

BellSouth

October 24, 1996

**RECEIVED**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION** **OCT 24 1996**  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
)  
Implementation of Section 402(b)(1)(A) )  
of the Telecommunications Act of 1996 )  
)

CC Docket No. 96-187

DOCKET FILE COPY ORIGINAL

**REPLY COMMENTS**

BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth") hereby submit their reply comments in the above-referenced proceeding.

**I. INTRODUCTION**

Despite the unparalleled revision to the Communications Act occasioned by the enactment of the Telecommunications Act of 1996, several parties attempt to diminish the significance of the new Section 204(a)(3) that was created. Clothed in the rhetoric of historical regulatory precedent, these parties urge the Commission to look backward, bridge the Telecommunications Act to the past, and anchor it to traditional common carrier regulation. Such a formulation, however, is at fundamental odds with the pro-competitive and deregulatory purposes of the Telecommunications Act.

As with any provision created by the Telecommunications Act, the new Section 204(a)(3) of the Communications Act must be viewed within the context and purpose of the legislative changes in their entirety. This provision is an integral part of a new paradigm for local exchange carriers (LECs) that relies upon competition and reduces regulation. It is the complement to the new interconnection provisions that open the local exchange and exchange access markets to full competition.

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

019

## II. Section 204(a)(3) CREATES A NEW REGULATORY FRAMEWORK FOR LEC TARIFF FILINGS

Of the variety of issues presented in the Notice, none is more important, nor more contentious, than the scope of Section 204(a)(3). Not surprisingly, many competitors of the LECs, such as AT&T, MCI and MFS, seek to cast Section 204(a)(3) as a diminutive provision, indeed, almost as a superfluous act of Congress without substantive effect. The objective of these commenters is clear--to construct an interpretation of Section 204(a)(3) which will result in a narrow and constrained application of Section 204(a)(3). To achieve this result, as will be discussed below, these parties often ignore the express language of the statute, substitute terms of their own liking, or create implied non-existent conditions.

The most extreme of these is AT&T's contention that the 7/15 day notice provisions of Section 204(a)(3) can be deferred by the Commission under its authority under Section 203(b).<sup>1</sup> According to AT&T, because Section 204(a)(3) is silent regarding deferring effective dates, such silence must imply the Commission's authority to defer LEC streamlined filings. While AT&T's argument is imaginative, it lacks any credible basis. The plain language of Section 204(a)(3) contradicts AT&T's argument. The provision explicitly states that the filings shall become effective on 7/15 days notice, unless the Commission acts in accordance with Section 204(a)(1). Section 204(a)(1) does not empower the Commission to defer a tariff filing.<sup>2</sup>

---

<sup>1</sup> Comments of AT&T, p. 2-3.

<sup>2</sup> AT&T also ignores the fact that the Commission's authority to defer a tariff filing under Section 203 has no applicability to LEC streamlined filings made pursuant to Section 204(a)(3). Section 203(b)(2) enables the Commission to modify the notice period of common carrier filings provided that the notice period does not exceed 120 days. This authority, however, pertains only

Equally lacking substance is AT&T's self-indulgent lament that Congress could not have intended to single out incumbent LECs for different treatment regarding tariff deferrals. AT&T just does not get it. Section 204(a)(3), by its explicit terms, creates streamlined procedures for all LECs, not just incumbent LECs.<sup>3</sup> As such, there can be no clearer expression of Congressional intent to single out LECs as a special class of common carrier.

By far the most inventive arguments surround the meaning of the term "deemed lawful" in Section 204(a)(3). In order to limit the impact of Section 204(a)(3), many parties urge the Commission to read "deemed lawful" as nothing other than a presumed lawful standard the Commission has used when it streamlined its regulatory rules.<sup>4</sup> These parties assume, either implicitly or explicitly, that there was no intent to change the statutory process. Were this in fact the case, there would be no need for the Telecommunications Act of 1996.

