

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

In the Matter of)	DA 95-763
)	
The Bell Atlantic Telephone Companies)	Transmittal Nos. 742 and 765
Tariff F.C.C. No. 10)	
)	
Video Dialtone Market Trial)	
in Northern Virginia)	

ORDER

Adopted: April 7, 1995 Released: April 7, 1995

By the Chief, Tariff Division, Common Carrier Bureau:

1. On January 27, 1995, Bell Atlantic filed Transmittal No. 742 to establish rates, terms and conditions for a limited market trial of video dialtone service in northern Virginia.¹ The National Cable Television Association (NCTA) filed a petition to reject or, in the alternative, to suspend and investigate Transmittal No. 742. Bell Atlantic filed Transmittal No. 765 on April 6, 1995 to revise certain provisions of Transmittal No. 742.² Transmittal Nos. 742 and 765 are scheduled to take effect on April 10, 1995.

2. The proposed tariff would cover the provision of interstate video dialtone services by Bell Atlantic for the duration of the market trial in northern Virginia.³ Transmittal No. 742

1 Bell Atlantic has received authorization under Section 214 of the Communications Act, 47 U.S.C. § 214, to conduct a market trial of Asymmetric Digital Subscriber Line (ADSL) technology in Fairfax, Virginia. It is authorized to pass no more than 2,000 homes and business for a six-month period. Bell Atlantic may extend the market trial for an additional three months. Chesapeake and Potomac Company of Virginia, File No. W-P-C 6834, *Order and Authorization*, FCC 95-15 at 31, ¶ 62 (rel. Jan. 20, 1995.)

2 Transmittal No. 765 was filed pursuant to Special Permission No. 95-402, issued April 6, 1995.

3 The Virginia State Corporation Commission has jurisdiction over any intrastate video dialtone service provided during the market trial. Description and Justification (D&J) at (2-3). See Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-

contains a three part rate structure for the ADSL video dialtone service.⁴ First, video dialtone (VDT) access link charges will be assessed to the programmer-customer (programmer) for access to the video distribution office (VDO).⁵ The programmer may obtain access to the VDO through three different means (1) at its point-of-presence in the LATA, (2) at the Serving Wire Center, or (3) through expanded interconnection at the VDO.⁶ Second, pointcast service⁷ connection charges will be imposed for programmer access to end user subscribers. Specifically, the programmer will be assessed monthly port charges, a monthly connection charge for each of its end user subscribers, and a minutes of use charge. In addition, the pointcast service connection charges include a monthly charge to the end user subscriber for connection to the video dialtone

63.58 and Amendments of Parts 32, 36, 61, and 69 of the Commission's Rules to Establish and Implement Regulatory Procedures for Video Dialtone Services, *Memorandum Opinion and Order On Reconsideration and Third Further Notice of Proposed Rulemaking (VDT Reconsideration Order)*, 10 FCC Rcd 244, 335-36, ¶¶ 197-198 (1994) .

- 4 Concurrently with Transmittal No. 742, Bell Atlantic filed a petition for waiver of the Part 69 rules for the duration of the market trial to establish the rate structure used in the tariff. Generally, any tariff filing which would establish a rate element inconsistent with Part 69 is patently unlawful, and therefore subject to rejection unless a petition for waiver has been granted. *See U.S. West Communications, Inc., Revisions to Tariff F.C.C. No. 5*, 9 FCC Rcd 5228 (Com.Car.Bur. 1994). In this case, however, the Common Carrier Bureau has established procedures allowing local exchange carriers to file simultaneously Part 69 rate structure waiver requests and tariffs for video dialtone market trials. Public Notice, Common Carrier Bureau Establishes Procedures for Tariff Filings and Part 69 Waiver Requests for LEC Video Dialtone Market Trials, DA 95-211 (rel. Feb. 10, 1995). Bell Atlantic's waiver petition has subsequently been granted. Bell Atlantic Telephone Companies, *Petition for Waiver of Section 69.106 of the Commission's Rules to Offer Video Dialtone Service in a Limited Market Trial In Northern Virginia*, DA 95-745 (Com.Car.Bur. rel. Apr. 6, 1995). Accordingly, we will not reject this transmittal on that basis.
- 5 The video distribution office is the telephone company location from which signals are distributed, as authorized by the programmer-customers, to end user subscribers.
- 6 D&J at (1-4)-(1-6).
- 7 Pointcast is a service in which a program is transmitted to a specific end user subscriber. In contrast, broadcast services transmit programming so that all-end user subscribers can access the programming.

