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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20555

In the Matter of:	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992; Rate Regulation	)	MM Docket No. 93-215
	)	
and	)	
	)	
Adoption of a Uniform Accounting System for Provision of Regulated Cable Service	)	CS Docket No. 94-28

COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY

Southwestern Bell Telephone Company ("SWBT") hereby submits its comments concerning the petition for partial reconsideration (the "Petition") filed on February 26, 1996, by The Southern New England Telephone Company ("SNET") in the above referenced proceeding.[1] In its Petition requesting reconsideration of the Second Report and Order[2] in this proceeding, SNET requested that, in the interest of harmonizing accounting regulations applicable to local exchange carriers ("LECs") and cable operators, the Commission "amend the cable operator affiliate transaction rule ... in order to state specifically that a price-cap-regulated cable operator may provide network transmission service to its telephony affiliate only at a price which is set by allocating costs in compliance with the cost allocation principles set forth in the agency's cable TV rules."[3]

[1] The due date for SNET's Petition was April 8, 1996. See 61 Fed. Reg. 9136 (March 8, 1996).

[2] FCC 95-502 (released January 26, 1996).

[3] Petition at 3.

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rules."[3]

SNET claims that this amendment is required in order to harmonize the affiliate transaction rules applicable to cable operators and LECs in connection with one specific type of transaction, *i.e.*, provision of network transmission service to an affiliate. While SWBT agrees with the general premise underlying SNET's petition, *i.e.*, the accounting rules applicable to LECs and cable operators should be harmonized, SWBT does not agree that the cable operator affiliate transaction rules should be amended in the manner requested by SNET.

SWBT does not agree with the amendment suggested by SNET because in its attempt to conform the cable operator and telephone affiliate transaction rules, SNET has misstated the telephone affiliate transaction rules in two respects.[4]

First, SNET is incorrect when it states as follows: "the LEC rule <u>regulates the price</u> a LEC charges its cable affiliate for using the LEC's network on a non-common carrier basis to provide cable service by requiring that the cost be allocated in accordance with specific principles."[5] The telephone affiliate transaction rules were never intended to regulate the prices of nonregulated

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[3] Petition at 3.

[4] SWBT does not address SNET's interpretation of the cable operator affiliate transaction rules.

[5] Petition at 3-4 (emphasis added). While the valuation required by the affiliate transaction rules may affect indirectly the actual price paid, these rules do not mandate that the price be the same as the amount booked pursuant to these rules. Throughout the argument of its Petition, SNET assumes incorrectly that the price itself is regulated. <u>See</u> Petition at 4-7.

activities, as the Commission recognized as follows in the Joint Cost Order:

> The pricing of individual nonregulated products and services does not fall within our statutory mandate. Complaints about predatory pricing in nonregulated markets are the province of the antitrust laws. The proper purpose of our cost allocation rules is to make sure that all of the costs of nonregulated activities are removed from the rate base and allowable expenses for interstate regulated services. It is not our purpose, nor should it be our purpose, to seek to attribute costs to particular nonregulated activities for purposes of establishing relationship between cost and price.[6]

The affiliate transaction rules are concerned with the costs recorded in the LEC's regulated accounts, not the actual price charged for a nonregulated service.

Second, and more importantly, SNET's Petition is flawed because it assumes that the telephone affiliate transaction rules apply to a LEC's performance of a nonregulated activity for a nonregulated affiliate. In the United Order,[7] the Common Carrier Bureau recognized that the affiliate transaction rules do not apply to such transactions:

> [R]equiring a carrier to list an affiliate

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[6] In the Matter of Separation of costs of regulated telephone service from costs of nonregulated activities, Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to provide for nonregulated activities and to provide for transactions between telephone companies and their affiliates, CC Docket No. 86-111, 2 FCC Rcd 1298 ¶40 (1987) (Joint Cost Order), recon., 2 FCC Rcd 6283 (1987), further recon., 3 FCC Rcd 6701 (1988).

[7] In the Matter of United Telephone Systems Companies, Permanent Cost Allocation Manuals For Separation of Regulated and Nonregulated Costs, 7 FCC Rcd 4370 (1992).

> transaction in the CAM does not make that transaction subject to §32.27 [the LEC affiliate transaction rule[8]]. §32.27 affects only transactions that are recorded in regulated accounts. When a carrier provides a nonregulated service to its affiliate and records the transaction in a nonregulated revenue account, §32.27 does not apply.[9]

When a LEC's telephone network is used to provide cable service, the LEC is engaged in a nonregulated activity, and the network components being used in connection with that nonregulated activity must be allocated between regulated and nonregulated activities in the LEC's Part 64 CAM process in accordance with the cost allocation principles of the Joint Cost Order.[10] Accordingly, the provision of cable service transmission to a nonregulated affiliate using the nonregulated portion of the LEC network would be a nonregulated service provided to the nonregulated cable service affiliate, and thus, under the United Order, it would not be subject to the telephone affiliate transaction rules in Section 32.27.

Given that SNET has misstated the applicability of the telephone affiliate transaction rules, its suggested amendment to one of the cable operator affiliate transaction rules is also in

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[8] 47 C.F.R. § 32.27.

[9] United Order, ¶ 12.

[10] See Telephone Company - Cable Television Cross-Ownership Rules, Sections 63.54-63/58, CC Docket No. 87-266 Fourth Report and Order, n. 43 (released August 14, 1995) ("Cable television activities of LECs are treated as 'nonregulated' activities for purposes of Title II accounting and cost allocation rules, even though cable systems are regulated under Title VI of the Communications Act.").

error. SWBT does agree that the same cost allocation principles and affiliate transaction rules should apply to cable operators and LECs. However, it would not be wise to harmonize the telephone and cable operator accounting rules in a piecemeal fashion. Rather than changing the cable operator affiliate transaction rules applicable to only one specific type of transaction, the Commission should address the question of how to harmonize cable operator and telephone accounting rules in a more systematic and comprehensive fashion.

CONCLUSION

For the foregoing reasons, the Commission should reject SNET's proposed amendment to the cable operator affiliate transaction rules.

Respectfully submitted,

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May 7, 1996

CERTIFICATE OF SERVICE

I, Kelly Brickey, hereby certify that the foregoing "Comments of Southwestern Bell Telephone Company", have been served May 7, 1996 to the Parties of Record.

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May 7, 1996

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