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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:	)	
	)	
Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as Amended	)	
	)	
and	)	CC Docket No. 96-149
	)	
Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area	)	

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REPLY COMMENTS OF THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY

Although the issue before the FCC is whether to decrease regulation of in-region interstate services provided to end users by independent LECs, the opening comments of three parties (AT&T, MCI, and Teleport) urge the Commission to increase regulation. But this would be both contrary to the public interest and unlawful as we now show.

First, increasing regulatory controls on the in-region interstate services provided by independent LECs to end users would be contrary to the public interest because it would hamper competition in the interstate service market by making it even harder for independent LECs to compete effectively against the giant companies who now dominate the interstate service market. The opening comments demonstrate clearly that these giant companies already have a tremendous advantage over independent LECs because of their much

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larger size and the weaker regulatory structure governing their interstate service operations. While piling new regulations on independent LECs obviously would benefit these giants by further hamstringing the ability of independent LECs to compete, it is equally obvious that this would harm the public by dampening competition.

Imposing additional regulation on independent LECs not only would be against the public interest, it also would be unlawful since the Commission stated in the Notice that it is unaware of any "systemic pattern of anticompetitive abuses by independent LECs" under existing regulations which justify increased regulation.[1/] Instead, growing competition in all LEC core markets is sufficient by itself to prevent competitive abuse as the opening comments demonstrate. Add to this the additional fact that the activities of independent LECs in all of these core markets already are heavily regulated and there can be no doubt that imposing additional regulations on the interstate end user services of independent LECs is unnecessary to prevent competitive abuse.

Not only does the Commission recognize that increased regulation is unnecessary to prevent competitive abuse by independent LECs, two of the three advocates of increased regulation -- MCI and Teleport -- apparently agree. This is because they offer no evidence in their opening comments that independent LECs have engaged

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[1/] Notice of Proposed Rulemaking, CC Dkt. No. 96-149 at ¶146 (July 18, 1996).

in anticompetitive behavior in providing in-region interstate services to end users.

Moreover, while AT&T claims to have evidence of anticompetitive behavior, its two accusations of anticompetitive conduct, levelled against SNET alone, are demonstrably untrue. First, AT&T asserts that SNET honors PIC-freeze requests from its interstate service customers while unfairly refusing to honor identically worded PIC-freeze requests from AT&T's customers.[2/] In fact, SNET's policy is to honor signed PIC-freeze requests on non-discriminatory terms from customers of <u>any</u> interstate service provider, including AT&T.[3/] SNET introduced this policy because countless customers had complained to SNET that their presubscribed carrier had been changed without their authorization. AT&T also claims that SNET's exchange service representatives unfairly promote SNET's interstate service over that of other carriers.[4/] In fact, SNET's exchange service representatives are required by SNET policies to inform callers of their right to presubscribe to the interstate service provider of their choice and are required to honor each caller's choice regardless of the carrier selected.

[2/] AT&T Comments at 10. A "PIC-freeze" request instructs SNET to change the customer's presubscribed interstate service provider only if the customer directly requests the change. Without a PIC-freeze request on file, SNET will make such a change if an interstate carrier notifies SNET that the customer has authorized the carrier to request the change.

[3/] <u>See</u> Affidavit of Karen Fawcett (attached).

[4/] AT&T Comments at 10-11.

Not only does the factual record fail to support a need for increased regulation of an independent LEC's in-region, end user interstate services, the legal principle of consistent decision making does not compel increased regulation as AT&T, MCI, and Teleport suggest.[5] While the 1996 Telecommunications Act requires the Commission to impose some regulatory controls on BOC interstate services that are not now imposed on independent LECs, this fact does not require the FCC to impose these extra regulations on independent LECs since an independent LEC has far less ability than a BOC to harm interstate service competition due to its smaller size.[6] SNET has documented this mathematically.[7] Congress came

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[5] Id. at 2, 8-9; MCI Comments at 5-7; Teleport Comments at 1-2.

[6] AT&T recognizes that "the BOCs ... pose a greater threat to [interstate service] competition [than independent LECs since] ... the ... [access] facilities of independent LECs extend over smaller geographic areas than those of the BOCs ..., they generally serve less densely populated areas, and interexchange carriers often interconnect to independent LEC exchanges only indirectly ...." AT&T Comments at 6 n.11. Yet AT&T asks the Commission to increase regulatory controls on the interstate offerings of independent LECs based on its wholly unsupported (and unsupportable) contention that an independent LEC has "the potential to cause substantial harm" to interstate service competition in its in-region market. Id. at 11-12.

