

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

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FEDERAL COMMUNICATIONS COMMISSION
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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

**REPLY COMMENTS OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"),¹ through undersigned counsel and pursuant to *Notice of Proposed Rulemaking*, DA 98-238 (released November 24, 1998) ("*Notice*"), hereby replies to the comments of Ameritech, Bell Atlantic, BellSouth Corporation ("BellSouth"), and the United States Telephone Association ("USTA") (collectively, the "Incumbent LEC Commenters") in support of the Petition for Section 11 Biennial Review (the "Petition") filed by SBC Communications, Inc. ("SBC"), Southwestern Bell Telephone Company ("Southwestern Bell"), Pacific Bell and Nevada Bell (collectively, the "Petitioners") in the captioned docket on May 8, 1998.

¹ A national trade association, TRA represents nearly 800 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services. TRA is the largest association of competitive carriers in the United States, numbering among its members not only the large majority of providers of domestic interexchange and international services, but the majority of competitive local exchange carriers, as well.

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In its Comments, TRA, as well as all other non-incumbent local exchange carrier (“LECs”) commenters,² opposed as premature the widespread regulatory relief sought by Petitioners in their Petition. TRA, however, challenged in particular Petitioners’ proposals to (i) detariff incumbent LEC special access services, direct trunked transport, operator services, directory assistance and interexchange services, and (ii) relax the Commission’s affiliate transaction rules. As TRA emphasized, Petitioners’ proposals to relieve incumbent LECs of their tariffing, affiliate transaction and other obligations are predicated on a false assumption -- *i.e.*, that “[m]eaningful economic competition is underway” and that, accordingly, “[r]egulations which are holdovers from a monopoly local exchange market must be relaxed or eliminated in light of these developments.”³ As TRA showed, the most recent report on the state of local competition issued by the Industry Analysis Division of the Common Carrier Bureau confirms that competitive inroads into the local exchange and exchange access markets remain minimal.⁴ And neither the sparse competitive data supplied by Petitioners nor the undisclosed, limited study to which Petitioners briefly refer in arguing that the high capacity special access market in

2 Comments of ABC, Inc., AT&T Corp., CBS Corporation, Competitive Telecommunications Association, GST Telecom Inc., Hyperion Telecommunications, Inc., KMC Telecom, Inc., Logix Communications Corporation, MCI WorldCom, Inc., National Broadcasting Company, Turner Broadcasting System, Inc.

3 Petition at 8.

4 Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, Local Competition (December, 1998) ("Local Competition Report").

particular is highly competitive demonstrates otherwise.⁵ Indeed, the data provided by Petitioners actually confirms that local competition has barely taken hold.⁶

Other than arguing over and over again that the Commission's Section 11 biennial review has not been not broad enough, the Incumbent LEC Commenters offer little to bolster Petitioners' anaemic presentation. With respect to Petitioners' detariffing proposals, for example, Bell Atlantic simply declares that "[t]he special access market is highly competitive, . . . [t]he market for direct trunked transport is also highly competitive, . . . [numerous competitors already exist for operator services and directory assistance, . . . local exchange carriers . . . clearly cannot exercise pricing power in . . . [the interexchange] market," offering in support of its contentions only occasional reference to unsupported data and undisclosed studies.⁷ For its part, BellSouth avers, without more, that it and other incumbent LECs "are entrenched in fierce competition in high capacity special access services," while Ameritech offers only summary claims of lost market share in the directory assistance market.⁸

Obviously, simply declaring that something is so does not make it so. And persistently repeating the same inaccurate declarations does not render them any more true than

5 Not only did Petitioners not provide the study they rely upon in claiming that the high capacity special access market is highly competitive or disclose the methodology used in, or the data generated by, that study, but they cite the study only for the proposition that market losses have occurred in "major markets," while arguing for wholesale elimination of tariffing and other regulatory safeguards against abuse of market power.

6 As TRA pointed out, the "830,000 access lines" Petitioners claim to have lost "to CLECs through resale or through the establishment of new facilities-based service by CLECs in SBC's seven state areas" (Petition at 7) represents less than two percent of total access lines in this seven state area. Federal Communications Commission, Preliminary Statistics of Communications Common Carriers, pages 24 - 25, table 2.5 (1997 edition).

7 Bell Atlantic Comments at 5.

8 BellSouth Comments at 2; Ameritech Comments at 4 - 5.

when they were first uttered. While the Bell Operating Companies (“BOCs”) and other incumbent LECs persist in their contention that the local exchange and exchange access markets are, to use BellSouth’s characterization, “fiercely competitive,” their claims find no support in reality. As TRA pointed out in response to the Commission’s invitation to refresh the record in its access charge reform proceeding, among the many commenters, neither large nor small, residential nor business, governmental nor non-governmental, nor carrier nor non-carrier customers concurred with the incumbent LECs’ assessment of the status of local competition.⁹

The Commission should not allow itself to be swayed by monopolists’ distorted perceptions of what constitutes a competitive market. Regulatory action should be soundly founded in reality, not on a perception of reality which reflects decades of legal and regulatory insulation from competition.

