

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

1998 Biennial Regulatory Review –
Petition for Section 11 Biennial Review
filed by SBC Communications, Inc.,
Southwestern Bell Telephone Company,
Pacific Bell, and Nevada Bell

CC Docket No. 98-177

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COMMENTS OF BELL ATLANTIC¹

Bell Atlantic generally supports SBC's biennial review proposals. SBC has focused on several areas where the Commission has not yet carried out Congress' directive in Section 11 of the Act to review all of its regulations every two years to eliminate any regulation that "is no longer necessary in the public interest." 47 U.S.C. Section 161. In particular, the Commission should take the following actions to promote the "pro-competitive, de-regulatory"² directives of the 1996 Act.

Eliminate Rate of Return Represcription Trigger For Price Cap Carriers. The current rule mandating an inquiry concerning a represcription for a benchmark rate of

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

² Joint Explanatory Statement, p. 113.

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return (47 C.F.R. § 65.101) was put in place when all local exchange carriers' prices were set based on rate of return regulation, where rates were linked directly to cost. In contrast, price cap regulation was designed to encourage greater efficiency by severing the link between rates and costs. *See* LEC Price Cap Order, 5 FCC Rcd 6786, ¶¶ 21-37 (1990). Under price cap regulation, the rate of return benchmark is irrelevant for setting day to day prices. For this reason, the Commission should eliminate the trigger for price cap carriers.³

The only time there is any connection between a price cap carrier's rates and the benchmark rate of return is when a carrier applies for a lower formula adjustment.⁴ But the benchmark for a lower formula adjustment, used only as a protective backstop, serves a far different role than a benchmark for rate of return regulation. Under the Commission's rules, a carrier only may obtain a lower formula adjustment when its rates are 100 basis points below the benchmark – thereby lowering any risk of over-recovery by a carrier if the cost of capital has fallen. Moreover, the lower formula adjustment is

³ For the same reason, the Commission should delete Section 65.600(d), which requires local exchange carriers that are subject to price caps to file annual rate of return reports.

⁴ The Notice suggests that the prescribed rate of return continues to be used in certain contexts that apply to price cap carriers, such as in the formulas for pole attachment rates and in the state cost studies for universal service. Notice, n.12. However, Section 224(c) of the Act, and the Commission's decisions in the universal service proceeding, place initial responsibility on the state regulatory commissions to examine cost issues in these matters. *See* 47 U.S.C. Section 224(c); Amendment of the Commission's Rules and Policies Governing Pole Attachments, 13 FCC Rcd 6777, n.20 (1998); Universal Service Order, 12 FCC Rcd 8776, ¶ 250 (1997).

made only in the following year, and any price increases allowed through the adjustment must be undone by the year after. As a result, there is limited danger of significant lower formula over-recovery from too high a benchmark. In contrast, if the Commission were to set a benchmark for a lower formula adjustment recovery too high, these same limitations would make it likely that there could be significant financial harm to a carrier.

At a minimum, the Commission should consider alternatives to the current trigger. By focusing only on debt, the current trigger ignores changes in the cost of equity, and the impact of increased risk. The latter is especially significant today, when the Act has opened up regulated markets to competition and has significantly increased the risk (and thereby the cost of capital) for all price cap regulated carriers.

Streamline The Rules For Calculating Cash Working Capital. SBC is correct in observing that the lead-lag study required for calculating cash working capital is very labor intensive, and that the burden of performing this study is out of proportion to the impact on the rate base. *See* SBC at 10-11. Such studies typically take three to four months to complete. Such a burden is completely out of line with the “small impact” of such studies. Amendment of Part 65 Rules, 4 FCC Rcd 1697, ¶ 11 (1989) (“even an exaggerated 20% error in [cash working capital] would yield an overall error in the interstate revenue requirement of only one tenth of one percent”). Given that this study is only used for a rate of return calculation, which as shown above, has very limited relevance to price cap carriers, the burden is even more disproportionate. The best solution would be to eliminate this rule along with the entire Part 32 cost accounting system, and to allow the carriers to follow generally accepted accounting principles to

determine these costs for regulatory purposes, as they do for financial purposes. *See* 1998 Biennial Regulatory Review, Review of Accounting and Cost Allocation Requirements, CC Docket No. 98-81, Comments of Bell Atlantic (filed July 17, 1998), *see also* Attachment H, of Commissioner Furchtgott-Roth's Report on Implementation of Section 11 (rel. Dec. 21, 1998) (recommending repeal of section 65.820(d)).

If the Commission determines that a cash working capital is nevertheless required, at a minimum it should reduce the burden by allowing carriers greater flexibility in selecting the least burdensome method for conducting such a study. In particular, the Commission should allow a simplified approach that calculates cash working capital as 1/8 of overall operating expenses. When the Commission considered such an approach more than a decade ago, it found on balance that the benefits were outweighed by what might be lost in specific accuracy. Amendment of Part 65, 3 FCC Rcd 269, ¶ 71 (1987). But given subsequent Commission findings about the limited impact of such studies, as well as the reduced reliance on rate of return calculations altogether, clearly that balance has shifted.

Deregulate Services Subject To Competition. SBC proposes that the Commission "detariff" services that already are subject to competition, such as special access services, direct trunked transport, operator services, directory assistance, and interexchange services. SBC at 21-23. While SBC is correct that these services are sufficiently competitive that rate regulation is no longer needed to protect consumers, the issue is not detariffing, but rather pricing freedom. The Commission should eliminate its rules regarding the prices that the local exchange carriers may charge for these services.

For all of the services listed by SBC, there is no longer any need for price regulation by the Commission.

The special access market is highly competitive and clearly meets the criteria for forbearance from regulation. For example, in Bell Atlantic's service area, more than 88% of Bell Atlantic special access demand has the option of a competitive alternative. Moreover, that figure does not take into account customers already lost to alternative providers and self-provisioning. Indeed, according to a recent study by Quality Strategies, Inc., in Bell Atlantic urban areas -- where the vast majority of special access demand is concentrated -- approximately a third (and up to one half) of high capacity special access demand has already been won by competitors to Bell Atlantic. This direct competitive pressure makes regulation by the Commission superfluous, and counter-productive.

The market for direct-trunked transport is also highly competitive, since collocated carriers already have established fiber-optic and microwave facilities directly to interexchange carrier points of presence and can easily replace Bell Atlantic's transport facilities to these customers.

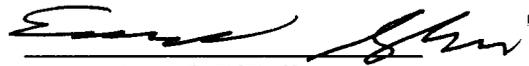
Numerous competitors already exist for operator services and directory assistance, including national service by the largest long distance carriers and local service by hundreds of independent carriers.

Finally, there can be no doubt that the local exchange carriers represent a minute portion of the market for interexchange services, and clearly cannot exercise pricing power in this market.

Conclusion

For the foregoing reasons, the Commission should adopt SBC's streamlining proposals as described herein.

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of January, 1999, a copy of the foregoing
"Comments of Bell Atlantic" was sent by first class mail, postage prepaid, to the parties on the
attached list.



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* Via hand delivery.

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