

RECEIVED

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

MAY - 3 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
Policy and Rules Concerning the)
Interstate, Interexchange Marketplace)
)
Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)
)

CC Docket No. 96-61
(Phase I)

DOCKET FILE COPY ORIGINAL

NYNEX REPLY COMMENTS

The NYNEX Telephone Companies

Joseph Di Bella
Donald C. Rowe

1300 I Street, N.W., Suite 400 West
Washington, DC 20005
(202) 336-7894

Their Attorneys

Dated: May 3, 1996
9661rep1.doc

No. of Copies rec'd DHG
List ABCDE

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	<i>i</i>
I. THE COMMISSION SHOULD RETAIN ITS EXISTING DEFINITIONS OF THE RELEVANT GEOGRAPHIC MARKET AND PRODUCT MARKET FOR INTEREXCHANGE SERVICE	3
II. THE COMMISSION SHOULD NOT IMPEDE BOC PROVISION OF “OUT-OF-REGION” LONG DISTANCE SERVICES WITH UNNECESSARY AND UNIQUE COMPETITIVE CONSTRAINTS	6
A. The BOCs Are Manifestly Non-Dominant In The Provision of Long Distance Services	7
B. IXC Proposed Competitive Constraints Are Unnecessary And Contrary To The Public Interest	9
III. THE COMMISSION SHOULD APPLY THE SAME RULES REGARDING GEOGRAPHIC RATE AVERAGING AND RATE INTEGRATION TO THE BOCS THAT IT APPLIES TO THE INCUMBENT INTEREXCHANGE CARRIERS	14
IV. CONCLUSION	15

SUMMARY OF NYNEX REPLY COMMENTS

The Commission initiated this proceeding to promote the pro-competitive, deregulatory policies which are the heart of the 1996 Telecommunications Act, and which the Commission itself has long pursued. Specifically, it stated that “we intend to examine existing regulations to see whether they can be reduced or eliminated consistent with our public interest responsibilities” (NPRM ¶ 16). In their comments, NYNEX and others showed that the public interest in enhancing long distance competition required that the BOCs be recognized as non-dominant carriers in the provision of out-of-region long distance services and that unique regulatory constraints on their competitive efforts would be both unnecessary and harmful to the consumer

Not surprisingly, incumbent interexchange carriers argued in their comments for dominant carrier regulation for the BOCs, as well as the imposition of elaborate regulatory requirements and prohibitions. They base their arguments on speculation of abuses which they claim the BOCs may engage in through their control of local exchange facilities. To support these arguments, they also ask the Commission to alter its existing definitions of the relevant geographic and product markets for interexchange services, in order to tie together the BOC provision of out-of-region interexchange services at issue in this proceeding with the BOC provision of in-region exchange services which are not at issue.

In fact, Congress has clearly rejected these same arguments in determining to permit “immediate entry” of the BOCs into out-of-region long distance markets without the conditions and requirements it deemed necessary for the provision of in-region long distance services. The record in this case confirms the appropriateness of the Congressional judgments which are now national telecommunications policy. The BOC “abuses” relied upon by the proponents of regulation restraints are improbable, and would in any event be self-defeating if even attempted. The competitive constraints proposed would unnecessarily encumber BOC competitive efforts to the ultimate disadvantage of the consumer.

In this Phase I the Commission should: (1) retain its existing definition of the relevant geographic and product markets for interexchange services; (2) find that BOCs (and other LECs) are “non-dominant” in their provision of “out-of-region” interexchange, interstate services, and reject proposals to encumber their market entry efforts with elaborate competitive constraints; and (3) apply the same forbearance approach to BOC pricing initiatives that is applied to other interexchange carriers with respect to geographic rate averaging and rate integration. Only by doing so can the Commission realize the expectation of the 1996 Act that BOC long distance market entry “intensify competition in the interstate, domestic, interexchange market” (NPRM ¶ 1).

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

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

NYNEX REPLY COMMENTS

The NYNEX Telephone Companies¹ (“NYNEX”) hereby file their Reply Comments in response to the comments filed by other parties addressing Sections IV, V and VI of the Notice of Proposed Rulemaking (“NPRM”) in Phase I of this proceeding.² The NPRM begins by noting that the enactment of the Telecommunications Act of 1996 (“1996 Act”) was intended “to provide for a pro-competitive, deregulatory national policy framework . . . opening all telecommunications markets to competition” (NPRM ¶ 1). The Commission continues on to observe that the 1996 Act “builds upon the progress made to date

¹ The NYNEX Telephone Companies are New York Telephone Company and New England Telephone and Telegraph Company.

