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Tamara Preiss
Assistant General Counsel
Office of General Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: CC Docket 96-61; Policies and Rules concerning the Interstate, Interexchange Marketplace

Dear Ms. Preiss:

On August 4, 2006, AT&T Long Distance (AT&T LD) filed a recertification, pursuant to section 64.1900 of the Commission's rules, 47 CFR § 64.1900, of its compliance with the geographic rate averaging and integration requirements of section 254(g) of the Communications Act of 1934, as amended. The cover letter accompanying our certification stated that all rate integration issues, including those discussed in a footnote to our May 1, 2006, certification and in a June 27 meeting between representatives of AT&T and Commission staff have been resolved. This letter provides additional detail with respect to those matters and their resolution. It also describes additional processes implemented by AT&T LD to ensure continued compliance with all rate integration and geographic rate averaging requirements.

I. The Footnote Issues

Our May 1 certification included a footnote identifying two circumstances involving variations among the AT&T LECs, which serve as billing agents for AT&T LD, in the assignment of billing telephone numbers (BTNs) to customers with multiple working telephone numbers. One arose from variations among the AT&T LECs in assigning BTNs to business customers with multiple lines and multiple classes of local service. The other involved the historical policy of Southwestern Bell Telephone Company (SWBT), but not the other AT&T ILECs, to make available to its local customers the option of consolidating charges for working telephone numbers at different locations under one account and one BTN. As discussed below, investigation and legal analysis after the May 1 certification revealed that, in fact, AT&T was in compliance with section 254(g) with respect to these matters.

A. BTN Requirements for Different Classes of Local Service

AT&T LD offers a variety of interstate interexchange service plans to multi-line business customers. In all states where AT&T LD offers a particular interexchange service, all customers may purchase the service at the same rates and on the same terms and conditions, pursuant to AT&T LD's published Service Guides.

AT&T LD offers some of its business services on a BTN basis. BTN-based plans establish rates, terms, and conditions that apply to all working telephone numbers billed under the same BTN. For instance, there might be a stated monthly recurring charge for each BTN, regardless of how many working telephone numbers are associated with that BTN. BTN-based plans are common in the long distance industry.

In AT&T's in-region territory, AT&T LD uses the local AT&T ILEC as its billing agent. In those in-region areas, consistent with its Guidebook and historical practice, AT&T LD applies the rates, terms, and conditions of its calling plans based on the same BTNs that the AT&T ILEC has established for the customer in providing its local services. This approach is consistent with industry practice when an IXC bills through a local telephone company.

Different AT&T ILECs have different policies with respect to establishing BTNs for their multi-line business customers. On the one hand, the local service tariffs filed by AT&T California and AT&T Nevada require that multi-line business customers obtain a separate BTN for each class of service to which they subscribe. Thus a multi-line business customer in California that subscribes to one class of service (e.g., Centrex) for some of its lines and another class of service (e.g., POTS) for other lines would need to obtain at least two BTNs – one for each class of service. That customer would then receive a separate local service bill for each BTN. In other AT&T in-region states, local tariffs under the oversight of state regulators permit a multi-line business customer that mixes classes of local service to have one BTN for all of its lines. Multi-line customers with only one BTN receive one local service bill. The AT&T ILECs set their BTN policies without reference to the possible effect those local account management and billing policies may have on long distance pricing.

If the California customer in the above example wishes to subscribe to an AT&T or other IXC long distance plan that is BTN-based, it necessarily would subscribe to a separate plan for each BTN. The customer thus would purchase a minimum of two plans. In other AT&T in-region states (besides Nevada), a multi-line business customer with multiple classes of local service might be able to purchase one long distance plan for all of its lines, because those lines could be covered by the same BTN. Because it must subscribe to two (or more) long distance plans instead of just one, the California customer could potentially pay higher charges for its long distance service, to the extent its chosen long distance plan includes fixed monthly recurring charges (MRCs).

Shortly before our May 1 certification, questions were raised as to whether the different LEC practices with respect to multi-line business customers with more than one class of service posed rate integration issues. Because we had not yet conclusively resolved this issue, we included a footnote in our certification to alert the Commission to the matter. Since that time, we have further analyzed the issue and concluded that AT&T's practices were and are consistent with the federal rate integration requirement.

1. SBCLD Has Established Uniform Rates, Terms, and Conditions of Service.

Under the plain language of section 254(g) and the FCC's implementing rule (47 C.F.R. § 64.1801(b)), rate integration requires uniformity across different states in "the rates charged" by the IXC, not uniformity in the bills received by different customers. For example, IXCs can comply with the rate integration rule by establishing "identical mileage-banded interstate rates

available throughout the country,” even though the practical effect of such rates is, for instance, that customers in California pay more than customers in Kansas for calls to Missouri. Report and Order, *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 11 FCC Rcd 9564, 9569, 9588 (1996) (“1996 Implementation Order”). The rate integration rule thus allows billing differentials between customers in different states if the IXC uses “the same ratemaking methodology and rate structure” in all states. *Id.* at 9596. In the situation described above, the rates charged by AT&T LD, and the associated terms and conditions of service, are precisely the same in all states. AT&T LD is applying the same ratemaking methodology and rate structure everywhere.

