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

In the Matter of	)	
	)	
Petition of the SBC Companies	)	
For Forbearance from Regulation	)	**CC Docket No. 98-227**
as a Dominant Carrier for	)	
Dedicated Digital Services in	)	
Specific MSAs	)	
	)	

REPLY COMMENTS OF THE SBC COMPANIES

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SUMMARY

The comments filed in this proceeding come largely from those that have a vested interest in seeing that the SBC Companies receive no additional pricing flexibility whatsoever. All of these parties wish to keep access rates within the artificial bounds set by the Commission rather than allow the marketplace to govern these prices.

Such a result should be firmly rejected by the Commission. In this proceeding, as in the Access Reform docket, many of the competitors of the SBC Companies use their dual identity as customers of the ILECs to attempt to cloud the debate. These commenters claim that they are really not active competitors, or that their competitive activities are minimal, in order to attempt to deny the ILECs any meaningful pricing flexibility, and to hinder their ability to compete.

This proceeding provides a prime opportunity to the Commission to make a bold statement to competitors that it will no longer protect them from full and fair competition. Granting of SBC's Petition would provide a firm sign to the marketplace that competition is about to become even more fierce than before. At a minimum, RFP and contract pricing would allow the ILECs to meet their competitors in these markets where competitive access providers are "cherry-picking" the most profitable customers, in many cases just because the ILECs have not been allowed even to bid against them in an RFP process.

There is no basis to await the decision in the pricing flexibility phase of the Access Reform before moving forward here. Such a potential procedural delay would only provide cover and comfort to those competitors that fear a market where all players are allowed to compete fully and freely.

Under the standards established in Section 10, SBC has fully met its burden of proof. As Commission Powell has recently written, the burden must now shift to those who favor regulation over competition. In this docket, there is no basis for such a finding — the competitors of SBC have not and cannot, meet that standard.

Likewise, the Commission should reject the attacks upon the evidence cited by SBC as groundless. Quality Strategies has prepared a response to allegations leveled against its research. That response is incorporated herein. The response shows that the attacks on the evidence in this docket only attempt to deny the obvious – that is, the existence of active and strong competition by all participants in the markets listed in the Petition, with only the SBC Companies constrained by unnecessary regulation. The public interest would clearly be served by allowing all competition to be regulated equally.

The fearmongering of the oppositions should be rejected – as shown herein, the alleged abuses by the SBC Companies of the Commission's current pricing policies are baseless. Instead, as Commissioner Powell has also noted, it is time for the Commission to stop treating such unproven allegations as true, assuming that some parties will not compete fairly, but to leave the Commission's complaint and enforcement processes to deal with the alleged abuses.

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REPLY COMMENTS OF THE SBC COMPANIES

SBC Communications Inc. (SBC), on behalf of Southwestern Bell Telephone Company (SWBT), Pacific Bell, and Nevada Bell (collectively, the SBC Companies), and pursuant to the Public Notice [1] issued December 8, 1998 by the Federal Communications Commission (Commission), hereby replies to the comments filed upon the Petition for Forbearance of the SBC Companies filed December 7, 1998.[2] As demonstrated herein, none of the comments provide any basis to deny the petition.

I. THE COMMISSION MUST RESIST THE COMMENTERS' SUGGESTION THAT IT SUMMARILY DISMISS OR DEFER RULING ON SBC'S PETITION FOR FORBEARANCE.

Several commenters attempt to derail SBC's request for forbearance, claiming that the Commission should avoid ruling on the issue in favor of first deciding the larger issues presented in the Access Reform proceeding.[3] The commenters variously suggest that the Commission either dismiss this proceeding or simply defer ruling on its merits in anticipation of a decision in the

[1] Public Notice, Petition of SBC Communications Inc. for Forbearance from Regulation as a Dominant Carrier for High Capacity Dedicated Transport Services in Fourteen Metropolitan Service Areas, CC Docket No. 98-227, (DA 98-2509), released December 8, 1998.

[2] See Appendix A for a list of entities filing Comments.

