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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Petition of U.S. West Communications Inc.	)	CC Docket No. 99-1
For Forbearance from Regulation as a	)	
Dominant Carrier in the	)	
Seattle, Washington, MSA	)	

REPLY COMMENTS OF BELL ATLANTIC[1]

It is clear that customers for special access services have competitive alternatives available to them. As a result, as one customer explained, increased regulatory flexibility "will lead to lower prices and more service options." GSA Comments at 8.

While commenters on this petition debate the meaning of specific market share statistics cited by US West, there can be no doubt that regardless of the exact level of market share, there is a profusion of special access competitors that are offering service and winning customers. Indeed, several self-identified competitors filed comments here. As the Chairman has explained, when customers have a "meaningful choice of service options," "the Commission *must* deregulate these services." Letter from Chairman William E. Kennard, to Hon. Tom Bliley at 20 (Dec. 7, 1998) (emphasis added). Because

[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.

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special access customers have a choice of providers, the Commission can no longer justify continued regulation of this service as a monopoly.

The comments raised in opposition to the petition here echo earlier comments on a previous petition filed by US West and a similar one filed by SBC. For the Commission's convenience, rather than offering an exhaustive repetition of its rebuttal to those comments, Bell Atlantic attaches its responsive replies to comments on those petitions.

In particular, the Commission should note the comments of GSA – the only individual customer to file in this proceeding. GSA recognizes the underlying fact opposing commenters dance around – that "many viable alternatives exist for high capacity service." GSA Comments at 4. Moreover, these competitors have the ready ability to expand capacity and thus "[o]pportunitites for competitors to expand their offerings are not constrained by presently available facilities." As a result, GSA recommends (at 7) that the Commission forbear from applying rules that currently require tariffs to be filed in advance with cost support:

> "To participate effectively in competitive bidding opportunities, US West must be able to present clear responses to request for proposals, often very quickly. Moreover, the company must be able to submit responses with assurance that regulatory authorities will not subsequently nullify terms of offers or place any barriers to the performance of contracts. In addition, the company must have the flexibility to respond with commitments to provide any service or combination of services, at rates, terms and conditions that may differ considerably from those published in its general tariffs."

Despite its acknowledgment that the special access market is competitive, GSA nevertheless argues that the Commission should retain price cap limits on these services.

But this argument is inconsistent with GSA's own conclusions. GSA fails to explain how to juxtapose the flexibility -- which it agrees benefits consumers -- with the restrictive price cap rules. In particular, GSA agrees that the company should be able to respond and provide services or combination of services at "rates, terms and conditions" that differ from the general price tariff. GSA Comments at 7. However, retention of a price cap mechanism, which controls rates and requires complex calculations before any modifications are made, places regulatory controls on a process that GSA agrees should be market controlled. Moreover, as the Commission has explained regulating prices becomes "unnecessary or counterproductive as market forces become operational." *Price Cap performance Review*, 11 FCC Rcd 858, ¶21 (1995). To retain pricing controls on incumbent local exchange carriers after acknowledgment that the market is competitive would turn what had been put in place as a protection for customers into a punitive retention of unnecessary regulation.

Conclusion

The Commission should act quickly, both with respect to this petition, and to put into place a framework to allow other carriers to remove from price regulation those services that have a competitive alternative.

Respectfully submitted,

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March 11, 1999

ATTACHMENT A

COPY

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

In the Matter of	)	
	)	
Petition of U.S. West Communications Inc.	)	CC Docket No. 98-157
For Forbearance from Regulation as a	)	
Dominant Carrier in the	)	
Phoenix, Arizona, MSA	)	

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OCT 28 1998
FEDERAL COMMUNICATIONS COMMISSION
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REPLY COMMENTS OF BELL ATLANTIC[1]

This petition presents the Commission with an opportunity to make good on its own commitment to remove services from price regulation as soon as there is a competitive alternative available for those services. As the Commission has acknowledged, regulating prices becomes "unnecessary or counterproductive as market forces become operational." *Price Cap performance Review*, 11 FCC Rcd 858, ¶21 (1995).

