

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

In the Matter of)	
)	
Suspension and Investigation of AT&T Special Access Tariffs)	WC Docket No. 13-299
)	
Ameritech Operating Companies Tariff F.C.C. No. 2)	Transmittal No. 1803
)	
BellSouth Telecommunications, LLC Tariff F.C.C. No. 1)	Transmittal No. 71
)	
Nevada Bell Telephone Company Tariff F.C.C. No. 1)	Transmittal No. 254
)	
Pacific Bell Telephone Company Tariff F.C.C. No. 1)	Transmittal No. 498
)	
The Southern New England Telephone Company Tariff F.C.C. No. 39)	Transmittal No. 1061
)	
Southwestern Bell Telephone Company Tariff F.C.C. No. 73)	Transmittal No. 3383

ORDER

Adopted: December 9, 2013

Released: December 9, 2013

By the Chief, Pricing Policy Division:

I. INTRODUCTION

1. Pursuant to section 204(a)(3) of the Communications Act of 1934 as amended,¹ Ameritech Operating Companies (Ameritech), BellSouth Telecommunications, LLC (BellSouth), Nevada Bell Telephone Company (Nevada Bell), Pacific Bell Telephone Company (Pacific Bell), the Southern New England Telephone Company (SNET), and Southwestern Bell Telephone Company (SWBT) (collectively AT&T) filed Transmittal Nos. 1803, 71, 254, 498, 1061, and 3383 respectively, on November 25, 2013, revising certain provisions of Ameritech's interstate access Tariff F.C.C. No. 2, BellSouth's interstate access Tariff F.C.C. No. 1, Nevada Bell's interstate tariff F.C.C. No. 1, Pacific Bell's interstate access Tariff F.C.C. No. 1, SNET's interstate access tariff F.C.C. No. 39, and SWBT's interstate access tariff F.C.C. No. 73 to become effective on December 10, 2013.² In these filings, AT&T

¹ 47 U.S.C. § 204(a)(3).

² See Ameritech Transmittal No. 1803, Tariff F.C.C. No. 2 (filed Nov. 25, 2013); BellSouth Transmittal No. 71, Tariff F.C.C. No. 1 (filed Nov. 25, 2013); Nevada Bell Transmittal No. 254, Tariff F.C.C. No. 1 (filed Nov. 25, 2013); Pacific Bell Transmittal No. 498, Tariff F.C.C. No. 1 (filed Nov. 25, 2013); SNET Transmittal No. 1061, Tariff F.C.C. No. 39 (filed Nov. 25, 2013); SWBT Transmittal No. 3383, Tariff F.C.C. No. 73 (filed Nov. 25, 2013).

proposes to eliminate for new customers and for existing customers placing new orders, certain term discount plans of sixty months or greater for a variety of special access services, including DS1 and DS3 services.³

2. Cbeyond Communications, LLC, Integra Telecom, Inc., Level 3 Communications, LLC, tw telecom, Inc. (Cbeyond, *et al.*), Consolidated Communications, Inc. (Consolidated), Sprint Corporation (Sprint), XO Communications, LLC (XO), Windstream Corporation (Windstream), and Ad Hoc Telecommunications Users Committee (Ad Hoc) (together, the Petitioners) filed petitions to reject or suspend and investigate the elimination of certain term discount plans contained in AT&T's tariff revisions.⁴ On December 6, 2013, AT&T filed its reply.⁵ In this order, we suspend for five months and set for investigation the revisions to Ameritech's interstate access Tariff F.C.C. No. 2, BellSouth's interstate access Tariff F.C.C. No. 1, Nevada Bell's interstate tariff F.C.C. No. 1, Pacific Bell's interstate access Tariff F.C.C. No. 1, SNET's interstate access tariff F.C.C. No. 39, and SWBT's interstate access tariff F.C.C. No. 73.

II. DISCUSSION

3. We find that there are substantial questions regarding the lawfulness of AT&T's tariff revisions that require further investigation. The petitions collectively cite a number of concerns about the tariff filings and raise questions about whether they comply with the Commission's rate regulations and whether they are anticompetitive or otherwise violate the Act.⁶ For example, Petitioners argue that AT&T's elimination of the discount plans effectively results in substantial price increases for special access customers, because lack of competition gives Petitioners no choice but to continue purchasing

³ Specifically, the tariff revisions eliminate the ability of new customers to sign up for or existing customers to place new orders for: (1) the Direct Analog Service and Base Rate DS1 and DS3 Services in the Ameritech tariff; (2) the SMARTPath Service, SMARTPath DS3 Transport Service, Digital Data Access Service (DDAS), Voice Grade Service, DS1 High Capacity service, BellSouth DS1 Diverse Service, LightGate DS3 service, Derived Data Channel Service (DDCS), BellSouth SPA Customer Network Management—FlexServ Service, and Federal Government Transport Plan (FGTP) DS1 High Capacity Service in the BellSouth tariff; (3) High Capacity DS1 and DS3 services and Fractional DS1 service in the Nevada Bell Tariff; (4) High Capacity DS1 and DS3 services and Fractional DS1 service in the Pacific Bell Tariff; (5) Digital Data Special Access Service, High Capacity DS1, Fractional DS1 and DS3 services, and the DS1 OPP Portability Commitment in the SNET Tariff; and (6) Voice Grade, MegaLink Data, High Capacity DS1 and MegaLink Custom service in the SWBT Tariff. *Id.*

