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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of 800 Data Base Access Tariffs and the 800 Service Management System	CC Docket 93-129

TO THE COMMISSION

DIRECT CASE OF
THE AMERITECH OPERATING COMPANIES
THE BELL ATLANTIC TELEPHONE COMPANIES
BELLSOUTH TELECOMMUNICATIONS, INC.
THE NYNEX TELEPHONE COMPANIES
PACIFIC BELL AND NEVADA BELL
SOUTHWESTERN BELL TELEPHONE COMPANY
U S WEST COMMUNICATIONS, INC.

For the 800 Service Management System (SMS/800) Functions Tariff

September 20, 1993

SUMMARY

In its 800 Designation Order, the Commission defines a number of issues for investigation, ranging from the reasonableness of the 800 Service Management System (SMS/800) Functions Tariff[1] terms and conditions to the nature of costs and cost allocations. This direct case provides responses to those issues.

Some of the designated issues actually relate to terms and conditions which do not appear in the tariff, especially regarding required time frames for Responsible Organizations (Resp Orgs) to complete certain customer requested changes and enforcement procedures in the event a Resp Org does not demonstrate responsiveness to customer requests. The SMS/800 Tariff properly refrains from regulating business relationships between Resp Orgs and their customers. Industry guidelines provide recommendations on how Resp Orgs should conduct themselves. For competitive services such as those offered by Resp Orgs, the power of the market to mitigate abuses by Resp Orgs acts against the need for specific enforcement provisions in the tariff. If an 800 end user is dissatisfied with the Resp Org's conduct, the end user is free to transfer the business relationship to another Resp Org.

Concerns are raised regarding indemnification and liability insurance requirements. These are standard conditions which can be

[1]Referred to as the SMS/800 Tariff in this Direct Case.

found in any tariff, and are reasonable in this tariff as well. Such requirements are intended to protect the Bell Operating Companies (BOCs) from liability arising out of actions of Resp Orgs which are beyond the control of the BOCs. The liability insurance requirement provides assurance that the Resp Org will not be suddenly driven out of business due to a lawsuit (say, for a personal injury sustained on the Resp Org's property), leaving the Resp Org's customers without the necessary SMS/800 support.

Incorporation by reference of industry negotiated guidelines, such as those pertaining to intervals for making customer requested changes, is appropriate. Appropriate SMS/800 requirements from the guidelines are placed in the tariff to allow easier reference.

Other issues relate to the appropriateness and/or restrictiveness of procedures to be followed when the Number Administration and Service Center (NASC) makes a change of Resp Orgs. The procedures set forth in the tariff associated with NASC-performed Resp Org changes are an appropriate starting point, which were based on information available at the time that the tariff had to be filed. Actual experience with these procedures is limited at this point, but the procedures could be changed if actual experience shows that other methods can also work.

Concerns raised regarding affiliate transactions are obviated by the nature of the relationships between entities and services provided. Specifically, the Commission's affiliate transaction rules carefully control the level of costs recorded on the regulated company's books.

The assumptions used in the development of demand and costs are reasonable. The demand forecast reflects the fact that the bulk of activity and demand growth for many SMS/800 services will occur in the first months of SMS/800 operation, after which demand will flatten. The forecast was based on data available at the time, including forecasts of service growth from both external and internal sources.

The allocation of costs between Service Control Point (SCP) owners and Resp Orgs is equitable and based on cost causation. This is demonstrated by the consistency of structure and price level between corresponding tariffed and contract services. Finally, costs for services from vendors are based on contract negotiations, and as such cannot be changed to a different level by a simple change of assumptions by the BOCs.

DIRECT CASE OF
BELL OPERATING COMPANIES

CC Docket No. 93-129

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BEFORE THE

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DIRECT CASE OF

THE BELL OPERATING COMPANIES

The Bell Operating Companies (BOCs),[2] by their attorneys, hereby file their Direct Case in response to the Order Designating Issues For Investigation in the above stated docket.[3]

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[2]The Ameritech Operating Companies; the Bell Atlantic Telephone Companies; BellSouth Telecommunications, Inc.; The NYNEX Telephone Companies; Pacific Bell and Nevada Bell; Southwestern Bell Telephone Company; and U S WEST Communications, Inc.

[3]800 Data Base Access Tariffs and the 800 Service Management System Tariff, CC Docket No. 93-129, Order Designating Issues for Investigation (DA 93-930) (released July 19, 1993) (Designation Order).