The whole purpose of the Telecommunications Act was to bring about change, not only in the telecommunications marketplace, but also in the regulatory process. The Telecommunications Act simultaneously introduces competition in LEC markets and reduces regulation of LECs. While commenters are quick to acknowledge the provisions that facilitate competitive entry, many deny any intent of Congress to reform the regulatory process for LECs that moves away from regulation to one of competition. Understandably, their self-interests are advanced by an intrusive

---

to requirements made by or under the authority of Section 203. The 7/15 day notice provision arises under Section 204, not Section 203.

<sup>3</sup> Time-Warner (p. 2) argues that Section 204(a)(3) should be construed to apply only to incumbent LECs. Time-Warner is incorrect. By its express terms Section 204(a)(3) applies to filings made by LECs. Unlike Section 251, no distinction is made between LECs and incumbent LECs.

<sup>4</sup> See, e.g., Comments of GSA, p. 5; Comments of Time-Warner, p. 5; Comments of MCI, p. 9; Comments of Sprint, p. 3; Comments of AT&T, p. 6.

regulatory regime. Nevertheless, such a regulatory approach, as Congress has recognized, is not compatible with a competitive marketplace.

In arguing that the term “deemed lawful” means nothing more than a presumption of lawfulness such that there is a higher threshold before filings would be suspended, commenters are urging the Commission to disregard the statute’s express language and substitute a term that is more to the liking of the commenters. The Commission, however, is not free to ignore the plain language of statute, nor can it change the statute.

The Commission cannot find that the terminology “deemed lawful” is equivalent to “presumed lawful” as a matter of statutory interpretation. The term “presumed” is not an accepted definition of the term “deemed.” “Presumed” means to give inference to, to suppose, whereas the term “deemed” means to adjudge. Hence, “deemed lawful” and “presumed lawful” represent two different standards and the Commission is not free to substitute one for the other.

Those commenters, who attempt to get the Commission to adopt a presumed lawful standard, are simply unwilling to accept a Congressional pronouncement regarding the status of LEC streamlined filings. To convince the Commission to ignore the language of the statute, several commenters point the Commission to the regulatory process reflected in the Communications Act prior to the enactment of the Telecommunications Act of 1996, suggesting that this process not be altered as a result of the Telecommunications Act.<sup>5</sup> The fact remains, however, that such change is precisely the effect of the Telecommunications Act.

No matter how insistent commenters may be that “deemed lawful” does not reach the same level of lawfulness as that which is achieved from a Commission determination after hearing,

---

<sup>5</sup> See, e.g., Comments of MCI, p. 7; Comments of AT&T, pp. 3-6.

there is no legal basis for such a position. All overlook and fail to understand the Commission's authority under the Communications Act in the first instance. The Commission's authority is derivative--Congress delegates its authority to the Commission. Nothing requires Congress to delegate its authority, nor is there anything, other than constitutional limits, that prevents Congress from partially delegating its authority to the Commission and reserving itself to certain determinations. This is precisely what Congress did in enacting Section 204(a)(3). If the Commission acts pursuant to Section 204(a)(1), then it has the delegated authority to determine lawfulness. On the other hand, if the Commission does not act under Section 204(a)(1), then Congress, through a legislative act, has made the lawfulness determination.<sup>6</sup>

In addition to misinterpreting the term "deemed lawful," some commenters seek to reduce the impact of Section 204(a)(3) by urging the Commission to limit its applicability to only changes to existing services.<sup>7</sup> Such a twisted construction would require the Commission to do nothing less than to ignore express language of the statute and, instead, to superimpose unstated conditions and limitations.

The statute contains no limiting language. Indeed, the term "existing services" appears nowhere in Section 204(a)(3). In contrast, the terms which the statute does use are the same terms that are found in all other provisions of Title II--charges, classifications, regulations and practices. These terms encompass *all* tariff filings, whether related to existing or new services. In

---

<sup>6</sup> The determination of lawfulness is a legislative act. See *Arizona Grocery Co. v. Atchison, T. & S.F.*, 284 US 370, 388 (1932). In enacting Section 204(a)(3), Congress established the condition for lawful tariffs. In these circumstances, where the LEC's conduct conforms to the legislative mandate, such conduct cannot subsequently be challenged.