² In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, Notice of Proposed Rulemaking, FCC 96-123, released March 23, 1996. The Commission requested comments on the NPRM in two phases: Reply Comments on Sections IV, V and VI (Phase I) are due on May 3, 1996; Reply Comments on all other Sections (Phase II) are due on May 24, 1996.

in facilitating competition in the domestic long distance market, and provides a framework for raising competition to a higher plane” (NPRM ¶ 3). Critical to the achievement of this goal is the immediate and effective entry of the former Bell Operating Companies (“BOCs”) into long distance markets, first as providers of “out-of-region” services, and later as providers of in-region services subject to certain legislatively determined conditions and requirements.³

However, although this proceeding deals only with the BOC provision of out-of-region services, incumbent long distance carriers have proposed the imposition on the BOCs of an elaborate new regulatory superstructure consisting of requirements and constraints which will stifle rather than facilitate their competitive efforts. As discussed below, these proposals should be rejected and rules established which enable effective out-of-region competition. Specifically, the Commission should conclude in this Phase I that: (1) its existing definition of the relevant geographic and product markets for interexchange services should be retained, not changed to frustrate BOC out-of-region entry; (2) the BOCs and other LECs are “non-dominant” in their provision of out-of-region long distance services, and unique regulatory constraints on these competitive entry efforts are unnecessary and contrary to the public interest; and (3) the same forbearance approach will be applied to BOC pricing initiatives that is applied to incumbent

³ See, Sections 271-272 of the Act.

long distance carriers with respect to geographic rate averaging and rate integration.⁴

I. THE COMMISSION SHOULD RETAIN ITS EXISTING DEFINITIONS OF THE RELEVANT GEOGRAPHIC MARKET AND PRODUCT MARKET FOR INTEREXCHANGE SERVICE

Several commenters agree with NYNEX that the Commission should retain its existing definitions of the relevant geographic market and product market for interexchange service, and that these definitions should not be changed simply because the BOCs will enter the interexchange market.⁵ Even AT&T recognizes that revising the definition of the interexchange market would be neither helpful nor necessary when evaluating the application of a BOC to enter the interexchange market.⁶ The Commission should apply its nationwide definitions of the product and geographic markets for interexchange service when evaluating the impact of all out-of-region interLATA services by the BOCs.⁷ Exceptions, if any, to these definitions for the BOCs' in-region interLATA services should be addressed in a

⁴ Herein, we address specifically the findings and rules that should be applied to the former "Bell Operating Companies" ("BOCs"). However, the proposed conclusions and points of argument are applicable with equal force to other local exchange companies ("LECs") which offer to provide interstate, interexchange service to the public. Indeed, as earlier indicated, the acronym "BOC" itself will shortly become anachronistic as the requirements of Sections 271-272 of the amended Communications Act are met, and all LECs become simply "incumbent local exchange carriers" (NYNEX 9, n. 17). There is no valid basis for distinguishing the regulatory regime applied to BOCs as opposed to other large LECs, nor is the "2%" standard proposed by Frontier to distinguish "small LECs" a legally supportable criteria (Frontier 6-8). See, e.g., *Cincinnati Bell v. FCC*, 69 F. 3d 752 (6th Cir. 1995).

⁵ See, e.g., Ameritech 2; BellSouth 9-12.

⁶ AT&T 4.

⁷ In this regard, the Commission should follow the definitions of out-of-region and in-region interLATA services that are contained in Section 271(b) of the Act.

subsequent proceeding when the BOCs apply for in-region authority under Section 271 of the Act.

AT&T argues that the Commission should consider the BOCs to have market power in the interexchange market, despite the fact they have few (if any) customers for interexchange service, if they retain market power in the local exchange market. However, AT&T concedes that these arguments have nothing to do with the definition of the interexchange market.⁸ The Commission need not, and should not, prejudge the issues that may be raised when the BOCs file applications under Section 271(d) of the Communications Act for permission to enter the in-region interLATA markets.