[3] *See, e.g.*, Hyperion at 2-3; ALTS at 3-4; Logix at 1-3 (requesting "summary denial of SBC's Petition"); MCI WorldCom at 1-5 (requesting "immediate denial").

pricing flexibility phase of the Access Reform docket.[4] Although it is conceivable that a ruling in the Access Reform docket might moot or otherwise dispose of SBC's forbearance request, the Commission's deferral of this case in anticipation of such a result would be highly improper. Section 10 of the Act is mandatory, requiring the Commission to make a determination on a carrier's forbearance request in accordance with its three-pronged test.[5] There is no room for the Commission to demur.

Further, deferral of SBC's forbearance request would be unfairly prejudicial to SBC's market position in the 14 MSAs, as well as harmful to competition in general. SBC has been diligent about requesting relief from the Commission in the past, and has been repeatedly assured that pricing flexibility was on the Commission's priority list and would be forthcoming in the Access Reform docket. For example, in its May 21, 1997 Price Cap Order, the Commission sidestepped a BOC request for deregulation of high capacity access services, promising to address the issue in the Access Reform proceeding.[6] That promise has still not been fulfilled. The relief requested herein is consistent with SBC's position in the Access Reform docket.

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[4] *Ibid.*

[5] 47 U.S.C. §160(a).

[6] Price Cap Performance Review for Local Exchange Carriers/Access Charge Reform, Fourth Report and Order in CC Docket 94-1 and Second Report and Order in CC Docket No. 96-262, 12 FCC Rcd 16642 (1997), para.188.

II. SBC'S FORBEARANCE REQUEST SHOULD BE GRANTED BECAUSE THE STATUTORY STANDARDS ARE SATISFIED

Section 10 requires that the Commission grant forbearance if the statutory requirements are met. The commenters unsuccessfully attempt to discredit SBC's forbearance request and its supporting evidence and analysis of the market and competitive effects. SBC addresses each category of disputed issues, below.

A. <u>SBC has established lack of market power with appropriate, credible evidence</u>

AT&T and others attack SBC's evidence of its non-dominance in the 14 subject MSAs on several different grounds, including (1) improper measurement of market share using circuits instead of revenue; (2) failure to provide enough detail about surveys and historical trend analyses; (3) failure to account for network constraints and costs of competitors; (4) inaccurate portrayal of the portion of the market served or capable of being served by competitors; and (5) exaggeration of the impact of mergers and alliances between interexchange providers on SBC's market power. None of these criticisms has merit.

1. Use of equivalent circuits to define market share is more accurate than use of revenue.

Several commenters criticize the SBC Companies' use of "equivalent circuits" instead of revenue to measure its loss of market share, claiming that counting lost circuits results in an overstatement of that loss.[7] On the contrary, measuring market share in terms of units instead of dollars results in a much more accurate determination. As is more fully explained in Attachment 1 to these Reply Comments, "*Quality Strategies' Responsive Statement*," using revenues to measure market share can lead to erroneous estimates because:

[7] *See, e.g.*, AT&T at 4-5.

(a) In established high capacity and transport markets, where competitors have been in the market for a few years, it is often the case that competitors have charged a premium price. Using revenues to measure market share would yield results showing a greater erosion in market share for the incumbent BOC than the results produced by using equivalent circuits; and

(b) In emerging high capacity and transport markets, where competitors are just entering the market, the competitors often undercut the incumbent BOC on price. In this case, using revenues to measure market share yields results showing a lesser erosion in market share for the incumbent than the results produced by using equivalent circuits.[8]

When using revenues to measure market share, other factors, such as network utilization level, geographic location, number and overall strategy of competitors, all influence competitors' pricing strategy. Accordingly, market share measurements using revenues can be volatile, one way or the other, advocating in favor of using equivalent circuits as the measure instead.[9]

2. Sampling size and historical trend analysis portions of SBC's study methodology strongly support the conclusion that SBC is nondominant in the 14 MSAs.

