

segregated, plus interest, can be distributed in accord with the Court's decision.⁴⁷ The Commission has recognized the obvious advantages of this approach and has applied it in the past. See e.g., Virgin Islands Tel. Corp. 7 FCC Rcd 4235, 4236-37, ¶ 13 (1992).

Moreover, even if the Commission were able to compensate Petitioners for interim losses by allowing them to increase their future rates -- although competitive forces make it singularly unlikely that the attempt would succeed -- such an after-the-fact rate increase is an inferior method of providing compensation. In essence, raising future rates to make up for past losses forces tomorrow's customers to pay for the unjustified benefit enjoyed by the customers of today. Because the number, identity, and market share of Petitioners' customers change each year, it is virtually certain that those who end up paying the piper would not be those that enjoyed the show. In contrast, an accounting order ensures that burdens and obligations are distributed in perfect measure. Compensation is delivered precisely to the parties that deserve it -- and at the expense of those that should pay.

C. Imposition of a Stay and Accounting Mechanism Will Not Harm Other Parties or the Public Interest

Similarly, the imposition of a stay in these circumstances will not harm other parties. Certainly the interexchange carriers will suffer no detriment. If the Access Reform Order and Price Cap Performance Review Order are affirmed on appeal, they will be restored to their pre-stay financial position through distribution of the difference between the amount they actually paid and the amount they would have paid absent a stay, plus interest. Further, if the

⁴⁷ In the event that an accounting order is used, Petitioners will pay the statutory interest rate on any funds remitted to their customers.

interexchange market is competitive as the Commission contends, and if the Access Reform Order and Price Cap Performance Review Order are affirmed, competitive forces will impel interexchange carriers to reduce their prices when they recover any sums subject to the accounting order. Thus, in the end, the public at large would not be harmed. Absent a stay, any risk of irreparable injury not borne by Petitioners will be borne by the interexchange carriers and the public instead.⁴⁸ Moreover, as explained above, a stay plus an accounting order, will ensure a more equitable distribution of compensation and costs than would any other conceivable method of making Petitioners whole.

Finally, it should be noted that the public interest strongly favors prompt disposition of this motion. Each day the orders are left in effect is a day that the LECs and the Commission must spend on tariffs that may need to be entirely redone. Moreover, Petitioners anticipate seeking a judicial stay absent timely administrative relief. So that the Court may have sufficient time to review any such motion before Petitioners' 1997 annual access filings become effective on July 1, 1997, and before the orders take effect on June 17, 1997, Petitioners respectfully request that the Commission rule on this request no later than June 11, 1997.

⁴⁸ If the LECs prevail on appeal and competitive forces preclude them from recouping their losses through prospective price increases, the LECs might be entitled to recoup their losses retroactively from their customers. In Natural Gas Clearing House v. FERC, 965 F.2d 1066, 1073-75 (1992), the D.C. Circuit permitted just that to occur. There, the pipeline company was permitted to recover directly from shippers the amount of revenues lost as result of an erroneous FERC decision. If that same principle were applied here, reversal could subject Petitioners' customers to millions of dollars in liability. If the Commission is correct that these customers are subject to competitive forces, they, like Petitioners, would find it difficult to recover those losses through prospective rate increases. If an accounting order was put in place, in contrast, there would be no risk that this irreparable harm would befall Petitioners' customers. Instead, the only question would be how to distribute the funds placed subject to the accounting.

Conclusion

In light of the foregoing, it should not be difficult for the Commission to conclude that it indeed has decided a "difficult legal question" and that the equities favor the relief sought. 559 F.2d at 844. Accordingly, the Commission should stay the portions of those orders that require Petitioners to (a) exclude unbundled network elements from Part 69 access charges; (b) reduce their PCIs to reflect the completion of the amortization of equal access non-capitalized costs; (c) reduce their PCIs by a new productivity factor of 6.5%; and (d) reduce their PCIs due to the use of a 5.3% productivity factor in 1996, instead of the new 6.5% factor.