⁴ Ameritech Operating Companies Tariff F.C.C. No. 2, *et al.*, Petition of Cbeyond, Integra, Level 3 and tw telecom to Suspend and Investigate, Transmittal Nos. 1803, 71, 254, 498, 1061, and 3383 (filed Dec. 2, 2013); Southwestern Bell Telephone Company Tariff F.C.C. No. 73 *et al.*, Petition of Consolidated Communications, Inc. to Reject or Suspend and Investigate AT&T's Proposed Tariff Revisions, Transmittal Nos. 3383, and 498 (filed Dec. 2, 2013); Ameritech Operating Companies Tariff F.C.C. No. 2, *et al.*, Petition of Sprint Corporation to Reject and to Suspend and Investigate, Transmittal Nos. 1803, 71, 254, 498, 1061, and 3383 (filed Dec. 2, 2013); Ameritech Operating Companies Tariff F.C.C. No. 2, *et al.*, Petition of XO Communications Services, LLC to Suspend and Investigate, Transmittal Nos. 1803, 71, 254, 498, 1061, and 3383 (filed Dec. 2, 2013); *see, e.g.*, Ameritech Operating Companies Tariff F.C.C. No. 2, Petition of Windstream Corporation to Suspend and Investigate, Transmittal No. 1803 (filed Dec. 2, 2013); Ameritech Operating Companies Tariff F.C.C. No. 2, *et al.*, Petition of Ad Hoc Telecommunications Users Committee to Suspend and Investigate, Transmittal Nos. 1803, 71, 254, 498, 1061, and 3383 (filed Dec. 2, 2013).

⁵ Ameritech Operating Companies Tariff F.C.C. No. 2 *et al.*, Reply of AT&T Services Inc. to Petitions to Suspend and Investigate, Transmittal Nos. 1803, 71, 254, 498, 1061, and 3383 (filed Dec. 6, 2013) (AT&T Reply).

⁶ *See generally* Cbeyond *et al.* Petition; Consolidated Petition; Sprint Petition; XO Petition Windstream Petition; Ad Hoc Petition.

DS1s and DS3s from AT&T.⁷ Moreover, Petitioners dispute AT&T's claim that the proposed changes are necessary to advance the technology transition to IP technology.⁸ Among other things, Petitioners allege that in many instances AT&T has refused to interconnect with carriers via IP-based circuits and that in many locations Ethernet services are not available.⁹ Petitioners assert that suspension and investigation of the tariff revisions is justified for a number of reasons. First, Petitioners argue that withdrawing the widely relied upon discounts for term plans beyond three years constitutes an unjust and unreasonable practice and would result in unreasonable rates, rate structures and terms and conditions under section 201(b) of the Act.¹⁰ Second, Petitioners argue that the tariff revisions are an unlawful exercise of market power that will result in unreasonable rates, terms and conditions under section 201(b) of the Act.¹¹ Third, Petitioners claim that, for price cap areas, this tariff revision constitutes a restructuring of existing rates pursuant to 61.49(e) of the Commission's rules, but AT&T failed to submit sufficient information regarding how the new price cap indices would be calculated as that rule requires.¹² Fourth, Petitioners state that they will be immediately and irreparably harmed if these revisions go into effect because they would be required to pay increased costs for new DS1 and DS3 services and if the tariff revision is allowed to become effective, it would be "deemed lawful" and any remedies available would be prospective only.¹³ Finally, Consolidated argues that by prohibiting customers from signing up for new five- or seven-year contracts, AT&T is unilaterally altering the essential terms of its contracts in violation of the *Sierra-Mobile* doctrine.¹⁴

4. AT&T asserts the purpose of the tariff filing is to prepare for a transition to all Internet Protocol (IP) network.¹⁵ AT&T also contends that Petitioners ignore the existence of substantial competitive alternatives to the tariffed services.¹⁶ As to these two points, we note that the Commission is undertaking a comprehensive review of the legal, policy, and technical considerations of an all-IP transition.¹⁷ Additionally, the Commission has an open rulemaking evaluating the scope of competition in the special access market generally and is in the process of a substantial data collection to support such analysis.¹⁸ The Commission, however, must examine the lawfulness of the subject tariff filings based on

⁷ Ad Hoc Petition at 2-4; XO Petition at 9-11; Sprint Petition at 10-14; Consolidated Petition at 3-4; Cbeyond *et al.* Petition at 8-9.

⁸ See, e.g. Consolidated Petition at 12 (arguing that the price increase impedes its ability to transition customers to Ethernet services); Cbeyond *et al.* Petition at 2 (arguing that if AT&T were solely seeking to further the transition, it could have eliminated the term commitments longer than three years without eliminating the associated discounts).

