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

In the Matter of)	DA 96-434
1996 Annual Access Tariff Filing)	CC Docket No. 87-313
)	DA 96-28
)	
Price Cap Performance Review)	CC Docket No. 94-1
for Local Exchange Carriers)	
Treatment of Video Dialtone Service)	
Under Price Cap Regulation)	

ORDER

Adopted: March 25, 1996 **Released:** March 26, 1996

By the Chief, Common Carrier Bureau:

1. On February 16, 1996, Bell Atlantic filed a petition for waiver of Sections 61.42, 61.45, 61.47, and 61.48 of the Commission's rules¹ to "the extent that they might have been interpreted to require a separate price cap basket in Bell Atlantic's 1996 Annual Access Tariff filing for any service that was formerly regulated as video dialtone service."² Four parties filed oppositions to or comments on Bell Atlantic's waiver request and Bell Atlantic filed a reply.³ For the reasons discussed below, we grant Bell Atlantic's waiver request.

2. In its petition, Bell Atlantic presents two arguments for grant of the waiver. First, it states that since the Commission's rules and policies for video dialtone service ceased to be effective upon enactment of the Telecommunications Act of 1996 (the 1996 Act),⁴ there can no

1 47 C.F.R. §§ 61.42, 61.45, 61.47, and 61.48.

2 Bell Atlantic Petition at 1.

3 See *Public Notice* Bell Atlantic Files Petition for Waiver of Requirement to Maintain Separate Price Cap Basket for Video Dialtone Service, DA 96-207 (rel. Feb. 20, 1996). The National Cable Television Association (NCTA) and Adelphia Communications Corporation (Adelphia) filed oppositions. MCI Telecommunications Corporation (MCI) and AT&T Corporation (AT&T) filed comments.

4 See Section 302(b)(3), Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

longer be a requirement for a separate price cap basket for video dialtone.⁵ Second, Bell Atlantic argues that since it did not actually begin providing video service in Dover Township, New Jersey, until January 29, 1996, there was zero demand and revenues for service in 1995 and it cannot calculate either the Price Cap Index (PCI) or Actual Price Index (API) for the video dialtone basket.⁶

3. Adelphia, MCI, and NCTA argue that Bell Atlantic has overstated the scope of the 1996 Act. They note that Section 302(b)(3) of the 1996 Act only eliminated the Commission's rules and policies regarding video dialtone service that were established in CC Docket 87-266. They contend that since the price cap basket requirement was established in CC Docket 94-1, rather than in CC Docket 87-266, the 1996 Act does not alter Bell Atlantic's requirement to establish a video dialtone price cap basket in its 1996 Annual Access Tariff filing.⁷ Adelphia and NCTA further argue that establishing a video dialtone price cap basket should not place any burden on Bell Atlantic, so the petition should be denied.⁸ MCI agrees with Bell Atlantic that it cannot calculate the PCI or API for a video dialtone basket since it did not provide any service in 1995.⁹ AT&T argues that should the waiver be granted, Bell Atlantic should still be required to account separately for its revenues, expenses, and investment in the Dover Township video service in accordance with Commission rules.¹⁰ In its reply, Bell Atlantic contends that none of the commenters presents any reason that would justify requiring Bell Atlantic to establish a video dialtone price cap basket in its 1996 Annual Access Tariff filing.¹¹

4. Under Section 1.3 of our rules, we are authorized to grant waivers "if good cause therefor is shown."¹² As interpreted by the courts, this requires that a petitioner demonstrate that "special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest."¹³ In this case, we find that the lack of demand and revenues associated with video dialtone service in the base period does not allow Bell Atlantic to compute a PCI or an

5 Bell Atlantic petition at 1-2.

6 *Id.* at 2-3.

7 Adelphia Opposition at 2-3; MCI Comments at 2-3; NCTA Opposition at 1-2.

8 Adelphia Opposition at 4; NCTA Opposition at 3.

9 MCI Comments at 3.

10 AT&T Comments at 4.

11 Bell Atlantic Reply at 1.

12 47 C.F.R. § 1.3.

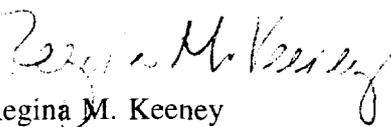
13 *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

API for the video dialtone basket for its 1996 Annual Access Tariff filing. We conclude that this fact establishes the necessary special circumstance that warrants grant of this waiver.

5. Section 61.48 of the Commission's rules sets out the transition rules for the video dialtone price cap formula calculations.¹⁴ According to the rules, Bell Atlantic is required to establish its initial PCI and API levels at 100 and adjust those levels for inflation and productivity before adding the video dialtone price cap basket to its existing price cap baskets. It is mathematically impossible, however, to make the inflation adjustment if there were no revenues or demand in the base period. The formula for PCI adjustment prescribed by the Commission's rules requires that part of the equation be divided by revenue for the base period, which in this case is zero.¹⁵ Likewise, the formula for API adjustment requires that part of the equation be divided by demand for the base period, which in this case is also zero.¹⁶ A denominator of zero results in an indeterminate factor in the equation, which means that the equation cannot be solved. We find that this situation requires us to grant Bell Atlantic a waiver from the requirements of Sections 61.42(d)(5), 61.45 (b), 61.45(b)(3), 61.45(h), 61.47(g)(6) and 61.48 (j) for its 1996 Annual Access Tariff filing to the extent that they deal with the price cap basket established in Section 61.42(d)(5).¹⁷ Since we are granting the waiver based on Bell Atlantic's inability to establish a PCI or API for its 1996 Annual Access Tariff filing, we do not need to reach its argument regarding the effect of the passage of the 1996 Act on the requirement that Bell Atlantic include a video dialtone basket in that tariff filing.

6. ACCORDINGLY, IT IS ORDERED THAT, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, the petition for waiver filed by the Bell Atlantic Telephone Companies IS GRANTED to extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION


Regina M. Keeney
Chief, Common Carrier Bureau

14 47 C.F.R. § 61.48(j).

15 See 47 C.F.R. § 61.45(c).

16 See 47 C.F.R. § 61.46(a).

17 47 C.F.R. §§ 61.42(d)(5), 61.45 (b), 61.45(b)(3), 61.45(h), 61.47(h) and 61.48(j).