Commenters accuse SBC of inadequately supporting its data and methodology; specifically, providing no detail on sampling size and historical trend analysis.[10] Although SBC did not include every detail in support of its Petition to avoid overburdening this docket, Attachment 1 (*Quality Strategies' Responsive Statement)* to these Reply Comments contains responses to commenters' criticisms.

3. SBC's assessment of its competitors' strengths and capabilities is accurate.

The Commission's decision on AT&T's Motion to be Reclassified as a Non-Dominant Carrier is instructive in this case.[11] In its Order, the Commission found that AT&T could be reclassified as non-dominant based upon three basic findings:

(1) Supply of interstate, domestic interexchange services was sufficiently elastic to

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[8] *Quality Strategies' Responsive Statement* at 7.

[9] *Ibid.*

[10] *See, e.g.*, AT&T at 5.

[11] In the Matter of Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, CC Docket 79-252, Order, 11 FCC Rcd 3271 (1995) ("AT&T Order").

constrain AT&T's ability to unilaterally increase price;[12]

(2) Residential and business customers were willing to switch long distance providers, which the Commission viewed as evidence of AT&T's lack of market power, even in spite of the considerable goodwill attached to its brand and reputation in the marketplace;[13] and

(3) A thirty percent decrease in market share over a ten-year period, even though AT&T's then-current market share was still 60 percent, and its loss of market share had slowed significantly.[14]

a. Competitors are not too small to meaningfully compete with the SBC Companies.

The parties opposing the SBC Companies' forbearance request have raised some of the same arguments that were raised against AT&T in its reclassification proceeding. For example, commenters CompTel and GST Telecom, Inc. claim that the SWBT is not subject to effective competition in the subject MSAs because competitors are new, small and powerless, and that there are prohibitive costs associated with the provision of service by facilities-based competitors.[15] As in the AT&T reclassification proceeding, the commenters fail to provide any evidence that the SBC Companies' competitors could not expand to serve additional SBC customers should SBC attempt to charge a supra-competitive price. It was precisely this failure in the AT&T case that led the Commission to find "unpersuasive" the argument that competitors were too small to compete effectively with AT&T.[16] In the AT&T proceeding, the Commission also found that the growth of resellers such as ALC/Allnet and WorldCom, and the ability of competing carriers to lease excess capacity of existing facilities-based carriers, permitted entry

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[12] AT&T Order, para. 58.

[13] AT&T Order, paras. 63-66.

[14] AT&T Order, para.68. Notably, page 4 of CompTel at 4, asserts that SBC does not deserve forbearance because it allegedly still has "disturbingly high" market share in some markets of 49% -- much lower than AT&T's market share when the Commission declassified AT&T.

[15] *See, e.g.*, CompTel at 6; GST Telecom, Inc. at 6-8

[16] AT&T Order, para. 62.

into the marketplace that exerted downward pressure on price in the event that the carrier seeking relief (in that case, AT&T) attempted to raise its prices.[17] Thus, despite the opposition of commenters like Sprint, who claim that SBC's assessment of its competitors' strength based upon capacity available is flawed,[18] the Commission should continue to view these factors of evidence of increasing competitiveness in the marketplace.

b. The SBC Companies have properly utilized the pricing flexibility available to them.

AT&T, along with other commenters, claims that SBC creates its own effective barrier to competition by using pricing techniques such as term discounts, along with termination liabilities.[19] The Fact that the SBC Companies use these techniques, however, indicates how vulnerable they are to competition in this market. Interestingly, the Commission expressly noted in the AT&T Order that the practice of AT&T and other large interexchange carriers of promoting discount plans, volume discounts and even offering cash awards to win customers were all evidence of a competitive marketplace.[20] The commenters' argument, therefore, is unpersuasive.

Paradoxically, some of the same commenters that accuse SBC of over-aggressively retaining customers by using pricing flexibility, simultaneously condemn SBC for *not* using flexible pricing techniques as an alternative to seeking forbearance from regulation in these 14 MSAs.[21] This places SBC in the quandary of being attacked by commenters for employing legitimate flexible pricing strategies on the one hand, and attacked for alleged failure to utilize pricing flexibility on the other.