Respectfully submitted,



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June 3, 1997

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

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review)	CC Docket No. 94-1
for Local Exchange Carriers)	
_____)	

DECLARATION OF LEE BAUMAN

I, **Lee Bauman**, declare the following:

1. I am Vice-President Local Competition for Pacific Bell. In that position, I have responsibility for Pacific Bell's compliance with regulatory requirements related to competition in local markets. As the official exercising management authority for the total local competition program within Pacific Bell, my duties include the creation and development of public and corporate policies, negotiation of agreements with all competitive local exchange carriers, and the monitoring of compliance with all requirements for implementing local competition. As part of my responsibilities, I am familiar with the Commission's regulation of our services, including the effects of that regulation on prices and revenues and the market conditions for our products and services.

2. In this capacity I am familiar with the effects on Pacific Bell of the First Report and Order in CC Docket No. 96-262, Access Charge Reform, (released May 16, 1997) (the

“Access Reform Order”) and the Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, Price Cap Performance Review for Local Exchange Carriers and Access Charge Reform (released May 21, 1997) (the “Price Cap Performance Review Order”).

3. Currently, under the terms of our agreements with various competitive local exchange carriers such as AT&T, MCI and Sprint, Pacific is permitted to charge the Carrier Common Line Charge and the Residual Interconnection Charge on unbundled switching purchased by competitive local exchange carriers.

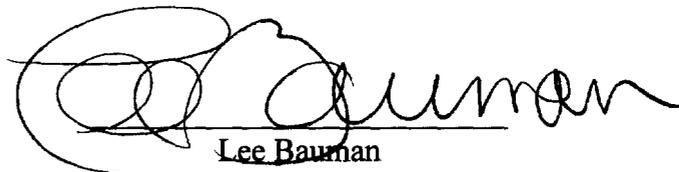
4. The Access Reform Order provides that no access charges shall be permitted to be charged to purchasers of unbundled elements.

5. The effect of this requirement is to force us to compete with other carriers who do not need to bear the universal service burden. Those carriers can purchase unbundled network elements from us without paying the interstate-allocated costs of service, or the contribution to low usage customers that the incumbent LEC bears. Those carriers can then provide service to customers with prices and terms and conditions with which we cannot compete. Our reputation will be permanently harmed as customers then perceive us as a high cost carrier and take their business to our competitors.

6. It is only by charging that portion of access charges that represents subsidy contribution that fair competition will be established.

7. By totally eliminating access charge payments on unbundled elements, windfall profit opportunities are created for competitive local exchange carriers that will prevent formation of a healthy competitive environment.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 2, 1997.



Lee Bauman

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

In the Matter of)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review)	CC Docket No. 94-1
for Local Exchange Carriers)	

DECLARATION OF JAMES L. JONES, JR.

I, James L. Jones, Jr. declare the following:

1. I am Director - Access Product Management/Switched for Southwestern Bell Telephone Company (SWBT). My responsibilities encompass management and oversight of various functions, including market planning and analysis, service development and pricing for the Carrier Marketing Line of Business. This line of business is responsible for managing the switched and special access services offered by SWBT including the interstate services that are regulated by the Federal Communications Commission. As part of my responsibilities. I am familiar with the Commission's regulation of our services, including the effects of that regulation on prices and revenues and the market conditions for our products and services.

2. In this capacity I am familiar with the effects on SWBT of the First Report and Order in CC Docket No. 96-262, Access Charge Reform, (released May 16, 1997) (the "Access Reform Order") and the Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, Price Cap Performance Review for Local Exchange Carriers and Access Charge Reform (released May 21, 1997) (the "Price Cap Performance Review Order").

3. The Commission's Price Cap Performance Review Order significantly modifies the

price cap plan under which SWBT and certain other local exchange carriers ("LECs") are to be regulated. The Order requires the price cap LECs to reduce their current price cap indexes as if they had been required to use an X-factor of 6.5% in 1996.

