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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Southwestern Bell Telephone Company,)	
Pacific Bell and Nevada Bell Petition)	CC Docket No. 98-91
for Relief from Regulation Pursuant)	
to Section 706 of the Telecommunications)	
Act of 1996 and 47 U.S.C. §160)	
for ADSL Infrastructure and Service)	

JOINT COMMENTS OF AT&T CORP. AND
TELEPORT COMMUNICATIONS GROUP INC.

AT&T CORP.

TELEPORT COMMUNICATIONS
GROUP INC.

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SUMMARY

SBC's petition suffers from the same legal and factual infirmities as the similar requests recently submitted by Bell Atlantic, U S West, and Ameritech. SBC, like those earlier petitioners, seeks an unjustified exemption from its statutory obligation to provide advanced telecommunications services subject to the unbundling and resale requirements of Section 251(c) of the Communications Act. As AT&T and TCG showed in their earlier comments on these similar ILEC requests, SBC's claim is squarely foreclosed by the plain terms of the Act.

Additionally, SBC's arguments describing the competitive nature of the market for broadband services are grossly overstated and highly speculative. SBC describes a smattering of cable modem services, costly satellite-based Internet access, and a handful of ADSL competitors that are heavily if not totally reliant on ILEC local loops to provide their services. Cable companies, however, have won only about 100,000 cable modem customers nationwide, and significant investments of time and money will be required for them to increase that number in the future. SBC's showing thus falls far short of any sustainable justification for regulatory relief.

Nor is it necessary to grant SBC relief from its unbundling and resale obligations to encourage SBC to invest in upgrading its local network. The applicable statutory costing standards for resold and unbundled elements fully compensate SBC for all of its legitimate costs. SBC's own public statements also flatly contradict the arguments that it presents in its Petition. Only three weeks

ago, SBC announced that it would be "broadly deploying high-speed Asymmetrical Digital Subscriber Line (ADSL) service in more than 200 communities across California" and that before the end of 1998 these services would be available to "4.4 million households and 650,000 business customers." The absence of the regulatory relief that SBC is requesting here has, therefore, not discouraged SBC in the least from undertaking ambitious plans to deploy advanced communications services.

Finally, SBC's track record in making unbundled network elements available to CLECs for the provision of traditional services is so poor that it is inconceivable that CLECs would ever be able to obtain the network elements and interconnection opportunities from SBC that are necessary to provide competitive broadband services if SBC's request were approved. The Commission need only review SBC's record in providing UNEs and collocation to CLECs to determine that, if unleashed from the obligations of Section 251, SBC would foreclose entirely CLECs from any access whatsoever to their bottleneck facilities and services. The Commission should, therefore, deny SBC's petition.

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**JOINT COMMENTS OF AT&T CORP. AND
TELEPORT COMMUNICATIONS GROUP INC.**

AT&T Corp. and Teleport Communications Group Inc. ("AT&T/TCG") respectfully submit their Joint Comments opposing the petition of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell ("SBC") requesting relief from regulation in their provision of Asymmetrical Digital Subscriber Line ("ADSL") infrastructure and service. As demonstrated below, SBC requests a forbearance that the Commission does not have authority to grant, and requests non-dominant treatment of ADSL that is not justified by the facts or the law.

I. INTRODUCTION

SBC's petition suffers from the same legal infirmities as the similar requests recently submitted by Bell Atlantic, U S West, and Ameritech.¹ SBC, like those

¹ Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-11 (filed January 27, 1998); Petition of U S West Communications, Inc. for Relief from Barriers to Deployment of Advanced Services, CC Docket No. 98-26 (filed February 25, 1998); Petition of Ameritech Corporation to Remove Barriers to Investment in

earlier petitioners, seeks an unjustified exemption from its statutory obligation to provide advanced telecommunications services subject to the unbundling and resale requirements of Section 251(c) of the Communications Act, and relies on many of the same meritless arguments. AT&T/TCG incorporate herein their Comments in opposition to each of the three petitions,² and will not repeat those arguments here. In this pleading, AT&T/TCG refute SBC's argument that there is a factual and policy basis to forbear from Sections 251 and 252 for SBC's data services. AT&T/TCG further address SBC's claim that forbearance under Section 10 of the Telecom Act is warranted to relieve the SBC LECs from dominant carrier regulation for their data services.