(1) Discounts based upon volume and term commitments are legitimate, bilateral marketing strategies.

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[17] AT&T Order, para. 61.
[18] Sprint at 10.
[19] AT&T at 14.
[20] AT&T Order, para. 64.
[21] *See, e.g.*, Time Warner at 19.

In fact, SBC implements existing pricing flexibility to the maximum extent allowed, tempered by legitimate business goals and concerns. For example, SBC currently offers tariffs for high capacity services linking graduated price discounts directly with purchasers' agreements to secure a certain level of high capacity usage for a certain period of time – a practice with which the industry is intimately familiar. The longer the period purchasers agree to buy a certain amount of high capacity services from SBC, the lower the tariff price for which they qualify. SBC extensively uses term arrangements to compete against CLECs who can target price to specific customers.

Parties in this proceeding suggest that SBC is somehow abusing this flexibility by "locking in" customers who cannot seek alternate sources of supply. Time Warner claims that "SBC has attempted to use pricing flexibility it currently possesses to selectively drop prices to capture large customers."[22] Current pricing constraints expressly prohibit SBC for issuing customer-specific price offerings for potential customers. The dedicated transport price packages SBC offers to one potential customer are available to any other customers that meet the same qualifying criteria. Contrary to Time Warner's assertion, SBC cannot abuse a flexibility that is currently not even afforded.

MCI WorldCom claims that "excessive termination liabilities and inflated non recurring charges combine to seriously restrict access customers' ability to switch suppliers."[23] AT&T states that "customers seeking low cost services and lacking competitive alternatives thus find themselves locked into long term agreements that they cannot exit.[24] Like quasi-contract arrangements that other providers offer, term arrangements include certain penalties for participants whose agreed-to usage fails to materialize or who withdraw prematurely. Most providers of high capacity service, that require significant capital investment, employ termination liability provisions and non-recurring charges to recover their costs and protect themselves from

[22] Time Warner at 18.
[23] MCI WorldCom at 10.
[24] AT&T at 14.

stranded investment. The termination liabilities that MCI WorldCom and AT&T criticize were developed under regulatory scrutiny and are freely agreed to by parties entering term arrangements. Presumably, customers would not agree to these terms and conditions if they had not concluded that the benefits of the discounts outweighed the binding nature of the term commitment.

AT&T complains that it would have to pay $4.17 million in termination liabilities to transition all of its DS3s away from Pacific Bell in California. In the abstract, the amount is significant, but in the context of the revenue that Pacific Bell would lose, the liability figure is eminently reasonable. The charges to AT&T can be discounted as much as 44% when it agrees to retain the DS3 service during its chosen service agreement term. Pacific should not bear significant capital risk with no certainty that AT&T will retain its chosen services.

(2) Zone-density pricing will not resolve the competitive threat to SBC.

Another example of the commenters' schizophrenic position is found in AT&T's and Sprint's criticism of SBC for not fully using permissible zone-density pricing flexibility. Sprint mentions that the Commission's zone-density rules already grant SBC substantial pricing flexibility for dedicated transport.[25] AT&T claims that SBC is not exercising the opportunity to file rates below their price caps and to geographically deaverage its rates under zone-density pricing rules.[26]

SBC has found the zone distinctions to be overly aggregated and would not equate the present zone-density pricing rules with geographic deaveraging. Present zone pricing rules require zone-specific price changes to be applied uniformly across a study area, regardless of competitive market distinctions in market areas. Zone categories are not product-, market-, or customer-specific. The densest zone category is not necessarily the most competitive zone for high capacity dedicated transport services, and may not be the most competitive area in every

[25] Sprint at 2.
[26] AT&T at 18.

geographic area with which it is associated. Revenue reductions resulting from zone price decreases do not always justify the competitive advantages won in every market where the reductions must be applied. True geographic deaveraging would allow unique, non-uniform price adjustments that could be tailored toward individual geographic markets. Competition does not develop uniformly across broad geographic markets. Competitors target individual customer groups and individual markets that exhibit the greatest revenue potential. The present zone-density pricing rules do not allow SBC to tailor pricing for its high capacity dedicated transport service in the same manner as competitive providers.

