

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Inquiry Concerning the Deployment of) CC Docket No. 98-146
Advanced Telecommunications Capability)
to All Americans in a Reasonable and)
Timely Fashion, and Possible Steps to)
Accelerate Such Deployment Pursuant)
to Section 706 of the Telecommunications)
Act of 1996)

REPLY COMMENTS OF BELL ATLANTIC¹

I. Introduction.

The extensive NOI comments confirm that local exchange incumbents are only one of many facilities-based carriers offering advanced services, and that they are behind the cable companies among others in rolling them out. Given the lack of any “monopoly bottleneck” justification for regulation and the concept of regulatory “technology neutrality” embodied in Section 706, the Commission should ensure that all competing technologies are treated similarly. Unequal regulation artificially and uneconomically favors some technologies or services over others, and ultimately undermines, rather than promotes, the vigorous competition that Congress sought to promote.

Furthermore, Congress directed the Commission to promote the deployment of advanced services to all Americans by removing regulatory burdens that deter their

¹ 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.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

widespread deployment, not to add regulatory burdens that will deter their deployment. To take the most pressing example, a requirement to pay reciprocal compensation on Internet-bound calls that are handed off to another carrier for delivery affirmatively deters deployment of advanced services. As the chairman of one competitor recently explained, paying reciprocal compensation is a “boondoggle” that competing carriers earn only if they do not provide their own services to end users, and therefore affirmatively “slows down the deployment of a high-speed packet-based network.” As directed by Congress, the Commission should promptly reconfirm that Internet bound calls are interstate and interexchange in nature, and are not subject to the payment of reciprocal compensation.

II. Commenters Agree There are Numerous Alternatives to Local Telephone Companies for Advanced Services.

Bell Atlantic faces numerous competing facilities-based entrants in its densely populated Northeastern region. For example, as Bell Atlantic previously explained, cable companies already serve hundreds of thousands of customers with cable modems, and RCN offers high-speed broadband services to over 120,000 of its customers. Bell Atlantic NOI Comments at 5-8 and Attachment A.

The comments confirm Bell Atlantic’s observation that it is the new entrant to the advanced services marketplace (and is behind others), and lacks any “monopoly bottleneck” over that marketplace that might justify onerous Commission regulations:

- The cable companies correctly claim that they are leaders in deploying high-speed broadband services over their own separate network facilities. The National Cable Television Association states that its members already pass 19 million homes with high-speed broadband service. NCTA at 7-10. MediaOne will offer over 2.5 million customers high-speed Internet access by the end of this year, and in three years well over 40 million after capital expenditures of over \$5 billion. MediaOne at 1-4.

- Moreover, cable companies continue to expand on their existing, industry-leading base. For example, Cablevision and Time Warner Cable confirm they rapidly are upgrading facilities to offer high-speed broadband services. Cablevision at 2-4; Time Warner at 4. AT&T is buying TCI and plans to pump millions of dollars into upgrading its cable systems. AT&T at 13-14.
- Wireless competitors do not need access to the local loop. Local competitors that use wireless bypass technologies emphatically state that “there *are* carriers, like WinStar, that are – and have been – able to offer ATS [advanced telecommunications services] and innovative telecommunications services directly to end-users *now*.” WinStar at 2 (emphasis in original). Teligent also notes it is a “true facilities-based competitor” that does not depend at all on local telephone companies. Teligent at 4. WinStar and Teligent say nothing about the alleged “last mile” issue, only the last one hundred feet, because they do not depend at all on local telephone companies for access to the home.
- The Association for Local Telephone Services notes that CLECs have invested and continue to invest in advanced telecommunications capabilities. ALTS at 8-12. ALTS further explains that CLECs were the first industry players to deploy fiber rings, and have been leaders in the introduction of new technologies such as asynchronous transfer mode (ATM), frame relay, and xDSL technologies, and that CLECs have raised between 15-20 billion dollars in capital in the last two years. ALTS at 9. The CLECs uniformly claim that they are the leaders in deploying advanced technology. See, e.g., Intermedia at 11-13; e-spire at 7-9, Northpoint at 1.
- AT&T notes that CLECs and new entrants from other industries are aggressively rolling out broadband services to consumers. AT&T at iv and Exh. B. AT&T further explains that TCI has committed \$1.8 billion to upgrade its infrastructure and that AT&T itself is trialing its “Angel” technology designed to offer high-speed secure wireless access to homes over CMRS spectrum. AT&T at 14-15.
- The Commercial Internet Exchange Association (CIX) points out that high-speed Internet access to end users is growing rapidly as CLECs, cable operators, satellite-based service providers and others are rapidly deploying capabilities for much improved Internet speeds. CIX at 12. CIX notes that @Home has affiliate agreements with 15 leading cable companies in North America, including Comcast and Cox. Illogically, however, CIX requests access to BOC networks only, completely ignoring the fact that cable companies are the incumbents in offering advanced services and do so through their monopoly @Home ISP.
- Power companies confirm they are in a unique position to provide high-speed broadband. American Public Power Association at ii. Media Fusion expects to roll out high-speed services over power lines beginning at the end of 1999, and claims that high-speed transmission over power lines is much more economical than over phone lines. Media Fusion at 3.