<sup>7</sup> See, e.g., Comments of GSA, p. 7; Comments of AT&T, p. 9.

sum, Section 204(a)(3) is unambiguous--it explicitly encompasses "new and revised" filings. The Commission cannot change the statute under the guise of interpreting one of its provisions.

### **III. STREAMLINED ADMINISTRATION OF LEC TARIFFS SHOULD BE CONSISTENT WITH THE MEANING AND SPIRIT OF SECTION 204(a)(3)**

By the end of this proceeding, the Commission should have reduced the rules and regulations under which LECs are currently required to operate. Implementation of Section 204(a)(3) does not require, nor did Congress contemplate, new regulations that increase regulatory burdens. Section 204(a)(3) should not be used as an excuse to create new, intrusive processes that entrench regulation and inhibit the operation of the competitive marketplace.

At a minimum, the Commission must reject the proposals that are contradictory to Section 204(a)(3). The Commission's consideration of employing a post-effective tariff review is a prime example. While the approach garnered little support in the comments, it must also be recognized that the proposal is without regulatory purpose. Under Section 204(a)(3), once a tariff has become effective and is deemed lawful, there is nothing left for the Commission to review. The lawfulness of the tariff cannot be disturbed.

While pre-effective tariff review is the process that is consistent with Section 204(a)(3), the Commission need not adopt preventive measures to solve imaginary problems. Streamlined regulation should ease and quicken the filing process. Before the Commission acts to delay the effectiveness of a filing made pursuant to Section 204(a)(3), it should be certain that substantial questions of lawfulness are raised by the filing. Without question, the Commission should not act to suspend a filing solely on the mere assertion in a petition that a filing may be unlawful.<sup>8</sup> The

---

<sup>8</sup> Likewise, the Commission should not act upon a claim that a disputed filing is more likely than not to be found unlawful. *See* Comments of AT&T, p. 8. To do otherwise would merely invite competitors to use the regulatory process to gain competitive advantage.

Commission should require of petitioners the same showing that it currently requires for streamlined filings.

In addition, the Commission should not use the Tariff Review Plan (TRP) to circumvent the streamlined notice provisions of Section 204(a)(3). To suggest, as some commenters do, that the Commission can require the TRP without rate changes before the annual tariff is filed, misses the fact that the TRP has no significance apart from the tariff filing it supports.<sup>9</sup> By requiring the information be filed in advance of the tariff filing, the Commission would be effectively extending the notice period of filing in contravention to Section 204(a)(3).

Further, establishing a new regulatory requirement would be counter to the spirit of Section 204(a)(3). The Commission would be creating a new regulatory burden without legitimate purpose. Without proposed rates, neither the Commission nor anyone else can evaluate the price cap constraints or a LEC's compliance with the price cap rules. Further, certain exogenous changes, such as Long Term Support, cannot be calculated until rates have been calculated. In as much as the TRP would have to be recalculated when the annual filing is actually made, advance filing of a TRP would have no value. It would simply increase the regulatory burden and expense for a LEC.

The Commission should also reject MFS's suggestion LECs should submit a list of planned filings thirty days in advance of filing a tariff.<sup>10</sup> Such a requirement would be tantamount to a thirty day notice period which could not be reconciled with the mandated streamlined notice provisions in Section 204(a)(3).

---

<sup>9</sup> See, e.g., Comments of AT&T pp. 16-19; Comments of CBT pp. 15-16; Comments of Sprint, pp. 8-9; Comments of MCI, pp. 27-28.

<sup>10</sup> Comments of MFS, p. 10.

An area where the Commission can actively amend its rules to further reduce the burdens of regulation is that of supporting material, particularly cost data. The core objective of streamlined regulation, whether Commission established or Congressionally mandated, is to reduce regulation and encourage the operation of the marketplace. This objective cannot be realized by an approach requiring cost and other materials to accompany a tariff filing, particularly where the origin of that approach was in a non-competitive, monopoly-based regulatory environment.

