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

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
)  
Policy and Rules Concerning the ) CC Docket No. 96-61  
Interstate, Interexchange Marketplace )  
)  
Implementation of Section 254(g) of the )  
Communications Act of 1934, as amended )

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**BELL ATLANTIC<sup>1</sup> COMMENTS ON SECTIONS III, VII, VIII and IX**

**SUMMARY AND INTRODUCTION**

As Bell Atlantic explained in its comments on the first portion of the Commission's Notice,<sup>2</sup> any regulatory relief extended to long distance service providers must include not only the small group of incumbents that control the market today, but also the Bell operating companies, which as new entrants will interject much needed competition into the market. To arbitrarily impose greater burdens on the new entrant Bell operating companies would undermine competition and thereby hurt consumers.

<sup>1</sup> This filing is on behalf of Bell Atlantic Communications, Inc. and the Bell Atlantic telephone companies ("Bell Atlantic"), which 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.

<sup>2</sup> *Policy and Rules Concerning the Interstate Interexchange Marketplace*, CC Docket No. 96-61, Bell Atlantic Comments on Sections IV, V and VI (filed Apr. 19, 1996).

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**I. Bell Company Entry Into the Long Distance Market is the Best Protection Against Existing Tacit Price Collusion.**

In the Notice, the Commission correctly identifies both the problem of, and solution to, price collusion in the long distance industry. The Commission found that the “best solution” to any problem of “tacit price coordination” is the 1996 Act’s allowance of “competitive entry in the interstate interexchange market by the facilities-based BOCs and others.”<sup>3</sup>

As the ample evidence already before the Commission demonstrates, the long distance market today is an oligopoly that is characterized by a lack of competition based on price.<sup>4</sup> In a recent exhaustive study on competition in the long distance markets, Professor Paul MacAvoy, the former Dean of the Yale School of Management, provides still further proof that the long distance incumbents have employed a pattern of tacit price collusion. Among other findings, Professor MacAvoy concludes that the gap between AT&T’s prices and those of its major competitors has shrunk from a range of 10 to 20 per cent in 1984 to almost zero today, and that prices have converged at steadily higher levels.<sup>5</sup> Moreover, Professor MacAvoy observes that the coordinated

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<sup>3</sup> ***Policy and Rules Concerning the Interstate, Interexchange Marketplace***, CC Docket 96-61, Notice of Proposed Rulemaking, ¶ 81 (rel. Mar. 25, 1996) (“Long Distance NPRM”).

<sup>4</sup> ***See, e.g., Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorization Therefor***, CC Docket 79-252, Further Opposition of Bell Atlantic Corp., *et al.* (filed June 9, 1995); attached Affidavit of Paul W. MacAvoy, ¶ 6 (AT&T, MCI and Sprint “have developed market sharing and identical pricing patterns to an extent that results in a classic case study in tacit collusion”); Data Appendix (detailed price information that empirically support Professor MacAvoy’s conclusions); W. Taylor & J. Zona, “An Analysis of the State of Competition in Long-Distance Telephone Markets” (May 1995) (study demonstrates that despite a marked drop in their access charges since 1991, long distance carriers have not passed through that cost decrease and instead have raised their own rates).

<sup>5</sup> P. MacAvoy, “The Failure of Antitrust and Regulation to Establish Competition in Markets for Long-Distance Telephone Services” at 95. Yale School of Management Working Paper Series C (1995) (“MacAvoy Study”).

pricing policies of the three largest providers are recognized by Wall Street.<sup>6</sup> Six recent price increases by AT&T have produced significant jumps in the stock price of MCI and Sprint.<sup>7</sup> Since the publication of the MacAvoy study, the coordinated price moves have continued. Most recently, this past February, AT&T and MCI filed for similar price increases on the same day for the same services.<sup>8</sup>

Professor MacAvoy also provides further confirmation of the Commission's conclusion that entry of the Bell companies is the key to ending this price collusion in the long distance market. According to the MacAvoy Study, immediate entry of the Bell companies would produce significant consumer welfare gains -- gains that potentially could reach as much as \$24 billion a year.<sup>9</sup>

In order to obtain these consumer benefits, however, the Commission must properly implement the 1996 Act by allowing the Bell companies to enter the market as soon as they have met the criteria defined in the Act. This means the Commission should reject AT&T's arguments that the language in the Act be broadened to include a requirement for pervasive local competition prior to in-region entry.<sup>10</sup> Such a policy was rejected by Congress and, as Professor MacAvoy has explained, should be recognized as a "charade" that would unnecessarily force

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<sup>6</sup> MacAvoy Study at 133-34.

<sup>7</sup> *Id.* At the end of 1994, these three carriers accounted for more than 90% of the long distance market. Federal Communications Commission, "Statistics of Communications Common Carriers" at 348 (1994/1995 ed.).

<sup>8</sup> AT&T Transmittal No. 9643 (filed Feb. 16, 1996); MCI Transmittal No. 942 (filed Feb. 16, 1996).

<sup>9</sup> MacAvoy Study at 381.

<sup>10</sup> *See Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, AT&T Comments at 7 (filed April 19, 1996).

consumers to continue paying monopoly prices.<sup>11</sup> Moreover, the Commission must ensure that once the Bell companies are allowed market entry, the regulatory rules of the road must apply to all participants, and that no unique burdens be imposed on the new entrants who will be the parties least able to sustain a regulatory disadvantage.