I. THE BOCs' RESPONSES TO THE FOLLOWING ISSUES SHOW THAT THE TERMS AND CONDITIONS IN THE BOCs' 800 SERVICE MANAGEMENT SYSTEM (SMS/800) FUNCTIONS[4] TARIFF ARE REASONABLE.

1. The SMS/800 Tariff properly addresses industry agreements related to Responsible Organization (Resp Org) changes and any potential tariff violations.

The Designation Order cites petitioners' complaints that the tariff does not define the procedures to be followed when a change from one Resp Org to another is not made within two days and the sanctions to be imposed when the tariff provisions are violated.

SMS/800 Tariff Section 2.3.1 sets forth the requirement that changes in Resp Orgs must be accomplished by the close of the second complete business day from the receipt of the request. The two business days requirement for confirming a change request is an industry agreed upon interval adopted by the Ad Hoc 800 Database Committee of the Carrier Liaison Committee (CLCAH).[5] The tariff provides in general terms the requirements for both the releasing and the receiving

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[4]Referred to as the SMS/800 Tariff in this Direct Case.

[5]The CLCAH is an open, industry forum associated with the Exchange Carriers Standards Association (ECSA).

Resp Orgs. It is not the purpose of this tariff nor the responsibility of the BOCs or the Number Administration and Service Center (NASC) to develop methods and procedures necessary for the Resp Orgs to be in compliance with the provisions of the tariff. The competitive nature of the Resp Org services will of itself serve as an enforcer. The market will deal harshly with Resp Orgs which do not adhere to industry guidelines. Thus, any enforcement provisions in the tariff are unnecessary and would be superfluous.

Regarding tariff violations, as with any tariff, the BOCs will communicate directly with any parties believed to be in violation of any provisions of the tariff. When this action does not produce satisfactory results, appropriate action will be taken with the Commission. The 800 subscriber also has recourse with the Commission regarding any violations of the tariff. Application and enforcement of this tariff is therefore no different from other tariffs.

2. <u>Resp Org change procedures are clear and reflect industry input.</u>

The Designation Order cites petitioners' contention that the procedures for requesting and confirming change requests are inadequate or vague.

Tariffs do not generally contain detailed procedures for ordering services, nor do they describe in detail the forms that the BOCs and their customers will use in connection with the provision of services.[6] This information is provided via other means, in part because the carriers and their customers want to be able to change administrative procedures without going through a tariff change proceeding.

Likewise, such detailed information for ordering services are forwarded to customers through informational documents. In keeping with this policy, the NASC forwarded a Client Support Bulletin relating to procedures for requesting and confirming change requests to all Resp Orgs on April 28, 1993.

After dialogue at the June 1993 meeting of the CLCAH, the procedures were modified to reflect a new form as well as an alternative method of confirming a completed change

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[6]See Ordering Provisions set forth in Section 5 of the Bell Operating Companies' Access Service Tariffs.

request. This revised information was distributed to the Resp Orgs on July 12, 1993.

3. <u>The tariff contains standard liability provisions relating to patent infringement.</u>

The <u>Designation Order</u> cites petitioners' claim that the liability provisions relating to patent infringement are unjust and unreasonable in light of the fact that the BOCs selected the technology.

The tariff condition merely indemnifies the BOCs against possible patent infringement claims arising from Resp Org actions or inactions. The language used for this provision[7] is standard in BOC access tariffs approved by the FCC[8] even though the BOCs "selected the technology" used to provide these services. There is no reason to make Resp Orgs any less liable for their own actions than any other access customer.

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[7]Section 2.1.3(C)(2) provides that the BOCs shall be indemnified for all "Claims for patent infringement....".

[8]Refer to BOC Access Service Tariffs Sections 2.3.8(A) or 2.3.11(A), Claims and Demands for Damages (The Ameritech Operating Companies, The Bell Atlantic Telephone Companies, BellSouth Telecommunications, Inc., The NYNEX Telephone Companies, Southwestern Bell Telephone Company, U S WEST Communications, Inc. - Section 2.3.8(A), Nevada Bell and Pacific Bell - Section 2.3.11(A)).

4. The liability insurance provisions represent normal business practices.

The Designation Order cites petitioners' argument that the requirement that a Resp Org purchase liability insurance is unprecedented and discriminatory.

