

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
800 Data Base Access Tariffs and the)
)
800 Service Management System Tariff)
)
and)
)
Provision of 800 Services)

CC Docket No. 93-129

DOCKET FILE COPY ORIGINAL

CC Docket 86-10

BELL ATLANTIC¹ REPLY COMMENTS

AT&T, the only party to oppose Bell Atlantic's petition for reconsideration, only challenges one aspect of Bell Atlantic's petition. Even then, AT&T provides no substantive response, and wholly fails to address (let alone rebut) the reasoning underlying the petition. In contrast, the multiple oppositions to the petitions filed by AT&T and MCI demonstrate that both legal and equitable concerns require the Commission to deny the interexchange carriers' demand for additional unjustified rate adjustments.

I. The Commission Should Approve Bell Atlantic's Petition for Reconsideration

No party objected to Bell Atlantic's showing that the Commission should reconsider its decision to deny exogenous treatment for the port and link costs incurred for 800 data base

¹ The Bell Atlantic telephone companies ("Bell Atlantic") 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.

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service.² These costs clearly fall within the Commission's previously approved scope of exogenous costs for providing 800 data base service, and they should be treated as such.

AT&T, the only party to object to Bell Atlantic's petition, did challenge Bell Atlantic's request to treat the data base costs it actually incurred as exogenous, but offered no substantive response to Bell Atlantic's showing that reconsideration on this score is justified. AT&T argued that Bell Atlantic did not show its costs to be reasonable because they differed from an earlier cost study and because they differed from those of other Local Exchange Carriers ("LECs").³ But, as Bell Atlantic explained in its petition, the results of the cost studies differed because unlike the initial cost *projection* model, rejected by the Commission, the cost submission relied upon by Bell Atlantic was based on what was *actually spent* to provide the 800 data base service.⁴ If the rejected cost model could not serve as the basis to justify Bell Atlantic's exogenous costs, it similarly cannot be used as a basis to reject the reasonableness of Bell Atlantic's subsequent cost submission.

Likewise, comparison to what other companies spent for their networks should not serve as a basis to reject the amount Bell Atlantic spent for its own network. AT&T argues that the choice of technology is discretionary, and therefore Bell Atlantic's recovery should be limited to an inferior technology that Bell Atlantic did not use to provide the service.⁵ But such an argument puts the Commission in the position of being the arbiter of what technology choices are

² Bell Atlantic Petition for Reconsideration at 5-6 (filed Nov. 27, 1996).

³ AT&T Corp. Opposition to Bell Atlantic petition for Reconsideration at 3 (filed Dec. 10, 1996) ("AT&T Opposition").

⁴ See Bell Atlantic Petition for Reconsideration at 2-5.

⁵ AT&T Opposition at 4-5.

correct -- a role the Commission has rejected in the past, and one that is inconsistent with the Act's requirement that the Commission encourage advanced technology deployment.⁶ In fact, a number of companies that initially used a different technology to provide 800 data base service are now moving toward the more efficient intelligent network technology approach employed by Bell Atlantic.

The Commission authorized exogenous treatment for the costs specifically incurred to provide the mandated 800 service . Bell Atlantic's petition merely requests exogenous treatment for all the costs it actually incurred that fit that criteria, and should be approved by the Commission.

II. The Commission Should Reject Petitions That Seek Further Reductions in Recovery for 800 Data Base Service

In contrast, the multiple objections to the reconsideration petitions filed by AT&T and MCI demonstrate that those petitions must be rejected.⁷ Indeed, even Sprint -- which would stand to gain from a refund -- correctly identified the other interexchange carriers' proposal as "unfair," and as a "penalty."⁸

It is indisputable that the question of whether to authorize refunds here is not, as AT&T suggests, mandated by the Commission's earlier order, but rather is a matter left to the

⁶ See Telecommunications Act of 1996, P.L. 104-104, Section 706(a).

