ORIGINAL

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

RECEIVED
OCT - 9 1996
Federal Communications Commission
Office of Secretary

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Implementation of | ) | CC Docket No. 96-18 |
| Section 402(b)(1)(A) of the | ) | |
| Telecommunications Act of 1996 | ) | |

DOCKET FILE COPY ORIGINAL

# COMMENTS OF BELL ATLANTIC

Edward D. Young, III
Michael E. Glover
Of Counsel

Edward Shakin

1320 North Court House Road
Eighth Floor
Arlington, VA 22201
(703) 974-4864

Attorney for the
Bell Atlantic Telephone Companies

October 9, 1996

No. of Copies rec'd 0+16
List A B C D E

## TABLE OF CONTENTS


| | | PAGE |
|---|---|---|
| I. | Summary and Introduction | 1 |
| II. | The New Time Limits Apply to Tariff Filings for New Services as Well as Changes to Existing Tariffs (¶¶ 16-18) | 2 |
| III. | The Commission Should Avoid Regulations that Circumvent the Requirement to Streamline (¶¶ 6, 13, 23-26, 30-31) | 4 |
| IV. | A Tariff "Deemed Lawful" Protects Against Retroactive Attacks (¶¶ 5-15, 19) | 6 |
| V. | The Commission Should Move Forward to Streamline Tariff Administration (¶¶ 20-22, 25, 29, 32-33) | 7 |
| Conclusion | | 9 |

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

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Implementation of | ) | CC Docket No. 96-187 |
| Section 402(b)(1)(A) of the | ) | |
| Telecommunications Act of 1996 | ) | |

## COMMENTS OF BELL ATLANTIC[1]

## I. Summary and Introduction

Section 204(a)(3) of the amended Act is one of the specific requirements that give teeth to Congress's general admonition that the new law "reduce regulation" and thereby benefit consumers by encouraging lower prices and new services.[2] The Congressionally mandated time limits for tariff filings set out in this section are broadly worded, without qualification, and apply to tariff flings for new services as well as to changes in existing tariffs. In the course of implementing the changes required by the Act, the Commission should avoid creating new regulatory burdens in the guise of deregulation. For example, the Commission cannot require "pre-filing" or "post-effective" fillings as a way to circumvent the firm limits in the Act. Instead, the Commission should streamline the tariff review process so that if conforms to the timetable required by the Act.

---

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.; and Bell Atlantic-West Virginia, Inc.

2 P.L. 104-104, preamble.

## II. The New Time Limits Apply to Tariff Filings for New Services as Well as Changes to Existing Tariffs

The language in new section 204(a)(3) provides a maximum notice requirement without qualification. Thus, the Commission is correct in its conclusion that "all tariff filings that involve changes to the rates, terms and conditions of existing services are eligible for streamlined treatment."[3]

The Commission is wrong, however, when it suggests that new services are not covered by the rules.[4] In fact, the Act specifies that not only are "revised" tariff charges and practices covered, but also "new" tariff charges and practices as well.[5] The provision for "new" charges is not qualified in any way, and it would be inconsistent with the Act's language to manufacture a qualification that would exclude tariffs for new services. Moreover, inclusion of new services is consistent with one of the overarching policy goals of the new Act -- "to encourage" the provision of new services to the public.[6] It would be, at best, a strained reading of the Act to interpret a requirement relating to new service charges as having no impact on charges for new services.

It is also good policy to streamline procedures for new service tariffs. Regulatory delay of new services under current rules costs consumers billions of dollars a year.[7] Indeed, as Bell

---

3 Notice, ¶ 17. The Commission is also correct in its determination that nothing in the shortened notice requirements limit the Commission's ability to authorize further streamlining, including the elimination of any mandatory tariff requirement. Notice, ¶ 19.

4 Notice, ¶ 18.

5 47 U.S.C. § 204(a)(3).

6 47 U.S.C. § 157(a).

7 ***See Price Cap Performance Review for Local Exchange Carriers***, CC Docket Nos. 94-1, 93-124, 93-197, Statement of Professor Jerry A. Hausman at 3, attached to Comments of BellSouth Telecommunications, Inc. (filed Dec. 11, 1995).

Atlantic has previously demonstrated, the Commission should go even farther and allow new service tariffs to go into effect on one day's notice, without the need for burdensome cost support.[8] Moreover, the Commission should act on outstanding proposals to eliminate the Part 69 waiver process, which creates a further and unlimited delay of the certain new service tariffs.[9] This useless and duplicate procedure guarantees that new switched access tariffs cannot go into effect within the 15 day limit mandated by Congress. As a result, the process violates the Act and ***must*** be eliminated.

Because new services provide customers an option that did not previously exist, they are discretionary in nature, and there is no economic or policy reason for delaying new services through tariff or other regulatory waiting periods.[10] Because regulated carriers generally will continue to offer previously existing services, customers retain the ability to reject the new service offering. This serves as a market-based check on the new service tariff, regardless of the level of market competition.

