

WOMBLE
CARLYLE
SANDRIDGE
& RICE

A PROFESSIONAL LIMITED
LIABILITY COMPANY



150 Fayetteville Street Mall, Suite 2100
Raleigh, NC 27601

Mailing Address:
Post Office Box 831
Raleigh, NC 27602
Telephone: (919) 755-2100
Fax: (919) 755-2150
Web site: www.wcsr.com

~~RECEIVED~~ ~~FILED~~ ^{110.00}

Loretta A. Cecil
Direct Dial: (404) 888-7437
Direct Fax: (404) 870-4826
E-mail: lcecil@wcsr.com

OFFICIAL COPY June 19, 2002

FILED

JUN 20 2002

VIA HAND DELIVERY

Clerk's Office
N.C. Utilities Commission

Ms. Geneva Thigpen, Chief Clerk
North Carolina Utilities Commission
430 North Salisbury Street
Raleigh, NC 27601

p-55 sub 1365

Re: In the Matter of BellSouth Telecommunications, Inc. Intrastate
Access Services Tariff/New Section 26/BellSouth SAW Tariffs

Dear Ms. Thigpen:

Please find enclosed for filing in your office the original and thirty-one (31) copies of an AT&T Communications of the Southern States, LLC ("AT&T") Complaint for Anticompetitive Activity and Motion to Find Tariff Noncompliant or Suspend Tariff for Failure to Comply. Please stamp two (2) copies of the Complaint and Motion in the usual manner and return to us via our courier.

If you have any questions, please do not hesitate to contact me at (404) 888-7437.

Sincerely yours

Loretta Cecil
jpm

Loretta A. Cecil

Enclosure(s)

*7-Comm
AG
Barrick
Long
Holler
Sawmills
Kite
Steel
Porchal
Wigball
64. Du
3- Legal
3- Acctg.
2- ECI Res.
3- Comm.*

and (e) and Commission Tariff Rule R9-4. In support of this Complaint and Motion, AT&T alleges as follows:

1.

FULL NAME AND ADDRESS OF COMPLAINANT

The full name and address of the Complainant is AT&T Communications of the Southern States, LLC whose address is 150 Fayetteville Street Mall, Suite 1340, Raleigh, NC 27601.

2.

FULL NAME AND ADDRESS OF DEFENDANT

The full name and address of the Defendant is BellSouth Telecommunications, Inc. whose address is P. O. Box 30799, Charlotte, NC 28230-0188.

STATEMENT OF FACTS AND ALLEGATIONS

3.

This Complaint and Motion involves BellSouth's revision to BellSouth's Intrastate Access Services Tariff filed with this Commission on May 24, 2002, which introduced BellSouth Switched Contract Tariffs ("Revised Tariff").

4.

Currently, BellSouth's Intrastate Access Services Tariff is the only tariff available to interexchange carriers ("IXCs") under which they may purchase "switched access services" from BellSouth. The Intrastate Access

Services Tariff establishes "usage-sensitive" switched access rates, which are required to apply to all IXC's on a nondiscriminatory basis.

5.

The Revised Tariff seeks to fundamentally change the switched access landscape in North Carolina, conveniently at a time when BellSouth hopes to enter the interLATA long distance market in North Carolina.¹

6.

Other than the Revised Tariff's ambiguous provisions regarding "Demand Development" (defined as an IXC's projected one (1) year local switching usage based upon the trending of the most recent available eighteen (18) months local switching prior to the beginning of the term), the Revised Tariff does not indicate what other terms and conditions BellSouth may "individually design, price, and negotiate" with IXC's for switched access (See, Revised Tariff, Executive Summary, Description of Proposed Tariff).

7.

The Revised Tariff also fails to state whether BellSouth may negotiate with its affiliated IXC company, BellSouth Long Distance, Inc. ("BSLD") for "individually designed, priced, and negotiated" switched access

¹ This Commission "endorsed" BellSouth's proposed entry into the interLATA long distance market in North Carolina in its Order dated May 23, 2002.

arrangements. Absent such a prohibition, such negotiation would be allowed.²

8.