To the extent that the Commission does not act aggressively to modify these obsolete regulatory requirements, the Commission must be concerned with the confidentiality of competitively sensitive economic and financial information that is provided to the Commission in the context of tariff filings. Competitive firms do not share cost data. Where a regulatory agency causes such information to be made available to competitors, competition is not served.

Those commenters who contend that the Commission should continue to require cost data be made publicly available, ignore the substantial change in competitive conditions created by the enactment of the Telecommunications Act of 1996.<sup>11</sup> Alternatively, these commenters all too clearly recognize the change in competitive conditions, and as competitors of the incumbent LECs, recognize the competitive advantage that can be gained by acquiring a competitor's cost data. Certainly, the Commission should avoid being a conduit by which such competitively sensitive information is transferred.

In GC Docket No. 96-55, the Commission is addressing the issue of protecting competitively sensitive data, including information that may accompany a tariff filing. In that

---

<sup>11</sup> See, e.g., Comments of MCI, p. 25-26.

October 24, 1996

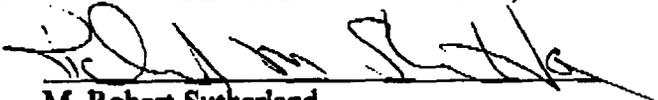
proceeding, BellSouth, jointly with several other parties, suggested an approach that would establish a nondisclosure policy based on release of confidential information pursuant to a protective agreement. This approach strikes a reasonable balance among competing interests.

**IV. CONCLUSION**

Section 204(a)(3) streamlines the statutory process exclusively for LEC tariff filings. Implementation of this provision does not require a new series of rules and regulations. Instead, consistent with Congress' pro-competitive initiative in enacting Section 204(a)(3), the Commission should avail itself of this opportunity to streamline its own rules and processes.

Respectfully submitted,

**BELLSOUTH CORPORATION  
BELLSOUTH TELECOMMUNICATIONS, INC.**

By:   
M. Robert Sutherland  
Richard M. Sbaratta

Their Attorneys

Suite 1700  
1155 Peachtree Street, N. E.  
Atlanta, Georgia 30309-3610  
(404) 249-3386

DATE: October 24, 1996

**CERTIFICATE OF SERVICE**

I certify that I have this 24th day of October, 1996 served all parties to this action with a copy of the foregoing **REPLY COMMENTS** by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties on the attached service list.

  
Juanita H. Lee

**Service List CC Docket No. 96-187**

Gary L. Phillips  
Ameritech  
1401 H Street, NW  
Suite 1020  
Washington, DC 20005

Mark C. Rosenblum  
Peter H. Jacoby  
James H. Bolin, Jr.  
AT&T Corporation  
Room 3245H1  
295 North Maple Avenue  
Basking Ridge, NJ 07920

Edward Shakin  
Bell Atlantic  
1320 North Court House Road  
Eighth Floor  
Arlington, VA 22201

Randolph J. May  
Timothy J. Cooney  
Sutherland, Asbill & Brennan, L.L.P.  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2404

Charlene Vanlier  
Capital Cities/ABC, Inc.  
21 Dupont Circle  
6th Floor  
Washington, D.C. 20036

Diane Zipursky  
National Broadcasting Company, Inc.  
11th Floor  
1299 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Mark W. Johnson  
CBS Inc.  
Suite 1000  
One Farragut Square South  
Washington, D. C. 20006

Bertram W. Carp  
Turner Broadcasting System, Inc.  
Suite 956  
820 First Street, N.E.  
Washington, D. C. 20002

Christopher J. Wilson  
Frost & Jacobs  
2500 PNC Center  
201 East Fifth Street  
Cincinnati, Ohio 45202

Thomas E. Taylor  
Senior Vice President-General Counsel  
Cincinnati Bell Telephone Company  
201 East Fourth Street, 6th Floor  
Cincinnati, Ohio 45202

Michael J. Shortley, III  
Frontier Corporation  
180 South Clinton Avenue  
Rochester, New York 14646

