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

CC Docket No. 88-1
Phase II

In the Matter of

Annual 1988 Access Tariff Filings

Motions To Extend Time

Pacific Bell Motion for Stay

ORDER

Adopted: January 6, 1989; Released: January 6, 1989

By the Chief, Common Carrier Bureau:

1. The BellSouth Companies (BellSouth); the Ameritech Operating Companies (Ameritech); the Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (US West); New England Telephone and Telegraph Company and New York Telephone Company (NYNEX); Cincinnati Bell Telephone Company (Cincinnati Bell); and Pacific Bell have filed motions for extension of time in the above-referenced matter.[1] Pacific Bell has also filed a motion for stay. The Ad Hoc Telecommunications Users Committee (Ad Hoc) has filed an opposition to the motions for extension of time.[2] By this Order, we grant the motions filed by BellSouth, US West, and NYNEX, and deny those filed by Pacific Bell, Ameritech, and Cincinnati Bell.

2. In its *December 27 Order*,[3] the Commission concluded that certain local exchange companies (LECs) had overstated revenue requirements in their annual 1988 access tariff filings. Accordingly, the *December 27 Order* required those LECs to file no later than January 6, 1989, one of the following: (1) tariff revisions effecting the disallowances for the remainder of the 1988 access year; (2) a plan for refunding the disallowed amounts; or (3) a letter of intention to adjust the revenue requirement in the carrier's Annual 1989 Access Tariff Filing to reflect the disallowances. If a carrier chooses the third option, the *December 27 Order* requires the carrier to file revisions to its 1989 access filing by January 13, 1989.

3. In its motion for extension of time, BellSouth states its intention to elect the third option and asks that the Commission extend the time for filing the tariff revisions from Janaury 13 until January 30. BellSouth argues that it needs additional time to fully analyze the *December 27 Order*, to determine the appropriate manner by which to reflect the disallowances for the Annual 1989 Access Tariff period, and to prepare the required tariff filing. BellSouth also states that it will file a letter of intent on January 6. US West states that it will effect any necessary disallowances through use of refunds, but asks that the Commission extend the date for submission of a detailed refund plan from January 6, 1989, until February 3, 1989. NYNEX states that it will use either the second or the third option, but that it needs additional time to analyze the disallowances. It contends that no party's interest would be harmed if the Commission extended until January 24, 1989, the date by which it must file a refund plan or file adjustments to its 1989 revenue requirement.

4. Ameritech and Cincinnati have filed extension requests that are similar to each other, in which they argue that the January 6 date should be extended. Their motions differ significantly from those summarized in the preceding paragraph in that neither carrier commits to any of the options set forth in the *December 27 Order*. Cincinnati requests an extension to January 26; Ameritech requests an extension to January 27, without prejudice to its right to seek appropriate regulatory or judicial relief.

5. Pacific Bell requests an extension of time pending Commission consideration of Pacific Bell's motion for stay.[4] In its motion for stay, Pacific Bell requests a stay of the January 6 filing requirement, pending Commission consideration of a petition for reconsideration which Pacific Bell intends to file. Pacific Bell states that it is likely to prevail on the merits, that it will suffer irreparable harm if the stay is not granted, that granting the stay will not harm any interested party, and that grant of a stay is in the public interest.

6. Ad Hoc argues in its opposition that any extension of the date to file tariff revisions to effect the ordered disallowances will obviate the possibility of comment on such revisions. Ad Hoc maintains that the comment date for the annual 1989 access tariffs filed on December 30 applies to any revisions as well, so that tariff revisions filed later than January 24 would not be subject to comment.

7. We have reviewed the motions to extend time, and have concluded that good cause has been shown for an extension of certain of the deadlines established in the *December 27 Order*. One major concern prompting the Commission to establish the schedule set forth in the *December 27 Order* is the short period remaining in the 1988 access year. If a LEC opts to effect the disallowances by revising its 1988 access tariffs, such revisions must take effect on an expedited basis before the end of the access year. Thus, those motions seeking a blanket extension of the January 6 deadline, including the deadline for filing revisions to 1988 tariffs, cannot be granted.[5]

