

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

In the Matter of)	
)	
AT&T Corp. Petition Pursuant to 47 U.S.C.)	WC Docket No. 03-256
Section 160(c) of the Communications Act)	
For Forbearance from Enforcement of)	
Section 204(a)(3) of the Communications Act,)	
As Amended)	

**COMMENTS IN OPPOSITION TO
AT&T PETITION FOR FORBEARANCE**

**THE CHILLICOTHE TELEPHONE
COMPANY**

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Summary

The Commission should dismiss outright AT&T's petition for Commission forbearance from enforcement of Section 204(a)(3) of the Act "insofar as that provision of the statute precludes customers from seeking reparations through the complaint process under Sections 206-208 of the Act." Section 10(c) does not authorize an access customer like AT&T to petition for forbearance from a regulation or statutory provision imposed upon a carrier or a carrier's service. Rather, the Section 10(c) petition mechanism, including its "deemed granted" provision, is expressly reserved for use by carriers that request forbearance from regulation imposed upon themselves or their services. If AT&T and other customers, competitors and third parties are allowed to expand the scope of Section 10(c) beyond the express limits established by Congress, the results will include a significant increase in the Commission's administrative burdens and an increased risk that important statutory and regulatory provisions will be "deemed" eliminated if the Commission does not act in time.

Even if it were authorized under Section 10(c), AT&T's petition should be denied because it wholly fails to satisfy the three requirements for forbearance in Section 10(a) of the Act. The "thousands of streamlined tariffs" and "enormous volume of tariff filings" alleged by AT&T as the basis of its forbearance request are actually comprised of the interstate access tariffs of the National Exchange Carrier Association and 47 mid-sized and small local exchange carriers. Likewise, AT&T's alleged "powerful incentives" and "unfettered ability" by these 48 entities to charge "excessive access rates" reduce upon more rational examination to a group of carriers making yeoman efforts under changing market and technological conditions to hit target rates of return, and ending up earning more than their target rates for some services and less for others. Put simply, notwithstanding AT&T's unsupported allegations, the Commission's present

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tariff review procedures are working and working well. First, the requested “forbearance” is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with LECs filing interstate access tariffs are just and reasonable and are not unjustly or unreasonably discriminatory. Rather, there are numerous formal and informal constraints on the 48 issuing entities against which AT&T’s petition is directed. Second, the requested “forbearance” is not necessary for the protection of consumers, and is unlikely to produce any perceptible benefits for AT&T toll customers. Third, the proposed “forbearance” is not consistent with the public interest, but rather will impair the regulatory certainty and revenue stability encouraged by Section 204(a)(3) without producing the curious and incredible “competitive benefit” asserted by AT&T.

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**COMMENTS IN OPPOSITION TO
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The Chillicothe Telephone Company (“Chillicothe”), by its attorney, hereby comment in opposition to the “AT&T Petition for Forbearance” filed December 3, 2003. This filing is made pursuant to the Commission’s Public Notice (Pleading Cycle Established for AT&T’s Petition for Forbearance from Enforcement of “Deemed Lawful” Provision of Section 204(a)(3) of the Act), DA 03-4076, released December 24, 2003).

AT&T, in its role as an access customer of Chillicothe and other local exchange carriers (“LECs”), has petitioned pursuant to Section 10(c) of the Communications Act of 1934, as amended (“the Act”), for Commission forbearance from enforcement of Section 204(a)(3) of the Act “insofar as that provision of the statute precludes customers from seeking reparations through the complaint process under Sections 206-208 of the Act.”

AT&T’s petition should be dismissed outright because Section 10(c) does not authorize or permit a customer to petition for forbearance from a regulation or provision imposed upon a carrier or a carrier’s service. Rather, the Section 10(c) petition mechanism is expressly reserved for use by carriers or classes of carriers that request forbearance from regulations and provisions imposed upon themselves or their services. Moreover, even if AT&T’s petition was authorized

under Section 10(c), it wholly fails to satisfy the three-part standard for forbearance in Section 10(a) of the Act. Rather, the requested “forbearance”: (1) is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with LECs filing interstate access tariffs are just and reasonable and are not unjustly or unreasonably discriminatory; (2) is not necessary for the protection of consumers; and (3) is not consistent with the public interest.

I

AT&T’s Petition Is Neither Authorized Nor Appropriate Under Section 10(c) of The Act

Section 10(c) of the Act provides that “[a]ny *telecommunications carrier, or class of telecommunications carriers*, may submit a petition to the Commission requesting that the Commission exercise the [forbearance] authority granted under this [Section 10] with respect to *that carrier or those carriers*, or any service offered by *that carrier or carriers* [emphasis added].” 47 C.F.R. Sec. 160(c).

As the statutory language makes clear, Section 10(c) was enacted by Congress to give a carrier or a group of carriers a mechanism to seek and obtain from the Commission the elimination or reduction of outmoded or unnecessary regulations imposed upon the requesting carrier or group of carriers. The provision, which also includes a one-year deadline for Commission action and “deems” the forbearance petition to be granted if the Commission fails to act within the prescribed period, is strictly limited to those instances where carriers petition for

relief from regulations imposed upon themselves. To date, both the telecommunications industry and the Commission have interpreted the plain language of Section 10(c) in this manner.¹

Section 10(c) does not give competitors, customers or other third parties any right to file a forbearance petition, or any right to a “deemed grant” of a forbearance request after one year. In other words, a party that is not a carrier subject to a particular regulation or statutory requirement has no Section 10(c) right or standing to petition the Commission to forbear from enforcing that provision. In particular, AT&T and other third parties must not be allowed to turn Section 10 on its head by using “forbearance petitions” as ploys to try to strip carriers of the rights, privileges and benefits to which they are entitled as a result of their compliance with procedural and regulatory requirements established by the Act and the Commission.²

Although AT&T is an interexchange carrier (“IXC”), it has filed the subject petition in its role as an access customer of Chillicothe and other LECs. It does not request the Commission to forbear from enforcing Section 204(a)(3) (which applies solely to LECs) with respect to any of AT&T’s own local exchange carrier activities, but rather only “insofar as that provision of the

¹ See e.g. Memorandum Opinion And Order (In the Matter of Petition of Verizon for Forbearance from Prohibition of Sharing Operating, Installation, and Maintenance Functions Under Section 53.203(a)(2) of the Commission’s Rules), FCC 03-271, released November 3, 2003; Memorandum Opinion And Order (In the Matter of Petition of SBC Communications for Forbearance of Structural Separation Requirements and Request for Immediate Interim Relief in Relation to the Provision of Nonlocal Directory Assistance Services), 18 FCC Rcd 8134 (2003); Order (In the Matter of Petition of Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom Pursuant to 47 U.S.C. Sec. 160(c) from the Deadline for Price Cap Carriers to Elect Interstate Access Rates Based on the CALLS Order or a Forward Looking Cost Study), 17 FCC Rcd 24319 (2002).