LDDS WorldCom argues that the Commission should “always” find that “RBOC-provided long distance services likely will constitute a separate product market,” and that “the relevant geographic market for an RBOC will always be those individual regions from which it seeks to provide interstate, interexchange service.”⁹ LDDS WorldCom cites no antitrust authority for this proposal, and it does not even attempt to reconcile it with the Department of Justice’s Merger Guidelines.¹⁰ The proposal would require the Commission to prejudge the nature

⁸ AT&T 8.

⁹ LDDS WorldCom 4, 6

¹⁰ MFS argues that DOJ’s Merger Guidelines are too generic to apply to the telecommunications market, which is characterized by various types of barriers to entry, anticompetitive practices, and market segmentation. See MFS 2-5. However, these factors are only part of the antitrust analysis that starts with a definition of the market that is being affected. They do not warrant

of the market that a BOC seeks to enter, and to ignore any evidence that the market is broader than the scope of the services provided by the BOC. If products provided by other suppliers were substitutes for a BOC's interexchange services, or if suppliers in other geographic areas could easily enter the area served by the BOC if it attempted to maintain prices above competitive levels, then the relevant product and geographic markets would not be identical to the interexchange markets served by the BOC. For these reasons, the Commission should adhere to standard antitrust analysis in defining the relevant product and geographic markets when the BOCs seek permission to enter the interexchange market.

Frontier argues that the 1996 Act requires the Commission to employ a state-by-state analysis of the geographic markets when the BOCs enter the long distance market.¹¹ While it is true that the 1996 Act allows a BOC to apply for authority to provide in-region interLATA service separately for each state,¹² this does not mean that the relevant geographic market for interexchange services is limited to a particular state. Even if a BOC only intended to provide interexchange service to the customers located in a single state, it would be competing in a nationwide interexchange market that is dominated by nationwide interexchange carriers such as AT&T, MCI and Sprint. As NYNEX and other

changing the definition of the relevant markets that are being examined for evidence of market power.

¹¹ Frontier 5-6.

¹² 47 U.S.C. Section 271(d)(1).

commenters have shown, the Commission should not abandon the *Competitive Carrier* definitions of the relevant product market and the relevant geographic market for interexchange service simply because the BOCs will enter those markets.¹³

II. THE COMMISSION SHOULD NOT IMPEDE BOC PROVISION OF “OUT-OF-REGION” LONG DISTANCE SERVICES WITH UNNECESSARY AND UNIQUE COMPETITIVE CONSTRAINTS

In the NPRM, the Commission has said that “we seek to promote competition by reducing or eliminating existing regulations that may no longer be in the public interest in the increasingly competitive interexchange marketplace” (NPRM ¶ 4). In Section V, the Commission specifically inquires whether the separation requirements placed on the provision of long distance services by independent LECs (and the BOCs, as proposed in CC Docket 96-21) should be required in order to qualify these entities for regulatory treatment as non-dominant carriers outside of their local exchange operating areas. Along with other commenters, NYNEX has shown that these requirements are not required by the public interest.¹⁴

¹³ See, e.g., NYNEX 4-8; BellSouth 15-20.

¹⁴ NYNEX 9-13. In a separate proceeding the Commission has determined that the requirement of national telecommunications policy to facilitate new long distance market entry warranted its action to immediately enable BOC “out-of-region” long distance entry on terms at least equal to those applied to other LEC-affiliated long distance providers. In the Matter of Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services, FCC No. 96-59, CC Docket No. 96-21, Notice of Proposed Rulemaking (released February 14, 1996). NYNEX supported that initiative as an interim measure based on the Commission’s commitment to consider the elimination or modification of these conditions shortly. Now some commenters argue that the Commission’s NPRM here is “premature” because of that earlier

Not surprisingly, the incumbent long distance carriers argue in their comments for the retention and extension of regulatory constraints as a condition of BOC qualification as a non-dominant carrier, even for out-of-region services. Indeed, one major incumbent carrier argues that the BOCs should still be regulated as dominant carriers after the imposition of competitive restraints.¹⁵ There is no persuasive weight to these arguments. First, the BOCs will be non-dominant in the provision of long distance services. Regulation as dominant carriers will cripple their efforts to compete as new entrants against incumbent carriers. Second, BOC provision of local exchange service does not warrant impeding their out-of-region entry efforts by regulatory constraints. The marketplace circumstances and existing regulations which govern BOC provision of local exchange service negate the need for such unique impairments. Congress has already rejected the arguments made herein, and the Commission should conclude that competition and the public would suffer from such regulatory handicapping.