(3) To the extent SWBT prices to the cap in the trunking basket, this does not establish failure to exercise available pricing flexibility.

AT&T additionally complains that SWBT is pricing to the cap in the trunking basket and that Pacific is priced only slightly below the trunking basket cap.[27] Pricing at or near the cap of the trunking basket does not disguise the fact that the SBC Companies' actual transport rates have been consistently falling for years. The principal reason the SBC Companies have come to price at or near the cap is attributable to the increased productivity offset effectuated in 1997. The 6.5% X-factor has driven each basket's cap much lower, so that previous differentials between actual prices and the cap (headroom) disappeared. Transport prices could not fall quickly enough to keep pace with the precipitous decline in the trunking basket cap, pushed down by the increased X-factor. Pricing to the cap of the trunking basket in no way indicates that SBC is refusing to exercise existing pricing flexibility. Financially, SBC cannot justify maintaining much, if any, headroom due to the downward pressure the higher X-factor has had on price cap indicies and therefore prices. Perhaps the most persuasive evidence of SBC's lack of market power and competitive responsiveness is the consistent decline of dedicated transport prices over time.

4. SBC has accurately assessed competitors' existing and potential ability to take away the SBC Companies' customers as well as attract new ones.

AT&T and several other commenters complain that SBC overstates the success of its

[27] AT&T at 18.

competitors in the 14 MSAs and understates the difficulty faced by its competitors in entering the high-capacity dedicated transport market. For example, AT&T submits a chart purporting to show the aggregate number of buildings served by CLECs in each of the 14 MSAs as compared to the total number of businesses, and argues that the chart demonstrates the "miniscule" market share enjoyed by CLECs in comparison with the SBC Companies'.[28] Not only is the chart not persuasive, it is completely off-base. A comparison of the aggregate number of *buildings* served by CLECs with the total number of *businesses* within an MSA is fallacious. Of course there are thousands more businesses in an MSA than there are multi-tenant buildings; it would be shocking if there were not. AT&T makes no effort to explain this comparison of "apples to oranges," presumably relying instead upon the fact that the Commission will be swayed by the superficial disparity between the numbers.

A simple conclusion with regards to reachability of competitors can be drawn by examining Attachment 2 which illustrates that the majority of SBC's high capacity demand is where competitors are either collocated or have fiber present or both. For example, the Dallas MSA, which has 28% of SWBT's Texas high capacity DS1 demand, has 10 collocating carriers that occupy central offices where 96% of that demand is located. Likewise 89% of that demand is located where competitors have fiber facilities. Collocation gives those carriers with fiber facilities an even greater reach since it is a way to serve customers where the competitive carrier has no fiber. Clearly, competitors are present and well equipped and have access to a significant amount of SWBT's Texas high capacity market, as well as of the high capacity markets in the other MSAs.

Another of AT&T's attacks actually buttresses SBC's position. In its Opposition, AT&T disputes the persuasiveness of SBC's argument that it has lost several RFP contests to competitors because of its subjugation to current pricing rules.[29] AT&T explains that, although it tried to fill

[28] AT&T at 7-8.
[29] AT&T at 9.

an order for 164 DS3 circuits in Dallas with MFS, it was unable to do so because MFS was only able to accommodate 128 of the circuits. AT&T states that it had to contravene its own "longstanding policy to decrease reliance on monopoly inputs wherever possible," and award the remaining 36 circuits to SWBT.[30] The conclusion the Commission should draw from this grudging business decision by AT&T is that SBC's prediction that large IXCs are migrating their traffic away from the SBC Companies is not only true, but apparently takes the form of actual "policy." SBC requests that it be allowed to freely compete in the marketplace where competing access providers and its largest customers alike are clearly planning to take away business from SBC wherever possible. Additional responses to SBC's analysis of the competition are found in Attachment 1 to these Reply Comments.