The Commission should determine whether the Revised Tariff establishes "reasonable and just" provisions in accordance with the requirements of N.C.G.S. 62-73.

9.

BellSouth's SWA Contract Tariff No. NC 2002-01 (included in Revised Tariff) is the first "individually designed, priced, and negotiated" switched access arrangement offered to a particular IXC. However, it is not clear whether the minutes of use ("MOU's") minimum usage, usage ranges, and volume discount percentages contained in E.26.1.5.B. apply only to the particular IXC with whom BellSouth apparently already has been negotiating, or whether different MOU minimum usage, usage ranges, and volume discount percentages could be negotiated by the next IXC who elects to negotiate a special deal with BellSouth.³

10.

² BellSouth "locks" an IXC (prior IXC) into a "SWA Contract" and then prohibits prior IXC from moving to a potentially better BellSouth offer given to another IXC (subsequent IXC if similarly situated). BellSouth will allow prior IXC to cancel the "SWA Contract," but only once and only on its anniversary. Accordingly, Revised Tariff allows BellSouth to file a new "SWA Contract" with subsequent IXC the day after entering into a "SWA Contract" with prior IXC. However, prior IXC would be forced to wait nearly 1 year before it can "opt in" into the more recent "SWA Contract" executed with subsequent IXC.

³ Although, E.26.1.1 states "[a] customer that is similarly situated may subscribe with a period of 30 days following the effective date of BellSouth SWA Contract Tariff No. 2002-01," it remains unclear whether "better deals" could be negotiated by "subsequent" negotiating IXCs.

Because the Revised Tariff provides discounts based only on "positive incremental" local switching MOU's, Revised Tariff only benefits those IXC's, like BSLD, who will experience a growth in MOU volumes. (See, Exhibit 1 attached and incorporated herein by this reference.)

11.

An IXC, like AT&T, whose intrastate volume historically has been declining is discriminated against by the methodology of Revised Tariff. In other words, an IXC experiencing a declining-growth trend can obtain no credit for simply "improving" its rate of decline over the "Demand Development" term. AT&T and other declining growth trend IXC's would benefit from Revised Tariff only by growing (in a positive manner from its baseline usage level) MOU's in future years (e.g., years 2 thru 5 of a contract term). BellSouth's methodology fails to recognize declining growth improvement and requires by Year 2 that the IXC be achieving positive incremental growth (compared to the minimum usage established in the "Demand Development.") (See, Exhibit 2 attached and incorporated herein by this reference.)

12.

As illustrated in the attached Exhibits, Revised Tariff's discount structure only considers percentage growth rather than actual growth (i.e., raw volume) and can competitively disadvantage an IXC even if that IXC produces greater volume growth than a competitor. For example, if IXC "A"

produces 1,000,000 incremental MOU's versus IXC "B" which produces just 1,000 incremental MOU's, the incremental volume for IXC "A" does not satisfy Revised Tariff's requirement of 2% growth in order to qualify for a second year discount. Meanwhile, the incremental volume for IXC "B" satisfies the 2% growth requirement and thus qualifies IXC "B" for discounts in the 2nd year of the "Demand Development" term. Although IXC "B" (in this scenario) has produced little "raw volume" improvement, it has positioned itself to obtain a better usage-sensitive unit cost than IXC "A." Ultimately, this equates to IXC "B" (a smaller growing carrier) to produce better market prices and a competitive edge towards gaining market share against IXC "A" and other declining growth trend IXC's.

13.

Based on the foregoing, Revised Tariff is anticompetitive under N.C.G.S. 62-133.5(a)(iii) and (iv) and, pursuant to N.C.G.S. 62-73, should be found by this Commission to be "unjust and "unreasonable," and either found noncompliant by the Commission pursuant to Commission Rule R9-4 or suspended by the Commission pursuant to N.C.G.S. 62-134(b).

14.

