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Federal Communications Commission
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUN 29 1992

Federal Communications Commission
Office of the Secretary

In the Matter of	)	
	)	CC Docket No. 92-141
1992 Annual Access Tariff Filings	)	

ORIGINAL FILE

AT&T OPPOSITION TO REQUEST FOR PARTIAL STAY

Pursuant to Section 1.45(d) of the Commission's Rules, American Telephone and Telegraph Company ("AT&T") hereby opposes the request of the Ameritech Operating Companies ("Ameritech") to stay that aspect of the Bureau's June 22, 1992 Order regarding the 1992 annual access tariff filings which requires Ameritech to revise rates to reflect price cap sharing allocations based on relative basket revenues rather than relative basket earnings.* Ameritech's request should be denied, because Ameritech has failed to meet its burden of establishing any of the prerequisites for such relief prescribed in Virginia Petroleum Jobbers Ass'n v. FPC.**

First, Ameritech has not shown that there is a substantial likelihood it will prevail on the merits. For this prong of the test, Ameritech relies solely on its concurrently filed Application for Partial Review of the

* In the Matter of 1992 Annual Access Tariff Filings, CC Docket No. 92-141, Memorandum Opinion and Order, DA 92-841 (released June 22, 1992) ("Bureau Order").

** 259 F.2d 921, 925 (D.C. Cir. 1958).

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Order ("Application"). Although the Application is couched in terms of seeking a remedy for alleged "distortions" caused by the Bureau Order's specification of relative basket revenues as the basis for allocating price cap sharing amounts, in essence the Application requests the Commission to overturn its decision in the 1991 Price Cap Reconsideration Order* to include LEC interexchange service revenues in the calculation of overearning sharing amounts that are owed to interstate access customers.** In support of that position, the Application merely reiterates the same arguments which the Commission fully considered and rejected more than a year ago in the Price Cap Reconsideration Order.*** Thus, there is no substantial likelihood that Ameritech will prevail on the merits, and its stay request should be denied for that reason alone.

Ameritech also has not met its burden of showing that irreparable harm will result if the stay is not granted. Ameritech claims (at 2) that, absent a stay, the

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* In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Order on Reconsideration, FCC 91-115 (released April 17, 1991) ("Price Cap Reconsideration Order").

** See, Application, p. 3 ("[T]he Commission left the door open to the implementation of a sharing mechanism that minimizes the distortion caused by including the interexchange services in the computation of the price cap sharing amount.").

*** Compare Application, pp. 3-5 with Price Cap Reconsideration Order, par. 97.

Bureau Order would impose upon Ameritech a "choice" that allegedly would either harm Ameritech, by requiring it to lower Carrier Common Line ("CCL") and Traffic Sensitive ("TS") rates, or injure some of its customers by "requiring" Ameritech to raise Special Access and Interexchange rates to "make up" the "difference." This, however, is a false "choice." Nothing in price cap regulation prohibits Ameritech from making appropriate reductions in its access rates, whether in accordance with its own business judgment or in response to a Commission order. Indeed, the whole purpose of price cap regulation is to give LECs the incentive to become more efficient and to pass on those efficiencies to customers in the form of lower rates. Thus, the possibility that Ameritech might have to reduce its CCL and TS access rates as a result of the Bureau Order is not the type of "irreparable harm" which would justify a stay.

Ameritech has further failed to show (at 3) that a stay would not harm the interests of others. Ameritech states that it would voluntarily submit to an accounting order and, if it loses on the merits, refund "the higher rates for [CCL] and [TS] charges that would result from sharing in the manner proposed by [Ameritech]." Section 204 of the Communications Act, however, provides that the Commission may issue an accounting order only with respect to "a proposed charge for a new service or

increased charge." Ameritech's proposed CCL and TS charges in its 1992 annual interstate access filing obviously were not for new services; nor were they increases over previously filed rates.* The Commission, therefore, is without statutory authority to impose an accounting order in these circumstances. Moreover, even if it were permitted, an accounting order would allow Ameritech to charge its customers higher CCL and TS rates while its stay request and Application for Review are being adjudicated, a process that could take a year or more. Requiring interstate access customers to pay those higher charges for that period of time, even under an accounting order, is contrary to the public interest in light of the likelihood that Ameritech's Application will ultimately fail on the merits.

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* See Ameritech TRP data in support of 1992 annual interstate access filing, Chart RTE-1, pp. 1-4.

WHEREFORE, for the reasons stated herein, Ameritech's Request for Partial Stay of the Bureau's June 22, 1992 Order should be denied.

Respectfully submitted,

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

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Dated: June 29, 1992

CERTIFICATE OF SERVICE

I, Karen L. Mitchell, do hereby certify that on this 29th day of June, 1992, a copy of AT&T's Opposition to Request for Partial Stay has been served by first class mail, postage prepaid, upon the parties listed on the attached Service List.

/s/ Karen L. Mitchell
Karen L. Mitchell

Attachment

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