⁹ Cbeyond *et al.* Petition at 9-10; Windstream Petition at 5.

¹⁰ Cbeyond *et al.* Petition at 15; Sprint Petition at 3-4; Windstream Petition at 6-7.

¹¹ Sprint Petition at 7-9; Windstream Petition at 8.

¹² 47 C.F.R. § 61.49(e); Cbeyond *et al.* Petition at 19-20; Sprint Petition at 4-6.

¹³ Cbeyond *et al.* Petition at 22-23; Sprint Petition at 18. AT&T asks the Commission to strike Level 3's confidential data because Level 3 did not provide it to AT&T until Thursday night. See AT&T Reply at 18 n.32. Because there is sufficient basis for suspending and investigating the AT&T tariffs without relying on Level 3's data, we need not formally reach the question of whether it is appropriate to strike that data.

¹⁴ Consolidated Petition at 12-16.

¹⁵ AT&T Reply at 2-3.

¹⁶ *Id.* at 12.

¹⁷ See The IP Transition: Starting Now, Tom Wheeler, FCC Chairman (Nov. 19, 2013), <http://www.fcc.gov/blog/ip-transition-starting-now>.

¹⁸ See *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318 (2012).

the terms of the tariffs and the relevant facts and we cannot presume here the determinations that will be made in either of these proceedings.

5. AT&T responds to Petitioners' arguments by asserting that they largely reflect confusion over the purpose of the tariff revisions and how the sunset of the five and seven-year term plans will actually operate.¹⁹ AT&T argues that the mere elimination of a discount plan cannot violate section 201(b) because that section does not obligate AT&T to maintain any specific type of discount plan.²⁰ AT&T asserts next that this tariff proceeding is not a proper forum for Petitioners to challenge the reasonableness of the rates that would remain following the proposed eliminations of discount plans.²¹ AT&T further disputes that this filing is a restructured service, since AT&T's tariff revision does not replace any existing service or option.²² Finally, AT&T argues that the Petitioners that cited concerns about how these revisions would impact specific contract tariffs misunderstand how these provisions would work.²³

6. In light of the arguments and evidence presented in the Petitions, we conclude that substantial questions of lawfulness of AT&T's tariff revisions exist that require further investigation, and we suspend the tariff revisions for five months and institute an investigation.²⁴ The specific issues that will be the subject of the investigation will be identified in an upcoming designation order and may include, but not be limited to, the issues identified in this Order. We may also, by order, identify discrete issues that do not warrant further investigation.

III. *EX PARTE* REQUIREMENTS

7. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.²⁵ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations,

¹⁹ AT&T Reply at 3.

²⁰ *Id.* at 7-8.

²¹ *Id.* at 8-13.

²² *Id.* at 13-16.

²³ *Id.* at 16-17.

²⁴ Rule 1.773(a)(1)(iv) provides a standard of review applicable to petitions challenging "tariff filings made pursuant to rule 61.49(b) by carriers subject to price cap regulation." See 47 C.F.R. § 1.773(a)(1)(iv); 47 C.F.R. § 61.49(b). Because AT&T did not file these tariff revisions pursuant to section 61.49(b) of the Commission's rules, section 1.773(a)(1)(iv) of the Commission's rules does not apply to this filing. See AT&T Reply at 15 n.28 ("Rule 61.49(b) does not apply because AT&T's filing does not 'propose rates.'").

²⁵ 47 C.F.R. §§ 1.1200 et seq.

and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), and through the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, the revisions to Ameritech's interstate access Tariff F.C.C. No. 2, BellSouth's interstate access Tariff F.C.C. No. 1, Nevada Bell's interstate tariff F.C.C. No. 1, Pacific Bell's interstate access Tariff F.C.C. No. 1, SNET's interstate access tariff F.C.C. No. 39, and SWBT's interstate access tariff F.C.C. No. 73 contained in Transmittal Nos. 1803, 71, 254, 498, 1061, and 3383 ARE SUSPENDED for five months and an investigation of Transmittal Nos. 1803, 71, 254, 498, 1061, and 3383 IS INSTITUTED.

9. IT IS FURTHER ORDERED that AT&T SHALL FILE supplements within five business days from the release date of this order reflecting the suspension in each operating company tariff suspended. AT&T should cite the "DA" number on the instant order as the authority for the filing.

10. IT IS FURTHER ORDERED that the petitions filed by Cbeyond Communications, LLC, Integra Telecom, Inc., Level 3 Communications, LLC, tw telecom, Inc, Consolidated Communications, Inc., Sprint Corporation, XO Communications, LLC, Windstream Corporation, and Ad Hoc Telecommunications Users Committee ARE GRANTED to the extent indicated herein and otherwise ARE DENIED.

11. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 204(a), and pursuant to the authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, AT&T SHALL KEEP ACCURATE ACCOUNT of all amounts received that are associated with the tariff filings that are subject to this investigation.

FEDERAL COMMUNICATIONS COMMISSION

Kalpak S. Gude
Chief, Pricing Policy Division
Wireline Competition Bureau