5. AT&T's and MCI WorldCom's acquisitions of alternative access providers constitute a fundamental market alteration supporting the need for forbearance.

AT&T and MCI WorldCom would like for the Commission to believe that their acquisitions of TCG and MFS-Brooks Fiber, respectively, represent an insignificant occasion in the market for competitive access services. Clearly this is a gross understatement. These acquisitions give AT&T and MCI WorldCom even more incentive to shift dedicated high capacity business away from ILECs and toward their new affiliates.

Financially paying a CLEC affiliate to provide dedicated access would be advantageous to AT&T and MCI WorldCom since all revenues remain within each respective corporate entity. Not only do the carriers now have an in-house source for dedicated transport, but the extensive networks of TCG, MFS and Brooks are now at the disposal of AT&T and MCI WorldCom, giving the carriers direct contact with customers. Though these carriers try to downplay the extensiveness of the CLECs' networks, the significant investments made by AT&T ($11 billion) and MCI WorldCom ($16.4 billion) to obtain the CLECs indicate that each CLEC's network is

[30] *Ibid.*

both well-developed and strategically well-placed. The carriers would be foolish to spend billions of dollars acquiring CLECs with under-developed facilities in locations that do not match the expansion plans of the carrier

Despite commenters' characterization of SBC's position, SBC did not assert that all of AT&T's business had been migrated to TCG. Rather, the Quality Strategies report, as augmented by Attachment 1, noted a trend in the market for combined carrier and CAP/CLEC entities to result in a significant migration of business away from an incumbent LEC. Forbearance would be a hollow remedy if an incumbent feeling the heat from competition had to wait until it had been vastly injured before it could request relief.

B. <u>Forbearance is in the public interest.</u>

Several commenters assert that if SBC is granted forbearance it will abuse its position by improperly cross-subsidizing or by raising its prices, thereby harming customers. This type of accusation is popular; it is easy to cast aspersions against an incumbent LEC against the backdrop of years of heavy regulation and suspicion. Commissioner Powell has repeatedly decried this approach. In early 1998, he cautioned against over-cautious treatment of the telecommunications marketplace, saying:

> Rather than imagining all the dangers that might result if we let a company do what it has asked and then take equally speculative action to meet those speculative dangers, let's instead police conduct and make decisions based on real facts. If there are 'teeth' in our enforcement efforts, companies will take heed or pay the price.[31]

At an industry gathering in late 1998, he observed:

> Almost by definition, you cannot predict what outcomes a healthy market will produce, and attempting to do so too broadly will result in speculation about benefits and harms that can paralyze our ability to let go of regulation.[32]

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[31] "Technology and Regulatory Thinking – Albert Einstein's Warning" at Legg Mason Investor Workshop, Washington, D.C., March 13, 1998.

[32] Remarks by Commissioner Michael K. Powell to PCS '98 in Orlando, FL on September 23, 1998.

Most recently, in a Dissenting Statement,[33] Commissioner Powell describes the standard of proof for forbearance requests, noting that the Commission has been overly protective of regulation in what is now a highly competitive marketplace. Commissioner Powell criticized previous decisions for being nothing more than summary dismissals of petitions for "lack of proof." Whatever the forum, his meaning is clear – it is time to stop presuming that large access providers like the SBC Companies will behave wrongfully if given the chance. Competition in the marketplace effectively promotes the "right" kind of behavior and discourages the "wrong" kind.

In fact, as the Commission itself has recognized, tariffing requirements may themselves be abused by unscrupulous providers if used to signal prices to the marketplace.[34] Forbearance, including detariffing, improves competitiveness because it forces market participants' prices toward levels consistent with the costs of the most efficient producers. Customers of high capacity dedicated transport services (and, presumably, long distance customers) can only benefit from this behavior.

Further, as the Commission recognized in its IXC Forbearance Order,[35] illegal or otherwise prohibited behavior by a carrier may be addressed through the Section 208 complaint process. Maintaining pricing rules and regulation, particularly when competition has significantly eroded the SBC Companies' market share, is unnecessary for the protection of the customer and is contrary to the public interest.