The Commission has for some time recognized the need to set a clear framework to allow local exchange carriers the ability to accomplish such removal routinely once they have met some predetermined competitive threshold. *Price Cap Performance Review*, 12 FCC Rcd 16642, ¶1 (1997). (Commission is seeking a framework to "allow services to be more readily removed from price regulation as warranted by the

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development of a competitive marketplace"). Such a pre-set framework would obviate the need to resolve issues raised by the commenters here in piece-meal fashion every time a carrier seeks to remove a service from price regulation. When the Commission considers that this petition addresses a small number of services of a single carrier in one small geographic segment of the market, the scope of the potential problem becomes readily apparent. Unfortunately, while competition has grown dramatically in the last few years,[2] the Commission has yet to act. Bell Atlantic is hopeful that the Commission's most recent notice will be the catalyst for Commission action rather than for further study. In the meantime, the Commission should act quickly to resolve petitions such as this one.

Adopting a pre-set framework for pricing deregulation will also eliminate the need to repeatedly address some of the specious arguments raised in response to this petition. Competitors of U.S. West for the very services under consideration here are those that are the most vociferous in arguing that competition for high capacity special access service is lacking. In fact, competition for high capacity services is pervasive, and not just in the limited geographic area included in the U.S. West petition.[3] As the Chairman has acknowledged, it is obvious to "see competition for high volume

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[2] In comments filed this week to refresh the record in Access Reform, Bell Atlantic summarized the consensus view of analysts, economists and the Commission that local exchange carrier competition is growing at a much faster pace than it did after the long distance market was opened. *See* Bell Atlantic Comments On Notice To Refresh The Record, CC Docket No. 96-262 at 7-11 (filed Oct. 26, 1998).

[3] For example, in the large urban areas where high capacity demand in the Bell Atlantic region is concentrated, virtually the entire market has a competitive alternative available and nearly every other high capacity line purchased is sold by a competitive provider.

customers." Statement of W. Kennard before Subcommittee on Communications United States Senate (June 10, 1998).

AT&T claims that this petition runs counter to the Commission's market-based approach to regulation of access services. AT&T at 3. But, as the Commission understood, the "market-based approach will permit, and indeed, require [the Commission] progressively to deregulate the access charge regime as competition develops." *Access Charge Reform*, 12 FCC Rcd 15982, ¶49 (1997). This is exactly what the U.S. West petition seeks to accomplish.

Several commenters argue that the Commission can not grant pricing freedom for high capacity special access service because of a claimed lack of competition for switched access and local services. *See* GST at 12-13, Sprint at 5, Quest at 3. But that means that the Commission could not give local exchange carriers pricing freedom for *any* service until *all* local exchange carrier services are sufficiently competitive. This is inconsistent with the Commission's stated policies and makes no economic sense. The services that commenters point to would remain under price regulation even if the petition were granted in full. Thus, the Commission would retain sufficient regulation to assure no economic harm could come to carriers that are dependent on these other services.

Commenters also argue that even if there is sufficient competition for high capacity services, the Commission should deny the petition because of the potential for cross subsidization. But, as the Commission itself has acknowledged, the implementation of price cap regulation severs the "direct link between any improperly shifted costs and regulated basic service prices" thereby undermining the incentive to cross-subsidize.

Computer III Remand Proceedings, 6 FCC Rcd 174, 179 (1990). As economists have widely recognized, "[w]ith price caps, cost-shifting is no longer a possibility since prices cannot be affected by any manipulation of cost accounts." Affidavit of Robert W. Crandall, ¶ 8, attached to Bell Atlantic Comments, CC Docket No. 96-21 (Mar. 13, 1996). Consequently, as Professor Alfred Kahn has explained, a price cap regulated local exchange carrier "is no more able to cross-subsidize than an unregulated firm." Affidavit of Alfred E. Kahn, ¶ 27, attached to Reply Comments of Bell Atlantic, CC Docket No. 94-1 (June 29, 1994).

Incumbent local exchange carriers can have no reasonable expectation of recouping lost profits that they would forgo by under-pricing competitive special access service. The only way to recoup such forgone profits is to charge monopoly prices after eliminating the competition for high capacity special access services. But competition for these services is not going to go away. The competitors for high capacity services include financial giants such as AT&T and WorldCom/MCI that will not be driven out by temporary efforts to under-price special access. These giants have expanded their market presence by buying the largest competitive access providers. In addition, even if the incumbent local exchange carriers could drive competitors out of the special access market, which they can not, the fiber installed by those defunct competitors would remain in the ground to be purchased and operated by another competitor.