Revised Tariff also fails to comply with numerous requirements of Commission Rule R9-4, including:

- (a) failure to explain the reasons necessary for the Revised Tariff, including full explanation of all provisions of the Revised Tariff as required by Rule R9-4(c)(3);
- (b) failure to give a full explanation of the impact that the Revised Tariff will have on existing IXCs as required by Rule R9-4(c)(4);
- (c) failure to give the estimated gross revenue and net revenue that the new offering will produce annually over the term period, including explaining how the estimate was obtained as required by Rule R9-4(c)(5).⁴

15.

Because Revised Tariff fails to comply with Commission Rule R9-4, it should be found noncompliant by the Commission.

COUNT ONE

ANTICOMPETITIVE ACTIVITY

16.

AT&T incorporates herein paragraphs 1 through 15 of the Complaint.

17.

AT&T requests the Commission declare and find that Revised Tariff is anticompetitive in that it allows one or more IXCs to obtain more favorable

⁴ On page 2 of BellSouth's cover letter to the Revised Tariff, BellSouth indicated "N/A" for the required gross revenue impact and explanation. Yet on page 2 of the Executive Summary for Revised Tariff, BellSouth states the Revised Tariff "... is designed to retain the existing customers on BellSouth's switched network. The revenue impact of introducing BellSouth SWA Tariff No. NC 2002-01 is entirely dependent upon the customer's performance."

switched access rates than other IXCs without adequate justification, and such as, Revised Tariff unreasonably prejudices IXCs as a class of telephone customers and is inconsistent with the public interest in violation of N.C.G.S. 133.5(a)(iii) and (iv), and thus should not be approved by the Commission.

COUNT TWO

FAILURE TO COMPLY WITH COMMISSION RULE R9-4

18.

AT&T incorporates herein paragraphs 1 through 15 of the Complaint.

19.

AT&T requests that the Commission declare and find that Revised Tariff fails to meet the requirements of Commission Rule R9-4(c)(3)(4) and (5) and thus should be found noncompliant by the Commission.

WHEREFORE, AT&T respectfully requests that the Commission order a hearing on AT&T's Complaint and Motion regarding Revised Tariff pursuant to N.C.G.S. 62-73 and 62.134(b) and grant the relief requested in COUNTS ONE and TWO above and for such other and further relief as the Commission deems proper and just.

This the 19th day of June, 2002.

Respectfully submitted,

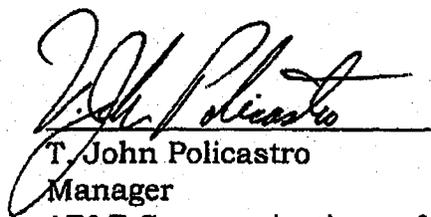
Loretta Cecil, Esq.

Loretta A. Cecil, Esq.
Timothy G. Barber, Esq.
Attorneys for AT&T Communications
Of the Southern States, LLC
Womble Carlyle Sandridge & Rice LLC
1201 West Peachtree Street
Suite 3500
Atlanta, GA 30309
(404) 88-7437

VERIFICATION BY COMPLAINANT

I, T. John Policastro, Manager, AT&T Communications of the Southern States, LLC due hereby verify that I have read the foregoing Complaint and that the information contained herein is accurate and truthful to the best of my knowledge.

This the 19th day of June, 2002.


T. John Policastro
Manager

AT&T Communications of the
Southern States, LLC

SWORN TO AND SUBSCRIBED BEFORE ME, on this 19th day of June, 2002.


NOTARY PUBLIC

My Commission Expires:

11/19/2006

CERTIFICATE OF SERVICE

I, Loretta A. Cecil, Attorney for AT&T Communications of the Southern States, LLC ("AT&T"), hereby certify that I have this day served AT&T's COMPLAINT FOR ANTICOMPETITIVE ACTIVITY PURSUANT TO N.C.G.S. 62-73; 62-133.5(a)(iii) AND (iv); 62-133.5(d) AND (e); AND 62-134; AND COMMISSION RULE R1-9 AND MOTION TO FIND TARIFF NONCOMPLIANT OR SUSPEND TARIFF FOR FAILURE TO COMPLY WITH N.C.G.S. 133.5(a)(iii) AND (iv); 62-133.5(a) AND (e) AND COMMISSION TARIFF RULE R9-4.

