

ORIGINAL

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

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

REPLY COMMENTS OF BELL ATLANTIC¹

SUMMARY AND INTRODUCTION

The record in this proceeding is replete with evidence of a pattern of tacit price collusion among the three predominant interexchange service providers -- evidence that includes a series of lock step price increases despite steadily falling access rates, long distance prices that have averaged at ever higher levels, and long distance margins that have increased. Nonetheless, the incumbent service providers deny that these facts are the result of collusion. Regardless of whether the result of collusion, parallel pricing or umbrella pricing, the simple fact is that the long distance business today is characterized by the absence of competition based on price.

The Commission has already recognized that the "best solution" to this problem is the entry of the Bell operating companies into the long distance market.² This conclusion is not only

¹ 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.

² *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Notice of Proposed Rulemaking, ¶ 81 (rel. Mar. 25, 1996) ("Notice").

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endorsed by expert economists, it is endorsed by a wide array of customer organizations. In order to make this entry a true benefit to consumers, the Commission must not burden the new entrants with burdensome regulatory requirements that do not apply to the incumbents.

I. The Evidence of Tacit Price Collusion Is Overwhelming

The best evidence on the question of tacit price collusion in the long distance industry is the actual pricing patterns of the three major interexchange service providers. The record is clear that these carriers' price changes have not just been comparable, they have been virtually identical. According to MIT professor Jerry Hausman: "AT&T, MCI, and Sprint have engaged in 'lock-step' pricing with 7 price increases over the past 4 years. Each time the pattern has been the same. AT&T has announced a price increase, and both MCI and Sprint have followed with their own price increase, by virtually the same amount almost immediately."³ The picture of long distance pricing patterns is made clear in the price graphs submitted in this docket.⁴ They demonstrate that over the last five years, long distance prices have converged at ever higher levels, while the cost of access has steadily decreased. As Professor Paul MacAvoy explains, the result of this pattern has been that "AT&T's margins for interstate switched services have consistently increased as market concentration has decreased -- a result at odds with competitive market performance."⁵

This pricing behavior can be no coincidence. Professor MacAvoy analyzed the incumbents' market behavior in his forthcoming book, *THE FAILURE OF ANTITRUST AND*

³ Declaration of Professor Jerry A. Hausman, ¶ 8, attached to Comments of BellSouth (Phase II) (filed Apr. 25, 1996).

⁴ *See, e.g.*, Comments of the National Association of Development Organizations *et al.* at Figure 2 (filed Apr. 25, 1996).

⁵ Affidavit of Paul W. MacAvoy at 16, attached to Comments of BellSouth.

REGULATION TO ESTABLISH COMPETITION IN LONG-DISTANCE TELEPHONE SERVICES.⁶ Professor MacAvoy concludes that “emerging coordination [among AT&T, MCI and Sprint] provided the basis for each carrier setting higher price-cost margins in long-distance markets in the 1990s.”⁷

Nonetheless, the major long distance incumbents deny that these factors are the result of collusion. They of course ignore actual price history, because of the damning nature of the evidence. Instead, they point to “structural reasons” in the market that they claim would make collusion less likely.⁸ These “structural reasons” only prove that the price coordination that has occurred should not have happened -- such an argument cannot exonerate the actual conduct of the incumbent oligopoly.⁹ MCI claims that the “best evidence” of “vibrant competition” is the Commission’s decision to regulate AT&T as a non-dominant carrier.¹⁰ But the Commission specifically elected there not to address its own “serious concern” over tacit price collusion, and instead chose to defer that issue until this proceeding.¹¹

⁶ A pre-publication copy of Professor MacAvoy’s book (hereinafter “Competition Failure in Long-Distance”) has been made a part of this record as an attachment to the Comments of BellSouth.

⁷ Competition Failure in Long-Distance at 180.

⁸ *See* Comments of AT&T at 23 (filed Apr. 25, 1996) (“AT&T Comments”).

⁹ For example, AT&T (p. 24) and MCI (p. 19, n.27) point to aggressive marketing on the part of the major long distance carriers. But such advertising has focused consumer attention on brand identification and illusory discounts, and has strenuously avoided any competition based on actual prices.

¹⁰ Comments of MCI Telecommunications Corp. at 22 (filed Apr. 25, 1996) (“MCI Comments”).

¹¹ *Motion of AT&T to be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd 3271, 3314-15 (1995).

MCI also argues that “stable or rising” prices are innocent when they result from “stable or rising” costs.¹² But MCI and the other major carriers have benefited from dramatically *lower* costs during the same time that they were increasing their prices to consumers. From January 1990 through August 1995, access rates fell by 27%, and other costs of service have fallen as well.¹³ Nonetheless, prices during the same period have increased -- in lock step.¹⁴ Even AT&T acknowledges that it was a combination of “lower costs and higher revenues” for long distance services that increased its gross margin in the early 1990s.¹⁵ Moreover, AT&T recognized that the upward margin trend was “mainly the result of lower per-minute access costs.”¹⁶

II. Allowing the Bell Companies to Compete on Equal Terms is the Best Remedy to Tacit Price Collusion

The Commission recognized that the “best solution” to any tacit price coordination is the competitive entry in the interstate interexchange market by the Bell companies.¹⁷ This conclusion is echoed by economists’ analyses. For example, Professor MacAvoy determined that entry of the Bell companies could potentially create more than \$24 billion in annual benefits to consumers.¹⁸ A varied and impressive collection of customer groups have also gone on record

¹² MCI Comments at 22.