- Satellite companies will offer ubiquitous broadband from the sky. Teledesic explains that it will provide broadband services everywhere in the world, starting by the year 2003. Teledesic at 2. PanAmSat notes that it has invested “billions” in satellite systems that among other things support “point-to-point data links and large data networks.” PanAmSat at 2.

Given this facilities bypass, and the numerous competitors already in the market, it is increasingly critical to eliminate regulatory requirements that impose costs and burdens on one particular competitor only, local telephone companies, and to avoid creating onerous new rules applicable only to them. Disparate regulation of competing technologies serves to undermine, rather than promote, efficient competition. The reason is simple. By artificially increasing the costs of one competitor, it actually serves to deprive consumers of the full benefits of vigorous price competition. Furthermore, ensuring that regulations do not unfairly disadvantage some technologies is consistent with Section 706(c)(1), which directs the Commission to promote advanced telecommunications capability by removing regulatory barriers, and to do so “without regard to any transmission media or technology.” The Commission’s 706 inquiry should follow the statutory directive to consider all technologies rather than focus narrowly on one particular technology (copper wire).

More fundamentally, the existence of these many forms of bypass further undercuts any rationale for taking draconian measures that would disadvantage technologies offered by local telephone companies such as ADSL, and that would force telephone companies effectively to become construction companies forced into service at the behest of competitors. For example, there is no reason to apply the unbundling provision in Section 251 to new equipment that telephone companies deploy to provide

advanced services or to mandate subloop or spectrum unbundling. Indeed, in determining what network elements should be made available for unbundling the Commission is required by the Act to consider whether such access is necessary, and this standard cannot be met where competitors already have in place or are now deploying facilities of their own to provide advanced services in competition with the local telephone company. Section 251(b)(2)(A). Nor is there any reason to require Bell Atlantic to condition loops for competitors on demand. With the existence of so many facilities-based competitors, the Commission's proposed rules actually retard advanced services deployment.

III. Extensive Regulation of Advanced Services Offered by Local Telephone Companies Will Delay Their Provision and Undermine Competition.

Some commenters note that advanced services are being deployed in a timely and reasonable manner, Cablevision at 5, while others believe that the standard for measuring the pace of deployment would be what a free market provides. AT&T at 24-25. The free market is working just fine for advanced services, and is providing the facilities-based bypass that is a key goal of the 1996 Act. But onerous regulation of local telephone company technologies will deter the broad scale deployment of advanced services by the telephone companies, and by doing so will hold full competition back.

The draconian measures the Commission proposes in the NPRM for the local telephone network, such as loop conditioning on demand and subloop unbundling, are a "solution" to a problem that does not exist. Indeed they create serious inefficiencies by burdening one technology with regulation others do not face. The real-world effect of such rules, however well-intentioned, will be slower deployment of xDSL and less choice for consumers.

First, Bell Atlantic previously explained in the NOI the many ways in which the Commission's proposed regulations will harm residential advanced services deployment. NOI Comments at 9-14. Imposing unbundling and resale obligations would deter local telephone company investments in broad scale deployment of advanced services, while the reduction of Bell Atlantic to the position of a construction company for its competitors will lead both to innumerable disputes over equality of access and to enormous disruption as Bell Atlantic reconfigures services designed for operation by one company and makes them available to everyone under all circumstances.