² In the same manner, AT&T’s business and residential toll customers do not have the right to file Section 10(c) petitions requesting “forbearance” from the Commission rulings that relieved AT&T of dominant carrier regulation and eliminated its obligation to file and maintain interstate toll tariffs. Likewise, unsuccessful bidders and others do not have the right to file Section 10(c) petitions requesting “forbearance” from the license and interference protection rights of cellular and PCS carriers, even if competition might be increased by permitting additional operators to use the licensed spectrum.

statute precludes customers from seeking reparations through the complaint process under Sections 206-208 of the Act.” (AT&T Petition, pp. 1, 21). AT&T repeatedly refers to itself in the Petition as an “access customer” and as a “non-LEC commenter” (Id., pp. 3, 7, 9). AT&T declares that the “only change from the *status quo* resulting from granting forbearance is that access customers could now seek reparations from the LECs.” (Id., p.4).

As an access customer, AT&T has full and unfettered rights under the Act to seek relief from allegedly unjust or unreasonable access charges: (a) by filing Section 204(a)(1) petitions to reject or suspend tariff filings; (b) by filing Section 207 or 208 complaints; and/or (c) by requesting Section 205 prescription proceedings. However, neither AT&T nor any other access customer has any right or standing under Section 10(c) to petition for forbearance of Section 204(a)(3) or any other statutory provision or rule that pertains solely and entirely to LECs or LEC services.

As the time it adopted Section 1.53 of the Rules requiring separate pleadings for petitions for forbearance, the Commission recognized that the “deemed granted” provision of Section 10(c) places a significant burden upon its administrative processes and resources. Separate Pleadings for Petitions for Forbearance, 65 FR 7460 (February 15, 2000). As long as the right to file forbearance petitions and the scope of the “deemed grant” provision is limited to carriers seeking relief from outmoded or unnecessary regulations imposed upon their own operations and services, this burden is manageable. However, AT&T’s attempt to expand the scope of Section 10(c) forbearance petitions to customers, competitors and other non-carriers not only would eviscerate the plain language of the statute, but also would impose much greater administrative burdens upon the Commission and increase the risk that important statutory and regulatory provisions would be “deemed” eliminated if the Commission could not act in time.

Therefore, on the basis of the plain and clear wording of Section 10(c) of the Act, AT&T's petition must be dismissed as unauthorized and inappropriate.

II.

The Commission Should Not Forbear From Enforcing the "Deemed Lawful" Provision of Section 204(a)(3)

Even if AT&T had the right and standing under Section 10(c) to petition for forbearance of Section 204(a)(3), the Commission still should not write out of the statute the "deemed lawful" provision that Congress put into it. The "forbearance" requested by AT&T: (1) is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with LECs filing interstate access tariffs are just and reasonable and are not unjustly or unreasonably discriminatory; (2) is not necessary for the protection of consumers; and (3) is not consistent with the public interest.

Notwithstanding AT&T's allegations of "thousands of streamlined tariffs" and "clearly inadequate" pre-effectiveness and post-effectiveness Commission oversight (AT&T Petition, p. 14) that it claims have led to "excessive access charges" (*Id.*, p. 16), the AT&T petition is actually directed only at the interstate access tariffs of the National Exchange Carrier Association (NECA) and approximately 47 small and mid-sized rate of return carriers.³ This very manageable number of 48 issuing carriers is very adequately and effectively regulated and supervised by: (a) informal negotiations among LECs, IXC's and the Commission's staff; (b)

³ See *Interstate Rates of Return for Local Exchange Carriers* (rel. May, 2003), available at <http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/ror02.pdf> (Attachment A hereto).

The Commission also reviews the interstate access tariffs of: (a) approximately 65 price cap carriers (*Id.*; Attachment B hereto); and (b) a number of small Tier 3 LECs. However, as AT&T recognizes, price cap tariffs are governed by overall basket price cap indices and service pricing bands that limit Commission review (AT&T Petition, p. 20, n.30) and Tier 3 tariffs are based upon historical demand and cost data that also limit Commission review (*Id.*, p. 20, n.31).

petitions for rejection and/or suspension filed by AT&T and other IXCs pursuant to Section 204(a)(1) of the Act; (c) suspensions by the Commission pursuant to Section 204(a)(1) of the Act; (d) complaints under Section 208 of the Act; (e) the collection and monitoring of annual Rate of Return Reports (FCC Form 492); and (f) rate prescription proceedings under Section 205 of the Act.

Assuming, *arguendo*, that rates of return comprise a relevant indicia of the reasonableness of rates (which they do not⁴), it is noteworthy the weighted arithmetic mean interstate rate of return for the 48 rate of return carriers during the 2001-2002 monitoring period was a very “non-excessive” 11.98 percent (Attachment A). In comparison, the weighted arithmetic mean rate interstate rate of return for the 65 price cap carriers was 19.95 percent in 2001 and 17.77 percent in 2002 (Attachment B).

A.

Background of “Deemed Lawful” Provision

In the same 1996 legislation that added Section 10 to the Act, Congress amended Section 204 of the Act to contain a new subsection 204(a)(3), which states:

A local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis. Any such charge, classification, regulation, or practice shall be deemed lawful and shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission unless the Commission takes action under paragraph (1) [that is, suspends the tariff filing] before the end of that 7-day or 15-day period, as is appropriate.

⁴ This assumption is belied by the fact that rates of return are far more reflective of the relative ability or inability of LECs to estimate accurately their prospective demand and prospective expenses in a world of rapidly changing markets and technologies. It is also contrary to the ruling of the U.S. Court of Appeals for the District of Columbia Circuit in ACS of Anchorage, Inc. v. FCC, 290 F3d 403 (DC Cir. 2002)(ACS).

This provision was intended to provide a little regulatory relief for LECs in the pro-competitive and deregulatory environment fostered by the 1996 Act. If a LEC tariff transmittal complies with the rigid filing periods of Section 204(a)(3), the charges, classifications, regulations, and/or practices contained therein become entitled to “deemed lawful” status. However, these filing periods have often had a regulatory bite. They not only were designed to encourage rate reductions, but also have frequently increased the administrative complexities and billing costs of implementing tariff changes (e.g., when the fifteenth or seventh day before a desired effective date falls on a weekend or holiday⁵).