Finally, while the commenters disagree as to the proper interpretation of the market share numbers cited by U.S. West, the Commission need not even consider market share in order to determine the competitiveness of this market. Instead, the

Commission should look to the presence of competitive offerings and the ability of competitors to serve expanded portions of the market. To the extent competitors have the ability to expand quickly, historical market share is misleading. In the market for high capacity special access services, where significant buying power is held by few customers (the largest long distance carriers), historical market share is even more misleading as a measure of future competition. Indeed, with the AT&T purchase of TCG, and the MCI/WorldCom purchase of MFS and Brooks Fiber, the largest buyers of high capacity special access service have themselves purchased the largest competitive suppliers of that service. The result is a dramatic increase in the ability of these customers to self-supply.[4] This renders meaningless historical market share that predates these fast changing market events.

[4] For example, one financial analyst estimates that as a result of the MFS and Brooks Fiber acquisitions, the new WorldCom can provide its latest addition, MCI, with more than 70% of its access capacity, and, "given the current expansion plans," that figure should grow to 90%. Jack B. Grubman and Sheri McMahon, Salomon Smith Barney, *WorldCom, Inc.*, Apr. 9, 1998. Similarly, regardless of the impact of AT&T's proposed merger with TCI, AT&T's purchase of TCG is expected to result in $1.1 to $1.5 billion in synergy savings in 1999, of which more than half are expected to be network access savings. Prudential Securities, *AT&T Company Update*, Jan. 21, 1998.

Conclusion

The Commission should act quickly, both with respect to this petition, and to put into place a framework to allow other carriers to remove from price regulation those services that have a competitive alternative.

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October 28, 1998

ATTACHMENT B

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

In the Matter of	)	
	)	
Petition of SBC Companies	)	CC Docket No. 98-227
For Forbearance from Regulation as a	)	
Dominant Carrier for High Capacity	)	
Dedicated Transport Services	)	
In Specified MSAs	)	

REPLY COMMENTS OF BELL ATLANTIC[1]

Continued price regulation of special access services has long passed the point of protecting customers and now only serves to protect competitors. It is not surprising that the competitors commenting here want to continue the cozy arrangement by which they are allowed to compete free from regulation while incumbent local exchange carriers are hindered by antiquated rules that limit their ability to offer fully competitive prices. Consistent with sound public policy and the requirements of the Act, the Commission should reject these protectionist arguments and remove pricing regulations from special access services that are subject to competition.[2]

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[2] Bell Atlantic has filed its own petition, seeking forbearance from price regulation for its special access services in 12 states. *Petition of Bell Atlantic Telephone Companies For Forbearance,* CC Docket No. 99-24 (filed Jan. 20, 1999).

I. The Commission May Not Defer Action To A Generic Rulemaking

Several competitors argue that the Commission should reject SBC's petition in favor of a broader based rulemaking. *See, e.g.*, ALTS at 3; Hyperion at 2.

The 1996 Act, however, provides a mechanism that requires the Commission to act on such individual petitions. If a petition for regulatory forbearance meets the statutory criteria, the Commission *must* forbear. 47 U.S.C. § 160 (forbearance provision uses the mandatory "shall" rather than the permissive "may" to describe the Commission's obligation). Moreover, the Act specifically contemplates that forbearance may be applied as narrowly or broadly as a carrier (or several carriers) propose: for a single service or group of services "in any or some of its or their geographic markets." *Id.* It is simply inconsistent with the Act to argue that forbearance that otherwise meets the Act's criteria may be denied to allow the Commission to further "study" the issue in a generic rulemaking.[3]

At the same time, the filing of forbearance petitions should not deter the Commission from adopting generic rules that will facilitate future deregulation. The Commission has for some time recognized the need to set a clear framework to allow local exchange carriers the ability to remove services from price regulation once they have met some predetermined competitive threshold. *Price Cap Performance Review*, 12 FCC Rcd 16642, ¶1 (1997). (Commission is seeking a framework to "allow services to be more readily removed from price regulation as warranted by the development of a competitive marketplace"). Such a pre-set framework would obviate the need to resolve

[3] Indeed, the Act provides that if the Commission fails to Act within the specified time limit, the petition is "deemed granted." 47 U.S.C. § 160 (c).

issues raised by the commenters here in piece-meal fashion every time a carrier seeks to remove a service from price regulation.

