

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

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In the Matter of)
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)
Long-Term Telephone Number Portability)
Tariff Filings)
)
Bell Atlantic Telephone Companies,)
Tariff F.C.C. No. 1, Transmittal No. 1114)
)
NYNEX Telephone Companies,)
Tariff F.C.C. No. 1, Transmittal No. 540)

CC Docket No. 95-116

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") query charges.

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¹ Order, Long-Term Telephone Number Portability Tariff Filings, CC Docket No. 95-116, DA 99-128 (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, DA 98-2534 (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 -- including Bell Atlantic's LNP end user surcharge, filed just two

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, DA 99-265 (released January 29, 1999) ("Suspension Order").

weeks before the instant tariffs⁹ -- the Commission implicitly has recognized that suspension is appropriate to ensure that any LNP query charges or end-user surcharges comply with its new cost recovery rules.

I. Bell Atlantic's Tariffs Should Be Suspended For The Same Reasons The Commission Cited In Suspending That BOC's LNP Surcharge Tariff On March 16, 1999

Bell Atlantic filed tariffs for an LNP end-user surcharge on March 2, 1999, which the Commission suspended and set for investigation on March 16th -- the day before the instant tariffs were filed. In light of this timeline, Bell Atlantic did not have the benefit of the Bell Atlantic Suspension Order when it prepared its LNP query tariff, and the instant transmittals accordingly suffer from the same flaws that led the Commission to suspend the prior filings. Among other failings, Bell Atlantic has claimed OSS costs that the Commission's orders make clear are not eligible for recovery in LNP tariffs, has improperly claimed advancement costs for switch replacement, and has improperly calculated its tax recovery. AT&T hereby incorporates into this pleading by reference the arguments offered in its "Petition To Reject Or Suspend Tariff" filed in this docket on March 9, 1999 in response to the Bell Atlantic Telephone Companies' Transmittal No. 1111 and the NYNEX Telephone Companies' Transmittal No. 539.

In addition, the Commission found in the Bell Atlantic Suspension Order that Bell Atlantic's LNP surcharge tariffs should be suspended because they raised substantial questions of lawfulness including, but not limited to, "whether Bell Atlantic's use of 'standard' factors to

⁹ See Memorandum Opinion And Order, Long-Term Telephone Number Portability Tariff Filings of Bell Atlantic Telephone Companies and NYNEX Telephone Companies, CC Docket No. 99-35, DA 99-519 (released March 16, 1999) ("Bell Atlantic Suspension Order").

estimate number portability costs is unreasonable; whether Bell Atlantic's inclusion of building and power costs in its calculation of number portability costs is unreasonable; and whether Bell Atlantic's overall costs for long-term number portability are unreasonable."¹⁰ Bell Atlantic's LNP query tariffs repeat these same errors, and therefore should also be suspended or rejected.

II. Bell Atlantic's Query Tariff Improperly Calculates Depreciation Costs

In charts 4B and 5B of its filing, Bell Atlantic calculates a depreciation factor of approximately 21% of the claimed present worth ("P/W") of its investments. This factor would allow Bell Atlantic to recover the entire present worth of its claimed investments in just under five years. The Commission did permit ILECs to recover their LNP surcharge-related costs over a five year recovery period, because that charge will end after that time. However, LNP query charges will continue indefinitely. Accordingly, the Commission's LNP Cost Classification Order unequivocally held that "[f]or query services, however, LECs should use normal depreciation rates instead of a five year amortization."¹¹ Bell Atlantic's LNP query tariffs are facially noncompliant with this requirement.

III. Bell Atlantic Overstated its Query-Related Overhead

Paragraph 35 of the LNP Cost Classification Order held that:

any overhead allocation factor to be applied to query service charges must be an incremental overhead based on a special study similar to the study Ameritech has proposed with respect to common costs, but adapted to apply to query services (wholesale common costs).

¹⁰ Bell Atlantic Suspension Order, ¶ 4.

¹¹ LNP Cost Classification Order, ¶ 54.

Despite this clear directive, Bell Atlantic continues to ask for completely unsubstantiated markups to its claimed costs. In Charts 4B and 5B of its filing, Bell Atlantic calculates a per-query rate that includes a 50% markup over its claimed per-query costs.¹² In explaining this markup, Bell Atlantic states only that:

The incremental overhead factor was applied to each direct cost figure to produce the total costs per query for each service. In establishing the rate for both services, Bell Atlantic included a reasonable loading that has been previously used in comparable new service filings.¹³

While the LNP Cost Classification Order did suggest that new services rates that are "established for highly competitive services" could potentially "provide a useful additional test of the reasonableness of incremental overhead allocations,"¹⁴ it did not suggest that an ILEC could merely advert to previous new service filings as justification for its claimed overheads. Moreover, Bell Atlantic cannot plausibly contend that a 50% overhead markup is typical of "highly competitive" offerings.

Finally, the 50% overhead figure that Bell Atlantic seeks to employ is significantly higher than those proposed by other ILECs in their LNP tariffs. In this regard, the Commission's Designation Order expressly held that Pacific's proposed 21% overhead figure was subject to investigation because it exceeded those claimed in other LNP tariffs, and because that BOC failed to offer sufficient proof that it in fact reflected its incremental costs.

¹² In fact, BellSouth applies its 50% overhead figure to a total it derives by multiplying its purported direct costs by 106.4%. The net of the two additives is approximately 60%.

¹³ Bell Atlantic D&J, p. 6.

¹⁴ LNP Cost Classification Order, ¶ 37 (emphasis added).

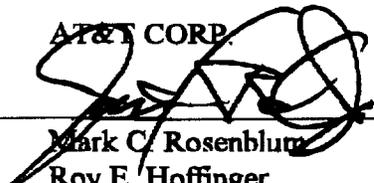
We find, however, that the Pacific overhead allocation factor of 21 percent is substantially higher than the overhead allocation factors used by the other incumbent LECs. We, therefore, find that Pacific's use of a 21 percent allocation factor and SWBT's use of a weighted average factor, in the absence of a special study or other information to confirm that these factors represent the incremental overheads attributable to number portability, raises issues of lawfulness that warrant an investigation.¹⁵

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. 1114 and the NYNEX Telephone Companies' Transmittal No. 540.

Respectfully submitted,

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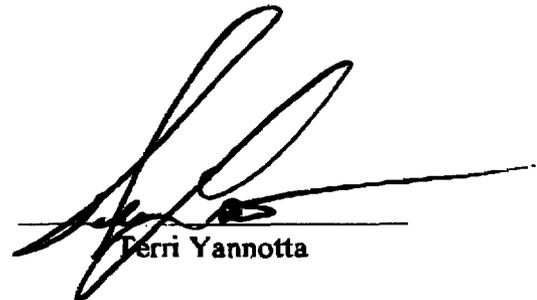
¹⁵ Designation Order, ¶ 27.

CERTIFICATE OF SERVICE

I, Terri Yannotta, do hereby certify that on this 22nd 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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