A. The BOCs Are Manifestly Non-Dominant In The Provision of Out-of-Region Long Distance Services

There has been no showing made by any commenter that the BOCs are even remotely dominant in the provision of long distance service. While this is

action (see, e.g., Cable & Wireless 8). Wholly apart from the express determination earlier to reconsider these requirements herein, it simply cannot be "premature" to consider removing impediments to competition which will serve the public interest. NYNEX continues to urge prompt action, as necessary to facilitate competition in each docket.

¹⁵ MCI 25-26.

true for in-region long distance service, it is even more so the case for the out-of-region services at issue herein. As shown in detail by NYNEX and others, the application of the Commission's established analyses underline this self-evident fact.¹⁶ That is, the Commission has looked to the supply elasticity of the market, the demand elasticity of the customer base, the carrier's marketshare, and the carrier's cost structure, size and resources in assessing its market "dominance."¹⁷

With respect to the long distance market, the Commission has found that it is characterized by both abundant supply and demand elasticity. With respect to the BOCs, the Commission must conclude that they have a minimal customer base, if any, and lack long distance resources comparable to those already in place for "non-dominant" carriers. Thus, in accordance with each and every criteria applied by the Commission in the assessment of long distance market dominance, the BOCs should be classified and regulated as non-dominant.

As importantly, regulation of BOC long distance services under a dominant carrier scheme would place unique impairments on their competitive operations, to the ultimate disadvantage of the consumer. Among these are the requirements for the disclosure inter alia of service plans, pricing initiatives and competitive operating details to competitors through the regulatory process. As indicated in

¹⁶ NYNEX 11-12; See, also, Ameritech 5-7, BellSouth 16-17, GTE 7, Pacific Telesis 7, SBC 8-9, and US West 4-6.

¹⁷ See Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, FCC 95-427, Order (released October 23, 1995) at para. 38.

NYNEX's Comments in Docket 96-21, the Commission should not facilitate the publication of such information by any carrier to its competitors, far less should such publication be required only of BOC new market entrants.

B. IXC Proposed Competitive Constraints Are Unnecessary And Contrary To The Public Interest

Lacking the ability to refute the fact that BOCs are fundamentally “non-dominant” providers of long distance services, commenters argue instead that their BOC control of in-region “bottleneck facilities” require that structural separation, along with numerous other regulatory requirements and prohibitions, should be placed on their out-of-region long distance operations as a condition of non-dominant regulatory treatment.¹⁸ In support, they offer a string of speculative “abuses” that arguably could be employed by the BOCs against other long distance competitors. However, these imagined misdeeds are improbable and would in any event be self-defeating, and the adoption of commenters proposals would impair rather than advance the public interest.

¹⁸ Some commenters argue that this “control” alone warrants a finding of dominance under Competitive Carrier precedent, citing the Commission’s 1980 conclusions with respect to AT&T. (See, e.g., LDDS WorldCom 9). Remarkably, others see no change in the marketplace since 1984, when the Commission established separation conditions on LEC long distance services in that proceeding (MCI 20). All fail entirely to account for the changes in law, regulation and -- most fundamentally -- the competitive marketplace over the past 15 years. Even if the Commission were to ignore the intervening history, the “Bell System” is not at issue here. In 1980, AT&T controlled the preponderance of both long distance and local exchange facilities nationwide. Now, the BOCs have no long distance facilities and only geographically confined local exchange facilities. In 1984, BOC access provisioning and regulation were still in their infancy, and AT&T still dominated the long distance market. Now, the long distance market is deemed fully competitive and Congress has specifically dealt in detail with the changes it requires to make the local exchange competitive. As the Commission recognizes, these historic conclusions are no longer valid.