⁷ See Opposition of Southwestern Bell Telephone Company To Petitions For Reconsideration of AT&T and MCI (filed Dec. 11, 1996) ("Southwestern Opposition"); Opposition of GTE to Petitions for Reconsideration of AT&T and MCI (filed Dec. 12, 1996) ("GTE Opposition"); Sprint Response to Petitions for Reconsideration (filed Dec. 12, 1996) ("Sprint Response"); NYNEX Opposition (filed Dec. 11, 1996); Opposition of Pacific Bell and Nevada Bell (filed Dec. 12, 1996) ("Opposition of Pacific and Nevada"); Comments of US West Communications, Inc. (filed Dec. 11, 1996).

⁸ Sprint Response at 3.

Commission's discretion. As all the commenters pointed out, and the Commission itself has recognized, "Section 204 of the Act allows the Commission considerable discretion regarding whether to order rate refunds from carriers."⁹ Here, the circumstances weigh heavily against exercising that discretion.

As an initial matter, the Commission's suspension order lasted three and a half years¹⁰ -- far beyond the 15 months that was then allowed under section 204(a)(2)(A).¹¹ As a result, there is a serious question of whether the Commission even can order a refund under these circumstances. Even presuming it could order such a refund, there is also a question whether the refund could lawfully cover more than the initial 15 month period. As the D.C. Circuit has made clear, the Commission's power to order refunds is limited by the legislative conditions on that conveyance.¹²

In addition to the legal concerns, equitable considerations also weigh heavily against any refund. Had the Commission modified the amount of exogenous cost recovery allowed for 800 data base service earlier, Bell Atlantic could have made offsetting adjustments that would have maintained its revenue flow. Like other carriers, Bell Atlantic was priced under the price cap for

⁹ Southwestern Opposition at 2, citing *Local Exchange Carrier Access Tariff Rate Levels*, 8 FCC Rcd 6202, 6203 (1993).

¹⁰ The investigation went from the beginning of May, 1993 to the release of the report and order at the end of October, 1996. *See Bell Operating Companies' Tariff for the 800 Service Management System, Tariff FCC No. 1 and 800 Data Base Access Tariffs*, 8 FCC Rcd 3242 (Com. Car. Bur., 1993); *800 Data Base Access Tariffs and the 800 Service Management System Tariff and Provision of 800 Services*, Report and Order, CC Dockets No. 93-129, 86-10 (rel. Oct. 28, 1996) ("800 Data Base Order").

¹¹ *See* Opposition of Pacific and Nevada at 2.

¹² *Illinois Bell Telephone Co. v. FCC*, 966 F.2d 1478, 1481 (D.C. Cir. 1992) (Holding that the Commission may not order refunds when it has failed to follow the procedural requirements in Section 204 of the Communications Act).

the affected baskets during the period that 800 costs were under investigation.¹³ Moreover, even when Bell Atlantic was priced at the cap for those baskets, it could have adjusted prices in other baskets that would have resulted in no loss of revenue to Bell Atlantic.¹⁴ In contrast, a refund would be imposed in addition to the price index reductions mandated in the going forward order. Indeed, going forward reductions alone, if they were applied exclusively to the 800 data base service, would reduce the cost of the service to nothing.¹⁵ If a refund were to be applied on top of that, it would be the equivalent of requiring Bell Atlantic to pay its customers for taking the service.

Moreover, interexchange carriers would suffer no harm if no refund was imposed. They were able to pass along any costs they paid for 800 data base service to their own end-user customers. Also, during the pendency of this proceeding rate regulation and tariff control of all interexchange carriers was eliminated.¹⁶ No interexchange carrier is under any obligation, therefore, to pass along the windfall of a refund, and neither MCI nor AT&T has suggested that they would do so.

¹³ For example, during the second half of 1993, Bell Atlantic was priced \$26 million below the price cap in the Traffic Sensitive Basket and in the last half of this year Bell Atlantic's services in the Trunking Basket have been priced at least \$18 million below their cap. *See* Bell Atlantic Transmittal No. 579 (filed June 29, 1993); Bell Atlantic Transmittal No. 890 (filed July 12, 1996).