In its Report And Order (Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996), CC Docket No. 96-187, 12 FCC Rcd 2170 (1997) (hereafter, the “Streamlined Tariff Order”), the Commission implemented Section 204(a)(3) by adopting streamlined tariff filing rules and procedures for incumbent LECs. It examined the meaning of the term “deemed lawful” and concluded that “it must be read to mean that a streamlined tariff that takes effect without prior suspension or investigation is conclusively presumed to be reasonable and, thus, a lawful tariff during the period that the tariff remains in effect.” Id. at 2182. The Commission indicated that it “did not find, however, that the Commission is precluded from finding, under section 208 [of the Act], that a rate will be unlawful if a carrier continues to charge it during a future period or from prescribing a reasonable rate as to the future under section 205.” Id. The FCC also noted that “the ‘deemed lawful’ language does not govern streamlined tariff filings that become effective after suspension in those instances where the

⁵ For example, the seven-day requirement precludes LECs from reducing rates effective January 1 without Special Permission to file before Christmas.

Commission suspends and initiates an investigation of a LEC tariff within the 7 or 15 day notice periods specified in section 204(a)(3).” Id.

The Streamlined Tariff Order considered explicitly the effect of streamlined tariff filings and the “deemed lawful” provision upon requests for Section 208 “damages” or “refunds,” stating:

We recognize that our interpretation of section 204(a)(3) will change significantly the legal consequences of allowing tariffs filed under this provision to become effective without suspension. Under current practice, a tariff filing that becomes effective without suspension or investigation is the legal rate but is not conclusively presumed to be lawful for the period it is in effect [footnote omitted]. Indeed, if such a tariff filing is subsequently determined to be unlawful in a complaint proceeding commenced under section 208 of the Act, customers who obtained service under the tariff prior to the determination may be entitled to damages. In contrast, tariff filings that take effect, without suspension, under section 204(a)(3) that are subsequently determined to be unlawful in a section 205 investigation or a section 208 complaint proceeding would not subject the filing carrier to liability for damages for services provided prior to the determination of unlawfulness. We find, based on the language of the statute, that this is the balance between consumers and carriers that Congress struck when it required eligible streamlined tariffs to be deemed lawful. Id. at 2182-83.

The Commission reiterated its conclusion regarding the elimination of carrier liability for Section 208 “damages” from a different perspective in the following paragraph of the Streamlined Tariff Order, when it stated:

Further, section 204(a)(3) does not mean that tariff provisions that are deemed lawful when they take effect may not be found unlawful subsequently in section 205 or 208 proceedings. . . . The “deemed lawful” language in section 204(a)(3) changes the current regulatory scheme only by immunizing from challenge those rates that are not suspended or investigated before a finding of unlawfulness. It does nothing to change the Commission’s ability to prescribe rates as to the future under section 205 or to find under section 208 that a rate will be unlawful if charged in the future. Id. at 2183.

Hence, the Streamlined Tariff Order clearly interpreted Section 204(a)(3) to preclude its ordering of Section 208 “damages” or other refunds for interstate access rates that were issued and became effective after February 8, 1997 if two conditions are met. These conditions are: (1)

that the rates were issued in a clearly marked streamlined tariff filing made pursuant to Section 204(a)(3) of the Act; and (2) that the rates were allowed by the Commission to go into effect without suspension or investigation.

Subsequently, in General Communications, Inc. v. Alaska Communications Systems Holdings, Inc., 16 FCC Rcd 2834 (2001), the Commission found that a LEC had unlawfully earned more than its allowable rate of return for the 1997-1998 monitoring period because it had knowingly violated two separations requirements. The LEC had increased its interstate allocations and returns by: (1) improperly assigning the traffic sensitive costs of Internet Service Provider (“ISP”) traffic to the interstate jurisdiction, and (2) improperly calculating dial equipment minutes for intraoffice calls. The Commission rejected the LEC’s attempt to avoid the consequences of its rule violations during the second half of the 1997-98 monitoring period by claiming that the non-suspended, streamlined tariff filings it made in January, 1998 and July, 1998 immunized it from liability for damages regarding the rates therein. In an attempt to buttress its determination regarding the LEC’s January, 1998 filing, the Commission posited a distinction between: (1) “a challenge to the lawfulness of a carrier’s tariffed rate” (which it held to be governed by the “deemed lawful” presumption); and (2) “a challenge to the lawfulness of a carrier’s rate of return” (which it hinted may not be so governed, at least in some cases). Id. at para. 57. However, the Commission ultimately stated its position, as follows:

GCI asserts that the “deemed lawful” language of section 204(a)(3) has no application at all to a rate-of-return violation, even where the tariff at issue describes the practices that cause the violation [citations to GCI pleadings omitted]. We need not and do not reach this issue here. We conclude only that where, as here, the tariff at issue failed to specify the practices that caused the rate-of-return violation, the carrier who exceeded its prescribed rate of return is not immunized by section 204(a)(3) from a damages award in a complaint proceeding under section 208. Id. at n.127.

In ACS, supra, the court noted the difference between “legal” (procedural validity) and “lawful” (subsequent reasonableness) rates in the Supreme Court’s Arizona Grocery Co. v. Atchison, Topeka & Santa Fe Railway Co., 284 U.S. 370 (1932), decision. It found that the “deemed lawful” language of Section 204(a)(3) renders streamlined tariffs that take effect without prior suspension or investigation to be not subject to refunds under Arizona Grocery. 290 F3d at 411. The court rejected the Commission’s proposed distinction between “rates” and “rates of return,” stating that the Commission’s statutory mandate under Section 201(a) of the Act is “to ensure just and reasonable rates (“charges”), not rates of return.” Id. It held that the “Commission acquires the authority to prescribe rates of return only as a means to achieve just and reasonable rates.” Id. The court noted that “[o]ver the years, rate-of-return violations have developed into proxies for finding rates unreasonable” but declared that “we have never suggested that rates of return could be ends in themselves, rather than means to the end of reasonable rates.” Id. at 412. However, with the advent of Section 204(a)(3), proxies for “reasonableness” or “unreasonableness” are no longer needed. Rather, the court held that “[s]ince Section 204(a)(3) deems [the LEC’s] rates to be lawful, the inquiry ends.” Id.

During recent months, AT&T has tried to bluff and bully at least several rate of return LECs into giving it refunds plus interest for what AT&T claims to be their “excessive rates of return” for some classes of service during the 2001-2002 period. When told by Chillicothe and others that Section 203(a)(3), the Streamlined Tariff Order and the ACS decision gave it no right to such refunds, AT&T filed the subject “forbearance” petition.

B.

Forbearance Is Not Necessary To Ensure Just And Reasonable Access Rates

It is wholly unnecessary for the Commission to delete from Section 204(a)(3) the “deemed lawful” language placed there by Congress, in order to preserve just and reasonable access rates.