Misuse of Local Exchange Facilities. It is argued first that the BOCs could misuse their terminating access facilities for anticompetitive purposes.¹⁹ The specifics of how the BOCs could do so without injury to themselves, detection by long distance carrier customers, and resulting loss of reputation and regulatory freedom is left undetailed.²⁰ Similarly, it is argued that BOC access pricing could be used to distort the competitive marketplace.²¹ How this could be done under the detailed regulatory scheme that applies to interexchange access services is again left unstated. The absence of such particulars is not an oversight. Rather, it is a reflection of the improbability of such BOC conduct. Moreover, given the immense value of the interexchange carrier's business to the BOC, such conduct would be clearly self-defeating.²² In short, the active regulation of, and direct carrier oversight applied to, BOC provision of access -- as well as the BOC's own economic and reputational interests -- ensure against the speculative abuses which are advanced by commenters to justify retaining Competitive Carrier restraints.

Cost Shifting and Misallocations. Commenters proposing new regulatory handicaps also speculate about the possibility of BOC "cost-shifting" between

¹⁹ See, e.g., AT&T 24-25; MCI 18-19.

²⁰ MCI's antedated and lengthy Attachment offers the MFJ-based arguments against BOC provision of out-of-region long distance which were rejected by Congress in the 1996 Act.

²¹ See, e.g., AT&T 24-25.

²² It is similarly beyond credible argument to maintain that the BOCs could "bully multi-city customers into selecting the BOC for their out-of-region long distance needs" (CompTel 4). It is neither possible nor advisable for the BOCs to act in such manner.

long distance and local exchange services.²³ Here also they fail to explain either how this “cross-subsidization” is likely to be accomplished between such disparate services, or how such conduct would be advantageous.²⁴ The Commission already has in place the regulations necessary to properly allocate any shared costs and to deal with affiliated transactions. No basis has been shown which should cause the Commission to negate the flow-through benefit to the public of legitimate BOC operating efficiencies and economies because of accounting rule deficiencies.²⁵ Further, there is no reasonable prospect of gain for the BOC in “undercosting” long distance service or in “overcosting” local exchange services in today’s competitive market. Any such attempt would be irrational and counterproductive under the “price cap” form of local exchange service and access regulation that prevails in both federal and state jurisdictions.²⁶

Additional Competitive Constraints. Finally, some commenters propose that special constraints be imposed on BOC competitive efforts. In some cases these commenters ask the Commission to impose conditions which, like proposed

²³ See, e.g., MFS 8.

²⁴ Id.

²⁵ Instead, MCI argues that alleged enforcement deficiencies justify structural separation (MCI 23-24). Even if MCI’s view of deficiencies were to be accepted, arguendo, they amount to no more than isolated shortfalls in more than a decade of demonstrated LEC adherence to Commission rules. They can only be regarded as justifying regulatory preclusion of BOC competitive operating efficiencies by those entities that would face such competition, i.e. IXC marketplace incumbents such as MCI itself.

²⁶ GSA, for example, presupposes that: “LECs are in a position to extract monopoly prices from their subscribers if they can persuade their state regulators that the rates are justified by cost” (GSA 3). Price cap regulation does not permit the LECs to even attempt such “persuasion,” nor would higher rates be advantageous in today’s competitive market.

prohibitions on joint marketing, have already been deemed unnecessary by Congress for application to “out-of-region” services.²⁷ Similarly, proposed “anti-packaging” restrictions are unnecessary given the requirements of the 1996 Act that BOCs unbundle their local exchange networks and provide for the resale of their services by others.²⁸ In other cases, commenters draw upon the 1996 Act, but ask the Commission to predetermine current issues, which have clearly been set for other proceedings, e.g., the appropriate use of CPNI. BOC specific regulations are unnecessary. Like other carriers, the BOCs will comply with current and future regulations as required by law and the Commission.

Other commenter proposals, like office space separation, have been drawn from a Computer Inquiry II regulatory regime which has long since been recognized to impede competitive efforts unnecessarily and to thereby injure consumers.²⁹ The Commission should require that any of these proposed

²⁷ AT&T 27. See, 47 U.S.C. § 272 (g) prohibiting joint marketing only in certain circumstances not applicable herein. As above, Congress has carefully determined which conditions should, and should not apply to which BOC interexchange services, i.e., “in-region” or “out-of-region” services. Commenters should not be successful in reversing those determinations.

²⁸ Indeed, MCI’s proposal depends upon its untenable presupposition of BOC noncompliance with the statutory requirements of § 251 of the amended Communications Act (MCI 19).