¹⁴ For example, the common line rates were priced \$19 million below the cap for the entire 1993 tariff period. *See*, Bell Atlantic Transmittal No. 579 (filed June 18, 1993).

¹⁵ The exogenous costs included in Bell Atlantic's rates were \$6,883,362, while the FCC's disallowance was \$6,927,736. *Compare*, Bell Atlantic Transmittal No. 566, Workpaper 5.1 (filed Apr. 26, 1993) *with* 800 Data Base Order, App. D.

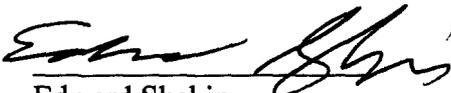
¹⁶ *See Motion of AT&T Corp. to Be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd 3271 (1995); *see also Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order, CC Docket No. 96-61 (rel. Oct. 31, 1996).

If the Commission does decide to require a refund, which it should not, it cannot rely on AT&T's bloated calculations. First, as several carriers point out, the amounts shared by the LECs during that period are an offset to any refund requirement.¹⁷ Second, as GTE explained, any interest calculation should be based on simple interest, not the compound calculations submitted by AT&T.¹⁸

Conclusion

For the foregoing reasons, the Commission should approve Bell Atlantic's petition for reconsideration and reject the petitions filed by AT&T and MCI.

Respectfully submitted,


Edward Shakin

Edward D. Young, III
Michael E. Glover
Of Counsel

1320 North Court House Road
Eighth Floor
Arlington, VA 22201
(703) 974-4864

Attorney for the
Bell Atlantic Telephone Companies

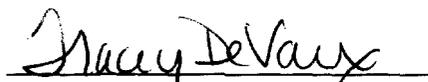
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¹⁷ Indeed, almost six million dollars of the amounts claimed by the interexchange carriers has already been returned to them by Bell Atlantic in the form of sharing adjustments.

¹⁸ GTE Opposition at 4.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of December, 1996 a copy of the foregoing "Bell Reply Comments" was sent by first class mail, postage prepaid, to the parties on the attached list.



Tracey DeVaux

* Via hand delivery.

John Bartlett
Robert Butler
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20004-2608
Counsel for Aeronautical Radio, Inc.

Roy L. Morris
Allnet Communications Services, Inc.
Suite 500
1990 M Street, NW
Washington, DC 20036

David Gross
Richard Whitt
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, NW
Washington, DC 20004-1008
Counsel for First Financial Management
Corporation

Joseph Markoski
Kerry Murray
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, NW
Washington, DC 20004
Attorneys for National Data Corporation

Thomas E. Grace
John T. Lenahan
Ameritech
Room 4H70
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196

Kevin DiLallo
Levine, Blaszak, Block & Boothby
Suite 500
1300 Connecticut Avenue, NW
Washington, DC 20036-1703
Counsel for Ad Hoc Telecommunications Users
Committee

Randolph J. May
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, NW
Washington, DC 20004-1008
Attorneys for Compuserve Inc.

Mary J. Sisak
Donald J. Elardo
MCI Telecommunications Corp.
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Jay C. Keithley
Sprint Communications Company
1850 M Street, NW
Suite 1100
Washington, DC 20036

Paul Berman
Ellen K. Snyder
Covington & Burling
1201 Pennsylvania Avenue, NW
PO Box 7566
Washington, DC 20044
Attorneys for Anchorage Telephone Utility

Stephen G. Kraskin
Kraskin & Associates
Suite 810
2120 L Street, NW
Washington, DC 20037
Attorney for Atlantic Telephone Membership
Corporation

Thomas J. Moorman
General Counsel
Regulatory and Industry Affairs
John Staurulakis Inc.
6315 Seabrook Road
Seabrook, MD 20706

Robert Sutherland
Richard M. Sbaratta
Helen A. Shockey
BellSouth Telecommunications, Inc.
4300 Southern Bell Center
675 West Peachtree Street, NE
Atlanta, GA 30375

Alfred Winchell Whittaker
Stuart A.C. Drake
Kirkland & Ellis
Suite 1200
655 15th Street, NW
Washington, DC 20005