## **II. Any Elimination of Tariff Requirements Should Apply Equally to All Long Distance Service Providers.**

The Notice proposes mandatory detariffing of nondominant long distance providers. To the extent the Commission adopts such a provision, it must also apply the new rules to the new entrant Bell companies. The Commission suggests that the combination of the detariffing requirement and the entry of the Bell operating companies in the market will together work to “discourage price coordination.”<sup>12</sup> In order for those two reforms not to work at cross purposes, the Commission must make sure that any detariffing rules are applied equally to the Bell operating companies.

Detariffing only the incumbents and not the Bell operating companies hurts competition. Forcing only the Bell companies to file tariffs but not one else would recreate the situation when only AT&T filed tariffs, with the resulting creation of a price umbrella. The Commission,

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<sup>11</sup> MacAvoy Study at 366 (“What has resulted is regulation’s rendition of *Waiting for Godot*. The great wait for competition in local telephony to precede that in long-distance telephony is an unnecessary burden on consumers and a charade.”).

<sup>12</sup> Long Distance NPRM, ¶ 81.

appellate courts and the Supreme Court all have cautioned against the resulting competitive harm.<sup>13</sup> Moreover, under a Bell company-only tariff requirement, incumbents could game the regulatory process by seeking delays in the effective date of Bell company competitive offerings. The incumbents could also make immediate preemptive responses to Bell company promotions that would be subject to a regulatory waiting period. The result would be to discourage the new service offerings necessary to promote full price competition.

### **III. Bundling of CPE Should Be Authorized on A Wider Scale.**

The Commission also tentatively concludes that allowing long distance providers to bundle their products with consumer premises equipment (“CPE”) offerings “would promote competition by allowing such carriers to create attractive service/equipment packages for consumers.”<sup>14</sup> If this is true of incumbents, however, it is even more true of the new entrants and the Commission should make clear that this flexibility also applies to the new entrant Bell companies.

The Commission already allows bundling of CPE and cellular service. In approving such packages, the Commission found that “bundling is an efficient promotional device which reduces

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<sup>13</sup> See *MCI Telecommunications Corp. v. American Telephone and Telegraph*, 114 S. Ct. 2223, 2233 (1994) (voluntarily sharing the very pricing information that the Commission *requires* dominant carriers to file could spark enforcement of the antitrust laws absent government compulsion); *Southwestern Bell Corp. v. Federal Communications Commission*, 43 F.3d 1515, 1520 (D.C. Cir. 1995) (expressing support for the economic sense of the Commission’s arguments that no tariffs should be required for non-dominant carriers, but citing the Supreme Court view that the logic applies even more strongly to dominant carriers); *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, FCC 95-427, Order, Separate Statement of Commissioner Susan Ness (rel. Oct. 23, 1995) (AT&T tariff requirements functioned “more as hindrances to true rivalry than as consumer safeguards”).

<sup>14</sup> Long Distance NPRM, ¶ 88.

barriers to new customers and which can provide new customers with CPE and cellular service more economically than if it were prohibited.”<sup>15</sup> The Commission found that allowing the bundled service offerings would not be anticompetitive without regard to whether or not the cellular market was fully competitive at the time.<sup>16</sup> Regardless, the result of the Commission’s decision has been continued phenomenal growth of the cellular industry and continued competition among cellular providers.

There is no reason that allowing bundled CPE service offerings would not be similarly pro-competitive for other telecommunications markets, but only to the extent the same flexibility is granted to all competing providers. In fact, the one way that bundled CPE offerings could be used to harm competition would be if the Commission were to limit the right to make such offerings to a subset of service providers. The Notice, however, limits the bundling provision to “nondominant” long distance carriers.<sup>17</sup> This covers every domestic long distance incumbent, including AT&T, but does not yet include the new entrant Bell operating companies. Denying these new entrants the regulatory flexibility to offer services comparable to those of the incumbents would hurt consumers by undermining the very competition that Congress and the Commission is relying on the Bell companies to provide.

Nor is there a credible argument that the Bell companies should be treated differently than other long distance providers that have the same right to make equivalent offers of bundled service. If both the CPE market and the long distance market are sufficiently competitive to

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<sup>15</sup> *Bundling of Cellular Customer Premises Equipment and Cellular Service*, 7 FCC Rcd 4028, 4030 (1992) (“Cellular/CPE Order”).

<sup>16</sup> *Id.* at 4029.

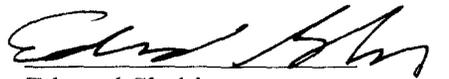
<sup>17</sup> Long Distance NPRM, ¶ 88.

allow other providers to make bundled service offerings, entry of the Bell companies will only add to that competition. The right to offer bundled packages simply cannot give the Bell companies the ability to exert anticompetitive pressure on either the long distance market or the CPE market.

### CONCLUSION

As the Commission moves toward a more deregulatory model for regulation of long distance services, it must encourage the entry of the Bell companies into the market and not apply harsher regulatory controls on those new entrants. Any detariffing or CPE bundling authorization should extend to the Bell companies' long distance services.

Respectfully submitted,



Edward Shakin

Edward D. Young, III  
Michael E. Glover  
Of Counsel

1320 North Court House Road  
Eighth Floor  
Arlington, VA 22201  
(703) 974-4864

Attorney for the  
Bell Atlantic Telephone Companies  
and Bell Atlantic Communications, Inc.

April 25, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of April, 1996 a copy of the foregoing "Bell Atlantic Comments on Sections III, VII, VIII and IX" was served on the parties on the attached list.

  
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Tracey DeVaux

Janice Myles\*  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW  
Room 544  
Washington, DC 20554

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

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