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Advanced Telecommunications Capability; CC Docket No. 98-32 (filed March 5, 1998).

² Comments of AT&T Corp. on Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-11 (filed April 6, 1998) at 4-10 (attached hereto as Exhibit 1); see also Comments of AT&T Corp. on Petition of US West for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-26 (filed April 6, 1998); Comments of AT&T Corp. on Petition of Ameritech for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-32 (filed April 6, 1998); Consolidated Comments of Teleport Communications Group Inc. on Petitions of Bell Atlantic, U S West and Ameritech for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket Nos. 98-11, 98-26, 98-32 (filed April 6, 1998) at 3-6 (attached hereto as Exhibit 2).

II. SECTION 706 OF THE ACT DOES NOT AUTHORIZE THE COMMISSION TO WAIVE THE UNBUNDLING AND WHOLESALE DISCOUNT REQUIREMENTS OF SECTION 251(c)

A. THERE IS NO STATUTORY BASIS FOR SBC'S REQUESTED FORBEARANCE FROM THE REQUIREMENTS OF SECTION 251(c)

SBC asks the Commission to "forbear" from enforcing the unbundling, resale and interconnection obligations set forth in Section 251 of the Telecom Act insofar as they apply to SBC's ADSL facilities and services.³ SBC argues, as did the prior three RBOC petitioners, that Section 706 of the Act gives the Commission sweeping authority to forbear from enforcing any part of the Act to the extent that it may relate to the provision of advanced telecommunications services.⁴ As AT&T showed in its Bell Atlantic Comments (at 4-12) and TCG explained in its Consolidated Comments (at 3-6), SBC's claim is squarely foreclosed by the plain terms of the Act, and AT&T/TCG respectfully refer the Commission to those pleadings for a full legal analysis.

Not only does SBC's petition lack any legal merit as to the scope of Section 706, its proposals would be at odds with the statute and with any reasonable public interest standard even if the Commission had authority to adopt them (which it does not). What is clear from over two years of experience since the 1996 Act was passed is that it is extremely difficult for CLECs to break the stranglehold of the ILECs over their monopoly local facilities, and that -- at least

³ See SBC Petition at 5-6.

for now -- the only path to virtually every residence and business customer will continue to be the ILECs' local networks. This is true not only for the provision of POTS service, but for advanced services as well, which use the same ILEC local loop and require access to the electronics deployed in the loop facilities.⁵ Thus for CLECs to compete in the provision of data services, they must gain access to the unbundled network elements and obtain interconnection at reasonable prices and under reasonable terms. Plainly, grant of the forbearance authority requested by SBC would foreclose any such competitive opportunities.

As a threshold matter, SBC's arguments (at 10-17) describing the competitive nature of the market for broadband services are grossly overstated and fall far short of any sustainable justification for regulatory relief. Specifically, SBC describes a smattering of cable modem services, costly satellite-based Internet access, and a handful of ADSL competitors that are heavily if not totally reliant on ILEC local loops to provide their services.⁶ Cable companies, however, have won only about 100,000 cable modem customers nationwide, and significant investments of time and money will be required for them to increase

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⁴ Id. at 22-24.

⁵ See AT&T Bell Atlantic Comments at 10-11.

⁶ Id. at 15-17.

that number in the future.⁷ Similarly, satellite-based alternatives are very expensive and despite the "hype," these systems have captured only a tiny fraction of the market, and the major satellite-based networks are years away from operation.