Theresa L. Cabral
James P. Tuthill
Pacific Bell and Nevada Bell
2600 Camino Ramon
Room 2W806
San Ramon, CA 94583

Timothy P. Leahy
Southwestern Bell Telephone Company
One Bell Center
Room 3504
St. Louis, MO 63101

Jeffrey Bork
US West Communications Inc.
1801 California Street
Suite 5100
Denver, CO 80202

Thomas E. Grace
The Ameritech Operating Companies
Location 4H94 - Legal Department
2000 W. Ameritech Center Drive
Hoffman Estates, IL 60196-1025

Shirley A. Ransom
BellSouth Telecommunications Inc.
3535 Collonade Parkway
South E9D1
Birmingham, AL 35243

Jay C. Keithley
Central Telephone Companies
1850 M Street, NW
Suite 1100
Washington, DC 20036

William D. Baskett, III
Thomas E. Taylor
David S. Bence
Frost & Jacobs
2500 PNC Center
201 East Fifth Street
Cincinnati, OH 45202-4182
Attorneys for Cincinnati Bell Telephone
Company

Richard McKenna
HQE03J36
GTE Service Corporation
PO Box 152092
Irving, TX 75015-2092

Paula Wagner
GVNW, Inc./Management
2270 La Montana Way
Colorado Springs, CO 80918

Benjamin H. Dickens
Gerard J. Duffy
Brian D. Robinson
Blooston, Mordofsky
2120 L Street, NW
Washington, DC 20037
Attorneys for Lufkin-Conroe Telephone
Exchange, Inc.

Robert A. Mazer
Nixon, Hargrave, Devans & Doyle
Suite 800
One Thomas Circle, NW
Washington, DC 20015
Attorney for Lincoln Telephone & Telegraph
Company

Rodney Thiemann
Revenue Requirements Manager
Great Plains Communications, Inc.
1635 Front Street
PO Box 500
Blair, NE 68008-0500

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

Howard J. Symons
Keith A. Barrett
Mintz, Levin
Suite 900
701 Pennsylvania Avenue, NW
Washington, DC 20004
Attorneys for LaFourche Telephone Company

Diane Smith
Vice President of Federal Government Affairs
ALLTEL Service Corporation
Suite 1000
1710 Rhode Island Avenue, NW
Washington, DC 20036

Joanne Salvatore Bochis
National Exchange Carrier Association, Inc.
100 South Jefferson Road
Whippany, NJ 07981

Edward R. Wholl
William J. Balcerski
NYNEX
120 Bloomingdale Road
White Plains, NY 10605

James L. Wurtz
Pacific Bell and Nevada Bell
1275 Pennsylvania Avenue, NW
Washington, DC 20004

Michael J. Shortly, III
Rochester Telephone Corporation
180 South Clinton Avenue
Rochester, NY 14646

George Petrutsas
Paul J. Feldman
Fletcher, Heald & Hildreth
11th Floor
1300 North 17th Street
Rosslyn, VA 22209

Rochelle D. Jones
Director-Regulatory
SNET
227 Church Street
4th Floor
New Haven, CT 06506

Robert M. Lynch
Richard C. Hartgrove
J. Paul Walters
Southwestern Bell Telephone Company
One Bell Center
Room 3520
St. Louis, MO 63101

Brian D. Thomas
Assistant Vice President
Pacific Telecom Inc.
1726 M Street, NW
Suite 801
Washington, DC 20036-2477
Counsel for Telephone Utilities Exchange
Carrier Association

Jay C. Keithley
United Telephone Companies
1850 M Street, NW
Suite 1100
Washington, DC 20036

Jeffrey S. Bork
Robert B. McKenna
Laurie J. Bennett
US West Communications, Inc.
1020 19th Street, NW
Suite 700
Washington, DC 20036

Mark C. Rosenblum
Ava B. Kleinman
Seth S. Gross
295 North Maple Avenue
Room 3245F3
Basking Ridge, NJ 07920

ITS, Inc.*
1919 M Street, NW
Room 246
Washington, DC 20554