As to the Incumbent LEC Commenters’ claims that the Commission has not fulfilled its statutory obligations under Section 11, they are baseless. Section 11 requires the Commission every two years to review its telecommunications regulations and identify and repeal or modify those it determines to be “no longer necessary in the public interest as the result of meaningful economic competition.”¹⁰ Accordingly, “meaningful economic competition” in the local exchange and exchange access markets is a prerequisite for a determination that a rule applicable to the operations or activities of an incumbent provider of such services is no longer necessary. And as discussed above, such “meaningful economic competition” has not yet

9 Reply Comments of TRA filed in CC Docket No. 96-262 and 94-1 and RM No. 9210 on November 9, 1998 *citing* Comments of the Ad Hoc Telecommunications Users Committee, the American Petroleum Network, the General Services Administration, the Consumer Federation of America, the International Communications Association, and the National Retail Federation, MCI WorldCom, Inc., and Sprint Corporation.

10 47 U.S.C. § 161.

emerged in the local exchange/exchange access markets. Thus, Ameritech's argument that "Congress intended the biennial review to be a more fundamental policy examination into whether specific regulations were necessary in light of the state of competition in the telecommunications marketplace" is unavailing because there has been no significant change in the state of local competition.¹¹

Nonetheless, contrary to Ameritech's contention, the Commission has not limited its biennial review of its telecommunication regulations to a mere "clerical examination."¹² As the *Notice* indicates, the Commission staff has taken a "broad review of Commission regulations," involving all five of the operating Bureaus, the Office of Engineering and Technology, and a task force comprised of representatives of the Office of Plans and Policy, the Chief Economist's Office, and the Competition Division of the Office of General Counsel.¹³ In undertaking this "broad review," the Commission went further than Section 11 required, evaluating rules applicable to carriers which faced no "meaningful economic competition," including rules applicable to incumbent LECs.¹⁴ And in so doing, the Commission evaluated its telecommunications regulations not only to determine whether they served a valid purpose, but whether other regulations might better achieve this purpose, and whether the regulations were unduly burdensome, redundant, or hindered competition or innovation.¹⁵

11 Ameritech Comments at 2.

12 *Id.*

13 *Notice* at ¶ 3.

14 *Id.*

15 *Id.* at ¶ 4.

This review produced a list of 31 proceedings which the Commission staff proposed to initiate in order to fully implement the directive of Section 11.¹⁶ These proceedings were in addition to a number of existing proceedings the Commission had already initiated to streamline its regulations and processes.¹⁷ And the Commission established procedures to ensure that its regulatory streamlining would be a fluid exercise, affirmatively soliciting ongoing regulatory input from the public.¹⁸ In short, efforts undertaken by the Commission pursuant to Section 11 have been, and continue to be, substantially more comprehensive than Ameritech's alleged "clerical examination" -- by an order of magnitude.

That having been said, Section 11 does not dictate the manner in which the Commission should undertake its biennial review of telecommunications regulations. Section 11 certainly does not require initiation of a single "mega-rulemaking" to evaluate at one time all telecommunications regulations. Nor does it dictate a presumption that rules which continue to protect consumers and competitors from market power abuses are no longer necessary. Nor does it limit regulation to restrictions on "actual" versus "prospective" behavior. Section 11 simply mandates a Commission review, leaving to the Commission's informed discretion how that review should be undertaken.

Finally, USTA's contention that "economic regulatory reform can provide welfare gains on the order of 0.3 percent of GDP for the U.S." fundamentally misses the point.¹⁹ What USTA fails to acknowledge is that the welfare gains it claims "economic regulatory reform"

16 Id. at ¶ 6.

17 Id.

18 Id.

19 USTA Comments at 3.

would generate would come at a high cost. Certainly, regulation imposes burdens on regulated entities, requiring them to expend capital and personnel resources to comply with applicable requirements. Regulation, however, also serves the public interest by protecting consumers and competition from abuses of market power. The “economic regulatory reform” Petitioners and the Incumbent LEC Commenters seek would deny consumers and competitors the benefits of this protection, to the detriment of the public interest.

What the Incumbent LEC Commenters’ complaints boil down to is a general dissatisfaction with the fact that they continue to be regulated as the dominant providers of local exchange and exchange access services that they are. There is of course an easy way to remedy this situation and that is for incumbent LECs to truly open their local markets to competition as they are required by law to do. As long as incumbent LECs continue to believe that their recalcitrance will eventually be rewarded with relaxed regulation despite their retention of a dominant market position, they will continue to resist competitive entry while at the same time seeking regulatory relief. It, accordingly, is critical that the Commission send a strong signal here and in other like proceedings that regulatory relief will only follow full implementation of Section 251(c).

By reason of the foregoing and the arguments set forth in its earlier-filed Comments, the Telecommunications Resellers Association once again urges the Commission to summarily deny the regulatory relief sought by Petitioners, including Petitioners' proposals to (i) detariff for all carriers special access services, direct trunked transport, operator services, directory assistance and interexchange services, and (ii) relax the Commission's affiliate transaction rules.

Respectfully submitted,

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January 25, 1999

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CERTIFICATE OF SERVICE

I, Evelyn Correa, hereby certify that a true and correct copy of the foregoing Reply Comments of the Telecommunications Resellers Association has been served by United States First Class Mail, postage prepaid, this 25th day of January, 1999, on the individuals listed on the attached service list.


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