Emily C. Hewitt  
Vincent L. Crivella  
Michael J. Ettner  
Jody B. Burton  
General Services Administration  
18th & F Street, N.W. Room 4002  
Washington, D. C. 20405

Gail L. Polivy  
GTE Service Corporation  
1850 M Street, N. W.  
Suite 1200  
Washington, D. C. 20036

Alan Buzacott  
MCI Telecommunications Corp.  
1801 Pennsylvania Avenue, NW  
Washington, D. C. 20006

Joanne Salvatore Bochis  
National Exchange Carrier Association, Inc.  
100 South Jefferson Road  
Whippany, New Jersey 07981

Joseph D Bella  
NYNEX Telephone Companies  
1300 I Street, N. W.  
Suite 400 West  
Washington, D.C. 20005

Michael Yourshaw  
Wiley, Rein & Fielding  
1776 K Street, N. W.  
Washington, D.C. 20006

Marlin D. Ard  
Lucille M. Mates  
Jeffery B. Thomas  
Pacific Telesis Group  
140 New Montgomery Street  
Room 1529  
San Francisco, California 94105

Robert M. Lynch  
Durward D. Dupre  
Thomas A. Pajda  
Southwestern Bell Telephone Company  
One Bell Center, Room 3520  
St. Louis, Missouri 63101

Jay C. Keithley  
Leon M. Kestenbaum  
Michael Fingerhut  
Sprint Corporation  
1850 M Street, N. W.  
Suite 1100  
Washington, D.C. 20036

Mary McDermott  
Linda Kent  
Charles D. Cosson  
Keith Townsend  
United States Telephone Association  
1401 H Street, NW  
Suite 600  
Washington, D.C. 20005

David N. Porter  
Vice President, Government Affairs  
MFS Communications Company, Inc.  
3000 K Street, N. W. Suite 300  
Washington, D. C. 20007

Andrew D. Lipman  
Tamar E. Haverty  
MFS Communications Co., Inc.  
Swidler & Berlin, Chartered  
3000 K Street, NW  
Suite 300  
Washington, D.C. 20007

Genevieve Morelli  
Vice President and General Counsel  
Competitive Telecommunications Association  
1440 Connecticut Avenue, N.W.  
Suite 220  
Washington, D. C. 20036

Carolyn C. Hill  
ALLTEL Telephone Services Corporation  
655 15th Street, N.W.  
Suite 220  
Washington, D. C. 20005

Robert B. McKenna  
Coleen M. Egan Helmreich  
U S West, Inc.  
Suite 700  
1020 19th Street, N. W.  
Washington, D. C. 20036

Alexandra Field  
James S. Blaszak  
Ad Hoc Telecommunications User Committee  
Levine, Blaszak, Block and Boothby  
Suite 500  
1300 Connecticut Avenue, NW  
Washington, D. C. 20036-1703

Charles C. Hunter  
Catherine M. Hannan  
Telecommunications Resellers Association  
Hunter & Mow, P.C.  
1620 I Street, N. W.  
Suite 701  
Washington, D. C. 20006

Mitchell F. Brecher  
Time Warner Communications Holding, Inc.  
Fleischman and Walsh, L.L.P.  
1400 Sixteenth Street, NW  
Washington, D.C. 20036

Emily M. Williams  
Association for Local  
Telecommunications Services  
1200 19th Street, N. W.  
Washington, D.C. 20036

Andrew D. Lipman  
C. Joel Van Over  
Communications Image Technologies, Inc.  
Swidler & Berlin  
3000 K Street, N. W., Suite 300  
Washington, D.C. 20007

Danny E. Adams  
Competitive Telecommunications Association  
Kelly Drye & Warren LLP  
1200 Nineteenth Street, N. W., Suite 500  
Washington, D. C. 20036

Charles H. Helein  
America's Carriers Telecommunications Association  
Helein & Associates, P.C.  
8180 Greensboro Drive, Suite 700  
McLean, VA 22102

\*Jerry McKoy  
Common Carrier Bureau  
1919 M Street, NW  
Room 518  
Washington, D. C. 20554

**\* VIA HAND DELIVERY**