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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Policy Rules Concerning the)
Interstate, Interexchange Marketplace)

Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)

CC Docket No. 96-61

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COMMENTS OF SBC COMMUNICATIONS INC.

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SUMMARY¹

In response to the Commission's request for comments in Sections III, VII, and VIII of the NPRM, SBC urges the Commission to address and to enhance the state of competition in interstate, interexchange services through adopting even regulation of competing carriers. In response to NPRM Sections III and VII, SBC points out that the Commission's tentative conclusion that forbearance is the correct path, but only if applied evenly to all IXCs. Any pro-consumer effect of forbearing in the tariff filing requirements currently applicable to non-dominant IXCs will be undermined by any continuing existence of the extinct dominant carrier regulatory regime for interexchange services. While SBC agrees that the entry of additional facilities-based competition will lessen or eliminate the risk of tacit price coordination, this is true only to the extent that the new entrant IXCs are regulated no more stringently than other IXCs.

SBC also agrees with the Commission's tentative conclusion in Section VIII of the NPRM that it should remove its prohibition on the bundling of CPE with interstate, interexchange services. However, SBC also urges the Commission to eliminate its bundling restrictions evenly among all providers of telecommunications services. The Commission should remove restrictions on bundling of CPE not only for interexchange service providers but also for LECs in order to permit the kinds of wide-spread consumer benefits envisioned by Congress in enacting the Telecommunications Act.

¹Abbreviated terms within this Summary have the same meaning as within the text of SBC's Comments.

TABLE OF CONTENTS

SUMMARY	i
I. INTRODUCTION	1
II. DISCUSSION	3
A. RESPONSE TO NPRM SECTION III, VII (REGULATORY FORBEARANCE AND PRICING ISSUES)	3
B. RESPONSE TO NPRM SECTION VIII (BUNDLING OF CUSTOMER PREMISES EQUIPMENT)	6
III. CONCLUSION	8

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**COMMENTS OF SBC COMMUNICATIONS INC.
(NPRM SECTIONS III, VII, AND VIII)**

SBC Communications Inc. ("SBC"), by its attorneys and on behalf of its subsidiaries, Southwestern Bell Communications Services, Inc. ("SBCS"), Southwestern Bell Telephone Company ("SWBT"), and Southwestern Bell Mobile Systems ("SBMS"), files these comments in response to Sections III, VII, and VIII of the Notice of Proposed Rulemaking released by the Commission on March 25, 1996 (the "NPRM").

I. INTRODUCTION

The Commission seeks comment in Sections III, VII, and VIII of the NPRM on several proposals intended to address and to enhance the state of competition in interstate, interexchange services. In Section III, the Commission requests comment on a proposal to forbear from existing tariff filing requirements for non-dominant interexchange carriers ("IXCs"), tentatively concluding that forbearance from the tariff filing requirement is mandated by Section 10 of The Telecommunications Act of 1996 (the "Telecommunications Act"). In a related section

of the NPRM, the Commission avers that during the AT&T non-dominance proceeding¹ allegations of tacit price coordination among IXCs arose but were not conclusively established.² Taken together, the Commission tentatively concludes through Sections III and VII of the NPRM that mandatory de-tariffing of interstate, interexchange services of non-dominant carriers, together with the introduction of additional facilities-based, interstate, interexchange service competition pursuant to the goals of the Telecommunications Act, will eliminate any tacit price coordination which might exist. The Commission also proposes in Section VIII of the NPRM to remove its prohibition on the bundling of customer premises equipment (“CPE”) with interstate, interexchange services.

SBC agrees that the entry of additional, facilities-based competition will lessen or eliminate tacit price coordination, provided that the new entrant IXCs are regulated no more stringently than other IXCs. SBC also agrees that the removal of CPE bundling restrictions can be a pro-competitive step. SBC, therefore, urges the Commission: (1) to eliminate all tariff filing requirements for IXCs in order to fulfill the pro-competitive goals of the Telecommunications Act and to achieve the goals sought to be obtained through the de-tariffing process; and (2) to remove restrictions on bundling of CPE, not only for IXCs, but also for local service providers, in order to permit wide-spread consumer benefits.

¹In the Matter of Motion of AT&T Corp. To Be Reclassified as a Non-Dominant Carrier; FCC 95-427 (released October 23, 1995) (the “AT&T Order”), reconsideration pending.

²NPRM at ¶ 81.

II. DISCUSSION

A. RESPONSE TO NPRM SECTIONS III, VII (REGULATORY FORBEARANCE AND PRICING ISSUES)

Section III of the NPRM tentatively concludes that the Commission should forbear from the tariff filing requirements currently applicable to non-dominant IXCs. Section VII of the NPRM, addressing allegations of tacit price coordination among IXCs, tentatively concludes that allegations of tacit price coordination, whether or not accurate, can be adequately addressed through (1) mandatory de-tariffing of non-dominant interexchange services, and (2) facilities-based, BOC-provided interexchange services. The Commission is correct in its tentative conclusion that forbearance in such circumstances may be appropriate, but for its tentative conclusions to be sustainable, all interstate IXCs must be regulated evenly. The Commission's pro-competitive goals will be undermined by any continuing distinctions in the manner in which IXCs are regulated.