²⁹ See, e.g., Computer III further Remand Proceedings: Bell Operating company Provision Of Enhanced Services, CC Docket No. 95-20, Notice of Proposed Rulemaking released February 21, 1995, 10 FCC Rcd. 8360, ¶ 37 (“The Commission has previously determined that structural separation hurts consumers by creating inefficiencies and slowing or preventing the development of enhanced services, and this finding was upheld by the Ninth Circuit”); Furnishing Of Customer Premises Equipment By The Bell Operating Companies And The Independent Telephone Companies, CC Docket No. 86-79, 3 FCC Rcd. 22, ¶ 3 (1987) (“We conclude that, in light of the high costs of structural separation in terms of the inefficiencies that it imposes on the BOCs and consumers, the public interest would be better served by permitting the BOCs more flexibility in organizing their operations for providing CPE and basic network services”).

handicaps be demonstrably necessary to serve the public interest before they are imposed to constrain operating flexibility. This showing has not been made with respect to BOC provision of out-of-region long distance service.

Perhaps most significantly, some commenters start from the perspective that the marketplace is already sufficiently competitive:

“The RBOCs and LECs will enter the interstate, interexchange telecommunications services market irrespective of whatever action the Commission may take with respect to structural separation of LECs and their long distance services affiliates. Moreover, the Commission has concluded that the interstate, interexchange telecommunications services market is already competitive evidencing both high supply and demand elasticities (citation omitted). Thus, it is unclear what, if any adverse impact a structural-separation requirement would have on the consuming public.”³⁰

Congress has already rejected this proposition, and the Commission should do likewise.³¹ Impediments to free and efficient competition should be specifically justified as required to further the public interest before they are imposed. Otherwise, like commenters’ many proposals herein, they will frustrate that interest. After years of debate, Congress has decided what conditions should

³⁰ TRA 25. See, also Vanguard 4 n. 5 (“BOCs have not offered evidence of significant efficiencies that will be lost. . .”). Vanguard has regulatory policy backward. The Commission should focus on how the benefits of BOC efficiencies can be secured for long distance customers, not how little inefficiency regulators can cause.

³¹ In this regard, it is incredible that MCI argues that Commission action is not required in this proceeding, because “[n]othing has occurred recently that creates any particular urgency as to the treatment of LEC out-of-region interexchange services . . .” (MCI 12). In fact, after years of debate, Congress has (i) established a “competitive, deregulatory national policy framework”; (ii) eliminated the MFJ constraints on the BOCs; and (iii) provided for their “immediate entry” into the “out-of-region” long distance services markets, without the competitive constraints proposed by MCI and others herein.

be imposed on BOC provision of in-region long distance service and -- as importantly -- that these restrictions are not required for out-of-region services. The Commission should use these determinations of national telecommunications policy as a guide in order to “build upon the progress made to date in facilitating competition in the domestic long distance market” (NPRM ¶ 3).

III. THE COMMISSION SHOULD APPLY THE SAME RULES REGARDING GEOGRAPHIC RATE AVERAGING AND RATE INTEGRATION TO THE BOCs THAT IT APPLIES TO THE INCUMBENT INTEREXCHANGE CARRIERS

Several interexchange carriers argue that the Commission should adopt a flexible interpretation of the new requirements of Section 254(g) of the Communications Act regarding geographic rate averaging and rate integration, and that it should use its forbearance authority under Section 10(a) of the 1996 Act to permit the interexchange carriers to offer rates that are responsive to competitive conditions.³² If the Commission exercises its authority in this way, it should apply the same policies to the BOCs that it does to other interexchange carriers. As above, the BOCs will enter the interexchange markets with almost no customers and in competition with numerous and well-entrenched incumbents. As new market entrants, their need for regulatory forbearance to respond to competitive

³² See, e.g., AT&T 28-42; MCI 26-39; CompTel 7-8.

pricing conditions will be equal to, if not greater than the needs of market incumbents.³³

AT&T's argument that the access charges stand in the way of averaged interexchange rates³⁴ has no merit. The interexchange carriers have maintained nationwide geographically averaged rates since divestiture despite the fact that access charges vary widely among the LECs. In addition, there is no direct relationship between the level of access charges and the level of interexchange rates. This is shown by the fact that the LECs have reduced their access charges by \$10.4 billion since divestiture, but AT&T has decreased its prices by only \$8.5 billion. In the 1995 annual price cap filings, the LECs reduced access charges by \$1.2 billion annually, saving AT&T over \$600 million each year. Nevertheless, AT&T and the other interexchange carriers raised their rates for many customers. Therefore, the level of access charges is irrelevant to the issue of geographic rate averaging and rate integration for interexchange services.

