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March 9, 1999

95-116

Hand Delivered

Ms. Magalie Roman Salas
Federal Communications Commission
445 Twelfth Street, S.W.
Room TWB-204
Washington, DC 20554

Re: Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 1111;
NYNEX Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 539

Dear Ms. Roman Salas:

Pursuant to Section 1.4(e)(1) of the Commission's rules, enclosed please find AT&T's petition to suspend or reject the above-captioned tariffs. This petition was originally due to be filed at the Commission yesterday, March 8, 1999; but was not filed on that date due to the Commission's early closing due to weather conditions.

Sincerely,

A handwritten signature in black ink, appearing to read "James H. Bolin, Jr.", written over a printed name.

James H. Bolin, Jr.

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

_____)	
In the Matter of)	
Long-Term Telephone Number Portability)	CC Docket No. 95-116
Tariff Filings)	
Bell Atlantic Telephone Companies,)	
Tariff F.C.C. No. 1, Transmittal No. 1111)	
NYNEX Telephone Companies,)	
Tariff F.C.C. No. 1, Transmittal No. 539)	
_____)	

PETITION TO REJECT OR SUSPEND TARIFF

Pursuant to Section 1.773 of the Commission's Rules, 47 C.F.R. § 1.773, and the Procedural Order¹ issued on December 8, 1998, AT&T Corp. ("AT&T") hereby requests that the Commission reject, or suspend for one day and investigate the above-captioned tariff filings by the Bell Atlantic Telephone Companies and the NYNEX Telephone Companies (collectively "Bell Atlantic") seeking to establish rates for local number portability ("LNP") end-user surcharges.

¹ Order, Long-Term Telephone Number Portability Tariff Filings, CC Docket No. 95-116, RM 8535 (released January 8, 1999) ("Procedural Order").

It is clear on the face of the instant filings that they fail to comply with the Commission's LNP orders, and accordingly they should be rejected.² At a minimum, the tariffs raise substantial questions of lawfulness that cannot be dispelled in the highly abbreviated "streamlined" process afforded by this proceeding.

The limited review afforded by this streamlined proceeding and the other ILEC tariff reviews that are ongoing represent the Commission's first opportunity to scrutinize ILECs' proposed end-user surcharges. The Commission's recent LNP Cost Classification Order³ provided significant new guidance to ILECs seeking to recover their costs of implementing LNP. In light of the importance and complexity of LNP cost allocation, that order recognized that "the need to distinguish between eligible LNP costs and general upgrade costs will require that LECs provide substantially more detail in filing their [LNP] tariffs than is customary when filing new services tariffs under the price caps recovery mechanism."⁴ The Commission's caution is well-justified. In the earlier rounds of ILEC LNP query tariff filings and the investigations that

² A tariff is subject to rejection when it is prima facie unlawful, in that it demonstrably conflicts with the Communications Act or a Commission rule, regulation or order. See, e.g., American Broadcasting Companies, Inc. v. AT&T, 663 F.2d 133, 138 (D.C. Cir. 1980); MCI v. AT&T, 94 F.C.C.2d 332, 340-41 (1983). Suspension and investigation are appropriate where a tariff raises substantial issues of lawfulness. See AT&T (Transmittal No. 148), Memorandum Opinion and Order, FCC 84-421, released September 15, 1984; ITT (Transmittal No. 2191), 73 F.C.C.2d 709, 716, n.5 (1979) (citing AT&T (Wide Area Telecommunications Service), 46 F.C.C.2d 81, 86 (1974)).

³ Memorandum Opinion And Order, Telephone Number Portability Cost Classification Proceeding, CC Docket No. 95-116, RM 8535 (released December 14, 1998) ("LNP Cost Classification Order").

⁴ Id., ¶ 19.

followed them the ILECs failed even to make a serious attempt to carry their burden of proof.⁵ As the LNP Cost Classification Order found, "the cost support submitted with the initial query service tariffs filed by several ILECs was inadequate to enable the Commission, or interested parties, to ascertain that only eligible LNP costs had been included in the end-user and query service charges."⁶ Accordingly, despite the long history of this proceeding, neither the Commission nor potential commenters have previously had a meaningful opportunity to evaluate ILECs' claimed LNP costs.

Against this backdrop, the Commission would be ill-advised to permit the instant tariff to take effect without the more complete review an investigation will allow.⁷ As the January 29th Suspension Order observed in suspending and setting for investigation five ILEC LNP tariffs: "The rate proposals and the issues raised in the tariff filings for long-term number portability are novel and complex."⁸ Indeed, by suspending almost every LNP query service and end-user surcharge tariff filed to date, the Commission implicitly has recognized that suspension

⁵ 47 U.S.C. § 204(a)(1) makes plain that the ILECs bear the burden of proving the lawfulness of their tariff filings.