2. There Is No Precedent for Requiring an IXC To Adopt Non-Uniform Rates in Order To Equalize Customer Bills, or Otherwise Holding IXCs Responsible for LEC Billing Practices.

There is no precedent that would obligate AT&T LD and other IXCs that use LEC billing services to depart from the general rule that rate integration *requires* uniform rates, terms, and conditions, and actually adopt non-uniform rates, terms, and conditions of service in an effort to guarantee equivalent billing for customers with the same long distance usage. The absence of any historical precedent for such an equalization rule has particular significance because, when Congress enacted section 254(g) in 1996, it intended to codify rate integration policies that the FCC already had developed in its decisions. *See GTE Serv. Co. v. FCC*, 224 F.3d 768, 770, 772 (D.C. Cir. 2000); First Memorandum Opinion and Order on Reconsideration, *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 12 FCC Rcd 11812, 11818-19 (1997). The fact that historical rate integration policies did not include an equalization principle thus strongly suggests that no such principle applies today.

Consistent with the lack of any precedent requiring IXCs to adjust their rates to account for differences in LEC billing agent practices, the FCC, in other contexts, has not held IXCs accountable for various practices of their LEC billing agents. *See* Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking, *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, 18 FCC Rcd 5099, ¶ 86 (2003) (“We agree with Sprint that it would be unfair to hold IXCs liable for slamming pursuant to section 258 when the unauthorized carrier change was the result of the LEC’s action.”). *See also* *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 11 FCC Rcd 9564 (1996) at n. 30 (noting that, consistent with Title II nondiscrimination principles, IXCs may decline to make their contract tariffs available when a LEC’s switching and/or billing capabilities are insufficient to support the discounted service arrangement.); *id.* at ¶ 28.

3. A Contrary View Would Impose Significant Administrative Burdens and Would be Highly Disruptive to the Industry.

Any departure by the Commission from the plain language of the statute and years of industry practice would be enormously disruptive. Under such a scenario, not only AT&T LD, but all other IXCs that offer BTN-based plans would be required either to revise the rates in their plans to compensate for the BTN policies of different LECs around the country, or terminate their billing arrangements with various LECs. Either result would pose novel and severe administrative burdens. The former result would entail significant changes in long distance pricing plans and introduce dis-uniformity into those plans. The latter would negate

longstanding billing and collection arrangements that benefit IXCs, LECs, and their customers. Smaller IXCs, in particular, would be hard hit because they tend to be the most dependent on LECs for billing and collection.

Alternatively, if current industry practices were deemed to present a rate integration problem, LECs might be forced to change their BTN policies for their local services in order to keep their IXC billing-service customers. Allowing section 254(g) to become a lever for changing LECs' account management and billing practices for their local services, as reflected in the LECs' intrastate tariffs, would intrude upon state regulators' jurisdiction over intrastate services. Moreover, effectively requiring LECs across the country to adopt uniform practices with respect to the assignment of BTNs to different classes of services would require costly changes to the local companies' billing systems.

B. Bill-ons.

The other issue referenced in the May 1 footnote was the historical policy of SWBT, but not the other AT&T ILECs, to make available to its local customers the option of consolidating charges for working telephone numbers at different locations under one account and one billing telephone number. That option was not available in other legacy SBC states, where the ILECs have consistently required their local customers to obtain different BTNs for working telephone numbers at different locations. As a result of these different ILEC policies, SWBT customers that had consolidated several working telephone numbers at different locations under one bill and that had elected a long distance plan with non-usage sensitive charges could effectively pay less for their long distance service than would a similar customer in another region, who lacked access to the bill-ons feature for local service.

Because this discrepancy was attributable to SWBT's billing practices and systems, not any lack of uniformity in AT&T LD's long-distance rates across states, we have concluded since the May 1 submission, based on substantially the same legal analysis set out above, that bill-ons did not present a rate integration issue.

In any event, SBC had decided as far back as June 2002 – even before SBC obtained long distance authority for states outside of the SWBT region - that SBC's section 272 long distance affiliate should not sell its long distance service in conjunction with SWBT's local bill-on offering. Implementing that policy decision required changes to SWBT's billing on behalf of SBC's section 272 long distance affiliate (SBC LD). Although SBC developed a plan to implement this policy, and although SBC LD believed until the fall of 2005 that this plan had been implemented by SWBT, SBC LD discovered late last year that, as a result of miscommunication, the billing changes were not implemented by SWBT. Immediately thereafter, SWBT initiated necessary actions to prevent SBC LD (now AT&T LD) customers, who are also bill-on customers for SWBT local services, from consolidating multiple locations under a single long distance plan. At the time of our May 1 certification, these steps had been completed for all but 121 business customers. As of July 19, 2006, the process was completed for all customers.