By contrast, SBC can easily upgrade its existing network on a customer-by-customer basis to provide broadband services simply by inserting electronics and modem cards into its switches or as adjuncts to its switches (and, where necessary, conditioning loops), and can do so at low incremental costs.⁸ At the end of the day, SBC cannot escape the fact that it still controls the bottleneck facility that offers the most ubiquitous and cost-efficient method for the provision of such services – the local loop.⁹

⁷ See AT&T Bell Atlantic Comments at 31 n. 70; see also Bell Atlantic Petition, Attachment 2 at 49. AT&T's announced acquisition of Telecommunications, Inc. ("TCI") does nothing to change this or to mitigate the need (and obligation) of SBC and the other ILECs to open their local markets to competitors in accordance with Sections 251 and 252 of the Communications Act. Notwithstanding this promising alliance, local competition is not here yet; the deal has yet to close, and AT&T anticipates that the deal will not close until the first half of 1999. In addition to federal approvals, AT&T will need to gain various approvals from thousands of municipalities that currently regulate cable operations. Moreover, millions of dollars of investment have yet to be made to upgrade TCI's cable systems to accommodate telephony. TCI also reaches only 30 percent of the nation's households, leaving the majority of American homes out of reach to CLECs except through the facilities of the ILECs. Thus ILEC compliance with their obligations under Sections 251 and 252 of the Act remains a critical cornerstone for local exchange competition.

⁸ See AT&T Bell Atlantic Comments at 19-21.

⁹ Analysts of the xDSL market also believe that the ILECs will not face significant competition from other providers. For example, in a recent report entitled "DSL

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Moreover, SBC's track record in making unbundled network elements available to CLECs for the provision of traditional services is so poor that it is inconceivable that CLECs would ever be able to obtain the network elements and interconnection opportunities from SBC that are necessary to provide competitive broadband services if SBC's request were approved. The Commission need only review SBC's record in providing UNEs and collocation to CLECs to determine that, if unleashed from the obligations of Section 251, SBC would foreclose entirely CLECs from any access whatsoever to their bottleneck facilities and services.

In its investigation of SBC's Section 271 applications, the Texas Public Utility Commission adopted a number of findings that Southwestern Bell Telephone Company ("SWBT") -- the SBC LEC -- failed to satisfy the competitive checklist.¹⁰ Specifically, the Texas PUC found that SWBT was not making loops

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Market Gains Direction" (January 1998), International Data Corporation ("IDC") observed that "the incumbent local exchange carriers are the lynch pin to DSL rollouts." IDC commented that the \$100 billion "cost of the required access network upgrades to support modem service will hold back wide availability of cable modem service." IDC also noted that today's satellite alternatives like DirectPC "only offer one-way capability" and that "the limited upstream speed as well as increased cost and complexity from coordinating PSTN dial-up with satellite delivery will limit the appeal of data over DBS solutions."

¹⁰ See Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market, PUC Project No. 16251, Order No. 25 Adopting Staff Recommendations and Directing Staff to Establish Collaborative Process (June 1, 1998) ("Texas PUC 271 Order").

available for advanced services. To address this failing, it ordered SWBT to publish a technical manual showing CLECs how to use unbundled loops to provide ADSL and HDSL and to allow CLECs to provide 4-wire HDSL service using an unbundled loop.¹¹ The Texas PUC also ordered SWBT to conduct expedited spectrum management for cable space upon a CLEC request to use the unbundled loop for ADSL/HDSL services.¹²

The Texas PUC also found fault with SWBT's ordering process, concluding that SWBT must further develop its LEX and EDI ordering systems for UNEs to provide electronic flow-through. SWBT had not demonstrated that it had achieved even the first phase of flow-through for POTS UNE orders, in violation of an earlier PUC order.¹³ CLECs have also detected similar failures in the ordering processes of Pacific Bell, another SBC LEC.¹⁴

¹¹ Id. at 6.

¹² Id.

¹³ Id. at 16-17; see also Order Approving Implementation Schedule and Establishing Docket No. 19000 Regarding Implementation issues, Docket Nos. 16226, et al. (March 17, 1998).

¹⁴ Brooks Fiber reported that Pacific Bell has not shown that its UNE ordering systems, which suffer from the same lack of flow-through for EDI and LEX) can accommodate the ordering of loops for high bandwidth services. Brooks Response, California PUC Rulemaking at 8 (May 1, 1998).