[7] SNET Comments at 16-20. As indicated above, numerous parties also showed in their opening comments that market conditions in the core markets of LECs and in the interstate service market, as well as regulation of the core services of LECs, likewise prevent anticompetitive behavior harmful to interstate service competition.

to this same conclusion in the Telecommunications Act of 1996.[8] It did so by repealing consent decrees which had prohibited both GTE (the largest independent LEC) and the BOCs from providing interLATA service[9] and replacing those decrees with pointedly different statutory schemes. Thus, the 1996 Act prohibits the BOCs from providing in-region interLATA service until after additional facilities-based exchange competition arrives and mandates that they provide in-region interLATA service at that time under a variety of regulatory requirements that it does not apply to independent LECs that provide interLATA service.[10] By contrast, the Act imposes no pre-conditions on GTE's right to provide interLATA service. This Congressional decision to mandate different regulatory controls on the in-region interLATA service of BOCs and independent LECs was no accident. When Congress wanted specific provisions of the 1996 Act to apply to both BOCs and independent LECs, it stated its intent unambiguously. For example, Section 251, by its terms, requires all incumbent LECs -- both BOCs and independent LECs -- to open their exchange markets to competition.[11]

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[8] The U.S. district court likewise found long ago that an independent LEC has less ability than a BOC to damage competition in the interLATA service market. See U.S. v. GTE Corp., 603 F. Supp. 730,737 (D.D.C. 1984). The Justice Department made the same finding too. See GTE Comments at 28; Sprint Comments (Phase 1) at 8-9.

[9] Sec. 601(a)(1)-(2) of the 1996 Act, 110 Stat. 56, 143.

[10] Sections 271 and 272 of the 1996 Act, 47 U.S.C. §§271 and 272.

[11] 47 U.S.C. §251.

CONCLUSION

Rather than increase regulatory controls on the provision of in-region interstate service to end users by independent LECs, the Commission should reduce such controls by eliminating the regulation permitting independent LECs to provide end user interstate service under non-dominant regulation only through a different entity than the one that provides access service.

Respectfully submitted,

THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY

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September 13, 1996

STATE OF CONNECTICUT)
) ss.: NEW HAVEN
COUNTY OF NEW HAVEN)

AFFIDAVIT OF KAREN FAWCETT

I, Karen D. Fawcett, first being duly sworn, hereby state that the following statements are true and correct to the best of my knowledge, information and belief.

1. I am an employee of the Southern New England Telephone Company (SNET). My title is Director-Acess Operations and Support. My address is 530 Preston Avenue, Meriden, Connecticut 06450.

2. I am responsible for the Interstate Carrier Service Center. This responsibility requires that I be familiar with all aspects of access order processing, including the PIC change process and related procedures.

3. I have read AT&T's allegations regarding the "PIC-freeze" issue in AT&T's Comments filed with the Commission on August 15, 1996 (Comments of AT&T Corp., CC Docket No. 96-149, pp. 58-59).

4. AT&T's characterization that "SNET has refused to honor identically-worded PIC freeze requests submitted to it by AT&T's long distance customers," is untrue and a blatant misrepresentation of the facts.

5. In January, 1996, AT&T requested that SNET stop using the "PIC-freeze" forms, or tell AT&T where its forms could be sent for processing. On February 14, 1996, SNET provided a written response to AT&T agreeing to handle AT&T PIC change and PIC block forms (see Exhibit A attached hereto).

6. On February 16, 1996, SNET sent a second letter to AT&T that included a Memorandum of Understanding offering to process AT&T's PIC-freeze requests (see Exhibit B attached hereto).

7. SNET has continually since February 16, 1996, been ready, willing and able to process AT&T requests for PIC-freezes, but AT&T has not to date accepted SNET's offer.

Karen D. Fawcett

Karen D. Fawcett

Subscribed and sworn to before me this 29th day of August, 1996, by Karen D. Fawcett.

Alfred J. Brunetti

Commissioner of the Superior Court

CERTIFICATE OF SERVICE

I certify that I placed a copy of the attached "Reply Comments of The Southern New England Telephone Company" in the first class U.S. mail system on Friday, September 13, 1996, addressed to each of the following:

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