submarkets. Indeed, this market definition is cited (or assumed) as support both for the BOC commenters' arguments that the NPRM's proposed rules are unnecessary and/or too stringent,[3] and for the non-BOC

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[3] See Bell Atlantic, p. 2 (referencing the "established" and "national interLATA market"); Ameritech, p. 8 (referencing "the entire, domestic, interexchange service market"); BellSouth, p 8 (same); NYNEX, pp. 1-2 and n.2; SBC, n.8.

commenters' arguments that the proposed rules are insufficient and too lenient.[4]

This seeming paradox stems from the core observation in AT&T's comments (pp. 4-7): that the rule proposed in the NPRM (i.e., classifying BOC long distance operations as non-dominant for out-of-region, but dominant in-region), could only be effected if the Commission's long-standing definition of the domestic interexchange market were altered, yet the NPRM fails adequately to propose -- much less justify -- such a change. This shortcoming is starkly contrasted by the new rulemaking proceeding, announced only last week, in which the Commission would, for the first time, consider possible changes to its established rules defining the relevant market.[5]

Thus, for example, notwithstanding their invocation of the Commission's current market definition (which assumes the existence of a single domestic market), Bell Atlantic (p. 7) asserts that it lacks power in the "out-of-region market," and Ameritech (p. 1) states that "out-of-region long distance services provided by BOCs are

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[4] See AT&T, p. 4; CompTel, p. 4; MCI, p. 9; TRA, p. 12.

[5] "Commission Proposes that Long Distance Companies be Relieved of Tariff Filing Requirement as It Begins Review of Regulatory Regime for Interstate, Interexchange Telecommunications Services," Public Notice, Report No. DC-96-24, released March 21, 1996.

nondominant."[6] Despite these references, however, the Commission's current rules simply do not recognize such a market. The Commission cannot assess a carrier's market power -- the acknowledged test for determining dominance[7] -- in a market that does not exist.

The comments thus confirm AT&T's position that waivers, not rules, are the only appropriate course if the Commission feels compelled to grant relief in this proceeding. In the event that the Commission wishes to continue the instant docket as a waiver proceeding, AT&T submits the following replies.[8]

First, there is no merit to BellSouth's argument (p. 2) that the Telecommunications Act of 1996 forbids the Commission to impose reasonable requirements on BOCs that

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[6] See also Bell Atlantic, Crandall Aff., p. 2. Pacific, p. i and U S WEST, p. 4 also assert they could have no power in the "out-of-region interLATA market." Several non-BOC commenters also reference an "out-of-region" market (see, e.g., CWI, p. i; Excel, p. 2; PUCO, p. 3; Sprint, p. 2; Vanguard, p. 2).

[7] BellSouth (p. 6) correctly notes that the Commission "determines dominance on the basis of a firm's market power in the particular market involved."

[8] AT&T assumes that any waiver, if granted, would only be for an interim period (see NPRM, ¶ 11) before the Commission issues its order in the rulemaking announced on March 21, in which the Commission will consider possible changes in the definition of relevant markets and the appropriate separations requirements for BOC out-of-region services.

wish to be subject to nondominant regulation for their provision of out-of-region services.[9] Contrary to BellSouth's claim, such requirements do not prohibit a BOC affiliate from offering out-of-region services, nor do they require BOCs to create separate subsidiaries to provide such services.[10] BOC affiliates may now enter any out-of-region area and provide services under the Commission's existing rules, which classify BOC-affiliated interexchange companies as dominant carriers.[11] The conditions proposed in the NPRM, together with the additional safeguards suggested by AT&T and some of the other commenters, will provide reasonable assurance that a BOC affiliate will not be able to leverage the BOC's acknowledged market power in its local exchange markets[12] into out-of-region interexchange services.[13]

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[9] See also Ameritech, pp. 7-8; Bell Atlantic, pp. 4-5; SBC, pp. 4-6.

[10] See Ameritech, p. 7 ("admittedly the Commission does not propose to require a separate affiliate for out-of-region service" (emphasis added)).

[11] See AT&T, n.6; CompTel, n.2; MCI, p. 9; TRA, p. 16.