With respect to collocation, the Texas PUC found that SWBT still did not have a viable physical or virtual collocation offering.¹⁵ It adopted the Staff's recommendation to require SWBT to make its physical collocation tariff available to all CLECs, rejecting SWBT's argument that CLECs would have to opt for tariffed rates through the "most favored nation" provision of Section 252(l) of the Act.¹⁶ SWBT's virtual collocation offering remains under review until such time that the Texas PUC can determine that it is cost-based and available to all CLECs. Again, SBC has not demonstrated that it can meet its commitment to provide collocation for ADSL equipment.

¹⁵ TCG, in fact, has been forced to file numerous Petitions with the Texas PUC seeking to force SBC to simply obey previously adopted PUC collocation rulings, in the face of repeated SBC defiance of the PUC's collocation orders. Moreover, SBC's hostile attitude toward collocation is of long standing. SBC was the only ILEC to insist that TCG remove previously physically collocated equipment and pay SBC's exorbitant virtual collocation rates to re-install the identical electronic equipment when the FCC's physical collocation rules were invalidated. Other ILECs either elected to continue offering physical collocation, or adopted reasonable policies that avoided undue disruption or equipment relocation.

¹⁶ Having failed to use the "most favored nation" ("MFN") provision to bind CLECs to unlawful collocation rates established in interconnection agreements, SBC now seeks to nullify this provision here. SBC requests forbearance from its MFN obligations to the extent that any existing interconnection agreements could be read to impose certain unbundling and wholesale requirements for ADSL. SBC Petition at 33-34. SBC pledges to make this service available to CLECs on a nondiscriminatory basis while at the same time attempting to escape any existing interconnection agreement obligations that will continue to impose standards that ensure actual availability of this service to CLECs. SBC's MFN request highlights the emptiness of its pledge to provide ADSL to CLECs on a "nondiscriminatory" basis.

The Texas PUC's findings show that SWBT has not yet demonstrated for any type of service that it provides CLECs with performance at parity with the service provided to itself or its affiliates. The PUC has required SWBT to provide at least three months of data on all performance measurements to demonstrate otherwise. Ultimately, SWBT's existing performance measurements apparently were not adequate even for POTS loops.¹⁷ SWBT is therefore not even capable of demonstrating, through existing reporting and performance measurements, that it meets its statutory requirements to provide access to UNEs in a nondiscriminatory manner. SBC's record is no better in California, where CLECs have submitted affidavits that they have not been able to secure access to advanced services from Pacific Bell.¹⁸

Given this experience, it would be sheer folly for the Commission to conclude that SBC's "commitments" to provide ADSL service to its competitors are in any way adequate or sufficient to meet CLECs' legitimate needs. SBC

¹⁷ See Texas PUC 271 Order at 3, 12-15.

¹⁸ See Rulemaking on the Commission's Own Motion to Govern Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominate Carrier Networks, et al., R.98-04-003, et al., MCI Deere Rebuttal Affidavit at 27 (May 20, 1998) (reporting Pacific Bell's position that involvement of CLEC personnel in spectrum management process necessary to support loop evaluation and bandwidth inventory is not required); TCG Response at 20-24 (May 22, 1998) (citing restrictions on its ability to use unbundled xDSL loops).

states that it will undertake a three part process¹⁹ to confirm that a loop can support xDSL technology, the most important (and most subjective) of which will not even be mechanized until "mid-1999 (projected)."²⁰ But all SBC has done is to offer to develop a process for determining which loops are ADSL-capable, and it has described the simple "checks" it will conduct to determine whether a loop is ADSL-capable.²¹ SBC has, therefore, failed to even present a proposal to develop an efficient OSS interconnection process for the provisioning and operation of xDSL facilities -- let alone demonstrate that such a process is currently in place, which is the only meaningful measure. Indeed, SBC has not even offered to exchange necessary provisioning information with its competitors. Instead, it intends to keep this critical loop information secret from its competitors, and intends to process competitors' xDSL requests through an entirely different process than will be applied to its ordinary retail customers.²² There is nothing in

¹⁹ In order to support xDSL, a loop must be of the appropriate length and technical characteristics (i.e., no load coils, no intermediate repeaters or multiplexing), both factual questions about which definite and verifiable answers should be possible. The third criteria is whether an xDSL facility will "interfere" with other services in the same cable binder.