Second, these deterrents to local telephone company investment are coupled with deterrents to CLEC investment. For example, the policy adopted by many state commissions of forcing local telephone companies to pay reciprocal compensation for Internet traffic discourages competitors from actually building facilities. NOI Comments at 9. As one analyst explains, payment of reciprocal compensation on this traffic actually deters investment in competing facilities because it has the "perverse effect of turning customers from assets to liabilities." *See* S. Cleland, "Reciprocal Comp For Internet Traffic—Gravy Train Running Out of Track," Legg Mason Research Technology Team (June 24, 1998). And the chairman of Covad, a competing provider of advanced services, recently explained that the effect of the reciprocal compensation "boondogle" is to "slow down the deployment of a high-speed packet-based network." *See* Transcript, Economic Strategy Institute Forum on Section 706 (Sept. 16, 1998).

Second, mandating unbundled access at cost-based prices to the new equipment needed to provide advanced services will only discourage additional facilities-based bypass. *Id.* at 9-10. Indeed, even where competitors could provide their own services at

the same or lower cost than the telephone company, they will have little incentive to do so if they can avoid the market risk inherent in investing their own capital by simply piggybacking on the investment made by the local telephone company. For this very reason, Professors Areeda and Hovenkamp have explained that when the government forces a company to “provide [a] facility and regulate the price to competitive levels, then the [prospective entrant’s] incentive to build an alternate facility is destroyed altogether.” 3A Philip E. Areeda & Herbert Hovenkamp, Antitrust Law ¶ 771b, at 175 (rev. ed. 1996).

It is, of course, true that Bell Atlantic and other local telephone companies have begun to roll out ADSL. But the consensus is that ADSL will not be as widely deployed as cable modems in the near future. “Net Access: Cable Modems Surge,” USA Today (Oct. 5, 1998). And, while factors such as competing standards and technical difficulties are part of the reason for the pace and magnitude of local telephone company deployment of ADSL, the overlay of Commission regulation proposed in the NPRM will continue to discourage wider deployment by the local telephone incumbents and competing local telephone companies alike.

The end result of adopting investment-detering rules will be less choice for consumers. Residential consumers in particular will be harmed by delays in rolling out advanced services. As Bell Atlantic has noted, no other competitors that plan to use telephone wires to offer broadband are targeting residential customers.

IV. Competitors Are Deploying ADSL Service Broadly Without the Commission’s Proposed Rules.

Experience also suggests that the additional regulatory requirements proposed in the NPRM are not needed in any event. Competing data carriers are deploying ADSL even in the absence of the Commission's proposed rules. Northpoint, for example, notes that it already "is well along the way" to rolling out service in more than twenty states over the next two years, with service already available in Boston, San Francisco and Los Angeles and new cities coming on line at the rate of one a month. Northpoint Comments at 1, 4. These carriers currently buy loops and collocation space from Bell Atlantic and other local exchange carriers based on negotiated agreements that are approved by state commissions.²

The fact that data carriers successfully are deploying ADSL to its customers now not only detracts from their inflammatory rhetoric that the local telephone company incumbents are preventing them from competing, but it refutes the argument that draconian new collocation, loop conditioning and unbundling rules are necessary within the meaning of Section 251(d)(2)(A) for these carriers to provide service. And the risk, as noted above, is that requiring the incumbents to make their own advanced services

² AT&T claims Bell Atlantic does not even live up to its agreements with the Commission, citing alleged violations by Bell Atlantic of its "merger commitments" undertaken when Bell Atlantic merged with NYNEX. Comments at 35. To the contrary, Bell Atlantic has lived up to the letter and spirit of those commitments. Thus, for example, Bell Atlantic has provided quarterly monitoring reports, which include the measurements set out in the merger order, to the FCC, to the state commissions, and to requesting carriers for each quarter since the merger was approved. Furthermore, Bell Atlantic has implemented industry standard interfaces for access to OSS, where they exist, within 180 days, and in some instances even sooner. For example, the industry standard for pre-ordering (EDI, version 9) was approved in July, and Bell Atlantic implemented it in the former NYNEX states in July, and in the former Bell Atlantic states in September. Likewise, Bell Atlantic implemented the industry standard ordering interface (EDI, version 8) within 180 days after the standard was adopted.

equipment available on an unbundled basis will actually deter the continued roll out by these competing carriers of their own competing facilities and equipment.

