

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

CC Docket No. 88-1  
Phase II

In the Matter of

Motions for Stay of

Annual 1988 Access Tariff Filings

**ORDER**

Adopted: January 30, 1989; Released: January 31, 1989

By the Chief, Common Carrier Bureau:

1. On December 27, 1988, the Commission released an Order terminating the investigation in the above-captioned docket.<sup>1</sup> The *Phase II Order* directed various local exchange carriers (LECs) to remove a total of nearly 300 million in special access revenue requirements based on the Commission's determination that these revenue requirements were inaccurately or wrongly calculated. The *Phase II Order* suggested that the affected carriers make these disallowances in one of three ways: by revising their 1988 access tariffs for the remainder of the access year (through March 31, 1989); by revising their 1989 access tariffs; or by making refunds. The *Phase II Order* established filing dates which were subsequently changed as follows: carriers electing to revise their 1988 access tariffs were to submit revisions on January 6, 1989; carriers electing to revise their 1989 access tariffs were to inform the Commission of this intention on January 6, and were to submit tariff revisions on January 31, 1989; carriers electing to make refunds were to inform the Commission of this intention on January 6, and to submit refund plans on January 31, 1989.<sup>2</sup>

2. In addition to the motions for extension of time that prompted the *January 6 Order*, we received motions for stay from Nevada Bell, Pacific Bell, and Southwestern Bell.<sup>3</sup> The Pacific Bell motion was resolved in the *January 6 Order*. The Nevada Bell motion, which is virtually identical to the Pacific Bell motion, was not considered in that Order, but is hereby denied on the basis of that determination.<sup>4</sup> Accordingly, only the Southwestern Bell motion is considered here.

3. Southwestern Bell requests that the Commission stay the *Phase II Order* as it applies to Southwestern Bell.<sup>5</sup> Southwestern Bell asserts that a stay of this Order is appropriate because there is a substantial likelihood that Southwestern Bell will prevail on the merits when it requests reconsideration of the Commission's findings, no party will be harmed if the requested stay is granted, Southwestern Bell will be irreparably harmed if the stay is denied, and the public interest will be served if the stay is granted.<sup>6</sup>

4. The standard established in *Petroleum Jobbers* requires, as Southwestern Bell acknowledges, that each of the four prerequisites be met before a stay is warranted. Without considering any other aspects of Southwestern Bell's motion, we deny the stay because Southwestern Bell has failed to show that it would be irreparably harmed by meeting the requirements of the *Phase II Order* as modified by the *January 6 Order*. Southwestern Bell's argument of irreparable harm hinges on its paying refunds, but neither Order establishes a schedule for the payment of refunds. Southwestern Bell is obliged to submit, on January 31, 1989, only a refund plan; it need not make any payments at this time.<sup>7</sup> Southwestern Bell's argument of irreparable harm is therefore not persuasive, and we find, without reaching the merits of its showing with regard to the other prongs of the *Petroleum Jobbers* test, that Southwestern Bell has not supported its motion for stay.

5. Accordingly, IT IS ORDERED that the motions for stay of Southwestern Bell Telephone Company and Nevada Bell ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock  
Chief, Common Carrier Bureau

**FOOTNOTES**

<sup>1</sup> Annual 1988 Access Tariff Filings, CC Docket No. 88-1, Phase II, Memorandum Opinion and Order, FCC 88-420, released Dec. 27, 1988 (*Phase II Order*).

<sup>2</sup> Order on Extensions of Time, CC Docket No. 88-1, Phase II, DA 89-9, released Jan. 6, 1989 (*January 6 Order*).

<sup>3</sup> Nevada Bell Motion for Stay, filed Jan. 5, 1989; Pacific Bell Motion for Stay, filed Jan. 5, 1989; Southwestern Bell Motion for Stay, filed Jan. 6, 1989.

<sup>4</sup> The *January 6 Order* held that Pacific Bell had failed to demonstrate that it would suffer irreparable harm through meeting the January 6 filing requirement. *Id.* at para. 9.

<sup>5</sup> The *Phase II Order* ordered Southwestern Bell to effect disallowances in its revenue requirement figures for Account 6362 Inside Wire Expense, Central Office Equipment (COE) Category 4.23 Special Access Investment, and Special Access Cable and Wire Facilities (C&WF). *Phase II Order* at paras. 33 and 174 and Attachments B, C, and E.

<sup>6</sup> Southwestern Bell cites to *Virginia Petroleum Jobbers Assoc'n v. Federal Power Comm'n*, 259 F.2d 921 (D.C. Cir. 1958) (*Petroleum Jobbers*). Southwestern Bell Motion at 2. In *Petroleum Jobbers*, the Court described a four-pronged test for determining whether a request for stay should be granted. These standards are whether (1) the petitioner is likely to prevail on the merits; (2) without the stay the moving party will be irreparably injured; (3) the stay will cause substantial harm to other parties; and (4) the stay is in the public interest. *Petroleum Jobbers*, 259 F.2d at 925.

<sup>7</sup> We note that Southwestern Bell elected, on January 6, the refund option rather than either of the other two options. Letter from Thomas M. Barry, Southwestern Bell Telephone Vice President, to the Secretary, Federal Communications Commission, Jan. 6, 1989.