IV. CONCLUSION

The Commission began this proceeding by observing that:

“The passage of the 1996 Act, the dramatic changes in the interstate, domestic, interexchange telecommunications services market since the Interexchange Competition proceeding, and our reclassification of AT&T as a non-dominant carrier in the overall interstate, domestic, interexchange market, make it timely for us to reexamine our policies and rules in light of

³³ Importantly, NYNEX agrees with AT&T, MCI and CompTel that geographically-targeted promotions and optional calling plans are pro-competitive activities which are excluded from geographic rate averaging and rate integration requirements.

³⁴ See AT&T p. 34.

the goals of the 1996 Act. In pursuing the pro-competitive policy established by the 1996 Act, we intend to examine existing regulations to see whether they can be reduced or eliminated consistent with our public interest responsibilities" (NPRM ¶ 16).

The Commission has now established the record for the review of these existing regulations. The record shows that it can best serve its pro-competitive, public interest purpose by enabling out-of-region interstate, interexchange competition by BOCs (and other LECs) without extensive and unique regulatory constraints on such competitive efforts, as set forth herein. In promptly implementing this conclusion, the Commission can significantly advance the intent of the 1996 Act to establish a "competitive, deregulatory national policy framework" for the benefit of customers nationwide.

Respectfully submitted,

The NYNEX Telephone Companies

By: 
Joseph Di Bella
Donald C. Rowe

1300 I Street, N.W., Suite 400 West
Washington, DC 20005
(202) 336-7894

Their Attorneys

Dated: May 3, 1996

CERTIFICATE OF SERVICE

I, Susan Sonnenberg hereby certify that on the 3rd day of May, 1996, a copy of the foregoing NYNEX Reply Comments in CC Docket No. 96-61 (Phase I) was served on each of the parties listed on the attached Service List by first class U.S. mail, postage prepaid.


Susan Sonnenberg
Susan Sonnenberg

Mary E. Newmeyer
Alabama Public Service Commission
100 N. Union Street
P.O. Box 991
Montgomery, Alabama 36101

C. Douglas Jarrett
Susan M. Hafeli
Brian Turner Ashby
KELLER AND HECKMAN
Attorneys for American Petroleum Institute
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001

Lon C. Levin
Vice President and Regulatory Counsel
AMSC Subsidiary Corporation
10802 Park Ridge Boulevard
Reston, Virginia 22091

Mark C. Rosenblum
Leonard J. Cali
Richard H. Rubin
AT&T Corp.
Room 3252I3
295 North Maple Avenue
Basking Ridge, NJ 07920

Edward Shakin
Attorney for the
Bell Atlantic Telephone Companies
and Bell Atlantic Communications, Inc.
1320 North Court House Road
Eighth Floor
Arlington, VA 22201

John F. Beasley
William B. Barfield
Jim O. Llewellyn
BellSouth Corporation
1155 Peachtree Street, NE, Suite 1800
Atlanta, GA 30309

Charles P. Featherstun
David G. Richards
BellSouth Corporation
1133 21st Street, NW
Washington, DC 20036

Danny E. Adams
Edward A. Yorkgitis, Jr.
KELLEY DRYE & WARREN
Attorneys for Cable & Wireless, Inc.
1200 19th Street, N.W.
Washington, DC 20036

Raul R. Rodriguez
Stephen D. Baruch
David S. Keir
Leventhal, Senter & Lerman
Attorneys for
Columbia Long Distance Services, Inc.
2000 K Street, N.W., Suite 600
Washington, DC 20006

Danny E. Adams
Steven A. Augustino
KELLEY DRYE & WARREN
Attorneys for The Competitive
Telecommunications Association
1200 Nineteenth Street, N.W., Suite 500
Washington, DC 20036

Kathy L. Shobert
General Communication, Inc.
Director, Federal Affairs
901 15th St., NW, Suite 900
Washington, DC 20005

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, DC 20036

Philip L. Verveer
Brian A. Finley
WILLKIE FARR & GALLAGHER
Attorneys for the Guam Public
Utilities Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20036