⁶ LNP Cost Classification Order, ¶ 19.

⁷ The importance of such review is heightened because, under the Commission's current interpretation of § 402 of the 1996 Act, if the instant tariff is not suspended carriers taking service pursuant to the tariff will have no effective right to damages in the event the instant filing later proves inconsistent with the Commission's orders. See Report and Order, Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, CC Docket No. 96-187, FCC 97-23 (released January 31, 1997) ¶¶ 18-23.

⁸ Memorandum Opinion And Order, Long-Term Telephone Number Portability Tariff Filings of Ameritech, GSTC, GTOC, Pacific and Southwestern Bell, CC Docket No. 99-35 (released January 29, 1999) ("Suspension Order").

is appropriate to ensure that any LNP query charges or end-user surcharges comply with its new cost recovery rules.

I. Bell Atlantic Fails to Comply with the Commission's Requirements Concerning Recovery of OSS Costs. -

The LNP Cost Classification Order imposed a two-part test to determine whether a cost purportedly incurred by an ILEC is in fact "directly related to the implementation and provision of telephone number portability," and therefore eligible for LNP cost recovery pursuant to the Commission's rules:

Under this test, to demonstrate that costs are eligible for recovery through the federal charges recovery mechanism, a carrier must show that these costs: (1) would not have been incurred by the carrier "but for" the implementation of number portability; *and* (2) were incurred "for the provision of" number portability service.⁹

The order made plain that under this test, ILECs may not seek to recover their costs to modify pre-ordering, ordering, maintenance and other systems that, while potentially affected by LNP, are not used to provide that service.

The Commission specifically rejected the proposition that eligible LNP costs include all costs that carriers incur as an "incidental consequence of number portability." For this reason, in submitting their tariffs, we require LECs to distinguish clearly costs incurred for narrowly defined portability functions from costs incurred to adapt other systems to implement LNP, such as repair and maintenance, billing, or order processing systems.¹⁰

The Commission also made plain its concern with ILECs' claims for OSS costs in its February 26, 1998 order designating issues for investigation for its upcoming review of the GTE, Ameritech, and SBC LNP tariffs:

⁹ LNP Cost Classification Order, ¶ 10.

¹⁰ Id., ¶ 12; see generally id., ¶¶ 8-14.

The number portability tariff filings demonstrate that several incumbent LECs have included a substantial portion of OSS costs as number portability costs. For example, Ameritech seeks to recover costs incurred to equip its systems and network to perform ordering, provisioning, maintenance and repair, billing and 911 calls for ported numbers. GSTC and GTOC also claim a substantial amount of OSS costs in their tariff filings for modification to existing ordering, maintenance and repair and 911 systems. Based on our review of the record and the tariff filings, we here designate for investigation the issue of whether Ameritech, GSTC, GTOC, Pacific and SWBT number portability tariffs include costs the LECs incurred to adapt other OSS systems to number portability, in addition to the incremental portion of OSS upgrades that is directly related to number portability.¹¹

Although Bell Atlantic alleges that it did not seek to recover OSS costs that violate the LNP Cost Classification Order, its transmittal cannot be reconciled with that order's requirements. Page 16 of Bell Atlantic's Description and Justification states that "[i]n all cases, the OSS investment and expenses Bell Atlantic seeks to recover for these modified systems are costs Bell Atlantic would not have incurred 'but for' the requirement to provide LNP." Appendix A of Bell Atlantic's filing lists the OSSs it claims required modification due to LNP. Included in that list, however, are a significant number of systems that, while they may be affected by LNP (and thus meet the Commission's "but, for" test for LNP cost recovery), plainly do not directly support the provision of number portability. For example, Bell Atlantic seeks to recover its purported costs to modify systems relating to ordering, maintenance and repair, and 911. The Commission's Designation Order held that such claims were grounds for suspension and investigation of prior ILEC LNP tariffs, and it should so hold in the instant case as well.