This the 19th date of June, 2002.

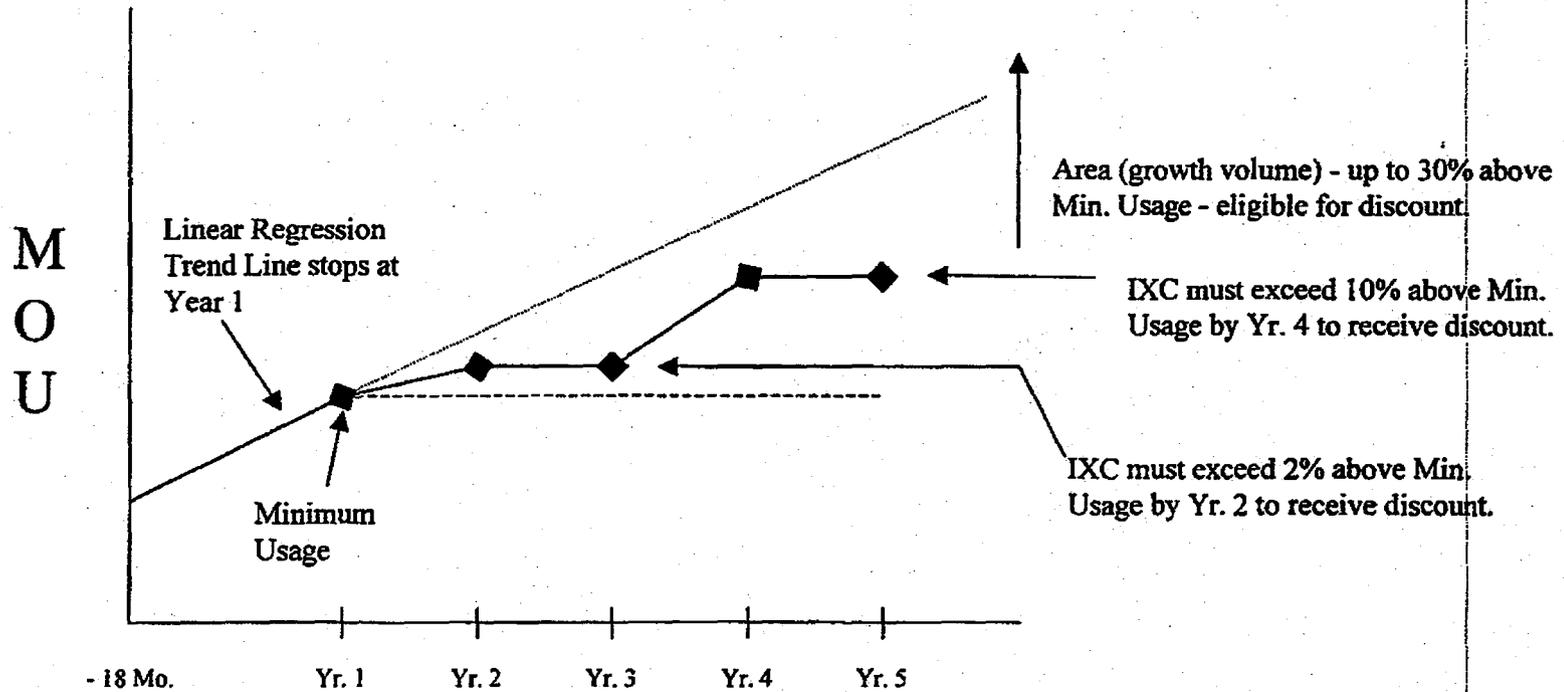
BellSouth Telecommunications, Inc.
P. O. Box 30799
Charlotte, NC 28230-0188