Contrary to the claims by AT&T of “excessive rates” that are “placed beyond redress” (AT&T Petition, p. 3), the fact of the matter is that access rates and revenues have declined steadily and significantly since the passage of the 1996 Act. Commission reports show that access revenues declined from \$21.423 billion in 1997, to \$18.449 billion in 1998, to \$18.105 billion in 1999, to \$17.017 billion in 2000, to \$15.096 billion in 2001. Source: *Universal Service Monitoring Report*, CC Docket No. 98-202 (2003), Table 1.2, Telecommunications Industry Revenues by Service. Some of these reductions resulted from the adoption of the CALLS Order⁶ and the MAG Order⁷; others were the result of efforts by LECs, IXC and regulators to restructure, rebalance and optimize access rates.

From the viewpoint of many LECs, it often appears that AT&T considers any access rate above “0” to be excessive, unjust and unreasonable. However, access charges or some comparable form of inter-carrier compensation are necessary to compensate LECs for use of their networks and to encourage the continued upgrade and maintenance of local exchange

⁶ *Access Charge Reform, Price Cap Performance Review for LECs*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, *Low-Volume Long-Distance Users*, CC Docket No. 99-249, Eleventh Report and Order, 15 FCC Rcd 12962 (2000) (CALLS Order).

⁷ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 00-256, 96-45, 98-77, 98-166, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001)(MAG Order).

networks. If IXCs and others are allowed to pursue lucrative lines of business while originating and terminating their traffic on local exchange networks for free or virtually for free, there will be absolutely no incentive for anyone to continue to construct, upgrade, maintain or operate expensive local exchange facilities.

Contrary to AT&T's unsupported assertions, Section 204(a)(3) has not created "powerful incentives for LECs to file excessive and discriminatory rates" (AT&T Petition, p. 3) or given "LECs of all stripes" an "almost unfettered ability ...to set rates at unjust and unreasonable levels" (*Id.*, p. 11). In fact, both Attachment A hereto and Exhibit 1 to the AT&T Petition⁸ show that most of the 48 LEC entities at which the AT&T Petition is directed, including Chillicothe, had rates of return less than 11.25-to-11.65 percent for some access services during the 2001-2002 period, and rates of return above 11.25-to-11.65 percent for others. If LECs in fact had "powerful incentives" and "unfettered ability" to charge excessive access rates, one would expect that they would "overearn" in most or all access service categories. One would not expect 16 of the 47 carriers listed on Attachment A as providing special access service to have earned less than 11.65 percent on such services during the 2001-2002 period. Likewise, one would not expect 25 of the 41 carriers listed on Attachment A as providing end office services, or another and different 25 of the 41 carriers listed on Attachment A as providing local transport services, to have earned less than 11.65 percent on such services during the 2001-2002 period.

In fact, the real world experience of most LECs is that they earn less than the target rate of return on some services and more than the target rate of return on other services during any given year or monitoring period, and that the services that "under-earn" and "over-earn" shift

⁸ Chillicothe does not concede that the figures contained in AT&T Exhibit 1 are accurate. In fact, AT&T's use of a "35% FIT Gross-up" for services with rates of return over 11.65% exaggerates the dollar amount of the "overearnings" that it alleges.

from time to time. The predominant reason for this is that it is extremely difficult for LECs or anyone else to set rates on the basis of estimates of both the prospective demand for their services and their prospective expenses, and then to have the resulting rates and their actual demand and expenses match up together in a manner that comes close to their target rate of return. This has been particularly true during recent years when rapidly changing market and technological conditions have significantly decreased predictive accuracy for both prospective demand and prospective expenses. Rather than evidencing any nefarious intent to charge excess rates, the actual pattern of LEC earnings above and below the desired rates of return demonstrates their consistent and good faith efforts to hit very difficult and erratically moving targets.

Chillicothe and other LECs monitor their rates and rates of return, and make periodic mid-course tariff filings to reduce rates for services earning more than the target rate and increase rates for services earning less. See e.g. Chillicothe's Transmittal No. 78, issued January 16, 2004. This behavior further belies AT&T's "fantasy" of LEC monopolists imposing excessive and unreasonable access charges without any meaningful constraints.

In fact, there are numerous formal and informal constraints on the 48 entities against whom AT&T seeks its "forbearance." These constraints include: (a) informal negotiations among LECs, IXC's and the Commission's staff; (b) petitions for rejection and/or suspension filed by AT&T and other IXC's pursuant to Section 204(a)(1) of the Act; (c) suspensions by the Commission pursuant to Section 204(a)(1) of the Act; (d) complaints under Section 208 of the Act; (e) the collection and monitoring of annual Rate of Return Reports (FCC Form 492); and (f) rate prescription proceedings under Section 205 of the Act.

i. **Informal negotiations.** AT&T, in particular, is very aggressive in contacting LECs that are preparing to file tariffs or that have filed tariffs, and demanding advance or additional information and/or rate reductions. For example, prior to the June dates for the filing of annual access tariff revisions, AT&T has called LECs to request advance looks at proposed rate revisions, cost support and tariff review plans. Likewise, once filings are made, AT&T has called LECs to request additional information and explanations, and in some cases to challenge or request reductions of specific proposed rates.

The Commission's staff also engages in informal review and negotiation during pre-filing and pre-effectiveness periods. LECs sometimes ask the Commission staff to review a tariff transmittal before it is filed, and may modify it prior to filing if the staff reviews the document and expresses concerns with it. Likewise, the Commission's staff may question a proposed rate or regulation during the pre-effectiveness period, and convince a LEC to withdraw or modify a provision before it is suspended.

ii. **Petitions to reject or suspend.** AT&T is also very aggressive in filing Section 204(a)(1) petitions to reject or suspend LEC tariff filings. It appears to file a petition to reject or suspend the annual or bi-annual access charge revisions of several LECs virtually every year. In some instances, AT&T's challenges are found insufficient to warrant rejection or suspension; in others, they cause or contribute to the modification or suspension of the questioned rates.

iii. **Section 204(a)(1) suspensions.** AT&T's assertion that "only a minuscule portion" of streamlined tariffs have been suspended is proof that the system is working and not, as AT&T claims, that the Commission staff is overwhelmed by the "enormous volume" of such tariff filings. Whereas the June filing period for certain annual and bi-annual access revisions is certainly a busy peak time, there is no indication that the Commission's staff is not capable of

adequately and effectively reviewing the rate of return LEC (maximum of 48), price cap LEC (maximum of 65) and Tier 3 LEC filings that may be made in any given year. In fact, in June 2003, Chillicothe's annual tariff filing was suspended by the Commission due to an inadvertent expense estimation error that was brought to Chillicothe's and the Commission's attention by AT&T and which Chillicothe admitted but was unable to correct before July 1.⁹ However, the vast majority of Chillicothe and other LEC tariff filings have gone into effect without suspension or investigation because the rates therein were just and reasonable.

iv. **Section 208 complaints.** Chillicothe does not know how many Section 208 complaints have been filed against LECs for allegedly excessive access rates since Section 204(a)(3) was adopted and implemented. However, they note that AT&T's purported explanations why the Section 208 complaint process is inadequate -- namely, because access customers have "no hope for reparations" and because LECs will re-file different (but still unlawful) tariffed rates (AT&T Petition, p. 16) -- are nonsense. First, if LEC access rates are as "excessive" as AT&T repeatedly claims, AT&T and other access customers should have more than sufficient incentive to file Section 208 complaints and get the Commission to rule such rates to be unlawful within five months, whether or not refunds for pre-ruling charges are available. If few or no Section 208 complaints are being filed, the more likely reason is that access customers have not found access rates (which have decreased significantly since 1996) to be "excessive." Second, Chillicothe knows of no instance where a LEC has been found to be charging unjust or unreasonable access rates, and has then attempted to re-file different (but still unlawfully "excessive") rates. Such an "in-your-face" challenge to the Commission is unlikely to be attempted, or to survive rejection or suspension under Section 204(a)(1) if it were.

