

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

In the Matter of)	
)	
)	
Petition of the SBC Companies)	CC Docket No. 98-227
for Forbearance from Regulation as a)	
Dominant Carrier for High Capacity)	
Dedicated Transport Services in)	
Fourteen Metropolitan Service Areas)	
)	

**REPLY COMMENTS OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to *Public Notice*, DA 98-2509 (released December 8, 1998), hereby replies to comments submitted by Ameritech, U S WEST Communications, Inc. (AU S WEST_≅) and the United States Telephone Association (AUSTA_≅) (collectively, the AIncumbent LEC Commenters_≅) in support of the APetition of the SBC Companies for Forbearance_≅ filed by SBC Communications Inc., on behalf of Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell (collectively, the "Petitioners") in the captioned proceeding (the "Petition").

In its comments opposing the Petition, TRA argued that the Commission could not, and should not, forbear from dominant carrier regulation of Petitioners= provision of high capacity dedicated transport services in fourteen identified metropolitan statistical areas (AMSA_{s≅}) because Petitioners had wholly failed to substantiate their claim that competition sufficient to blunt their market power had emerged in these product and geographic markets. While TRA did not dispute that alternate providers of high capacity dedicated transport services had entered each of the fourteen

identified MSAs, it emphasized that not only did the study relied upon by Petitioners to support their claim of intense facilities-based competition substantially overstate the extent of the existent competition, but that the relief sought by Petitioners outstripped even the study's flawed conclusions. And, TRA urged, not only do compelling policy considerations argue against granting piecemeal regulatory relief to entities that retain near monopoly control of bottleneck facilities that can be used to subsidize predatory pricing and otherwise disadvantage competitors, but the significant pricing flexibility that the Commission has already afforded incumbent local exchange carriers (ALECs) is more than adequate to permit them to meet competition.

The Incumbent LEC Commenters offer little new in their defense of Petitioner's pleas. Thus, Ameritech opines that Petitioners' demonstration of the extent of competition for high capacity services in the fourteen MSAs in question is more than adequate, and that it is very clear that for high capacity services in those areas, SBC has ceased to be a dominant carrier.¹ USTA chimes in that SBC's petition provides compelling evidence that SBC faces intense competition in each of those areas from numerous competitors.² And U S WEST claims that the SBC's Petition provides further proof . . . that the market for high-capacity services is intensely competitive.³ Other than referencing already discredited market studies, however, none of the Incumbent LEC Commenters provide any quantitative support for their or Petitioner's highly-exaggerated competitive assertions.

U S WEST does, however, attempt to shore up the market study upon which Petitioners found their claim of intense competition by offering a half-hearted defense of two key

Ameritech Petition at 3.

USTA Petition at 1.

U S WEST Petition at 1.

methodological flaws which undermine the study's credibility. First, U S WEST contends that it was appropriate for the study to treat special access and dedicated transport for switched access at DS1 and higher transmission levels as an identifiable product market. According to U S WEST, a customer perception and the market behavior of competitive access providers confirm that high capacity services constitute a distinct product market.⁴ TRA submits that U S WEST misses the point.

High-capacity dedicated transport services cannot be addressed separately from the monopoly or near-monopoly services Petitioners offer in conjunction with these services both within and without the fourteen identified MSAs. This is because Petitioners retain the incentive and the ability to leverage their market power in these adjacent service markets to secure competitive advantages in the high-capacity dedicated transport services market. As TRA pointed out in its comments, these adjacent service markets (and, indeed, other geographic high-capacity dedicated transport markets in which alternative sources of service are not available) can provide sources of cross-subsidy to fund Petitioners' predatory pricing of high-capacity dedicated transport services and the associated network facilities can be used to disadvantage competitors by, for example, degrading interconnection quality, slow-rolling provisioning, etc.⁵ Through such stratagems as these, Petitioners can not only crush existent high-capacity dedicated transport services competition, but render competitive entry into other geographic and service markets less likely.⁶

Id. at 2.

As described by Time Warner Telecom ("TWTC"), "SBC of course continues to control many essential CLEC input location (e.g., collocation, unbundled loops, and other UNEs, interconnection trunks, etc.). Even facilities-based CLECs such as TWTC must rely on many or all of these inputs from SBC." TWTC Comments at 11 - 12.

As TWTC points out, the Commission has previously recognized that "[i]f an incumbent is able to develop a reputation for aggressively competing via targeted bids with recent entrants by doing so in a handful of markets, it may be able to dissuade pote

U S WEST, however, also contends that Petitioners properly used capacity, not revenue as their basis for calculating market share in the market for high-capacity services.⁷ In support of this assertion, U S WEST obliquely notes that modern telecommunications networks are distinguished most fundamentally by their physical ability to transmit information.⁸ Somewhat (but not much) more to the point, U S WEST adds that use of the current output rather than the total capacity of competitors actually understates the competitive significance of other providers of high-capacity services.⁹ Once again, U S WEST is wide of the mark.