Section 10 of the Telecommunications Act requires the Commission to forbear from enforcing provisions of the Telecommunications Act and of the Commission's regulations where:

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.³

³47 U.S.C. §10 (emphasis added).

The Commission is correct in its analysis that the first element of the three-prong test is fulfilled in a detariffed environment. The second and third elements, however, are met only if all carriers are exempted from the Commission's tariff filing requirements.

Although no IXCs are currently subject to the Commission's dominant carrier regime, the potential differences in the continued application of the dominant/non-dominant regulatory dichotomy are not insignificant.⁴ As summarized in the AT&T Order, non-dominant carriers have numerous regulatory advantages over dominant carriers; some of these advantages are particularly pertinent to the Commission's concerns about tacit price coordination:

- (1) Non-dominant carriers are not subject to any regulatory pricing constraints, such as price cap regulation.⁵
- (2) Non-dominant carriers are allowed to file tariffs for all of their domestic services on one day's notice, and the tariffs are presumed lawful.⁶
- (3) Non-dominant carriers are not required to report or to file carrier-to-carrier contracts.⁷
- (4) Non-dominant carriers are not subject to several regulatory requirements associated with Section 214.⁸ In addition, under the existing Section 214-related regulations, non-dominant carrier requests to discontinue or reduce service will be deemed granted after 31 days unless a party or the

⁴AT&T Order at ¶¶12-13.

⁵See 47 C.F.R. § 61.41-61.42.

⁶Tariff Filing Requirements for Nondominant Carriers, CC Docket No. 93-36, Memorandum Opinion and Order, 8 FCC Rcd 6752 (1993) (Tariff Filing Requirements Order), vacated Southwestern Bell Corp. v. FCC, 43 F. 3d 1515 (D.C. Cir. 1995); Order on Remand, FCC 95-399, at paras. 8-9 (rel. September 27, 1995)(Tariff Filing Requirements Remand Order); First Report and Order, 85 FCC 2d 1, 31-33 (1980).

⁷See 47 C.F.R. §43.51.

⁸See, e.g., 47 C.F.R. §§63.07(a),63.07(b). These requirements were also modified as to all carriers by Telecommunications Act Section 11.

Commission objects.⁹

- (5) Non-dominant carriers, not being subject to price cap regulation, do not have to submit cost-support data now required for many dominant carriers' filings,¹⁰ such as tariff filings for new services.¹¹

The potential differences in regulation are extremely important in a competitive market.

Regulations that require a provider to tip its hand to competitors are a source of potentially anticompetitive activities.

As of this date, there exist no interstate IXC's subject to the Commission's dominant carrier rules.¹² Under the dormant, asymmetrical regulatory regime, however, if any carriers are made subject to the dominant carrier rules, they would not be allowed to provide the type of competition Congress and the Commission seek. The potential anticompetitive effects

⁹ In the NPRM, the Commission incorrectly assumes that common carriers are still required to obtain Commission approval for certain activities covered by Section 214. See NPRM at ¶¶ 9-10 and n. 20, 24-25. This is no longer the case in light of Section 402(b)(2)(A) of the Telecommunications Act. The Commission has recognized already that other provisions of the Telecommunications Act supersede the related Commission requirements. See, e.g., Revision of Filing Requirements and Implementation of Section 402(b)(2)(B) of the Telecommunications Act of 1996, Order, CC Docket No. 96-23, released March 20, 1996, at ¶¶ 3-4 ("Telecommunications Act of 1996 supersedes . . . current requirements that ARMIS reports be filed more frequently . . ."); Public Notice, Report No. N-009, released February 21, 1996 (Dismissed Section 214 video programming applications because "[u]nder Section 302(a) of the 1996 Act, the applicants are no longer required 'to obtain a certificate under Section 214 . . .'"). The Commission should recognize that the superseding provisions of the Telecommunications Act exempt common carriers from certain Section 214 requirements.

¹⁰ While the submission of dominant carrier cost data is often made under cover of the Freedom of Information Act, the ability to keep such information confidential is often unsuccessful.

¹¹ See id. at §§61.38, 61.49. In addition, non-dominant carriers are not subject to some annual reporting requirements, including ARMIS-like reports, an annual financial report, a depreciation rate report, an annual rate-of-return report, and a report of access minutes. See id. at §§43.21, 43.22, 43.43.