⁹ July 1, 2003 Annual Access Charge Tariff Filings, WCB/Pricing 03-15, Order (rel. April 18, 2003)(DA 03-1175).

Chillicothe objects to AT&T's attempt to tar the whole LEC industry with the alleged actions of the LEC in the General Communications, Inc., supra, complaint proceeding. If that LEC had knowingly and deliberately violated Commission requirements, its resulting rates should have been declared unlawful and it should have been fined or punished in an appropriate and sufficient manner. However, AT&T should not be permitted to attribute the LEC's alleged misbehavior to other LECs, any more than AT&T should be held responsible for the bankruptcy and alleged misconduct of WorldCom.

v. **Rate of return reports.** Section 65.600 of the Commission's Rules requires Chillicothe and other rate of return LECs to file annual Rate of Return Reports (FCC Form 492) by March 31 of the following year (and allows them to true-up such reports by September 30). These annual reports allow LECs, access customers and the Commission to monitor estimation, ratemaking and operating results between required tariff revision periods. Chillicothe and other LECs frequently use the reports and reporting process to determine whether mid-course revisions are necessary or feasible.

vi. **Section 205 prescription proceedings.** Contrary to AT&T's allegations, there is no "immense body of unsuspected streamlined tariffs" or "myriad streamlined LEC tariffs that have gone into effect without suspension" that render the Section 205 prescription process inadequate (AT&T Petition, p. 14). The Commission presently regulates the interstate access tariffs of 48 rate of return LEC entities. Should the Commission become convinced that one or more of these 48 entities is charging excessive and unlawful access rates, it has the resources and ability to conduct Section 205 proceedings or take other effective action.

In sum, it is not at all necessary for the Commission to forbear from enforcing the "deemed lawful" provision of Section 204(a)(3) in order to preserve just and reasonable access

rates. Rather, the Commission can continue to rely upon the existing formal and informal constraints that have proven successful in regulating access rates, including informal reviews and negotiations, rejection and/or suspension petitions, Section 204(a)(1) suspensions, Section 208 complaints, annual Rate of Return Reports, and Section 205 prescription proceedings.

C.

Forbearance Is Not Necessary To Protect Consumers

AT&T makes no attempt to show how or how much its proposed “forbearance” will protect or benefit end user customers. Rather, it makes only an unsupported assertion that there is “no conceivable manner” in which it will not (AT&T Petition, p. 17).

However, AT&T’s past record in handling Section 208 “damages/refunds” and Commission-mandated access charge reductions furnishes little hope that any future “refunds” from its proposed forbearance will ever trickle down to AT&T’s end user customers.

The Commission’s formal complaint files for the pre-1996 period when AT&T prosecuted numerous Section 208 complaints against LECs for “over-earnings” will reflect that AT&T was frequently asked in interrogatories whether it would commit to pass through some of its requested damages to the end user customers that it claimed had been forced to pay higher toll rates due to the allegedly excessive access charges. In all such instances, AT&T refused to answer the interrogatory or make any pass-through commitment.

More recently, AT&T’s reaction to major reductions in access charges has been to maintain its existing toll rates, or even to try to increase them. From the adoption of the 1996 Act to the issuance of the CALLS Order in May 2000, the Commission reduced the interstate access charges paid by AT&T and other IXC’s by an estimated \$3.2 billion. News Release (FCC Reduces Access charges By \$3.2 Billion; Reductions Total \$6.4 Billion Since 1996

Telecommunications Act), released May 31, 2000. In the CALLS Order itself, the Commission slashed the interstate access charges paid by AT&T and other IXC's to large LECs by another \$3.2 billion. Finally, the Commission's MAG Order cut the interstate access charges paid by AT&T and other IXC's to rural and other non-price cap LECs by \$727 million, and mandated a further reduction of \$65 million in July 2003. However, despite AT&T's repeated claims during the Commission's 1996-2001 access "reform" proceedings that "above cost and inefficient" access charges were preventing it from decreasing its toll rates and despite AT&T's promises during the CALLS proceeding to reduce its toll rates, AT&T's residential toll customers have received little or no rate relief in response to these substantial access cost reductions. In fact, immediately following the adoption of the CALLS Order, AT&T actually announced (and then withdrew under pressure) substantial residential toll rate increases. NEWS Release (Statement of FCC Chairman William F. Kennard Regarding AT&T), released June 7, 2000.

Hence, AT&T's past record offers no hope that grant of its forbearance request will afford any protections or benefits to its end user customers.

D.

Forbearance Would Not Serve The Public Interest

Section 204(a)(3) was enacted as part of 1996 Act, and provides limited regulatory relief to LECs that is fully consistent with the pro-competitive and deregulatory goals thereof.

AT&T twice asserts¹⁰ that the "deemed lawful" provision distorts competition because "end user customers of carriers that operate in the competitive interexchange marketplace enjoy unfettered ability to raise challenges to the lawfulness of those offerings, and if those complaints

¹⁰ AT&T's assertion on page 3 is that "end user customers of IXC's that operate in the intensely competitive interexchange marketplace are free to challenge the lawfulness of [interexchange service] offerings, and if those complaints are successful they are entitled to obtain damages where warranted."

are successful they are entitled to obtain appropriate relief – including damages” while access customers of LECs filing streamlined tariffs cannot get damages/refunds (AT&T Petition, pp. 3, 18). Chillicothe knows of no instance during the last decade where an IXC customer used Section 208 or any other complaint process to challenge the lawfulness of an IXC’s rates, and/or was awarded damages or a refund upon a finding that the IXCs rates were unjust and/or unreasonable. Given that AT&T and other IXCs have been classified as non-dominant carriers and relieved of tariff and rate of return obligations, it is difficult to imagine how or why a toll customer would pursue or hope to win such a challenge against their rates. Put simply, the alleged Section 10(b) “competitive effect” put forward by AT&T does not exist.