Northpoint also claims incorrectly that local companies are able to “price squeeze” Northpoint by inflating the costs of inputs such as loops and collocation to competitors while failing to include those costs in their own tariffs. Northpoint Comments at 4-6. As a preliminary matter, Northpoint’s claim that its offerings are uncompetitive because of these allegedly inflated costs is belied by its boasts that it is rapidly deploying services. More importantly, these inputs are not inflated. When Northpoint wants to offer a service, it has to buy a loop and collocation from Bell Atlantic at prices that have been set by state regulators based on Bell Atlantic’s costs. If, as it claims, Northpoint only wants to offer ADSL service, rather than the robust suite of voice and data services offered by Bell Atlantic and other CLECs, it may not get as much revenue off one loop as its competitors. But that is the proper result, since the Commission encourages companies that buy loops to put as many services across these loops as possible. The Commission held in its Local Competition Order that “[w]hen interexchange carriers purchase unbundled elements from incumbents, they are [] purchasing . . . the right to exclusive access or use of an entire element.” Local Competition Order at ¶ 358. The fact that some competitors may not fully utilize the facilities they purchase on an unbundled basis is their choice, and it is not up to regulators to correct holes in their business plans.

V. The Internet Backbone Is Congested and Concentrated and In Need of Strong Competitors to the Dominant Big Three Providers.

The Internet backbones would benefit greatly from more investment in competing facilities, particularly given the exponential growth in fast local access technologies. AT&T, for example, recently acknowledged that “the pace of Internet growth has outstripped the network’s ability to add new capacity quickly enough to handle the demand.” AT&T Opposition to Bell Atlantic’s 706 Petition at 23-24 (April 6, 1998). John Sidgmore, Vice Chairman of WorldCom, recently noted that “[w]e haven't seen the worst of bandwidth consumption yet. . . . If you're not scared, then you don't understand.”³

First, the Internet is concentrated and would greatly benefit from the removal of regulatory barriers that bar strong competitors. As this Commission and both domestic and international antitrust authorities have recognized, the Internet backbone market today is highly concentrated and is dominated by the big-three backbone providers – MCI Worldcom, Sprint, and the spun-off MCI backbone.⁴ The Commission again asks in the NOI how it can reduce concentration in the backbone market, specifically what it can do to “preserve efficient peering arrangements among Internet companies, especially in the face of proprietary gateways?” NOI at ¶79. The answer is to strengthen existing competitors and lower barriers for new entrants, in particular currently precluded entrants.

³ “Net Industry Puts on a Show,” Network World, 68 (May 11, 1998).

⁴ See, e.g., Antitrust Division Press Release, *Justice Department Clears WorldCom/MCI Merger After MCI Agrees to Sell its Internet Business* (July 15, 1998) (Assistant U.S. Attorney General Joel Klein noted that “[t]he merger as originally proposed would have given WorldCom/MCI a significant proportion of the nation's Internet traffic, giving the company the ability to cut off or reduce the quality of Internet services that it provided to its rivals”); Keynote Systems and Boardwatch Magazine, *Keynote/Boardwatch Internet Backbone Index*, Nov. 11, 1997, <http://www.keynote.com/measures/backbones/backbones.html>.

Second, many of the current backbones run slowly because there is a crying need for additional capacity, and permitting precluded competitors to enter and challenge the big three would add that capacity. Bell Atlantic NOI Comments at 16-18. Keynote Systems notes that average backbone speeds run at well below ISDN levels, even after an increase in performance this year. The latest Keynote Systems' studies shows the backbone continues to travel at unacceptable speeds – well less than the ISDN rolled out ubiquitously by Bell Atlantic. While WorldCom and others tout the statistics showing performance was 60% higher than last year, this comes from an unacceptable base and still remains significantly slower than the local loop access technologies installed by Bell Atlantic such as T-1s, T-3s, and even ISDN. The latest studies do not quantify the speed in kilobits per second, but a 60% gain from the year before would still leave Internet speeds at little more than half ISDN's 128 kbps. The Keynote Systems' measurements overstate actual speeds experienced by users, since they average measurements taken when few people are on the Internet with measurements taken at peak hours.