As TRA pointed out in its comments, Petitioners' use of DS1 equivalent circuits distorts a competitive analysis of the high-capacity dedicated transport market by assigning undue weight to DS3 circuits. Twenty-eight DS1 circuits will produce substantially more revenue and serve far more customers than a single DS3 circuit.¹⁰ Under Petitioners' methodology, however, a competitive provider of a single DS3 circuit will appear to have the same competitive impact as an incumbent provider of twenty-eight DS1 circuits even though the former is serving a fraction of the customers served by the latter and generating only a third of the revenues generated by the latter. And as Petitioners are well aware, the market at DS3 capacity and above is more competitive than the

ants from entering any of its other markets." Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, 12 FCC Rcd. 19,000 (1997).

Id. at 3.

Id.

Id.

¹⁰ If Petitioners are indeed comfortable that their use of equivalent circuit counts produces a conservative view of competition, they must question why market data based on revenues or customers was not provided to demonstrate the correctness of this view.

market for DS1 service.¹¹

While attempting to bolster Petitioners' request for relief, Ameritech and USTA actually provide a telling rationale for denying the Petition. As both commenters point out, the matters raised by Petitioners are at issue in the Commission's ongoing review of its access charge regime. Thus, Ameritech makes reference to the Access reform proposal it submitted . . . in Docket 96-262,¹² which, it bears noting, was, at the Commission's invitation, the subject of public comment this past fall.¹³ And USTA cites to its recommendation "[i]n CC Docket No. 96-262 . . . that the Commission forbear from regulating high capacity access services."¹⁴

As Ameritech and USTA appear to recognize, piecemeal regulatory actions are generally a poor substitute for industry-wide analysis. While TRA does not concur with respect to timing, it does agree with Ameritech that it is "important for the Commission to . . . adopt a broader pricing flexibility framework applicable to the industry as a whole."¹⁵ To this end, the Commission has already indicated that it intends to "give carriers progressively greater flexibility in setting rates as competition develops," and is currently developing rules for application of such a competition

¹ MCI WorldCom, Inc ("MCI WorldCom") notes in its comments that while "somewhat successful in finding alternative DS3 entrance facilities, it continues to purchase 100 percent of multiplexing and over 90 percent of DS1 interoffice channel terminations from SBC." MCI WorldCom Comments at 14. As described by MCI WorldCom, "DS1 equivalent' measure measures obscure SBC's continued dominance of the more significant (in revenue terms) multiplexing, interoffice transmission channel termination elements." Id.

² Ameritech Comments at Att. B, p. 1.

³ Public Notice, FCC 98-256 (released October 5, 1998).

⁴ USTA Comments at 2.

⁵ Ameritech Comments at 1.

continuum.¹⁶ Ad hoc actions here and in response to other incumbent LEC petitions seeking premature regulatory relief will interfere with the development of well-reasoned rules and policies and render comparable treatment of all similarly-situated carriers and consumers difficult, if not impossible.

Finally, Ameritech and U S WEST urge the Commission to act promptly on Petitioners' request for regulatory relief, suggesting the Commission will otherwise soon be inundated with like petitions.¹⁷ In fact, U S WEST directly threatens to "file subsequent forbearance petitions in additional MSAs."¹⁸ TRA agrees with these commenters that prompt Commission action is necessary, but disagrees with regard to the nature of that action. The Commission should indeed act expeditiously to deny the Petition, but in so doing, should make it clear that such matters will be addressed as part of its further review of its access charge regime and not on an ad hoc city-by-city basis. The Commission should further emphasize that no regulatory relief will be forthcoming until incumbent LECs have met their statutory obligation to fully open their local exchange and exchange access markets to competition.¹⁹ Only in this manner, to paraphrase Ameritech, will all consumers derive the full benefits of competition.

⁵ Access Charge Reform (First Report and Order), 12 FCC Rcd. 15982, & 14 (1997), *recon.* 12 FCC Rcd. 10119 (1997), *second recon.* 12 FCC Rcd. 16606 (1997), *third recon.* 12 FCC Rcd. 22430, *fourth recon.* 13 FCC Rcd. 5318, *recon. pending petition denied* FCC 97-216 (June 18, 1997), *aff= d sub nom. Southwestern Bell Telephone Company v. FCC*, Case No. 97-2620 (10th Cir. cases) (8th Cir. Aug. 19, 1998); Price Cap Performance Review for Local Exchange Carriers (Fourth Report and Order) 12 FCC Rcd. 16642 (1997).

⁷ Ameritech Comments at 3; U S WEST Comments at 4.

⁸ U S WEST Comments at 4.

⁹ After all, Section 10 of the Communications Act of 1934, as amended (the "Act") requires the Commission to determine whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services." 47 U.S.C. § 160(b).

By reason of the foregoing and the matters presented in its earlier-filed comments, the Telecommunications Resellers Association once again strongly urges the Commission to deny as premature the regulatory relief sought by Petitioners.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Evelyn Correa, do hereby certify that a true a correct copy of the foregoing document has been served by the United States First Class Mail, postage prepaid, individuals listed, the 11th day of February 1999.

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