Further, Bell Atlantic failed to provide a meaningful analysis of its claimed costs to modify any of these systems or how it determined that portion of the modifications that were

¹¹ Order Designating Issues for Investigation, Long-Term Telephone Number Portability Tariff Filings of Ameritech, GSTC, GTOC, Pacific and Southwestern Bell, CC Docket No. 99-35 (released February 26, 1999), ¶ 9 ("Designation Order").

allegedly devoted to LNP. Paragraph 10 of the Designation Order expressly found that prior LNP tariffs were also deficient in this regard, and accordingly directed those ILECs

to file as part of their direct cases an itemized list of OSS costs, arranged by functional area (for example, provisioning, maintenance, repair, billing, etc.). For each OSS modification or augmentation, the LECs must provide: (1) the total cost; (2) the cost assigned to number portability; (3) the cost allocations among number portability services; (4) an explanation of how each OSS modification relates to performing queries; (5) an explanation of how each OSS modification relates to porting numbers between carriers; (6) an explanation of how each OSS modification relates to any other number portability function; (7) the basis for cost allocations between number portability and non-number portability services; (8) the basis for cost allocations among number portability services. For functions other than provisioning of number portability, LECs should explain with specificity why they believe a particular OSS modification or upgrade qualifies as eligible under the Cost Classification order.

Bell Atlantic also should be required to provide a similar level of detail to support its purported LNP costs for OSSs, in order to permit both the Commission and commenters to validate its claims.

II. Bell Atlantic Improperly Claims Advancement Costs For Switch Replacement

Page 14 of its Bell Atlantic's Description and Justification states that:

When it was doing its network planning for number portability, Bell Atlantic identified three IAESS switches which were already at or slightly above recommended processor occupancy levels and which Bell Atlantic planned to replace in the near term. It was determined that these switches could not accommodate the additional processor load associated with LNP. Bell Atlantic could have invested more capital into these analog switches, but that money would have been wasted when the switch was removed. Bell Atlantic, therefore, decided to advance the replacement of these switches with digital technology. The costs of this advancement (but not the full cost of the replacement) are included as a direct cost of number portability.

The Designation Order makes clear that this practice is plainly contrary to the Commission's LNP cost recovery requirements. That order clearly ruled that the advancement costs associated with upgrading switches are not eligible recovery in LNP surcharges or query tariffs:

As we found in considering what portion of generic upgrades should be eligible LNP costs recoverable through the federal LNP charges, we do not agree that the entire costs

of an "advancement" should be recovered as number portability costs, especially where those costs were incurred for software generics, switch hardware, OSS, SS7 or AIN. Although the planned upgrades may have been advanced by LNP requirements and LECs would not have deployed the upgrades early "but for" the Commission's portability implementation schedule, the associated upgrades provide general enhancements to LECs' networks. As such, we find that only the incremental portion of such costs directly related to the provision of number portability may be recovered as eligible LNP costs. Thus, LECs may claim only the advancement costs associated with the difference between the costs of the upgrade with the LNP functionality and its costs without that functionality.¹²

III. Bell Atlantic Improperly Calculates Its Tax Recovery

Bell Atlantic's Chart 2B calculates an annual required return on its investment of \$11,184,469, and suggests that \$5,357,829 is necessary to recoup the federal income tax that will be owed on this return. However, the federal tax that Chart 2B proposes to recover is 48% of Bell Atlantic's return -- a figure significantly higher than that claimed in the other ILEC LNP tariff filings to date.¹³

Bell Atlantic may have arrived at these recovery amounts because it improperly assumed that it would owe taxes on its entire return. If Bell Atlantic financed all its investments with equity, its approach could provide an appropriate federal income tax recovery amount. However, Bell Atlantic, like most companies, finances its investments, including LNP-related investments, with a combination of debt and equity -- that is, Bell Atlantic's allowable return will be used to provide both returns to equity holders and interest payments on debt. Income taxes do not apply to the return paid to debt holders. In order to determine the true tax implications of its

¹² Designation Order, ¶ 30.

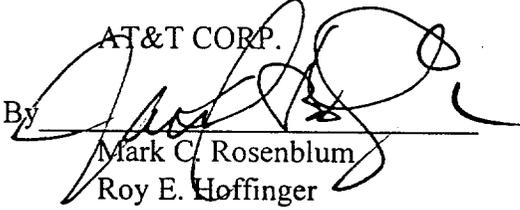
¹³ Both US West and Sprint initially proposed to use a comparable tax figure, but both later agreed that their calculation was in error for essentially the reasons AT&T advances here.

incremental LNP investments, Bell Atlantic must first subtract the applicable debt interest created by these investments.

CONCLUSION

For the reasons stated above, AT&T urges the Commission to reject or, alternatively, to suspend and investigate the Bell Atlantic Telephone Companies' Transmittal No. 1111 and the NYNEX Telephone Companies' Transmittal No. 539.

Respectfully submitted,

AT&T CORP.
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March 9, 1999

CERTIFICATE OF SERVICE

I, Terri Yannotta, do hereby certify that on this 9th day of March, 1999, a copy of the foregoing "Petition To Reject Or Suspend-Tariff" was mailed by U.S. first class mail, postage prepaid, and sent via facsimile to the parties listed below:

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Terri Yannotta

March 9, 1999