8. We are persuaded, however, that the public interest would be served if carriers that have chosen the other options are given additional time to calculate and develop refund plans and 1989 revenue requirement adjustments. Accordingly, we are granting the motions of BellSouth, US West and NYNEX for an extension of the dates for filing refund plans (previously January 6) and 1989 tariff revisions (previously January 13). We have concluded that an extension of these filing dates is warranted, will not harm any party,[6] and will serve the public interest. We have determined that the new date[7] should coincide with the general errata filing for the annual 1989 access tariffs. Accordingly, BellSouth, NYNEX, US West, and carriers described in note 7, *supra*, must respond to the requirements of our *December 27 Order* by filing either a refund plan or an application for special permission with proposed revisions to their 1989 Access tariff filing and related cost support on the date established for general errata filings. This application for special permission must include all errata, as well as the response to the *December*

27 Order. Details of this errata filing, including establishment of the specific date, will be discussed in a forthcoming public notice.

9. We are denying Pacific Bell's motion for stay. Pacific Bell has not demonstrated that it will suffer irreparable harm through meeting the Commission's January 6 filing requirement. Pacific Bell focuses on the refund option, and claims that it will suffer irreparable harm if it has to develop and implement mechanisms both to effect refunds that it states are unjustified, and later to recover the improper refunds. Pacific Bell Motion for Stay at 8. The *December 27 Order* does not, however, require carriers to implement refunds but rather, as noted above, permits carriers to choose among three options. Moreover, for carriers that choose to make refunds, the Order requires only that a refund plan be filed by January 6, not that refunds be made to customers by that date. Accordingly, Pacific Bell's assertion of irreparable injury is not well-founded.

10. Therefore, those LECs that have indicated that they will make refunds or revise their 1989 tariffs to effect the disallowances need make no filing on January 6.[8] Those LECs that have not yet selected one of the three options set forth in the *December 27 Order* must do so by January 6, either by proposing revisions to their 1988 tariffs, or by selecting one of the other available options. Carriers selecting the third option may make the requisite tariff filing in accordance with paragraph 8, above.

11. Accordingly, IT IS ORDERED that the motions for extension of time filed by the BellSouth Companies; the Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company; and New England Telephone and Telegraph Company and New York Telephone Company ARE GRANTED to the extent specified herein.

12. IT IS FURTHER ORDERED that the motions for extension of time filed by the Ameritech Operating Companies, Pacific Bell, and Cincinnati Bell Telephone Company ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Motion for Extension of Time of BellSouth Companies, filed Dec. 29, 1988; Motion for Extension of Time of Ameritech, filed Dec. 30, 1988; Motion To Extend Time of US West, filed Dec. 30, 1988; Motion To Extend Time of NYNEX, filed Jan. 3, 1989; Motion for Extension of Time of Cincinnati Bell, filed Jan. 4, 1989; and Motion To Extend Time of Pacific Bell, filed Jan. 5, 1989.

[2] Opposition to Motions for Extension of Time of the Ad Hoc Telecommunications Users Committee, filed Jan. 4, 1989.

[3] Annual 1988 Access Tariff Filings, CC Docket No. 88-1, Phase II, Memorandum Opinion and Order, FCC 88-420, released Dec. 27, 1988 (*December 27 Order*).

[4] Pacific Bell notes that the Commission may not have time to consider and rule upon its motion for stay, filed with its motion to extend time on January 5, 1989, before the January 6, 1989, filing date, and states that a denial of its request to extend time would effectively nullify its motion for stay.

[5] In their motions, Ameritech and Cincinnati do not affirmatively commit to any of the options nor do they rule out the selection of a mid-course correction to effect the required disallowances. Since we are denying their motions, Ameritech and Cincinnati must comply with the terms of the *December 27 Order* as indicated in paragraph 8.

[6] We reject Ad Hoc's argument, since parties will have an opportunity to comment on any revisions proposed in response to our requirements here.

[7] This date will apply as well to LECs who file on January 6 pursuant to the *December 27 Order* letters of intent to adjust their 1989 revenue requirement. Under the *December 27 Order*, such carriers would otherwise be required to file tariff revisions effecting such an adjustment by January 13, 1989.

[8] NYNEX indicates that it will employ either refunds or revisions of its 1989 access tariffs. NYNEX Motion at 3. BellSouth indicates that it will modify its 1989 access tariffs. BellSouth Motion at 2. US West indicates that it will use refunds. US West Motion at 3.