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[33] Memorandum Opinion and Order in CC Docket No. 96-61, FCC 98-347 (released Dec. 31, 1998, concerning Policies and Rules Concerning the Interstate Interexchange Marketplace: Implementation of Section 254(g) of the Communications Act; Petitions for Forbearance). A copy of the Dissenting Statement is available at 1999 FCC LEXIS 400.

[34] In the Matters of Hyperion Telecommunications, Inc. Petition Requesting Forbearance, Time Warner Communications Petition for Forbearance, and Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers, CC Docket No. 97-146, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 12 FCC Rcd 8596 (1997) ("Hyperion Order"), para. 31.

[35] Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730 (1996) ("IXC Forbearance Order"), para.21.

1. Granting SBC's petition will not harm competitors in the high capacity services market.

AT&T submits that it "has had a longstanding policy to decrease reliance on monopoly inputs wherever possible" as a principal reason that AT&T awarded 128 of 164 total DS3s to MFS over the SBC companies in 1997.[36] This example is noteworthy on several counts. First, the fact that SBC can lose 77% of a major contract in Dallas so quickly clearly indicates that AT&T has a significant competitive supplier immediately available. The widespread claims of commenters that SBC maintains market power over dedicated services ring hollow when even AT&T acknowledges that SBC has easily lost a substantial portion of business overnight. Market power is the ability of a single supplier to dictate the "market" price. In this instance, SBC was trying to lower the price of DS3s to keep from losing business. Firms with invincible market power would not allow competitors to win substantial bids in key markets. This example clearly demonstrates that SBC has no market power for dedicated services.

Second, this example illustrates that competitive carriers have facilities in place today to capture large portions of business immediately. Plus, other carriers now have every incentive to expand their facilities enough to capture AT&T's remaining DS3 demand, knowing that they would likely win the bid over the SBC Company. This clearly contradicts the commenters' position that there would be a substantial lag before competitive suppliers are equipped to handle carriers' dedicated traffic.

Third, AT&T's stated policy is to shift significant portions of its high capacity services purchases to providers other than ILECs in order to diversify its sources of supply.[37] Apparently AT&T's policy prevails regardless of whether the ILEC can offer more attractive prices, terms, or conditions than other suppliers. Given this predisposition, it is surprising AT&T begrudges the SBC Companies additional pricing flexibility when, by AT&T's own admission, alternative suppliers are virtually assured of capturing a significant portion of AT&T's dedicated business.

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[36] AT&T at 9.
[37] AT&T at 9.

No matter how much pricing flexibility SBC is allowed or how well it can accommodate AT&T's needs, AT&T will award large portions of its dedicated business to competitive access providers for strategic reasons. This position by a major purchaser of dedicated services should send a clear signal to the Commission that granting SBC's petition will have no adverse impact on SBC's competitors for high capacity services. Alternative suppliers' futures seem robust given the large IXCs' stated strategic needs to diversify the sources of supply.

2. Existing regulatory oversight and competitive forces render allegations of cross subsidization impotent.

Several parties make unsubstantiated claims that SBC would use increased pricing flexibility for dedicated high capacity services as a means to engage in cross subsidization tactics. At least two scenarios are portrayed: (1) SBC will use "monopoly" profits from non-competitive services to finance price decreases for dedicated transport services; and (2) SBC will fund price decreases for dedicated transport in the 14 MSAs through dedicated transport price increases in other geographic markets. Both of these accusations are without merit.

Sprint posits that "SBC ILECs can, absent dominant carrier regulations, exercise their downstream market power to the detriment of consumers and providers of dedicated circuits." [38] This allegation completely ignores the regulatory scrutiny SBC faces in its downstream markets. Interstate price cap regulation precludes interstate access services, for example, from being a source of subsidy to dedicated high capacity services. Even clearer, state regulatory oversight prevents local exchange service prices from subsidizing competitive dedicated transport services. The narrow focus of SBC's petition does nothing to alter the existing strict regulatory scrutiny for all services other than high capacity dedicated circuits. Consumers and competitors remain protected by the continuation of existing state and interstate price cap regulations.