¹² Accordingly, the virtue of nominally maintaining the dominant/non-dominant dichotomy through unused rules is questionable.

of requiring one carrier to file price tariffs substantially prior to their effective dates are significant. Advance notice of price changes is made still more significant if only one carrier, or a few carriers, are subject to pre-effective date filing requirements.

If the rules ultimately adopted require that any IXC file price tariffs while its competitors do not, then the Commission will have done nothing more than ensure that some carriers, including such large, well-funded carriers as AT&T, MCI, and Sprint, receive the benefit of advance notice of price changes. Advance notice can serve no consumer or public interest. Instead, regardless of the Commission's determination of whether it should forbear from its regulations requiring non-dominant carriers to file tariffs, the Commission should recognize that, to ensure that consumers receive the full benefits of competition, it must implement or enforce whatever regulations it intends to continue on an even basis with respect to all carriers. To the extent that an asymmetric approach is adopted and some IXCs are burdened with extensive tariff filing requirements, while others are not, consumer and public interests are not only left unprotected, but are actively harmed.

Mandatory de-tariffing of non-dominant carrier interexchange services without de-tariffing all competitive IXC services fails, therefore, to meet the second and third legs of the Section 10 forbearance test.

B. RESPONSE TO NPRM SECTION VIII (BUNDLING OF CUSTOMER PREMISES EQUIPMENT)

The Commission tentatively concludes in Section VIII of the NPRM that the CPE unbundling rule is no longer necessary or desirable with respect to IXCs that are "non-dominant,"¹³ and that non-dominant IXCs should be permitted to bundle CPE with interstate,

¹³NPRM at ¶¶ 84-87.

interexchange services.¹⁴ There is no valid reason why this rule should be lifted only for non-dominant IXCs; the Commission's unbundling rule should be eliminated in its entirety. Absent consistent regulations, consumers will be harmed by unintended, anti-competitive side effects of rules intended to serve a pro-competitive purpose.

As the Commission recognizes, elimination of the bundling restriction will allow carriers to package services and equipment and thereby to promote, not hinder, the continued growth of competition and consumer benefits in both the interexchange and CPE markets.¹⁵ The new telecommunications legislation will allow IXCs to enter local markets and to compete with local exchange carriers ("LECs"). Allowing the packaging of services and CPE can be an important procompetitive marketing tool, not only in the interexchange market, but in the local exchange market as well. Under the Commission's proposed rule, however, only non-dominant IXCs will be permitted to offer the attractive "one-stop shopping" bundles of local service, long distance, and CPE that customers want. A significant subset of potential competitors may be unable to bring competing bundles to market. If the unbundling rule is completely eliminated for all carriers, LECs will directly compete with IXCs' new bundled offers. Direct competition of bundled offerings will inevitably cause prices to decrease, thereby further benefitting consumers.

The proposed selective application of the CPE bundling rule is unfair and anticompetitive. Permitting non-dominant interexchange carriers, but not exchange carriers, to

¹⁴NPRM at ¶ 88. It is notable that "non-dominant IXCs," including AT&T and MCI, have promised to compete in the local exchange market as soon as they possibly can and have announced large-scale programs to enter the local exchange market.

¹⁵Elimination of the CPE bundling rule has created significant consumer benefits in the marketplace for cellular service for over a decade. It is common strategy for cellular providers to attract and retain customers by offering attractive packages of service and equipment. Elimination of the CPE bundling rule in both the local exchange and interexchange markets will produce similar consumer benefits.

bundle CPE with transmission services, fails to take into account that today's IXCs also function as LECS.¹⁶ Uneven application of the rule--that is, allowing non-dominant IXCs to bundle and to create attractive service and equipment packages, while forcing LECs to follow a rule which the Commission has tentatively concluded is outdated in this new era of competition--puts LECs at a distinct competitive disadvantage and actually reduces potential competition in the CPE market. The CPE bundling rule should be repealed for all providers.

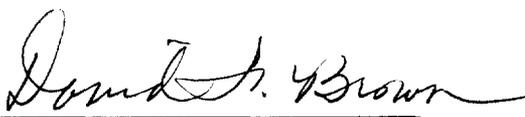
III. CONCLUSION

The Commission should undertake any piecemeal forbearance action that would serve to lessen competition by exacerbating the regulatory differences among carriers. SBC, therefore, urges the Commission (1) to eliminate all tariff filing requirements for all IXCs in order to fulfill the pro-competitive goals of Telecommunications Act and to achieve the goals sought to be obtained through the de-tariffing process; and (2) to remove restrictions on bundling of CPE, not only for non-dominant IXCs, but also for all providers. These actions will result in the wider consumer benefits the Telecommunications Act contemplates.

¹⁶SBC's LEC subsidiary, SWBT, is an interexchange, intraLATA carrier and currently competes with nondominant IXCs for the intraLATA interexchange market.

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