²⁰ SBC Petition at 19.

²¹ Id. at 17-20.

²² Id. at 20 (retail requests are processed through a DSL service center, while competitor requests are processed through the "UNE ordering process"). While SBC asserts that the "results" of these processes will be the same, notably it does not claim that the responsiveness, timeliness or accuracy of the processes will be at all the same.

SBC's "commitments" on providing ADSL that can provide any assurance that these facilities will be made available to competitors in a manner that satisfies the requirements of Section 251.²³ For the same reasons, and based on the existing dismal record of noncompliance with the requirements of the Telecom Act, the Commission should not attach any importance to SBC's "commitment" to provide collocation for ADSL equipment.²⁴

III. THERE IS NO POLICY JUSTIFICATION FOR THE RELIEF SOUGHT BY SBC

SBC seeks relief because, so it claims, the unbundling and resale requirements of Section 251(c) "discourage the needed infrastructure investment, make the investment uneconomical or more costly, or saddle the investment risk with the SBC LECs while unacceptably handing its competitors the benefit of the investment."²⁵ SBC also complains that, in providing unbundled elements, it is

²³ It should also be noted that SBC is proposing that its ADSL loops can only be connected to its "in house" transmission services and not to any network services provided by a competitor. See Pacific Bell Telephone Company, Tariff FCC No. 128, Transmittal No. 1986, Description and Justification at 7; Tariff Section 17.5.1(B).

²⁴ The Texas 271 state proceeding demonstrates that SBC's so-called "commitments" to fulfilling its statutory obligations to CLECs cannot be accepted at face value. SBC, after all, was criticized by the Texas PUC for its negative "attitude" towards its competitors. See Texas PUC 271 Order at 2 ("SWBT needs to show this Commission and participants during the collaborative process by its actions that its corporate attitude has changed and that it has begun to treat CLECs like its customers."). The Commission simply cannot accept promises in lieu of performance from SBC.

²⁵ SBC Petition at 3-4.

only entitled to "a cost-based rate plus a possible reasonable profit."²⁶ The Commission has already addressed and rejected these arguments.

First, granting SBC relief from the unbundling requirements and their associated costing requirements, as well as the resale obligation, is not necessary to encourage SBC to invest in upgrading its local network. The applicable statutory costing standards fully compensate SBC for all of its legitimate costs. The "cost plus a reasonable profit standard" of Section 252(d)(1) was determined by Congress to be an appropriate standard for the provision of unbundled elements. Moreover, this standard has generally been applied using forward looking (TELRIC) type costing, a costing approach that this Commission has already found to be fair and reasonable.²⁷ Indeed the Commission has held that TELRIC methodologies fully compensate the LECs for all of their legitimate business risks, because they incorporate a risk-adjusted rate of return and depreciation rates that reflect the risks of technological advancement.²⁸

²⁶ Id. at 27.

²⁷ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15494, 15846-47 (¶¶ 679) (1996) ("Local Competition Order"), aff'd in part and vacated in part sub nom. Competitive Telecomm. Ass'n v. F.C.C., 117 F.3d 1068 (8th Cir.) and Iowa Utils. Bd. v. F.C.C., 120 F.3d 753 (8th Cir. 1997), petition for cert. granted, Nos. 97-826, 97-829, 97-830, 97-831, 97-1075, 97-1087, 97-1099, and 97-1141 (U.S. January 26, 1998), Order on Reconsideration, 11 FCC Rcd 13042, Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), Third Order on Reconsideration and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12460 (1997), further recons. pending.

²⁸ Id. at 15849-50 (¶¶ 686-87), 15854-55 (¶ 700).

