

transport services and, as described below, limiting the availability of their physical collocation offerings. These tariffs are scheduled to become effective September 3, 1994. By this Order, we are suspending the interim tariffs for one day, instituting an investigation, and imposing an accounting order.

II. BACKGROUND

2. On July 25, 1994, the Commission released its Remand Order¹ in response to the June 10, 1994 decision of the U.S. Court of Appeals for the District of Columbia Circuit in Bell Atlantic v. FCC.² In Bell Atlantic v. FCC, the Court stated that it would vacate in part the first two of the Commission's expanded interconnection orders³ on the grounds that the Commission did not have authority under the Communications Act of 1934, as amended, to require local exchange carriers (LECs) to provide expanded interconnection through physical collocation. The Court also stated that it would remand the Commission's orders to permit the Commission to consider whether and to what extent to impose virtual collocation requirements in the absence of a physical collocation requirement.⁴ In the Remand Order, the Commission adopted virtual collocation as the basic architecture for providing expanded interconnection and directed Tier 1 LECs (other than National Exchange Carrier Association pool members) to provide expanded interconnection for both interstate special access and switched transport through generally available virtual collocation services.⁵

¹ Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Memorandum Opinion and Order, FCC 94-190 (released July 25, 1994) (Remand Order).

² Bell Atlantic Telephone Companies v. FCC, No. 92-1619, 1994 WL 247134 (D.C. Cir., June 10, 1994) (Bell Atlantic v. FCC).

³ Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369 (1992), recon., 8 FCC Rcd 127 (1992), vacated in part and remanded sub nom. Bell Atlantic v. FCC, No. 92-1619 (D.C. Cir., June 10, 1994), recon., 8 FCC Rcd 7341 (1993), Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7373 (1993), pet. for review pending sub nom. Bell Atlantic v. FCC, No. 93-1743 (D.C. Cir., filed Nov. 12, 1993).

⁴ Bell Atlantic v. FCC, slip op. at 9-10.

⁵ Remand Order at ¶ 3.

3. The Remand Order required LECs to file tariffs offering virtual collocation on September 1, 1994, to be effective on December 15, 1994.⁶ The Commission stated that December 15 was the earliest date by which the Commission could ensure that these tariffs would have undergone adequate review by the Commission's staff.⁷ The Commission exempted LECs from the mandatory virtual collocation requirement in central offices at which they choose to provide physical collocation under tariff, subject to non-streamlined regulation as a communications common carrier service.⁸ To prevent any lapse in the effectiveness of its overall expanded interconnection policy, the Commission stated its intention to ask the D.C. Circuit to stay the issuance of its mandate until December 15, 1994, by which time tariffs implementing the new virtual collocation rules could become effective.⁹ The Commission stated that LECs must continue offering physical collocation until December 15, 1994, if the D.C. Circuit's mandate had not issued before that date.¹⁰ On August 9, 1994, the Commission and the Tier 1 LECs entered into a letter agreement¹¹ that formed the basis for a joint motion for partial stay of the Court's mandate until December 15, 1994.¹² The D.C. Circuit granted the Joint Motion on August 24, 1994, stating that it would withhold issuance of the full mandate until December 15, 1994.¹³

4. The above-mentioned Letter Agreement sets forth procedures designed to facilitate an orderly implementation of the Commission's virtual collocation requirements, and to prevent undue disruptions to existing collocation customers. The Letter Agreement states that Tier 1 LECs not electing to satisfy their obligations under the Remand Order with a regulated physical collocation offering would file, on September 1, 1994, interim virtual collocation tariffs on short notice that are identical in substance to the permanent

⁶ Id. at ¶ 3, 36.

⁷ Id.

⁸ Id. at ¶¶ 3, 31-34.

⁹ Id. at ¶ 3.

¹⁰ Id. at ¶ 37.

¹¹ Letter from Mark L. Evans, Esq. on behalf of the Tier 1 LECs to William E. Kennard, Esq., General Counsel, FCC (August 9, 1994) (Letter Agreement).

¹² Joint Motion for Partial Stay of Mandate in Bell Atlantic v. FCC (filed Aug. 9, 1994) (Joint Motion).

¹³ Order Granting Joint Motion, filed Aug. 24, 1994.

virtual collocation tariffs to be filed on that same date.¹⁴ These interim tariffs would serve the public interest by, inter alia, permitting collocators to continue to receive, on an uninterrupted basis, tariffed expanded interconnection service during the period between the effectiveness of the interim tariffs and the date the permanent virtual collocation tariffs become effective.

5. In addition, the agreement states that upon the Court's grant of the Joint Motion, LECs may limit their offering of physical collocation until December 15, 1994, to interconnectors with operational physical collocation arrangements as of July 25, 1994, or "firm orders" (as described in the Letter Agreement) on June 10, 1994, if the interconnector elects to have the LEC complete the construction. After December 15, 1994, LECs electing to discontinue their physical collocation offerings will assure their expanded interconnection customers an orderly transition from physical to virtual collocation arrangements, or to any alternative forms of expanded interconnection that the Commission may approve.¹⁵

III. THE INTERIM TARIFFS

6. The above-captioned LECs¹⁶ filed interim tariffs on September 1, 1994 offering expanded interconnection through virtual collocation for special access and switched transport services and limiting the availability of their physical collocation offerings as set forth in paragraph 5, supra. These tariffs are scheduled to become effective on September 3, 1994, and will remain in effect until at least December 15, 1994.¹⁷ Based on our preliminary review, we find that the interim tariffs raise significant questions of lawfulness that warrant suspension for one day, investigation, and imposition of an accounting order. We will designate specific issues and establish a pleading cycle in a subsequent order.

¹⁴ Prior to filing their interim virtual collocation tariffs, the LECs filed on August 29, 1994, applications for special permission to file their interim tariffs on short notice. These applications were reviewed and granted by the Tariff Division, Common Carrier Bureau, on August 31, 1994.

¹⁵ See generally Letter Agreement.

¹⁶ The other Tier 1 LECs subject to expanded interconnection requirements have elected to provide physical collocation under tariff, subject to non-streamlined regulation as a communications common carrier service. These LECs, therefore, are exempt from the mandatory requirement for a general virtual collocation offering.

¹⁷ Also on September 1, 1994, the above-captioned LECs filed permanent tariffs scheduled to become effective on December 15, 1994. These permanent tariffs are not subject to this order.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the tariff revisions filed under the captioned transmittals ARE SUSPENDED for one day.

8. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 204(a), 205(a) and 403 of the Communications Act of 1934, 47 U.S.C. §§ 154 (i), 204(a), 205(a) and 403, an investigation IS INSTITUTED into the lawfulness of the tariff revisions filed under the captioned transmittals, as well as any future tariff revisions modifying those transmittals.

9. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 204(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i) and 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the local exchange carriers filing the captioned transmittals and any future tariff revisions modifying those transmittals SHALL KEEP ACCURATE ACCOUNT of all earnings, costs, and returns associated with the rates that are the subject of this investigation, and of all amounts paid thereunder and by whom such amounts are paid.

10. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the local exchange carriers listed in the caption SHALL FILE tariff revisions reflecting this suspension no later than September 2, 1994. Special Permission No. 94-1012 is assigned for this purpose.

FEDERAL COMMUNICATIONS COMMISSION



Kathleen M. H. Wallman
Chief, Common Carrier Bureau