II. Issue Discussed in June 27 Meeting

As discussed in the June 27, 2006, meeting between AT&T and Commission staff,¹ AT&T recently discovered that two parallel long distance offerings of AT&T LD and SNET America, Inc. (SAI) fell out of synchronization for a time. Specifically, and as noted in that meeting, prior to September 2005, both AT&T LD and SAI made available interstate MTS service at a per-minute rate of 35 cents for peak period and 25 cents for off-peak periods with no MRC. These per-minute rates were substantially higher than the per-minute rates available in the companies' other long distance plans. In September 2005, acting under the mistaken belief that SAI was implementing a parallel change in its offering, AT&T LD eliminated the ability of new customers voluntarily to elect this no-MRC service.² Then, in November 2005, AT&T LD reduced the rate for the grandfathered customers to 18 cents/minute and added a monthly recurring charge. Unbeknownst to AT&T LD at the time, due to an apparent communications breakdown, SAI did not make concurrent changes to its comparable rate plan.

As part of its regulatory compliance efforts, AT&T LD routinely performs a quarterly review to confirm ongoing compliance with rate integration and rate averaging requirements. For reasons that remain unclear, the discrepancy between AT&T LD and SAI was not identified during those quarterly reviews. On May 1, 2006, counsel for AT&T LD became aware for the first time that SAI had not acted in parallel with AT&T LD with respect to the no-MRC offering. AT&T immediately initiated an investigation. As soon as the facts became clear, AT&T LD implemented a plan of action to eliminate the disparity that had developed between it and SAI with respect to this long distance plan. As of July 5, 2006, AT&T LD had completed an appropriate "fix" by reversing all changes that had been made to its no-MRC offering that were not replicated by SAI. As a result, AT&T LD now offers interstate MTS service at the same rates, terms and conditions as SAI – *i.e.*, at a per-minute rate of 35 cents for peak period and 25 cents for off-peak periods with no MRC.

III. AT&T's Compliance Program

Although AT&T's investigations revealed that two of the three situations described above did not involve any failure of compliance with section 254(g)'s rate integration requirement, AT&T nevertheless concluded that comprehensive review of its rate integration compliance program was warranted. Based on that review, AT&T has taken the following additional steps to maintain and better ensure ongoing compliance.

¹ Attending the meeting for AT&T were Richard Rubin, Cathy Carpino, Michelle Thomas, and Eric Einhorn. Representing the Pricing Policy Division of the Wireline Competition Bureau were Tamara Preiss, Judith Nitsche, Pamela Arluk, Douglas Sloten, and Steven Funkhouser.

² As a result of the change, new customers were not permitted to elect this service. However, new customers were temporarily placed on this calling plan if there was an error in processing their order of if their initial PIC selection did not include a choice of a calling plan.

- First, AT&T performed a comprehensive review, from the ground up, of all of its interexchange affiliates' rates, terms and conditions of service, as set forth in their Service Guidebooks. Out of the full range of services offered by each of AT&T's long distance affiliates, we discovered three instances in which a service had not been properly posted or published in the relevant guidebook and one instance involving two jurisdictions in which legacy SBC LD services were not published or capable of being billed.³ Each of these situations has been corrected.
- Second, to strengthen its compliance program in the future, AT&T has supplemented its employee training program for rate integration issues. For each of the next three years, personnel in each long-distance affiliate who are involved in developing, implementing and/or ensuring the lawfulness of new long distance plans and modifications of existing plans will receive additional training on rate averaging and rate integration requirements.
- Third, to prevent miscommunication among our multiple interexchange affiliates, such as the miscommunication that gave rise to the matter discussed in Part II, above, AT&T has implemented additional "front end" processes. Under the new process, prior to implementation of a new or modified interstate long distance plan, an affiliate must provide confirmation to relevant AT&T legal and regulatory personnel that each affected AT&T interexchange affiliate is able to implement and has committed to implementing the new or modified plan in a manner that is consistent with the rate averaging and integration requirements.
- Fourth, AT&T is expanding the scope of its quarterly audit process to make those audits more detailed and comprehensive in scope, so that, for example, there will be even greater assurance of detecting unsynchronized action between two AT&T interexchange affiliates.

If you have any questions about these or other matters, please do not hesitate to contact me.

Sincerely,

/s/ Gary Phillips
Gary Phillips

CC: Deena Shelter
Pamela Arluk

³ We also discovered a discrepancy between SAI and AT&T LD in the choice of "fallback" plan to which a customer was assigned (pending further action by the customer) if the customer became ineligible for his/her current plan.