The Commission would be foolish to countenance arguments that fly in the face of its own conclusions as to the appropriate cost standard for provision of monopoly access components. In reality, SBC's Petition seeks protection far beyond mere compensation for these legitimate business risks -- it seeks the elimination of all risk, through protection from competition itself. But such protection runs counter to the fundamental policy of the Act.

SBC's own public statements also flatly contradict the arguments that it presents in its Petition. Only three weeks ago, SBC announced that it would be "broadly deploying high-speed Asymmetrical Digital Subscriber Line (ADSL) service in more than 200 communities across California" and that before the end of 1998 these services would be available to "4.4 million households and 650,000 business customers."²⁹ SBC has recently filed FCC tariff amendments to offer that ADSL service, with no assurance that its Petition will be granted and with no suggestion that its plan to offer ADSL is contingent on its success on this Petition.³⁰

²⁹ See SBC Press Release, "SBC Communications Announces Broad ADSL Deployment Across California -- Pacific Bell Plans To Have Service Available To More Than 5 Million California Business And Residential Customers By End Of Summer," San Francisco, California, May 27, 1998. Nowhere in its Press Release does SBC state or suggest that its deployment plans will be changed depending on the Commission's action on this petition.

³⁰ See Pacific Bell Telephone Company, Tariff FCC No. 128, Transmittal No. 1986, filed June 15, 1998. On June 22, 1998, TCG filed a Petition to Suspend and Investigate this SBC/Pacific Bell transmittal.

Nor does SBC believe that its planned ADSL deployment is the end of the line. SBC officials also stated that "commercial deployment of ADSL is but one component of our unfolding data strategy. Over the next few months, we intend to introduce a full range of data transport and networking services that meet the complex demands of businesses and consumers."³¹ SBC's confident California business plans do not appear to be actions of a "discouraged" competitor who must have regulatory advantages to compete. Instead, its public pronouncements make clear that it is proceeding to deploy these technologies and services even in the absence of any regulatory relief.

IV. THE COMMISSION SHOULD DENY SBC'S REQUEST FOR NON-DOMINANT TREATMENT UNDER SECTION 10

In addition to seeking to escape its unbundling and resale obligations, SBC also requests forbearance under Section 10 of the Telecom Act for its ADSL services, including relief from dominant tariff filing requirements and dominant pricing constraints.³² SBC does not, however, satisfy the forbearance criteria under Section 10(a) of the Act.³³ Competition has not developed for the

³¹ SBC Press Release, note 29, supra.

³² SBC Petition at 28-30.

³³ Section 10(a) of the Act provides that the Commission shall forbear from application of any provision of the Act "if the Commission determines that - (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

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provisioning of ADSL services at any level even remotely close to that required to justify SBC's classification as a non-dominant carrier for that purpose.

SBC asserts that forbearance is in the public interest because without it, SBC LECs will not have the flexibility to provide ADSL and other high-speed data services.³⁴ This claim is belied, however, by recent tariff filings by Pacific Bell and other ILECs to provide the service. More importantly, SBC has fallen far short of meeting its burden of proving that it lacks market power in providing the service; until such a showing can be made, public interest mandates maintaining the competitive safeguards of the existing regulatory structure to ensure nondiscrimination in the provision of these services and a level playing field for emerging competitors.

As to the first prong of the statutory test, SBC fails to support its assertion that dominant treatment is not necessary to ensure just and reasonable charges and the protection of consumers, because it is unable to support its central contention that the ADSL market is competitive.³⁵ According to SBC, "[t]he high-speed data competitors of the SBC LECs will ensure that their prices and practices

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(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
(3) forbearance from applying such provision or regulation is consistent with the public interest."

³⁴ SBC Petition at 28-30.

³⁵ Id. at 30-32.

remain just and reasonable, and not unreasonably discriminatory" (at 31) and that "[w]ith service alternatives, consumers will be able to simply move to another high-speed data provider" if they are not satisfied with an SBC LEC service (at 32). However, SBC has provided no evidence whatsoever to support its claim that it lacks market power,³⁶ and provides little credible support for its assertion that the "introduction of ADSL service is not at all like the paradigm in which the FCC has historically regulated."