Those parties that have legitimate bases to argue that a new service is being offered on terms and considerations that are unlawful may rely on the Commission's existing complaint process. Unlike other regulations, such as the Part 69 waiver process, the complaint process does

---

[8] The only potential exception is for mandated interconnection services. While customers of these services are also better off getting the service to market faster, and retain the ability to challenge a rate once the service is introduced, the Commission may nonetheless wish to leave such new services subject to a requirement for 15 day notice with cost support.

[9] ***See Price Cap Performance Review of Local Exchange Carriers***, CC Dockets 94-1, 93-124, 93-197 Comments of Bell Atlantic at 8-11 (dated Dec. 11, 1995) ("Bell Atlantic Price Cap Reform Comments").

[10] ***See*** Affidavit of Alfred E. Kahn at 14-15; Affidavit of Richard J. Gilbert and Robert G. Harris at 2-3, both attached to Bell Atlantic Price Cap Reform Comments.

not delay or control services that are offered under lawful terms and conditions, and it cannot be as easily manipulated by parties seeking to game the regulatory process for competitive advantage.

## III. The Commission Should Avoid Regulations that Circumvent the Requirement to Streamline

Once the Commission establishes the scope of tariffs that will be accorded streamlined treatment, it must avoid an apparent temptation to undermine the deregulatory intent of the Act by imposing new regulations that would circumvent the shortened notice requirements. For example, the Commission questions whether it should rely on a post-effective tariff review.[11] Rather than streamline regulation, such a policy would merely temporally reposition the same regulation. Indeed, taken as a whole, such a policy would increase the total burden by instituting a dual review process: 1) an abbreviated review before the tariff goes into effect (as required by the Act); and 2) a protracted second review after the tariff has already been deemed lawful (contrary to the Act). In addition to being inconsistent with the very requirement that the Commission seeks to implement in this docket, such duplicative regulation is simply bad policy. Post-effective review will remain an option when there is good cause for such review based on new information, or on the basis of a filed complaint. When there is no basis, however, it is simply an effort to maintain regulation for its own sake.

For annual price cap tariff revisions, the Commission proposes a "pre-filing" of a tariff review plan. The tariff review plan would contain the very information that underlies the actual tariff filing. As the Commission candidly acknowledges, such a bifurcation would give the

---

11 Notice, ¶ 23.

Commission and the public the right to "examine the carriers' current and proposed price cap indices, exogenous cost adjustments, and supporting information in advance . . ."[12] This is nothing more than an attempt to undermine Congressional policy by requiring that the bulk of the tariff filing be released early. Such an increase in the notice requirement is barred by the statute. For price cap companies, most of their tariff price changes are done through the annual price cap revisions. It would be incongruous indeed if these tariffs could be made exempt from the Congressional mandate through simple expedient of giving the key portion of the tariff filing a different name and a longer notice period.

The Commission also cannot establish a presumption of unlawfulness for certain categories of tariff filings.[13] There is no way to reconcile such a requirement with the statutory mandate that absent direct action by the Commission, tariff filings are "deemed lawful" within 7 to 15 days. A presumption would guarantee that inaction by the Commission (or the filing company) would mandate the opposite result.

The Commission correctly recognizes that "Congress did not intend for the Commission to be able to defer tariffs eligible for streamlined filing," and therefore "Congress intended to foreclose Commission exercise of its general authority under Section 203(b)(2) to defer up to 120 days tariffs that LECs may file on seven or fifteen days notice."[14] It is therefore incongruous that later in the Notice, the Commission suggests that such deferrals are still allowed because "the 1996 Act did not amend Section 203(b)(2) of the Act, which permits the Commission to defer the notice period for

---

12 Notice, ¶ 31.

13 Notice, ¶ 25.

14 Notice, ¶ 6.

tariff filings to a maximum of 120 days."[15] Clearly, the Commission had it right the first time. The specific requirements of section 204(a)(3) supersede the general provisions of 203(b)(2).[16] A 120 day deferral is not consistent with a legislative mandate that a tariff be deemed lawful within 15 days.

## IV. A Tariff "Deemed Lawful" Protects Against Retroactive Attacks

As the Commission recognizes, section 204(a)(3) not only streamlines the tariff process, but mandates that tariffs that go into effect under the streamlined procedure must be "deemed lawful." Once again, the Commission gets it right the first time. In its initial interpretation of this requirement, the Commission recognizes that the statutory language must be given its plain meaning. While parties may challenge a tariffed rate that was approved under this process on a going forward basis, they may not obtain recovery for the period prior to a determination that the previously lawful rate has become unlawful. The Commission may not "retroactively repeal its own enactment as to the reasonableness of the rate" that is already deemed lawful under the statute.[17]

In an alternative interpretation, the Commission suggests that the passive determination of lawfulness under the Act is somehow different from the active determination in ***Arizona Grocery***.[18] This ignores the impact of the statute. At its most extreme, the Commission questions whether

---

15 Notice, ¶ 13.

16 ***See Morales v. Trans World Airlines, Inc.***, 504 U.S. 374, 3834(1992) ("it is a commonplace of statutory construction that the specific governs the general").