Third, and again resulting in part from regulatory barriers, the backbones today could use improvement. Keynote Systems' backbone speed measurements ignore entirely Internet calls that are never completed. Bell Atlantic NOI Comments at 16-17. Backbones are a combination of fiber, routers and switches, which connect through network access points to local loops. When too much traffic is trying to make its way through congested switches or routers, many packets just drop off if they cannot get through, or some get through much more slowly than others turning the World Wide Web into the World Wide Wait. The problem is not isolated but systemic. Boardwatch noted that the fastest cities, including Boston in Bell Atlantic's region, are "often four times

faster than the slowest ones,” such as Washington, D.C. “Internet Performance 60% Faster This Year Than 1997,” www.keynote.com/news/announcements/pr031198.html. Internet backbone problems are even worse in more remote areas, given the lack of diversity in routing traffic and the lack of any backbones at all.

Finally, Internet backbones do not reach many areas. The comments confirm the limited reach of most backbone investment. Level 3 will connect 25 cities with its backbone, Comments at 2-5, and Qwest will connect 130 cities, Qwest Comments at 5-9, but that leaves the vast majority of American cities without access to these, or indeed for many cities any, backbones. There are well over 200 cities in the United States with a population in excess of 100,000, and literally thousands over 50,000.

<http://www.census.gov/population/censusdata/c1008090.txt>

Bell Atlantic has discussed at great length the difficulties rural areas have had obtaining Internet backbone service. In West Virginia, for example, government officials have noted the lack of bandwidth capacity, and many commenters on Bell Atlantic’s West Virginia Petition for Interim Relief agreed there is a bandwidth shortage. Bell Atlantic West Virginia Reply, CC Docket 98-11 at 1 (Aug. 21, 1998). Bell Atlantic also has noted that much of Northern New England, the Berkshire mountains, part of upstate New York, and many rural areas of Pennsylvania and Virginia lack backbone capacity. Bell Atlantic 706 Reply Comments at 10-13.

As Bell Atlantic explained in the NPRM, the Commission should grant several forms of limited interLATA relief, all of which relate to providing high-speed data services. The requested relief includes clarifying that information services are not subject

to the requirements of Section 271; permitting Bell Atlantic to offer backbone services⁵ and corporate intranets/extranets free of regulation; and allowing Bell Atlantic to provide high-speed access to the nearest network access point (“NAP”) in another LATA. Bell Atlantic NPRM Comments at 4-18.

There are no competitive issues related to granting backbone relief. First, backbone relief does not materially diminish incentives to comply with Section 271. The overall market for backbone services is small; in the Commission’s investigation of the WorldCom/MCI merger, GTE estimated the actual size of the Internet backbone market (for which no good figures exist) at far less than \$4 billion nationally,⁶ and even WorldCom/MCI estimated the entire Internet market – including ISPs and backbone providers – at around \$5 billion nationally – only a small fraction of which could ever be won by a single Bell company. Joint Reply of WorldCom and MCI, at 73 (Jan. 26, 1998). Compared to the \$80 billion long distance market, the backbone market is small and would not materially reduce Bell Atlantic’s incentives to comply with the checklist.

Second, there is no local loop issue involved in providing backbone service, since backbones as defined by the Commission connect Internet hubs. The only “bottleneck” is the proprietary gateways identified by the Commission in the NOI that are controlled by the current big-three Internet incumbents. Bell Atlantic’s entry will be procompetitive.

⁵ The Commission has defined an Internet backbone as “the transporting and routing of packets between and among ISPs and regional backbone networks.” WorldCom/MCI Order at ¶148. It defined backbone markets to be a “separate relevant product market” from non-Internet long distance markets. Id.

⁶ Internet Affidavit of Robert G. Harris at ¶45, attached to Comments of GTE Corporation, CC Docket 97-211 (March 13, 1998).

VI. Conclusion.

The Commission should adopt a policy of technology-neutrality that fairly reflects the lack of any monopoly bottleneck. Today cable companies are the advanced services incumbents but operate under far less stringent regulation than Bell Atlantic, while competitors such as RCN and Winstar are subject to even fewer regulations. As Bell Atlantic has noted, in a few years there will be no less than five facilities-based broadband alternatives in the home. It is in the public interest to reduce regulatory burdens on Bell Atlantic's provision of advanced services so it can deploy them as aggressively as its more lightly-regulated competitors.

Respectfully submitted,

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