Instead, AT&T’s forbearance request would eliminate the public interest benefits of the “deemed lawful” provision, particularly regulatory certainty and revenue stability. LECs, IXCs, end users and the Commission all benefit from a system wherein IXCs are encouraged to challenge access rates before they go into effect rather than sitting back for as much as two years after the final Rate of Return Reports for a monitoring period are filed (which may be over 4 and a half years after the access rates were actually charged and paid) and then filing complaints seeking refunds. Even if AT&T showed any significant inclination to pass refunds and access rate reductions through to its toll customers, it is unlikely that many of the toll customers affected by the unlawful access rates would ever realize any benefits from the belated refunds. In contrast, by encouraging challenges to rates to be made as early as possible, the present Section 204(a)(3) system lets LECs and IXCs and the Commission resolve access charge disputes rapidly, and permits IXCs to incorporate their access costs into the rates of their current toll customers.

In addition, the current Section 204(a)(3) system provides a small measure of increased revenue stability that is needed to encourage and enable rural LECs to invest in broadband and other infrastructure improvements. Under the pre-1996 system, some small and mid-sized LECs maintained substantial idle cash reserves for two-to-four years in case one or more of their IXC customers obtained retroactive refunds for alleged over-earnings. With the implementation of Section 204(a)(3), small and mid-sized LECs now know quickly whether their interstate access rates will become effective or will be challenged (and possibly reduced). Whereas market and technology changes continue to wreak havoc with demand, expenses and revenue streams, those LECs whose rates become effective and are “deemed lawful” gain at least a small measure of revenue stability.

III

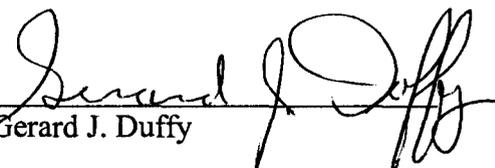
Conclusion

AT&T’s “forbearance” petition must be dismissed outright because Section 10(c) does not authorize a customer to petition for forbearance from a regulation or provision imposed upon a carrier or a carrier’s service. Rather, the Section 10(c) petition mechanism, including its “deemed granted” provision, are expressly reserved for use by carriers that request forbearance from regulation imposed upon themselves or their services. If AT&T and other customers, competitors and third parties are permitted to hijack the forbearance mechanism for their own ends, the results will include a significant increase in the Commission’s administrative burdens and an increase risk that important statutory and regulatory provisions would be “deemed” eliminated if the Commission could not act in time.

Moreover, even if AT&T’s petition was authorized under Section 10(c), it should be denied because it wholly fails to satisfy the three-part standard for forbearance in Section 10(a)

of the Act. First, the requested “forbearance” is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with LECs filing interstate access tariffs are just and reasonable and are not unjustly or unreasonably discriminatory. Rather, there are numerous formal and informal constraints on the 48 entities against which AT&T’s petition is directed, including: (a) informal negotiations among LECs, IXCs and the Commission’s staff; (b) petitions for rejection and/or suspension of LEC tariffs pursuant to Section 204(a)(1) of the Act; (c) suspensions by the Commission pursuant to Section 204(a)(1) of the Act; (d) complaints under Section 208 of the Act; (e) the collection and monitoring of annual Rate of Return Reports; and (f) rate prescription proceedings under Section 205 of the Act. Second, the requested “forbearance” is not necessary for the protection of consumers, and is unlikely to produce any perceptible benefits for AT&T toll customers. Third, the proposed “forbearance” is not consistent with the public interest, but rather will impair the regulatory certainty and revenue stability encouraged by Section 204(a)(3) without producing the curious “competitive benefit” asserted by AT&T.

Respectfully submitted,
**THE CHILLICOTHE TELEPHONE
COMPANY**

By 
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Dated: January 30, 2004

ATTACHMENT A

**Non-Price Cap Companies
Rate of Return Summary
January 1, 2001 - December 31, 2002
Summary of Reports Filed April 1, 2003**

Prepared by Katie Rangos, Industry Analysis Division, April 15, 2003.