¹³ Hausman Declaration, ¶ 16.

¹⁴ *Id.*

¹⁵ AT&T 1994 Annual Report at 24.

¹⁶ AT&T 1995 Annual Report at 26.

¹⁷ Notice, ¶ 81.

¹⁸ Competition Failure in Long-Distance at 193; *see also* Hausman Declaration, ¶ 34 (“Increasing the number of facilities-based carriers is almost certain to solve the problem [of coordinated pricing] as the experience of the steel industry, auto industry, and many other non-competitive oligopolies has demonstrated in recent US economic history.”).

in this proceeding in recognizing the need for prompt authorization for the Bell companies to compete in the long distance market.¹⁹ These same groups have recognized that the public benefit gained by Bell company provision of long distance services should not be undermined by regulating the new entrants under more restrictive requirements than the incumbents.²⁰

While the incumbents attempt to argue that special restrictions should be placed on the Bell companies, their arguments offer no real policy justification. For example, America's Carriers Telecommunications Association ("ACTA") argues that the Bell companies should be required to file tariffs while other carriers are relieved of this burden because of their "institutional knowledge of costing and pricing approaches" used by AT&T.²¹ It has been more than a decade since the Bell companies split from AT&T, and any relevant knowledge of AT&T pricing practices today is based on publicly available information. Another trade association of the incumbent carriers argues that the Bell companies should be singled-out for additional regulation because the Commission lacks "significant experience" with Bell company provision

¹⁹ *See, e.g.*, Comments of The Association for the Study of Afro-American Life and History at 1 ("At present, we do not have real competition; and we won't have it until the Regional Bell Operating Companies (RBOCs) are actually in the long distance market place."); Comments of the National Association of Development Organizations *et al.* at 5-6 ("allowing new entrants into the long distance market is the best, and perhaps the only, way to promote price competition"); Comments of the National Bar Association at 1 ("Active robust competition will come only through the entry of the Regional Bell Operating Companies in the market as a detariffed market participant") (all filings Apr. 25, 1996).

²⁰ *See, e.g.*, Comments of the National Association of Development Organizations *et al.* at 6 ("If the Commission concludes that detariffing is in the public interest, it should apply detariffing rules to all IXC's, including the Bell Operating Companies"); Comments of the National Black Data Processors Assoc. at 2 (filed Apr. 25, 1996) ("new competitors will only be able to compete fairly if the detariff proposals are applied at the same time to all market participants, new and old").

²¹ Comments of ACTA, Sections II, VII, VIII and IX at 16 (filed Apr. 25, 1996).

of long distance service.²² The same can be said of any new entrant, but that is no basis for the Commission to justify imposing unique burdens on one group of service providers, especially new entrants.

Ultimately, the incumbents repeat the tired refrain that the Bell companies can unfairly leverage their position in local markets to their advantage in the long distance market.²³ As an initial matter, placing unique regulatory burdens on *long distance service* offers no new protections against the alleged market power in *local service*. But, as Bell Atlantic and others also have demonstrated at length, the argument that the Bell companies' position in the local market might somehow give them an advantage is wrong.²⁴ Out-of-region, the Bell companies have no market position for local or long distance services. In-region, the new Act requires the Bell companies to open their local market and comply with a competitive checklist before they are allowed to offer long distance service. Moreover, the Commission has the benefit of safeguards on the local market and a long history of actual experience since divestiture to show that those safeguards have been effective.²⁵ No additional restrictions are required.

²² *See, e.g.*, Competitive Telecommunications Association Comments on Proposed Tariff Forbearance Policy at 19 (filed Apr. 25, 1996).

²³ *See* MCI Comments at 26; AT&T Comments at 24-25.

²⁴ *See Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Bell Atlantic Comments on Sections IV, V and VI at 3-5 (filed Apr. 19, 1996); Bell Atlantic Reply Comments on Sections IV, V and VI at 3-6 (filed May 3, 1996) and attached affidavits.

²⁵ *See* Affidavit of Robert W. Crandall, ¶¶ 8-13, attached to Bell Atlantic Reply Comments on Sections IV, V and VI (filed May 3, 1996) (“there is no indication that the BOCs can or will use their local-market positions to impede competition in a world of rate caps, equal-access provisions, open entry, and unbundling of local network elements”).

CONCLUSION

The Commission should recognize that there is price collusion among the major long distance carriers. The Commission should act to remedy that collusion by encouraging the entry of the Bell companies into the long distance market with the same regulatory rules as other non-dominant providers of long distance service.

Respectfully submitted,



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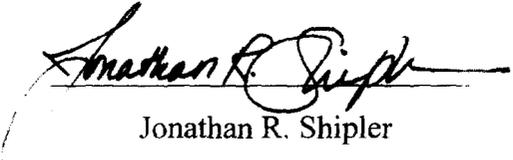
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May 24, 1996

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Reply Comments of Bell Atlantic" was served this 24th day of May, 1996 on the parties on the attached list.


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