Even if SBC could show that there is some measurable amount of competition for ADSL services, the Commission's prior, reasonable practice confirms that regulatory relief is not automatic merely on a showing of some competition. For example, in the Access Charge Reform proceeding, the Commission solicited comments regarding the possible removal of high-capacity special access services from price cap regulation.³⁷ While some record evidence about the state of high capacity competition was placed on the record, the Commission has yet to find that there is "substantial competition" which could justify reduced regulation for ILEC special access services. While the record in that proceeding shows that the amount of high capacity competition is not

³⁶ Id. at 10. SBC has offered, in another section of its petition, only anecdotal support for its claim that it is subject to competition for data services, id. at 10, 11-17, and AT&T/TCG has already shown that SBC's showing is far from accurate or compelling. See Section II.A. at 5-6, supra.

³⁷ Access Charge Reform Notice of Proposed Rulemaking, 11 FCC Rcd 21354, 21422 (¶ 153) (1996).

substantial, it is certainly more observable in the marketplace than the illusory ADSL competition that SBC obliquely relies on here. Given the paucity of the record here supporting SBC's claim that it is not a dominant provider of data communications services, it would plainly be arbitrary and capricious for the Commission to grant SBC's request in this proceeding.³⁸ Dominant carrier regulation of SBC's provisioning of ADSL infrastructure and services therefore continues to be necessary to ensure just and reasonable charges and practices.

Moreover, because of the SBC LECs' continued monopoly control over the bottleneck facilities critical to the deployment of competitive xDSL services, reduced regulation as requested by SBC would remove protections that are currently in place to ensure that customers are adequately protected.³⁹ And given the enduring market power of the SBC LECs, forbearance from dominant carrier

³⁸ Indeed, the need to continue Commission supervision of ILEC provisioning of high capacity and xDSL services is underscored by its decisions to investigate such recent offerings. See, e.g., GTE Telephone Operations; GTOC Tariff No. 1; GTOC Transmittal No. 1148, CC Docket No. 98-79, Order, DA 98-1020 (rel. May 29, 1998) (suspending for one day and initiating investigation into GTE ADSL tariff); Southwestern Bell Telephone Company Tariff F.C.C. No. 73, Transmittal No. 2622, 12 FCC Rcd 6687 (1997) (designating issues for investigation of SWBT's High Capacity Term Pricing Plan offering). SWBT's transmittal was subsequently withdrawn and the investigation was terminated. See Order Terminating Investigation, 12 FCC Rcd 7700 (1997).

³⁹ The Commission has recently rejected yet another SWBT tariff filing that proposed to offer high-capacity interstate access services for customers soliciting bids, on several grounds, including on the basis that such tariffs would violate the Commission's rate averaging rules. Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Transmittal No. 2633, Order Concluding Investigation and Denying Application for Review, 12 FCC Rcd 19311 (1997). The Commission

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regulation would be inconsistent with the public interest, from both a consumer and competitive perspective.

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ruled in this manner notwithstanding evidence present by SWBT in that proceeding purporting to show significant competition for special access services.

V. CONCLUSION

For the reasons stated above, and for the reasons given in the AT&T and TCG Comments cited above and incorporated herein by reference, AT&T and TCG respectfully urge the Commission to deny SBC's petition in its entirety.

Respectfully submitted,

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Dated: June 24, 1998

CERTIFICATE OF SERVICE

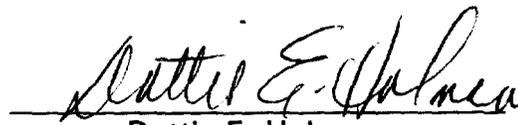
I, Dottie E. Holman, do hereby certify that copies of the foregoing Joint Comments of AT&T Corp. and Teleport Communications Group Inc. were served by hand-delivery and first-class mail, as indicated, this 24th day of June, 1998, to the following:

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Washington, D.C. 20554

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In the Matter of)
)
Petition of Bell Atlantic Corporation)
for Relief from Barriers to Deployment)
of Advanced Telecommunications Services)

CC Docket No. 98-11

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF AT&T CORP.

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