

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
2001 Annual Access Tariff Filings)	CC Docket No. 01-206
)	
)	

**REBUTTAL OF
MOULTRIE INDEPENDENT TELEPHONE COMPANY**

1. Moultrie Independent Telephone Company (“MITCO”) hereby submits its Rebuttal in response to the Oppositions filed pursuant to the Common Carrier Bureau’s Designation Order regarding the 2001 annual access tariff filing.¹ AT&T Corp. filed an Opposition to MITCO’s local switching (LS2) tariff rate. Opposition of AT&T Corp. to the Direct Cases of Alltel Tel. Systems, Inc. and Moultrie Indep. Tel. Co., filed Sept. 26, 2001 (“AT&T Opposition”).

I MITCO Calculated its Costs as Required by the FCC’s Rules.

2. AT&T claims that MITCO should calculate its revenue requirement for local switching by excluding local switching support for which MITCO is eligible. AT&T Opposition at 3. AT&T’s interpretation is contrary to the plain language of the FCC’s rule. Section 69.106(b) of the rules requires a carrier to compute its local switching rate “by dividing the projected annual revenue requirement for the Local Switching Element, excluding any local switching support *received by the carrier* pursuant to sec. 54.301 of this Chapter, by the projected annual access

¹ 2001 Annual Access Tariff Filings, Order Designating Issues for Investigation, DA 01-2033, released Aug. 29, 2001.

minutes of use for all interstate or foreign services that use the local exchange switching facilities.”² MITCO’s cost consultant developed MITCO’s 2001 cost study at issue in this investigation consistent with the clearly stated requirements of this FCC rule.

3. As explained in MITCO’s Direct Case, MITCO has received no local switching support for 2001 and none is expected, depending only on the outcome of its pending petition for declaratory ruling.³ The cost study for access charge development purposes is intended to separate the costs of service between the state and interstate jurisdictions. The increase in the switching rate filed pursuant to section 69.106 reflects the switching rate of MITCO based on its having received no high-cost support, either current or forecasted. Thus, the revenue requirement properly accounted for the fact that no local switching support has been received nor is expected to be received by MITCO for the year 2001.

II AT&T Misinterprets the Relevance of NECA’s Treatment of MITCO’s Cost Study.

4. AT&T also mischaracterizes the outstanding issues between MITCO and the National Exchange Carrier Association (“NECA”). AT&T Opposition at 3. The 1997 cost study MITCO filed with NECA for high-cost support and carrier common line funding accurately reflected the sale and lease transactions between MITCO’s regulated telephone company and its unregulated affiliate. The cost study and MITCO’s records of the sale and lease of the assets were in accordance with the FCC’s Part 32 (Uniform System of Accounts) rules. NECA rejected the cost

² 47 C.F.R. 69.106(b) (*emphasis added*).

³ Moultrie Indep. Tel. Co., Petition for Declaratory Ruling, CC Docket No. 96-45, filed March 29, 1999.

studies submitted by MITCO in 1997, 1998, 1999 and 2000 based on NECA's interpretation of the FCC's Part 36 rules.⁴

5. As noted in the Bureau's Designation Order, MITCO filed a petition for declaratory ruling on the subject of NECA's downward adjustment to MITCO's universal service support based on MITCO's sale and lease of the referenced facilities. That petition raised the critical issue of whether the Commission has the legal authority to require incumbent local exchange carriers to own, rather than lease, the facilities they use to provide telecommunications service. MITCO makes clear in that proceeding that its sale and lease transactions were and are a sound exercise of management discretion with clear public interest and ratemaking benefits inuring to its subscribers. As MITCO made clear in its direct case, the FCC has not yet ruled on NECA's interim actions. As such, the FCC has validated neither NECA's continuing use of the 1996 cost study nor NECA's interpretation of the rules.

6. Referring to a letter sent by NECA to the Common Carrier Bureau in which NECA asked for clarification of the Part 36 rules regarding affiliate leases, AT&T seems erroneously to assume that the Bureau's response to the NECA letter resolved all legal issues between NECA and MITCO. AT&T Opposition at 3, n. 2. Such an assumption is incorrect. NECA's letter only presented the Bureau with one of the rules called into question by MITCO's sale and lease of facilities. Thus, any response from the Bureau was missing critical analysis on the other rule in dispute: 47 CFR 32.27. Both issues are squarely presented in MITCO's pending petition.

7. Nor, importantly, did NECA or the Bureau give MITCO an opportunity to comment on the letter filed by NECA in 1999. Despite the fact that NECA knew of MITCO's petition (out of procedural fairness, MITCO served NECA), NECA did not notify or serve MITCO when it filed its

⁴ Memorandum from Roberta Alvir, NECA, to Larry Van Ruler, Independent Telecommunications

letter with the Bureau staff. The Bureau's letter response thus was obtained in violation of the Commission's long-standing ex parte rules.⁵ Consequently, the Bureau's letter ruling was flawed and cannot now be relied on by the Bureau in this tariff proceeding.

III Conclusion

8. In view of the foregoing, the Commission must reject AT&T's Opposition and determine that MITCO correctly calculated its local switching rate for purposes of the 2001 annual access tariff filing. MITCO's filed local switching rate is warranted based on MITCO's strict adherence to the FCC's rule in section 69.106(b) used to calculate that local switching rate.

Respectfully Submitted,

MOULTRIE INDEPENDENT TELEPHONE COMPANY

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October 3, 2001

Consultants, Inc.; Steve Bowers, Moultrie; and John Boehm, NECA, dated March 12, 1999.

⁵ 47 C.F.R. § 1.200 - 1.1216.