Name of Company				Switched Traffic Sensitive			
	Interstate	Common Line	Special Access	End Office	Information	Local Transport	Total
National Exchange Carrier Association	12.70 %	12.40 %	14.52 %	-	-	-	12.62 %
1 ACS of Anchorage	20.05	12.42	16.95	45.35 %	(0.31) %	21.49 %	35.41
2 ALLTEL Alabama, Inc.	10.76	11.80	18.10	9.42		3.47	7.58
3 ALLTEL Arkansas, Inc.	12.95	11.80	12.53	8.99	(9,355.47)	20.81	16.12
4 ALLTEL Carolina, Inc.	8.82	11.80	(0.06)	10.31	(2,020.31)	4.57	8.24
5 ALLTEL Florida, Inc.	9.71	11.80	5.94	(4.46)		4.11	1.53
6 ALLTEL Georgia Properties	8.19	8.44	3.29	7.88	(5,981.88)	15.05	11.30
7 ALLTEL Kentucky, Inc.	5.25	11.80	(8.08)	12.46		2.53	9.72
8 ALLTEL Mississippi, Inc.	11.30	11.80	8.90	11.07		8.32	9.80
9 ALLTEL Missouri, Inc.	11.99	11.80	12.94	13.14		10.74	11.97
10 ALLTEL New York, Inc.	10.33	11.80	2.98	30.04	(12,202.60)	7.80	18.56
11 ALLTEL Oklahoma Properties	11.20	11.80	12.38	11.03		4.91	10.00
12 ALLTEL Pennsylvania, Inc.	10.42	11.80	7.45	12.21	(12,326.38)	8.12	9.73
13 ALLTEL South Carolina, Inc.	9.81	11.80	8.12	6.82		(0.05)	4.49
14 Sugar Land Telephone Co.	10.29	11.80	8.89	20.07	79.26	3.65	10.51
15 Texas ALLTEL, Inc.	11.04	11.80	4.56	12.91		14.87	13.41
16 Western Reserve Telephone Company	10.76	11.80	8.07	11.03	(6,091.24)	15.44	11.93
17 C-R Telephone Company	9.48	14.94	101.41	3.38		(21.80)	(10.76)
18 CenturyTel of Midwest-Michigan, Inc./CenturyTel of MI., Inc.	15.73	11.25	24.58				27.74
19 CenturyTel of Ohio, Inc.	18.43	17.47	18.16				19.55
20 CenturyTel of Wisconsin, Inc.	19.24	11.25	25.02				20.11
21 Chillicothe Telephone Company, The	15.34	11.25	36.26	11.60		2.81	7.43
22 Coastal Utilities, Inc.	11.56	13.03	13.84	9.04		22.13	10.65
23 Concord Telephone Co.	16.51	11.78	44.49	14.69	181.82	14.67	14.90
24 El Paso Telephone Co.	17.75	9.82	88.57	12.06		14.01	12.20
25 Farmers Telephone Cooperative, Inc.	11.48	11.78	14.97	7.07		10.08	8.86
26 Fort Bend Telephone Co. dba TXU Communications	12.38	12.65	15.54	13.01		4.70	11.01
27 Fort Mill Telephone Company	13.80	11.92	21.93	3.91		49.78	18.83
28 Gallatin River Communications, LLC	13.64	11.31	9.58	24.56		15.09	22.17
29 Gulf Telephone Company	13.31	11.39	15.73	11.68		17.13	15.16
30 Hargray Telephone Company	9.23	14.30	6.94	(0.03)		9.25	5.09
31 Home Telephone Company, Inc.	9.63	11.77	14.97	(0.21)		6.17	0.91
32 Horry Telephone Cooperative, Inc	10.83	11.80	14.90	9.39		6.68	7.77
33 Illinois Consolidated Telephone Company	23.60	9.37	10.77	6.80		30.67	23.49
34 Lancaster Telephone Company	8.97	12.10	(1.64)	8.74		1.23	7.58
35 Moultrie Independent Telephone Company	(13.34)	13.35	(36.72)	(27.70)		71.70	(3.17)
36 Odin Telephone Exchange, Inc.	17.25		67.94	1.26		39.19	5.84
37 Puerto Rico Telephone Company	9.67	8.59	54.33	16.14	(52.54)	5.54	7.98
38 Rock Hill Telephone Company	10.20	12.02	5.42	13.17		0.09	9.37
39 Roseville Telephone Company	15.60	12.15	17.44	28.99		19.54	22.98
40 Taconic Telephone Corporation	13.65	14.15	17.52	11.31	(2,025.00)	17.47	12.00
41 Telephone Utilities Exchange Carrier Assoc.	14.66	11.25	34.82				14.47
42 TXU Communications Telephone Company, Inc.	12.12	12.77	12.94	8.07		6.22	6.01
43 Utelco, Inc.	11.20						
44 Virgin Islands Telephone Corporation	9.26	13.20	14.88	7.40	(397.26)	(2.93)	(0.17)
45 Warwick Valley Telephone Company	9.68	12.80	33.21	7.33		(10.17)	5.47
46 Winterhaven Telephone Company	12.74	11.06	31.38				10.02
47 Yates City Telephone Company	22.40	11.19	54.36	30.39		9.23	29.99
Maximum Rate of Return	23.60 %	17.47 %	101.41 %	45.35 %	181.82 %	71.70 %	35.41 %
Minimum Rate of Return	(13.34)	8.44	(36.72)	(27.70)	(12,326.38)	(21.80)	(10.76)
Weighted Arithmetic Mean	11.98	11.03	14.96	13.01	(396.53)	9.43	10.93
Standard Deviation	3.43	1.87	12.85	8.83	1469.29	7.12	6.38

ATTACHMENT B

Interstate Rate of Return Summary *
Years 1997 through 2002
Price-Cap Companies Reporting FCC Form 492A
(Final Reports for 1997 Through 2001 and Initial Report for 2002) ¹

Prepared by Katie Rangos, Industry Analysis Division, April 15, 2003.

Reporting Entity	2002	2001	2000	1999	1998	1997
1 BellSouth Telecommunications, Inc.	19.27 %	21.25 %	22.83 %	20.99 %	20.80 %	17.91 %
2 Qwest Corporation, Including Malheur and El Paso	NA	22.13	19.93	19.06	16.56	15.41
SBC Communications, Inc.						
3 Southwestern Bell Telephone Company L.P.	15.51	18.81	15.17	10.22	9.91	10.32
4 Ameritech Operating Companies	20.91	25.72	30.24	28.93	22.59	18.22
5 Nevada Bell Telephone Company	15.97	20.86	21.55	19.26	16.02	19.47
6 Pacific Bell Telephone Company	21.76	23.79	19.20	21.01	16.50	11.98
7 Southern New England Telephone Company, The	19.64	23.57	18.21	12.12	10.99	12.70
Verizon Telephone Companies						
8 Verizon Telephone Companies (Verizon FCC Tariff No. 1) (Former Bell Atlantic Companies)	11.97	12.93	13.36	13.66		
Bell Atlantic					13.88	14.73
Bell Atlantic (NYNEX)					11.40	13.72
New England Telephone and Telegraph Co. New York Telephone						
Verizon - West (Former GTE Companies)						
9 Verizon California Inc. (California - GTCA)	28.84	28.48	25.87	22.01	17.19	17.68
10 Verizon California Inc. (California - COCA)	28.24	29.80	28.74	28.28	22.71	19.16
11 Verizon California Inc. (Arizona - COAZ)	6.41	13.25	10.90	15.57	13.80	14.17
12 Verizon California Inc. (Nevada - CONV)	24.07	26.66	28.82	20.57	24.01	31.44
13 Verizon Florida Inc. (Florida - GTFL)	22.02	29.23	21.90	18.93	14.58	19.14
14 Verizon Hawaii Inc. (Hawaii - GTHI)	15.28	16.72	17.87	17.62	15.64	10.55
15 Verizon North Inc. (COPA + COQS = COPT)	39.35	39.71	41.05	39.58	45.97	36.83
16 Verizon North Inc. (Illinois - COIL)	54.01	53.67	44.51	41.03	14.11	41.14
17 Verizon North Inc. (Indiana - COIN)	46.00	46.55	47.67	41.40	34.61	33.26
18 Verizon North Inc. (Ohio - GTOH)	19.59	20.45	21.88	21.70	21.83	24.37
19 Verizon North Inc. (Pennsylvania - GTPA)	22.56	23.17	21.95	21.41	14.67	20.62
20 Verizon North Inc. (Wisconsin - GTWI)	9.81	14.16	16.99	17.85	16.08	18.75
21 Verizon North/Contel Systems of South (GTIN + GLIN = GAIN)	25.10	32.82	33.00	32.47	29.06	23.61
22 Verizon North/Contel Systems of South (GTMI + GLMI = GAMI)	16.65	17.49	16.45	15.75	13.17	15.33
23 Verizon North/GTE South (GTIL + GLIL = GAIL)	21.60	23.67	23.90	22.35	23.07	21.59
24 Verizon Northwest Inc. (Oregon - GTOR)	26.13	31.69	30.95	31.56	27.03	28.23
25 Verizon Northwest Inc. (West Coast CA - GNCA)	(5.18)	1.91	(8.35)	(9.93)	(6.85)	(25.83)
26 Verizon Northwest Inc. (Washington - COWA)	31.49	40.06	39.49	39.17	30.41	31.85
27 Verizon Northwest Inc. (Washington - GTWA)	29.00	34.03	33.26	32.91	27.33	24.41
28 Verizon Northwest Inc. (Idaho - GTID)	33.02	38.74	34.17	32.24	30.89	30.52
29 Verizon South Inc. (North Carolina - GTNC)	23.63	30.08	26.44	24.85	27.92	24.48
30 Verizon South Inc. (N. Carolina - CONC)	21.15	22.17	17.75	19.87	12.78	16.63
31 Verizon South Inc. (GTSC + COSC = GTST)	29.71	32.44	31.19	30.70		
Verizon South Inc. (Alabama - GTAL)		24.02	20.24	22.23	17.59	23.49
Verizon South Inc. (Kentucky - COKY)		30.95	20.60	9.55	5.97	6.62
Verizon South Inc. (Kentucky - GTKY)		27.21	25.07	24.03	22.34	20.57
GTE South Inc. (South Carolina - GTSC)					30.62	24.06
GTE South Inc. (S. Carolina - COSC)					26.14	25.09
32 Verizon South Inc. (Virginia - COVA)	39.94	40.69	40.85	34.74	35.19	33.65
33 Verizon South Inc. (Virginia - GTVA)	7.23	9.53	6.62	9.94	20.56	23.76
34 GTE Southwest Inc. (Texas - COTX)	12.12	11.90	12.17	17.13	14.96	18.10
35 GTE Southwest Inc. (Texas - GTTX)	20.56	24.35	21.65	21.42	16.43	14.81
36 Micronesian Telecomms. Corp. (N. Mariana Islands - GTMC)	32.75	21.83	23.58	29.24	34.45	21.17
GTE Midwest Inc. (Missouri - COMO + COCM + COEM = COMT)		20.33	17.06	15.29	12.56	12.39
GTE Midwest Inc. (Missouri - GTMO)		23.92	19.15	11.82	16.08	17.88
GTE Systems of The South (Alabama - COAL)		15.77	14.93	10.88	7.97	15.31