Sections 2.3.4(A) and (B) of the SMS/800 Tariff require that Resp Orgs purchase liability insurance. The requirement that Resp Orgs purchase liability insurance is just and reasonable. As set forth in our Reply Comments[9], the one million dollar comprehensive general liability insurance requirement is reasonable in relationship to the risks it guards against, including personal injury and property damage suits brought against Resp Orgs by a third party. Examples of risk for which this provision might be invoked include the possibility that a Resp Org could inadvertently claim a customer as intrastate only, thereby depriving that customer of its interstate traffic, or fail to identify accurately a customer's routing on the customer record, thereby depriving that customer of some of its 800 traffic. Either risk could cause

[9] BOCs' Reply To Petition To Reject Or Suspend And Investigate The BOCs' Transmittal No. 1 for SMS/800 Access Tariff No. 1, filed April 1, 1993.

damage to a third party. Moreover, the liability insurance should cover any failure on the part of the Resp Org to comply with the terms and conditions of the tariff. This provision is commercially reasonable and commonly followed in the industry.[10]

5. <u>The SMS/800 Tariff properly excludes definition of the business arrangement between a Resp Org and the end-user customer.</u>

The <u>Designation Order</u> cites petitioners' claim that the tariff should set a more specific time within which Resp Orgs must make customer-requested traffic changes, e.g., moving traffic to a new IXC.

The SMS/800 Tariff defines the rules, regulations, functionality, and rates associated with Resp Orgs purchasing services from the SMS/800 system. Resp Orgs that have purchased services from SMS/800 through this tariff are able to load and maintain 800 customer records in the data base on behalf of their customer. The relationship between the Resp Org and the end user customer is a separate and private business arrangement.

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[10] See U S WEST Communications, Inc. Access Service Tariff, Section 2.3.13, Insurance for Expanded Interconnection - Collocation.

The business arrangement between the Resp Org and the end user customer defines the services offered by the Resp Org and the associated charges. Such services may include (among other things) loading and maintaining records in the data base, making customer-directed traffic changes (moving traffic from one service provider to another), and trouble shooting. It would be no more appropriate for the SMS/800 Tariff to regulate the services offered by a Resp Org to its customer than it would be for the SMS/800 Tariff to regulate the charges that could be rendered by Resp Orgs to those customers.

6. Referring to technical publications and industry documents is a common practice in FCC approved tariffs.

The Designation Order cites petitioners' question as to the appropriateness of incorporating other documents, such as industry guidelines, by reference into the SMS/800 Tariff.

This is common practice in access tariffs[11], and the documents referred to in this tariff are appropriate for incorporation.

The Guidelines for 800 Data Base (the Guidelines) were developed and are currently maintained by the CLCAH. The CLCAH is comprised of industry experts in 800 service from local exchange companies, interexchange carriers, subscribers, and various industry organizations. The content of the Guidelines is dynamic, reflecting the increased experience gained by CLCAH members with national 800 Data Base Service.

To meet the need for both a definitive tariff and flexible guidelines, the SMS/800 Tariff does include those elements of the Guidelines that are truly defined as SMS/800 system requirements (e.g., limiting the number of days a number can remain in reserved status, limiting the quantity of numbers that any given Resp Org can hold in reserve, etc.). Other elements of the Guidelines deal with interfaces between Resp Orgs and customers and do not involve Resp Org access to SMS/800. These issues are

[11] All the BOC Access Service Tariffs reference numerous external documents, both technical publications and industry guidelines. See The Ameritech Operating Companies, pages 18-20.1; The Bell Atlantic Telephone Companies, pages 19-20.2; BellSouth Telecommunications, Inc., pages 65-68; Nevada Bell, pages 16.1.1-16.4; The NYNEX Telephone Companies, pages 55-59; Pacific Bell, pages 17.1-17.4; Southwestern Bell Telephone Company, pages 37-41; and U S WEST Communications, Inc., pages 0.22-0.26.

inappropriate and outside the scope of the SMS/800 Tariff.

The Guidelines for 800 Data Base is a living document that is subject to ongoing modification by the industry. To the extent that revisions are made to those specific guidelines that directly impact the tariffed SMS/800 service, corresponding changes will be made to the SMS/800 Tariff; however, the Guidelines document itself should remain as a referenced document, giving it the flexibility necessary to respond to industry needs.

7. <u>The Tariff ensures fair and evenhanded treatment of all SMS/800 users.</u>

The <u>Designation Order</u> cites petitioners' perception that the tariff lacks procedures to ensure evenhanded enforcement of the terms and conditions of the SMS/800 Tariff and the lack of explanation about what enforcement action will be taken against Resp Orgs that fail to comply with Tariff requirements.

