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

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In the Matter of	)	
	)	
Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area	)	CC Docket No. 96-149
	)	
Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	CC Docket No. 96-61

OPPOSITION OF BELL ATLANTIC LONG DISTANCE CARRIERS[1] TO JOINT PETITION FOR RECONSIDERATION AND CLARIFICATION

Joint petitioners RCN and Hyperion object to the Commission decision that in the limited area of long distance pricing, affiliates of Bell Operating Companies ("BOCs") should get the same regulatory treatment as all other carriers (including petitioners).[2] The petition does not even attempt to rebut the evidence cited by the Commission in its order, but rather argues that the Commission should ignore the evidence and require each operating company to make an individualized showing of nondominance. Such a course of action is not only wasteful and redundant, it would prejudice Bell Atlantic's ability to serve customers in the long distance market. The Commission should reject the petition.

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[1] This filing is on behalf of Bell Atlantic Communications, Inc. and NYNEX Long Distance, Inc. ("Bell Atlantic Long Distance Carriers").

[2] Joint Petition For Reconsideration and Clarification of RCN Telecom Services, Inc. and Hyperion Telecommunications, Inc. (filed Aug. 4, 1997) ("Joint Petition")

I. The Undisputed Facts Support Nondominant Treatment of BOC Long Distance Affiliates

Incredibly, in challenging the Commission's decision as based on "speculative analysis,"[3] petitioners do not even bother to try to refute the evidence in support of nondominant treatment. As the Commission recognized, and petitioners do not challenge, BOC affiliates "initially will have a zero market share in the provision of in-region, interstate, domestic, interLATA services."[4] Given a prior finding by the Commission that the excess capacity of AT&T's competitors was sufficient to constrain the market power of the nation's largest long distance provider, the Commission also concluded that such capacity (in conjunction with AT&T's own capacity) was sufficient to constrain the market power of BOC long distance affiliates.[5] The Commission also recognized that using dominant carrier regulation of the long distance business would be an inappropriate tool to address concerns over market power in the heavily regulated local and access markets.[6] These irrefutable factual and policy underpinnings, unchallenged by petitioners, demonstrate that the Commission's determination of nondominance was fully supported and is not the result of "speculative analysis."

Indeed, petitioners' own arguments give further support that the Commission's order will encourage competition. According to petitioners, as a result of nondominant treatment for BOC affiliate's long distance service, "CLECs will feel compelled to enter the long distance market to

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3 Joint Petition at 3.

4 Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket no. 96-61, ¶ 96 (rel. Apr. 18, 1997) ("Nondominance Order").

5 *Id.* at ¶ 97.

6 *Id.* at ¶ 91.

provide the same 'one-stop shopping' opportunities for potential customers."[7] The increased competition can only increase consumer welfare.[8]

II. There is no basis to require individualized demonstrations of nondominance.

Given the underlying facts, petitioners refrain from making the untenable argument that BOC long distance affiliates are dominant. Rather, they ask to defer the determination of nondominance subject to an individualized showing for each BOC. Such a cumbersome regulatory process makes no sense. In the competitive carrier proceeding, the Commission has made blanket findings of nondominance that subsumed the petitioners here.[9] It is in the FCC's discretion to use a single rulemaking to streamline regulation,[10] and it is sound policy here.

There is no need for separate adjudications for each BOC. The facts and policy considerations are identical for all BOCs. No BOC has a market presence for long distance in their region. Petitioners fail to identify any individual circumstances that would merit requiring individualized showings.

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[7] Joint Petition at 6. While petitioners also argue that smaller carriers may be harmed by added competition, they offer no support for their argument or offer explanation why any impact would not be a natural outgrowth of increased long distance competition.

[8] In fact, competing local exchange carriers are already moving to offer long distance service independently or to join alliances with existing long distance carriers. Indeed, petitioner Hyperion has joined with Brooks Fiber, Time Warner, IntelCom Group and American Communications Services Inc. in alliances with AT&T. ***See*** "AT&T Inks Deals With CAPs to Bypass RBOC Networks," Report on AT&T (Apr. 22, 1996). Teleport has already announced plans to roll out its own Long Distance Service in the second half of this year. "Teleport Gave Upbeat Presentation at JPM High Yield Conference," Report on Teleport Communications Group (Sept. 5, 1997). The most obvious example of this trend is MFS, which is part of the country's fourth largest long distance provider following its merger with WorldCom.

[9] ***Policies and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor***, 2 F.C.C. 2d 1, 23, (1980).

[10] ***See Phillips Petroleum Co. v. EPA***, 803 F.2d 545, 562 (10th Cir. 1986) (agency has in its discretion to use a generic streamlined approach rather than case by case determinations).

Moreover, such a requirement would impose costs on a variety of parties. It would unnecessarily tax Commission resources to conduct duplicative proceedings. Delaying nondominant regulation for BOC affiliates would also impose costs on consumers and hinder much needed additional competition in the long distance market.[11]

This delay appears to be the goal underlying the petition. Indeed, rather than an individualized fact finding, petitioners would have the Commission pre-judge the issue and "place the burden of proof on the BOC interLATA affiliate to demonstrate that it does not possess market power in that region."[12] Given the undisputed facts supporting the Commission's order here, petitioners' proposals would only serve to delay the inevitable.

III. BOC Long Distance Carriers Cannot Act Anticompetitively

Petitioners complain that the Commission relies only on "ex post remedies" to control anticompetitive behavior by the BOC affiliate.[13] While such remedies are an effective tool, petitioners ignore other limits on anticompetitive conduct. First, the Commission recognized that market forces will significantly constrain any potential for anticompetitive behavior.[14] Second, before a BOC affiliate may offer long distance service in-region, the affiliated BOC must show that it has met a check-list of requirements to open the local market and that in-region entry is in the public interest.[15] The affiliated BOC will remain heavily regulated and any transactions between the long distance affiliate and the BOC must be at arms length, publicly disclosed, and

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[11] Indeed, because the BOC must first obtain approval to offer in-region long distance service under section 271, the Commission will have already made a finding that it is in the public interest for each carrier to offer long distance service in that state. A second proceeding would add nothing but delay.

[12] Joint Petition at 7.

[13] Joint Petition at 9.

[14] Nondominance Order, ¶ 86.

[15] 47 U.S.C. § 271.

conform to the other requirements of section 272. There simply are no regulatory concerns left to address.

Conclusion

Based on the foregoing, the Commission should reject the Joint Petition for Reconsideration.

Respectfully submitted,

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September 8, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of September, 1997, a copy of the foregoing "**OPPOSITION OF BELL ATLANTIC LONG DISTANCE CARRIERS TO JOINT PETITION FOR RECONSIDERATION AND CLARIFICATION**" was served by first class U.S. mail, postage prepaid, on the parties listed on the attached service list.

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