[12] See MCI, pp. 5-7 (quoting, inter alia, Common Carrier Bureau public statements that "LECs continue to exercise a substantial degree of market power in virtually every part of the country and continue to control bottleneck facilities").

[13] The ability of carriers to leverage monopoly power from bottleneck local monopolies has, of course, been a traditional part of the Commission's nondominance

(footnote continued on following page)

Equally uncompelling are the BOCs' assertions that they cannot exert market power in out-of-region areas.[14] The BOCs uniformly fail to acknowledge the impact that the monopoly power generated by their in-region bottlenecks can have on out-of-region services if appropriate safeguards are not implemented.[15] The non-BOC commenters, however, clearly demonstrate the anticompetitive results that could result if appropriate conditions are not placed upon BOCs that wish to be regulated as nondominant in the provision of out-of-region interexchange services.

All of the non-BOC commenters, as well as NYNEX and Pacific, support the structural safeguards proposed in the NPRM, at least for an interim period. These proposals are not burdensome, and they will help to assuage legitimate fears that BOC local monopolies are unfairly advantaging

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(footnote continued from previous page)

analysis, which is not affected by the 1996 Act (see SBC, p. 4 ("[d]ominant" and "non-dominant interexchange regulation is not addressed in the Telecommunications Act"]; Vanguard, n.8 ("[t]he 1996 Act is silent as to the regulatory safeguards that the Commission may adopt for out-of-region services").

[14] See, e.g., Ameritech, pp. 3-5; Bell Atlantic, pp. 2-3; BellSouth, pp. 9-11.

[15] See MCI, n.17 (explaining that the BOCs' reference to the criteria used in the AT&T nondominance proceeding "does not advance the analysis" of the BOCs' market power, because AT&T (and other IXCs) do not possess bottleneck control over local exchange facilities).

their out-of-region affiliates. The maintenance of separate books and a requirement that BOC affiliates purchase monopoly local services out of the same tariffs that are available to competitive IXCs impose relatively minor (if any) costs, compared to their prophylactic value.[16] Moreover, the prohibition against the joint ownership of switching and transmission facilities is not an issue for the BOCs, because Bell Atlantic admits (p. 6) that out-of-region interexchange services facilities "will be geographically separated" from the facilities used to provide local service in the BOC's monopoly in-region territories.

The Ohio PUC and many other commenters also support AT&T's proposal (p. 7-8) that BOC affiliates should not be permitted access to any BOC information about marketing activities or customers in the BOC's monopoly serving area. Thus, the Ohio PUC (p. 6) agrees that BOC affiliates should not be given access to any BOC "proprietary information, other than that information that is made available at the same interval to any unaffiliated provider of functionally similar services or equipment."[17]

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[16] See Vanguard, pp. 6-9.

[17] See also ALTS, pp. 4-5; CWI, pp. 3-4; CompTel, pp. 9-10; Excel, pp. 6-7; TRA, p. 21.

These additional protections are critical to assuring that BOC local monopolies do not confer unfair advantages upon their out-of-region businesses.

The comments of the Ohio PUC (pp. 7-8) and MCI (pp. 12-16) demonstrate the need for separate affiliates and for continued vigilant enforcement of the Commission's cost accounting rules, including the requirement of periodic audits.[18] BOCs have often been found lax in their compliance with the FCC's accounting requirements, and the 1996 Act emphasizes the need to assure that monopoly services do not support competitive businesses.[19] Thus, it would be appropriate to require BOCs to submit to periodic independent audits to certify compliance with their cost allocation manuals.

WHEREFORE, if the Commission wishes to proceed, it should treat the instant docket as a request for waivers

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[18] See AT&T, pp. 8-9.

[19] See, e.g., § 254(k) (forbidding carriers to use services that are not competitive to subsidize services that are subject to competition); § 252(d)(1) (requiring that charges for interconnection and unbundled network be based on cost); and § 276(a)(1) (forbidding BOCs to subsidize their payphone service from local exchange service or exchange access operations).

from the Commission's currently established rules, and any interim waiver should be subject to the conditions described herein and in AT&T's Comments.

Respectfully submitted,

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March 25, 1996

CERTIFICATE OF SERVICE

I, Terri Yannotta, do hereby certify that on this 25th day of March, 1996 a copy of the foregoing "AT&T Reply" was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached service list.

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