However, the Commission has been "studying" the issue for more than half a decade without taking any action. In 1993, the Commission recognized that incumbent local exchange carriers are "subject to pricing restrictions that do not affect their competitors," and "as competition develops" the Commission must consider additional flexibility. *Expanded Interconnection with Local Telephone Company Facilities*, 8 FCC Rcd 7374, ¶94 (1993). Indeed, the Commission has long understood that price cap regulatory constraints "tend to become unnecessary or counterproductive as market forces become operational." *Price Cap Performance Review*, 11 FCC Rcd 858, ¶21 (1995). As a result, such regulation should "continue only until competition emerges." *Id.*

While the Commission has recognized the principles that would support removal of these competitive services from price cap regulation, it needs to take the necessary action to make it happen.

AT&T (at 17) makes a related argument that granting SBC's forbearance petition would be inconsistent with the Commission's market-based approach to access reform. While a petition that meets the statutory criteria must be granted regardless of prior rulemakings, there is no conflict here because forbearance is perfectly consistent with the Commission's market-based approach. As the Commission understood, the "market-based approach will permit, and indeed, require [the Commission] progressively to deregulate the access charge regime as competition develops." *Access Charge Reform*, 12 FCC Rcd 15982, ¶49 (1997). This is exactly what the SBC petition seeks to accomplish.

II. There Is No Cross Subsidy Concern

Most of the objections raised by competitors focus not on the level of competition in the markets covered by SBC's petition, but rather on the potential for cross subsidy from access services that would remain under price caps even if SBC's petition were to be granted. These arguments ignore the continuing protection of price cap regulation for these remaining services. As the Commission itself has acknowledged, the implementation of price cap regulation severs the "direct link between any improperly shifted costs and regulated basic service prices" thereby undermining the incentive to cross-subsidize. *Computer III Remand Proceedings*, 6 FCC Rcd 174, ¶31 (1990). Economists have widely recognized, "[w]ith price caps, cost-shifting is no longer a possibility since prices cannot be affected by any manipulation of cost accounts." Affidavit of Robert W. Crandall, ¶ 8, attached to Bell Atlantic Comments, CC Docket No. 96-21 (Mar. 13, 1996). Consequently, as Professor Alfred Kahn has explained, a price cap regulated local exchange carrier "is no more able to cross-subsidize than an unregulated firm." Affidavit of Alfred E. Kahn, ¶ 27, attached to Reply Comments of Bell Atlantic, CC Docket No. 94-1 (June 29, 1994).

Incumbent local exchange carriers can have no reasonable expectation of recouping lost profits that they would forgo by under-pricing competitive special access service. The only way to recoup such forgone profits is to charge monopoly prices after eliminating the competition for high capacity special access services. But competition for these services is not going to go away. While smaller competitors argue in this proceeding that they may be driven away, there can be no recoupment unless the major

competitors including financial giants such as AT&T and WorldCom/MCI are also removed. Because these competitors can not be driven out by temporary efforts to under-price special access, there is no economic rationale for cross subsidization. Moreover, even if the incumbent local exchange carriers could drive competitors out of the special access market, which they can not, the fiber installed by those defunct competitors would remain in the ground to be purchased and operated by another competitor.

III. There is Special Access Competition

To the extent that the competitors do comment on competition in the market for special access services they ignore their own substantial competitive presence and make incongruous arguments that competition does not exist.[4] First, they argue that collocation is too difficult to procure. *See, e.g.*, CompTel at 6. But as reported in its own petition, Bell Atlantic competitors have connected their networks to approximately 370 of Bell Atlantic's wire centers through over 1000 collocation arrangements (more than 600 of which have been added in just the last year). *See* Bell Atlantic Petition, Demonstration of Competition at 2. To the extent that there is also widespread collocation in the areas

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[4] Indeed, despite its own opposition here, Hyperion begins its comments by proudly proclaiming:

> "Hyperion is a leading provider of integrated local telecommunications services over state-of-the-art fiber optic networks . . . Hyperion operates in 20 geographic markets serving 46 cities, including more than 5,463 route miles of fiber and 17 Lucent 5 ESS switches in 11 states. Hyperion has bought or secured an additional 8,100 route miles of fiber optics which it expects to use in 50 new markets in the Eastern United States to operate an advanced regional fiber network."

covered by the SBC petition,[5] arguments concerning collocation availability must be rejected.

Competitors also argue that the market-share percentages cited by SBC in support of its petition are either insufficient or inexact. *See, e.g.*, Hyperion at 4; KMC at 2. But these arguments miss the relevance of market share. Loss of market share is not a punitive rite of passage that must be endured before evenhanded regulation is allowed. If this were the case, customers would be denied the benefit of competition unhampered by regulatory interference long after that regulation is made unnecessary by the presence of a competitive alternative.[6] That is not the Commission's policy, nor is it consistent with the Act. As the Chairman recently explained, when customers have a "meaningful choice of service options," "the Commission *must* deregulate these services." Letter from Chairman William E. Kennard, to Hon. Tom Bliley at 20 (Dec. 7, 1998) (emphasis added).