[38] Sprint at 5; CompTel at 7.

Other parties maintain that, if granted forbearance, SBC would increase transport rates outside of the 14 MSAs to finance price decreases within the MSAs.[39] This accusation would be impossible to implement given the concentration of traffic for dedicated transport service. 70% of SBC's total high capacity dedicated transport circuits lie in the 14 MSAs identified, leaving only 30% of circuits in remaining MSAs and outlying areas within SBC service territory. Even absent price cap regulation for the remaining 30% of circuits, SBC would have to increase prices for the 30% of transport circuits in non-MSA areas by a huge amount to offset even a modest decrease in price for the 70% of transport circuits with the 14 MSAs. With multiple transport suppliers throughout SBC's territory, or poised to enter these areas, such large price increases would be impossible to sustain. Any intra-service cross subsidy scheme would be destined to fail from the start.

As SBC's filing shows, it has lost between 30-50% of market share for high capacity dedicated circuits. What incentive is there for SBC to exert alleged market power? The inevitable result would be accelerated loss of the other half of the market. Supplier availability, the availability of UNEs and collocation, and technological advances secure the inevitability of continued market share loss if SBC attempted to exert market power by increasing prices for any customers of dedicated services. Contrary to parties' claims, the incentives SBC faces in the competitive market for dedicated transport services encourage SBC to meet the demands of its customers and potential customers in all of its geographic markets for these services. Regulatory oversight of all other services assures consumer and competitor protection elsewhere.

III. OTHER ISSUES RAISED BY COMMENTERS PROVIDE NO GROUND TO DENY SBC'S PETITION.

Network Access Solutions asserts that SBC is requesting regulatory relief for all dedicated transport, including those utilizing DSL technologies. Network Access claims that the doctrine of stare decisis bars the FCC from reducing regulation of any special access offering provided by a

[39] MCI WorldCom at 3; GST Telecom at 16.

SBC LEC that employs DSL technology, since the Commission recently declined to reduce regulatory controls over any DSL access service.[40]

Network Access misreads the SBC Petition. The DSL technology services were not included in the Quality Strategies study and are not a part of the SBC request. While it is apparent that the DSL services are akin to other dedicated transport services, and will certainly deserve forbearance from regulation upon future request, Network Access's claim need not be addressed here.

AT&T argues that SBC has made no attempt to show that it has satisfied the market opening requirements contained in section 251(c) of the Act.[41] AT&T thereby attempts to cloud the issues with this incorrect and irrelevant assertion.

The requirements of Section 10 do not list that an applicant must comply with Section 251(c) as well. Thus, AT&T is attempting to mislead the Commission into rewriting the statute. Nevertheless, SBC has indeed complied with all relevant subsections of Section 251(c). Obtaining relief here would make no difference to SBC's obligations under, or incentives to comply with, Section 251(c).

[40] Network Access at 2-3.
[41] AT&T at 16-17.

IV. CONCLUSION.

For the foregoing reasons, SBC respectfully requests that the Commission exercise its authority to forbear from dominant carrier regulation as to the SBC Companies' Dedicated Digital Services in the specified MSAs.

Respectfully submitted,

SBC COMMUNICATIONS INC.
PACIFIC BELL
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APPENDIX A

Ameritech
Association for Local Telecommunications Services (ALTS)
AT&T Corp. (AT&T)
Competitive Telecommunications Association (CompTel)
GST Telecom, Inc. (GST Telecom)
Hyperion Telecommunications, Inc. (Hyperion)
KMC Telecom, Inc. (KMC Telecom)
Logix Communications Corporation (Logix)
MCI WorldCom, Inc. (MCI Worldcom)
MediaOne Group, Inc. (Mediaone)
Network Access Solutions
Sprint Corporation (Sprint)
Time Warner Communications Holdings Inc. (Time Warner)
Telecommunications Resellers Association (TRA)
United States Telephone Association (USTA)
US West