Loretta Cecil /iam

Loretta A. Cecil, Esq.
Timothy G. Barber, Esq.
Attorneys for AT&T Communications
Of the Southern States, LLC
Womble Carlyle Sandridge & Rice LLC
1201 West Peachtree Street
Suite 3500
Atlanta, GA 30309
(404) 88-7437

Exhibit 1

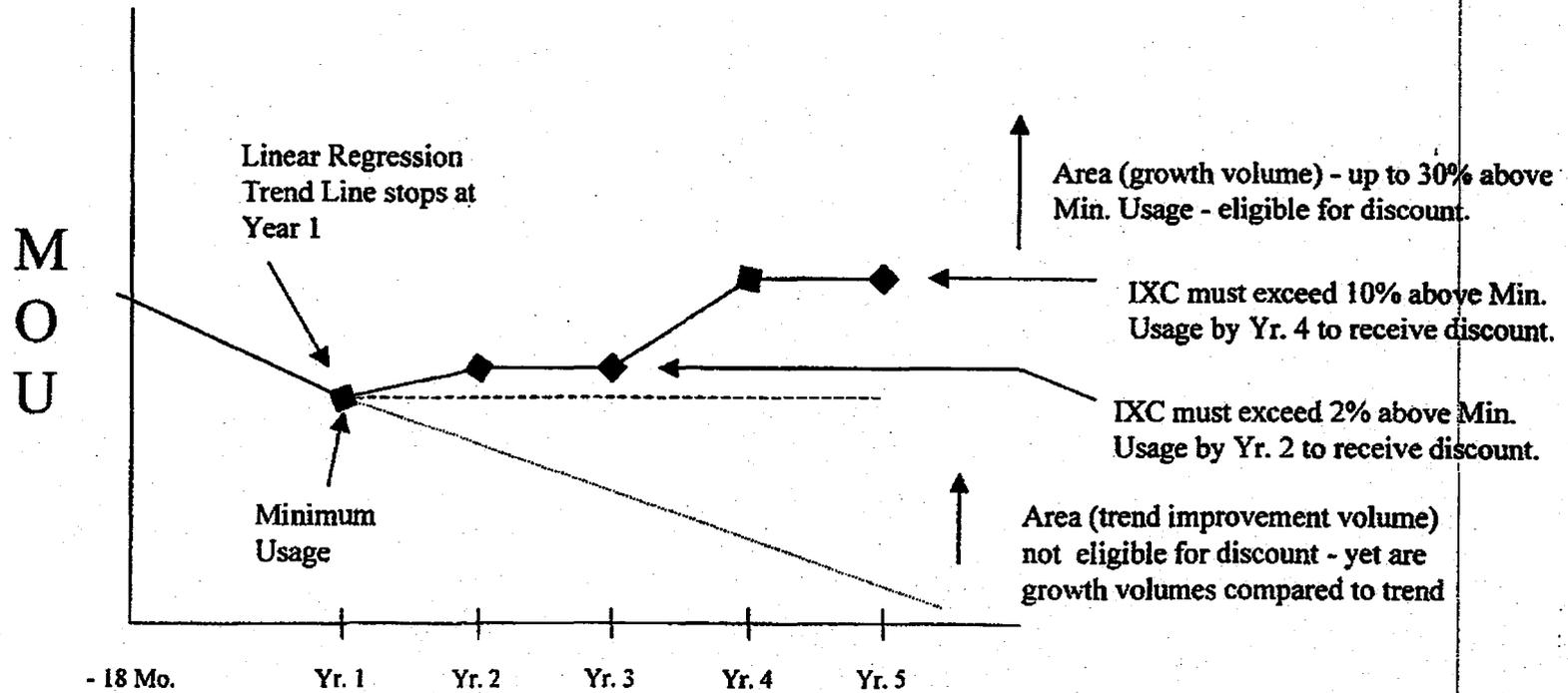
IXC Growing Trend



Contract Term Anniversary

Exhibit 2

IXC Declining Trend



Contract Term Anniversary