system.⁸ Third, an optional signalling port charge provides the programmer with additional signalling capacity to support interactive applications.⁹ Each rate element has a non-recurring charge, but Bell Atlantic seeks to waive those non-recurring charges for the market trial.¹⁰ According to Bell Atlantic, the rates for the market trial are based on ADSL investments in a mature market, *i.e.*, equipment prices that would be in effect after the system has been operating for a few years.¹¹

3. End user subscribers may sign up for service on a month-to-month basis. Programmers must sign up for a minimum of six months' service.¹² If the programmer terminates service early, it must pay a termination fee equal to its monthly charges times the number of months remaining in the trial.¹³

4. In its petition, NCTA states that the transmittal omits much of the information which NCTA claims is required by the *VDT Reconsideration Order*.¹⁴ Regarding the specific rates proposed by Bell Atlantic, NCTA argues that they will not recover the costs of video dialtone service since those rates are not above Bell Atlantic's fully loaded costs.¹⁵ NCTA also argues that Bell Atlantic's contribution to overhead in the proposed rates appears to be too low.¹⁶ It next contends that Bell Atlantic should not be allowed to waive the non-recurring charges during the trial.¹⁷ NCTA also claims that a six month minimum service period is unreasonable, and that the termination liability is excessive and not cost based.¹⁸ It further argues that programmers should

8 *Id.* at (1-6)-(1-8).

9 *Id.* at (1-8).

10 *Id.* at (1-3).

11 *Id.* at (3-1).

12 *Id.* at (1-3).

13 *Id.* at (1-9).

14 NCTA Petition at 5, citing *VDT Reconsideration Order*, 10 FCC Rcd at 343-347, ¶¶ 214-221.

15 NCTA Petition at 8-12.

16 *Id.* at 10-11.

17 *Id.* at 15.

18 *Id.* at 17-18.

not be required to provide rights-of-way to provide service to their end user subscribers to Bell Atlantic free of charge.¹⁹ NCTA also notes that the tariff does not provide a definition of the "signalling port" service.²⁰

5. In its reply, Bell Atlantic states that it has identified and included the direct costs of the ADSL service in its proposed rates in accordance with the new services test for price cap carriers and the *VDT Reconsideration Order*.²¹ Bell Atlantic argues that NCTA misconstrues the relevance of fully loaded costs. Bell Atlantic claims that fully loaded costs should be treated as a price ceiling, and that its rates are between direct costs and fully loaded costs.²² Bell Atlantic further argues that imposition of the non-recurring charges would be a significant deterrent to participation in the trial.²³ It also maintains that the six month minimum service requirement is reasonable given the short duration of the trial. Bell Atlantic contends that the termination liability provision in its tariff is appropriate since it is unlikely to find a replacement programmer for the remaining period of time in the trial.²⁴

6. According to Bell Atlantic, Transmittal No. 765 revises Transmittal No. 742 to clarify the regulations for the market trial. The revised language, *inter alia*, deletes the requirement that the programmer provide Bell Atlantic with rights-of-way free of charge and includes a definition of "optional signalling port." The revisions also change the interest rate to be charged for overdue balances to be consistent with the rate used in other Bell Atlantic access tariffs. Transmittal No. 765 also clarifies that programmers will be listed alphabetically in the Level 1 gateway.

19 *Id.* at 18.

20 *Id.* at 18-19.

21 Bell Atlantic Reply at 2-4.

22 *Id.* at 6.

23 *Id.* at 8-9. Bell Atlantic notes that Rochester Telephone Corporation was allowed to waive the non-recurring charges associated with its video dialtone market trial. *Rochester Telephone Corp., Tariff F.C.C. No. 3, Transmittal No. 224*, 9 FCC Rcd 3568 (Tariff Div. 1994).

24 Bell Atlantic Reply at 10-11.

7. We have reviewed Bell Atlantic's Transmittal No. 742 to provide video dialtone service on a market trial basis, the revisions to that filing made in Transmittal No. 765, the petition filed by NCTA, and Bell Atlantic's reply. We conclude that the provisions of Transmittals Nos. 741 and 765 are not patently unlawful so as to warrant rejection and the petitioner has not raised any issue that warrants suspension and investigation at this time of Bell Atlantic's tariff to conduct a limited six-month market trial of video dialtone service in northern Virginia.

8. Accordingly, IT IS ORDERED that the petition for rejection or suspension and investigation filed by the National Cable Television Association, against Bell Atlantic Telephone Companies, Transmittal No. 742, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Geraldine A. Matis

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