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[5] The Commission's own study indicates that more than half of incumbent local exchange carrier high capacity lines are served by switching centers with collocation. Industry Analysis Division, Federal Communications Commission, *Local Competition* (December 1998).

[6] Competitors argue that incumbent local exchange carriers already have sufficient flexibility – but this is clearly wrong. As economists supporting Bell Atlantic's forbearance petition have explained: "in an effectively competitive market, firms will attempt to compete on both a price and a non-price basis. A crucial part of a competitive firm's arsenal is its ability to provide customized services or service packages." Affidavit of Karl McDermott and William E. Taylor at ¶ 46, attached to Bell Atlantic Forbearance Petition. Such packages are unavailable to SBC's and Bell Atlantic's interstate special access customers under current rules. Moreover, forbearance would also eliminate the need to provide advance notice of tariff changes, or to disclose supporting cost data. Such restrictions can "inadvertently encourage tacit price coordination among competitors, thereby raising costs for consumers." *Id.* at ¶ 51.

As a result, disputes about the precise level of market share are irrelevant.[7] The indisputable fact that significant market share has been lost is one indicia that not only are there competitive alternatives present in the market, but those alternatives are winning customers' business.

MCI (at 10) and AT&T (at 14) argue that notwithstanding the presence of competitive alternatives, they are "locked into" long term plans with incumbent local exchange providers. But these large sophisticated carriers entered into these arrangements with an understanding of the state of current and potential future competition. Indeed, given their own actions in purchasing the largest providers of competitive access services, they were in the best position to balance the opportunity cost of their term commitment with the cost savings associated with lower priced term plans.

In fact, term plans are pro-competitive because they allow carriers to offer discounted rates that might otherwise be uneconomical. Without some reasonable assurance that they will be able to recover their upfront costs and have opportunities to market additional services, carriers would have little incentive to offer discounts from standard tariff rates and to compete as aggressively for the customer's business.

Indeed, these same carriers also take advantage of lower term pricing offered by competing carriers. For example, MCI has entered into a five year term arrangement with Hyperion that makes it MCI's "preferred provider" for all dedicated access circuits in areas where Hyperion has its own facilities or is collocated with an incumbent local

[7] Indeed, because so much market information is in the hands of competitors, requiring one provider to demonstrate an exact market share would be an impossible burden.

exchange carrier. Faulkner Telecommunications Company Profile, "Hyperion Telecommunications Company Profile," September 1998.

Moreover, at least under Bell Atlantic's term plan, these carriers are not truly "locked-in." Bell Atlantic's long term contracts already allow a customer to terminate and only pay back the discount it received by committing to a longer term than a month to month contract. As a result, the Commission has endorsed such plans, finding that they "reasonably balance the interest of both the [local exchange carriers] and their customers" and that "[c]ustomers will be able to benefit sooner" from competition "without placing an unreasonable burden on the [local exchange carriers], since the [local exchange carriers] will obtain the compensation appropriate for the term actually taken by the customer." *Expanded Interconnection With Local Telephone Company Facilities*, 8 FCC Rcd 7341 (1993) at ¶ 41 (footnotes omitted). MCI and AT&T's argument thus comes down to an unwillingness to give up the cost savings they accrued by making their term commitments.

Finally, even MCI (at 12) acknowledges that there is competition for new demand. MCI's own projections show more than 100% annual demand growth for services that generally require new special access connections. *See* Brian Brewer, MCI Communications, *Data Communications Services Market Overview & Outlook* (Apr. 14, 1998) (projecting 154% growth in ATM services, 106% growth in Frame Relay and 16% growth in generic private lines). As a result it is likely that competition for new demand will be large enough to drive price levels for the entire market. Therefore continued regulation is not necessary and only serves to limit competition and harm consumers.

Conclusion

The Commission should act quickly, both with respect to individual petitions for forbearance, and to put into place a framework to allow other carriers to remove from price regulation those services that have a competitive alternative.

Respectfully submitted,

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February 11, 1999

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of March, 1999, copies of the foregoing "Reply Comments" were sent by first class mail, postage prepaid, to the parties on the attached list.

Jennifer L. Hoh

* Via hand delivery.

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