The nature of the services provided under the BOCs' SMS/800 Tariff does not afford an opportunity for any form of discriminatory treatment. Because said services are obtained through customer input by means of either a dedicated connection to the SMS/800 or on a dial-up basis (at the customer's choice), it is virtually impossible to discriminate or show favoritism to a single Resp Org customer or a group of customers. Each customer is afforded equal opportunity to reserve 800 numbers or to create or modify 800 number records. The tariff does state in Section 2.1.2(B) that "The services offered herein will be provided on a first-come, first served basis", a standard procedure in all tariffs.

The responses to any violation of tariff requirements would generally include discussion with the noncomplying entity followed by close monitoring to ensure that the violation is not repeated. Disciplinary action, if required, would be administered in a uniform and nondiscriminatory manner to all noncomplying customers. Should a customer obtaining service from the tariff disagree with this procedure, that customer can lodge a complaint with the Commission in accordance with the Commission's complaint procedures as set forth in SECTION 208 of the COMMUNICATIONS ACT OF 1934, AS AMENDED.

8. <u>The procedures and timeframes for provision of Resp Org change services by the NASC is reasonable.</u>

The Designation Order cites petitioners' challenge to the reasonableness of requiring that when requesting the NASC to make a Resp Org change, the receiving Resp Org must mail a written request to the NASC and that the NASC will return confirmation notices by mail. The Designation Order also cites that the petitioners challenge the reasonableness of the provision that the NASC will perform changes from one Resp Org to another on a negotiated interval basis rather than within a fixed time limit.

The NASC Resp Org Change Process was tariffed subsequent to the March 11, 1993 Order and therefore research was not available on which to base a demand forecast. Based on discussions at the CLCAH, the BOCs expected a high volume of change requests and implemented a process utilizing mail services and involving a negotiated interval because of the potential impact on the resources available in the NASC. This process was chosen to ensure that equal service would be provided to all participants. If the volume of Resp Org change requests over time indicates the feasibility of performing changes on a fixed time limit, appropriate tariff revisions will be made.

In response to requests from Resp Orgs, the BOCs now offer Resp Orgs the option of receiving notice via electronic mail immediately after a Resp Org change is completed.

9. The SMS/800 Tariff limitations regarding number reservations are consistent with industry guidelines.

The Designation Order cites petitioners' questioning of the reasonableness of limits in the SMS/800 Tariff on the quantity of 800 numbers that a Resp Org can reserve for future use and what, if any, reservation policy should apply.

The SMS/800 Tariff limitations on the number of 800 numbers which can be reserved are identical to the limitations in the Guidelines. The issue of whether or not these limitations are appropriate, as well as other issues related to number reservations, was raised at a recent CLCAH meeting. The industry is discussing potential revisions to the Guidelines to address these issues.

The industry expects to address these number reservation concerns within the coming months. Potential revisions resulting from this process will be published to the industry.

II. THE BOCs' RESPONSES TO THE FOLLOWING ISSUES AND QUESTIONS SHOW THAT THE BOCs' COST ALLOCATIONS AND DEMAND ESTIMATES FOR THEIR SMS/800 TARIFF ARE REASONABLE.

1. All costs related to SMS/800 have been properly allocated between tariffed and nontariffed services.

The Designation Order cites petitioners' question as to whether the BOCs have properly allocated SMS/800 costs between the tariffed Resp Org services and other services, such as the nontariffed Service Control Point (SCP) updating service provided to SCP owners.

SMS/800 costs are properly allocated between Resp Orgs and SCP owners as a result of using cost allocations based on all rate elements. The cost support material previously submitted in this proceeding[12] clearly reflects this approach (See Attachment 1). In those worksheets, which were used to allocate SMS/800 cost items, all Service Provider and SCP Owner/Operator rate elements are displayed. The nondiscriminatory nature of this approach is demonstrated by the fact that prices for the two major rate elements used by both groups of

[12]SMS/800 Tariff No. 1, Transmittal 1, Appendix 1 filed March 5, 1993; and SMS/800 Tariff No. 1, Transmittal 2, Appendix 1, Exhibits 7, 8 and 9 filed April 8, 1993.

customers, i.e., Service Establishment and SMS Access, are consistent.[13]