17 ***Arizona Grocery v. Atichson Railroad***, 284 U.S. 270, 389 (1931).

18 Notice, ¶ 11.

"deemed lawful" may be degraded to mean only "presumed lawful." Not only is this inconsistent with the language of the Act, it undermines the policy incentives associated with quick and unequivocal tariff approvals.

Moreover, the Commission suggests that even tariffs voluntarily filed with longer notice periods would not be "deemed lawful."[19] The Notice does not explain why providing additional notice should expose a tariff to less regulatory protection. This incongruous result has no statutory or policy basis, and should be rejected.

## V. The Commission Should Move Forward to Streamline Tariff Administration

The Commission properly seeks methods to streamline not only the notice period for tariffs, but the tariff filings themselves. Tariff summaries can be an effective aid to facilitate expedited Commission review,[20] however, the Commission should not require any information in the summary that is not included in description and justifications filed today.[21] Bell Atlantic also supports electronic tariff filings on the Internet.[22] The Commission would have to establish the structure, location and administration of the filings, and put in place a mechanism to allow individual carriers to make changes only to their own tariffs.

The Commission also properly raises the issue of protection of confidential data. The solution for most tariffs is an elimination of the requirement of filing any cost support. As

---

19 Notice, ¶ 19.

20 ***See*** Notice, ¶ 25.

21 For those simple tariff changes that today are filed with only a transmittal letter, there is no need for ***any*** change in practice.

22 ***See*** Notice, ¶¶ 21-22.

previously discussed, new services are discretionary and a requirement of filing cost data in support of such tariffs imposes an unnecessary burden. Moreover, with the increasing level and scope of competition, it is likely that parties opposing a tariff will be competitors of the carrier filing the competitively sensitive information. There is no sound policy reason to require carriers to disclose competitively sensitive cost and demand information to their competitors.

If the Commission were still to require the filing of cost support, which it should not, material designated by the filing carrier as confidential should be withheld from public inspection. The Freedom of Information Act specifies that certain material filed with the Commission, including "trade secrets or commercial or financial information obtained from a person and privileged or confidential" is to be withheld from public inspection.[23] No exception is made for material filed in support of a tariff.[24] Moreover, to the extent a carrier files information from vendors, it may be contractually forbidden from releasing the information to third parties. To the extent a carrier is willing to release such information subject to a confidentiality agreement, the Commission is correct to seek to establish a standard protective order.[25] In response to a prior Commission inquiry, Bell Atlantic and other carriers have offered revisions to the Commission's proposed language for a model protective order.[26] Subject to those revisions, the order proposed in

---

23 5 U.S.C. § 552(b)(4).

24 ***See*** 47 C.F.R. § 0.457(d).

25 ***See*** Notice, ¶ 29.

26 ***Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission***, GC Docket No. 96-55, Comments of Joint Parties, Appendix A: Proposed Revisions to Model Protective Order and Declaration (filed June 14, 1996).

that docket would be appropriate to protect sensitive information voluntarily made available in connection with a local carrier's tariff filing.

Finally, the Commission questions whether formalized rules are necessary to govern Commission tariff investigations.[27] Under current practice, the Commission sets the administrative parameters of an investigation as part of the order mandating the investigation. This more flexible approach is well suited for the more expeditious review of tariffs sought by the Commission. Tariffs vary widely in complexity, and the Commission should gear the extent of its investigation to the specific issues for the particular tariff, rather than promulgate a one size fits all rule. Where the Commission finds that a tariff under investigation is lawful, there is no reason it may not issue abbreviated orders or delegate its approval authority in order to allow the tariff to go into effect more quickly.

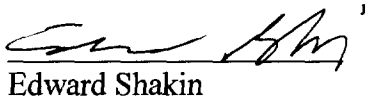
## Conclusion

The Commission should adopt a broad streamlining of tariffs consistent with the above comments.

---

[27] Notice, ¶ 33.

Respectfully submitted,



Edward Shakin

1320 North Court House Road
Eighth Floor
Arlington, VA 22201
(703) 974-4864

Attorney for the
Bell Atlantic Telephone Companies

Edward D. Young, III
Michael E. Glover
Of Counsel

October 9, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October, 1996 a copy of the foregoing "Comments of Bell Atlantic" was served on the parties on the attached list.

Tracey DeVaux

Tracey DeVaux

* Via hand delivery.

Jerry McKoy*
Federal Communications Commission
Common Carrier Bureau
1919 M Street, NW
Room 518
Washington, DC 20554

(Hard copy and diskette version)

ITS, Inc.*
1919 M Street, NW
Room 246
Washington, DC 20554