Michael S. Fox
Director, Regulatory Affairs
John Staurulakis, Inc.
6315 Seabrook road
Seabrook, Maryland 20706

William H. Smith, Jr., Chief
Bureau of Rate and Safety Evaluation
Iowa Utilities Board
Lucas State Office Building
Des Moines, Iowa 50319

Andrew D. Lipman
Erin M. Reilly
SWIDLER & BERLIN, CHARTERED
Attorneys for MFS Communications
3000 K Street, N.W. Suite 300
Washington, DC 20007

Eric Witte
Attorney for the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Paul Rodgers
Charles D. Gray
James Bradford Ramsay
National Association of
Regulatory Utility Commissioners
1201 Constitution Avenue, Suite 1102
Post Office Box 684
Washington, D.C. 20044

Margot Smiley Humphrey
Koteen & Naftalin, LLP
Attorney for NRTA
1150 Connecticut Avenue, NW
Suite 1000
Washington, DC 20036

Lisa M. Zaina
Stuary Polikoff
OPASTCO
21 Dupont Circle, NW
Suite 700
Washington, DC 20036

David Cosson
L. Marie Guillory
NTCA
2626 Pennsylvania Avenue, NW
Washington, DC 20037

Robert S. Tongren
Consumers' Counsel
The Office of the Ohio Consumers' Counsel
77 South High Street, 15th Floor
Columbus, OH 43266-0550

Philip McClelland
Assistant Consumer Advocate
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Steven T. Nourse
Assistant Attorney General
Public Utilities Section
180 East Broad Street
Columbus, OH 43215-3793

Susan Drombetta
Manager-Rates and Tariffs
Scherers Communications Group, Inc.
575 Scherers Court
Worthington, OH 43085

Rodney L. Joyce
Ginsburg, Feldman and Bress
Attorneys for
The Southern New England Telephone Company
1250 Connecticut Avenue, N.W.
Washington, DC 20036

Chris Barron
TCA, Inc.
3617 Betty Drive, Suite I
Colorado Springs, CO 80917

Margot Smiley Humphrey
Koteen & Naftalin, L.L.P.
Attorneys for TDS Telecommunications Corp.
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036

Robert B. McKenna
US West, Inc.
Suite 700
1020 19th Street, N.W.
Washington, DC 20036

Mary McDermott
Linda Kent
Charles D. Cosson
United States Telephone Association
1401 H Street, N.W. Suite 600
Washington, DC 20005

Charles H. Helein
Helein & Associates, P.C.
Attorneys for
America's Carriers
Telecommunications Association
8180 Greensboro Drive
Suite 700
McLean, Virginia 22102

Thomas K. Crowe
Kathleen L. Greenan
LAW OFFICES OF THOMAS K. CROWE, P.C.
Counsel for the Commonwealth of the
Northern Mariana Islands
2300 M Street, N.W.
Suite 800
Washington, DC 20037

Veronica M. Ahern
Nixon Hargrave Devans & Doyle LLP
Attorney for Guam Telephone Authority
One Thomas Circle, N.W.
Suite 700
Washington, DC 20005

Charles C. Hunter
HUNTER & MOW, P.C.
Attorneys for Telecommunications Resellers Assoc.
1620 I Street, N.W.
Suite 701
Washington, DC 20006

Catherine R. Sloan
Richard L. Fruchterman
Richard S. Whitt
WORLDCOM, INC.
1120 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036

Gary L. Phillips
Counsel for Ameritech
1401 H Street, N.W. Suite 1020
Washington, DC 20005

Michael J. Shortley, III
Attorney for Frontier Corporation
180 South Clinton Avenue
Rochester, New York 14646

Margaret L. Tobey, P.C.
Phuong N. Pham, Esq.
Akin, Gump, Strauss, Hauer & Feld, LLP
Counsel for IT&E Overseas, Inc.
1333 New Hampshire Avenue, N.W.
Suite 400
Washington, DC 20036

Raymond G. Bender, Jr.
J.G. Harrington
Christopher Libertelli
Dow, Lohnes & Albertson
Attorneys for Vanguard Cellular Systems, Inc.
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, DC 20037

Robert M. Halperin
CROWELL & MORING
Attorneys for The State of Alaska
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004