Interstate Rate of Return Summary *
Years 1997 through 2002
Price-Cap Companies Reporting FCC Form 492A - Continued
(Final Reports for 1997 Through 2001 and Initial Report for 2002) ¹

Prepared by Katie Rangos, Industry Analysis Division, April 15, 2003.

Reporting Entity	2002	2001	2000	1999	1998	1997
Sprint						
37 Central Telephone - Nevada	23.80 %	19.61 %	19.29 %	21.15 %	17.79 %	17.07 %
38 Sprint - Florida	29.41	25.89	27.38	27.17	26.14	20.05
39 Sprint Local Telephone Cos. - Eastern (NJ & PA)	37.78	26.21	25.62	20.87	14.59	17.36
40 Sprint Local Telephone Cos. - Midwest (MO, KS, MN, NE, WY, TX)	18.89	16.63	18.88	17.69	19.66	19.97
41 Sprint Local Telephone Cos. - North Carolina	36.64	25.56	22.23	15.92	12.55	16.54
42 Sprint Local Telephone Cos. - Northwest (OR & WA)	34.62	31.55	32.77	31.86	32.54	30.59
43 Sprint Local Telephone Cos. - Southeast (TN, VA & SC)	33.76	25.33	23.32	17.50	15.87	17.62
44 United Telephone Co. of Indiana, Inc.	41.75	35.19	38.21	28.98	24.19	26.13
45 United Telephone Co. of Ohio	30.89	27.13	20.03	20.16	17.33	13.91
Central Telephone of Illinois						18.92
All Other Companies						
46 ALLTEL Nebraska, Inc. (ALLTEL)	12.20	12.57	12.99	19.27	15.02	12.27
47 Kentucky ALLTEL - Lexington, Inc.	27.78					
48 Kentucky ALLTEL - London, Inc.	28.76					
49 CenturyTel of Northern Alabama	14.99					
50 CenturyTel of Southern Alabama	31.59					
51 Cincinnati Bell Telephone Company	28.64	30.09	28.95	25.45	17.81	20.04
52 Citizens Telecommunications Cos. (Tariff 1)	19.27	15.73	19.68	16.71	17.87	9.77
53 Citizens Telecommunications Cos. (Tariff 2)	20.67	17.30	24.05	15.74	14.29	13.25
54 Citizens Telecommunications Cos. (Tariff 3)	8.94	4.52	16.12	15.56		
55 Citizens Telecommunications Cos. (Tariff 4)	23.31	13.08	30.94			
56 Citizens Telecommunications Cos. (Tariff 5)	4.90	0.86	(11.23)			
57 Frontier Telephone of Rochester, Inc.	11.47	12.32	18.91	16.77	18.37	13.19
58 Frontier Tier 2 Concurring Companies	33.34	38.12	38.95	43.42	45.45	31.93
59 Frontier Communications of Minnesota & Iowa	31.15	25.24	33.16	35.40	29.28	28.26
60 Iowa Telecom Service Group (SAC 351167)	14.26	13.07				
61 Iowa Telecom Systems Service Group (SAC 351170 & 351178)	20.47	18.45				
62 Valor New Mexico #1164	15.88	11.45	20.67			
63 Valor New Mexico #1193	16.82	8.39	13.35			
64 Valor Oklahoma	9.28	11.65	11.22			
65 Valor Texas	10.63	5.70	5.24			
Maximum Rate of Return	54.01 %	53.67 %	47.67 %	43.42 %	47.21 %	48.69 %
Minimum Rate of Return	(5.18)	0.86	(11.23)	(9.93)	(6.85)	(25.83)
Weighted Arithmetic Mean	17.77	19.95	18.04	18.50	16.52	15.60
Standard Deviation	6.02	5.84	5.17	5.96	5.13	3.96

* The interstate rates of return reported by carriers on the FCC Form 492A may not necessarily agree with the interstate rates of return reported by the carriers on other Commission forms. For example, price-cap carriers also report interstate rates of return on the Commission's Automated Reporting Management Information System's (ARMIS) 43-01 report. The interstate rates of return reported by carriers on the ARMIS 43-0 include revenues and costs for non-price-cap services.

¹ For years 1991 - 1996, see Industry Analysis Division, Common Carrier Bureau, *Trends in Telephone Service* (August 2001).

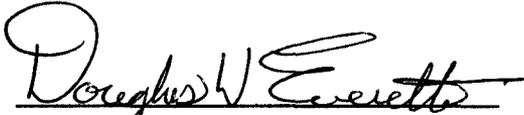
CERTIFICATE OF SERVICE

I, Douglas W. Everette, hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, and that copies of the foregoing "Comments in Opposition to AT&T's Petition for Forbearance" were served by hand delivery* or by U.S. Mail on this 30th day of January, 2004 to the persons listed below:

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Douglas W. Everette