Also, the Commission ordered a new factor. This new factor is at least 1.2% higher than the 4.0%, 4.7% and 5.3% offsets allowed in the 1995 price cap plan revisions, and at least 2.2% higher than the factors of 3.3% and 4.3% included in the original LEC price cap plan. In addition, the Access Reform Order requires an additional reduction in price cap indexes to reflect the completion of the amortization of equal access non-capitalized costs. These reductions must be reflected in tariffs that will go into effect on July 1, 1997. The Access Reform Order also prohibits LECs from assessing Part 69 access charges to purchases of unbundled network elements.

4. For each of the reductions in price cap indexes required by the orders, my staff has calculated the revenue effects on SWBT. These calculations conform to all relevant Commission rules and procedures regarding price cap regulation. Due to the large magnitude of price reductions required, our calculations assume average price levels at the maximum levels allowed by the newly revised price cap rules.

5. SWBT's interstate revenues would be affected by these changes during the first year as follows;

a. The 6.5% X-factor applied to SWBT's price cap indexes decreases revenues by approximately \$54 million.

b. The application of the higher 6.5% X-factor back to July 1, 1996 (as if the FCC had adopted the 6.5% a year earlier) further reduces SWBT's revenues by approximately \$25

million.

c. The additional reduction in price cap indexes to reflect the completion of the amortization of equal access non-capitalized costs will reduce revenue by approximately \$6 million.

6. Without a stay, it is uncertain whether SWBT will be able to recoup the lost revenues described above in the event the Commission's orders are overturned on appeal. As previously explained in detail in the record of this proceeding, many of SWBT's interstate services already are subject to growing competitive pressures that constrain the prices that can be charged for these services. High capacity access services already face competition from competitive access providers, interexchange carriers, cable companies, utility companies and customer's own private networks, and are particularly susceptible to these pressures. The scope and immensity of this competition is increasing, and will continue. These competitors provide an expanding array of competing telephone services, and new competitors such as wireless personal communications services will soon begin operation.

7. Under these market conditions, a later grant of permission from the Commission to increase prices in an effort to reclaim the lost revenues described above could be an ineffective remedy. Compared to the current price cap rules, and assuming the orders were in effect for only a single year, the lost revenues would total approximately \$85 million. In order to recoup losses of this magnitude, prices would have to be increased significantly above the rates in effect today before the mandated reductions. In the future that would require interim price increases of about \$170 million, essentially twice the reduction ordered by the Commission those in effect today. Absent a stay or the creation of an escrow fund, the Commission can provide no assurance that

the marketplace would permit price increases of this magnitude in the future. As a result, it is extremely uncertain whether SWBT would be able to recover these losses, and would thus be irreparably harmed.

8. SWBT's revenues are also greatly affected by the inability to assess access charges to purchasers of unbundled network elements. Because of the substantial difference in price between the unbundled network elements and their access counterparts, purchasers of unbundled network elements will be able to offer local and long distance service at a substantial price advantage to any similar offerings purchased through the incumbent LEC and a long distance carrier of the end-user's choosing. This difference will result in a substantial portion of SWBT's end user customer base, and the associated revenues, leaving SWBT, possibly forever.

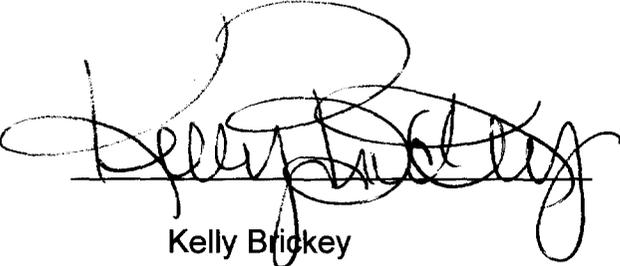
9. These same issues affect Pacific Bell and Nevada Bell which are both subsidiaries of SBC Communications Inc. The effects on Pacific Bell are approximately equal in total magnitude to the effects on SWBT.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 2, 1997.


JAMES L. JONES, JR.

CERTIFICATE OF SERVICE

I, Kelly Brickey, hereby certify that the foregoing " Joint Petition for a Partial Stay and for Imposition of an Accounting Mechanism Pending Judicial Review", has been served June 3, 1997, to the Parties of Record.



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June 3, 1997

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