The cost allocation methodology used to allocate cost items, such as the data center and the NASC operation, to specific rate elements is described in Attachment 1, Appendix 1, pages 1-1 through 1-3. Each cost item was analyzed to determine its nature (i.e., investment or expense, recurring or non-recurring, hardware/software or labor, shared or dedicated to a particular rate element, etc.) and an appropriate allocation method reflective of cost causation considerations was developed and applied. The allocation approach for the data center grouped costs into three categories: central processor, network equipment and facilities, and storage hardware. Central processor costs were allocated on the basis of measured internal transactions for each rate element. Network equipment and facilities were allocated on the basis of actual use by each type of access link, and storage hardware was allocated directly to the Customer Record Administration rate element. NASC costs were allocated on the basis of a Task Oriented Costing (TOC) study that relied on interviews of all NASC personnel to associate

[13]The rates for Service Establishment and SMS Access applicable to Resp Orgs are shown in Attachment A, Appendix 1, Exhibit 9. The contract prices charged to SCP owners for the same elements are shown in the response to question 13 of Appendix C of the Designation Order in this Direct Case.

their functions to specific rate elements and are independent of NASC proprietorship. A detailed description of allocation methods for all cost items, including the data center and NASC, is included in Attachment 1. The tailoring of cost allocation methods to specific cost items increased the complexity of the process; however, by focusing on the characteristics of individual cost elements and their relationship to rate elements, the objectivity, reasonableness and accuracy of the results has been maximized.

2. All costs related to transactions with affiliated entities have been properly supported and accounted.

The Designation Order cites petitioners' question as to whether the BOCs provide proper cost support and properly account for SMS/800 costs incurred in transactions with affiliated entities.

The BOCs' SMS/800 Tariff rates are supported by detailed cost information that satisfies applicable requirements of Part 61.38[14] of the Commission's rules. A projection of costs and demand for the 56-month period from May 1, 1993 through December 31, 1997 was submitted with the BOCs' tariff transmittals and are included herein as

[14] 47 CFR 61.38 (a), (b) and (c).

Attachment 2 (costs) and Attachment 3 (demand). A detailed description of each cost item was previously submitted in our Reply Comments and is also included herein as Attachment 4. The detailed supporting information previously filed and included herein as Attachments 1 through 4 properly support the allocation of costs to rate elements and all SMS/800 prices.

Transactions between the BOCs and Bellcore are reasonable and have been properly recorded. The fact that Bellcore is an affiliate of the BOCs does not make its costs of providing SMS/800 related services such as NASC administration (in 1993), billing and software unreasonable. To the contrary, the reasonableness of the costs is assured by the Commission's affiliate transaction rules which require that services provided by an affiliate to a regulated entity be quantified at fully distributed cost.[15] Also, the Commission's affiliate transaction rules carefully control the recording of the services between affiliates by requiring that the regulated entity only record on its books of account the fully distributed costs of services received, without any profit. These rules ensure that Bellcore's SMS/800-related costs are properly recorded and billed to each of the BOCs, and are more than sufficient to insure the

[15]See 47 CFR 32.27 (d).

reasonableness of the cost of services provided by Bellcore.

The relationship between the BOCs (with Bellcore acting as their agent) and Southwestern Bell Telephone Company (SWBT) does not support an inference that the price paid for data center operations is in any way unreasonable. The BOCs have absolutely no incentive to pay an inflated price to SWBT. To the contrary, their interest lies in paying reasonable prices for the services needed to offer SMS/800 support. And, in fact, SWBT's prices are reasonable. SWBT priced its data center services at fully distributed cost. Also, Southwestern Bell procured the equipment for the data center upgrade through a competitive bidding process.

In sum, the relationship between the BOCs, Bellcore, and SWBT, does not support the intervenors' unsubstantiated inference that the SMS/800 costs are inflated or improperly recorded. All costs have been shown to be reasonable and proper.

3. <u>The assumptions used to develop the tariff rates were reasonable.</u>

The *Designation Order* cites petitioners' question as to the assumptions, such as demand forecasts, labor wage rates, depreciation and tax expenses, that the BOCs used in developing their rates.

The forecast of demand for SMS/800 services is based on estimates of usage that were obtained from potential Resp Orgs through correspondence, surveys, meetings and site visits as well as actual operating experience with the SMS/800 prior to the introduction of national service. The basis for the forecast for each rate element was described in the Description and Justification (D&J) for the initial SMS/800 Tariff filing.[16] The information in the D&J adequately explained how the forecast was developed; however, the following additional information is provided to describe other underlying assumptions reflected in the forecast:

(a) the forecast for the Customer Record Administration rate element includes 800 number reservations as well as 800 numbers activated. Based on prior experience, it is assumed that an average of 1.7 reservations would be made for each new 800 record established.

[16] SMS Tariff No. 1, Transmittal 1, filed March 5, 1993.