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

CC Docket No. 88-554

In the Matter of

Local Exchange Carrier
Access Tariff Rate Levels

MEMORANDUM OPINION AND ORDER

Adopted: December 30, 1988; Released: December 30, 1988

By the Chief, Common Carrier Bureau:

I. BACKGROUND

1. By its final Order in CC Docket No. 88-326, the Commission modified the proposed effective date of the local exchange carriers' (LECs') Annual 1989 Access Tariff Filings from January 1, 1989, to April 1, 1989, and extended the terminating date of the LECs' current access tariff rates from December 31, 1988, to March 31, 1989. *See* Access Tariff Filing Schedules, 3 FCC Rcd 5495 (1988) (*Tariff Filing Deferral Order).* In that Order, the Commission noted that the LECs remain obligated to maintain their earnings within the authorized rate of return for the entire 15 months that the extended current rates will be in effect and directed this Bureau to make any necessary adjustments if the LECs fail to do so themselves.[1]

2. At the end of November 1988, the Bureau determined that, despite actual reported earnings for the first six months of 1988 well above the authorized level of 12.0 percent,[2] very few of the LECs had initiated any adjustments to retarget their rates. Accordingly, on December 12, 1988, this Bureau released an *Order To Show Cause* directing that, by December 19, 1988, LECs with combined switched traffic sensitive and special access rates of return above 12.25 percent for the first two quarters of 1988 must either file rate reductions which would retarget their rates of return to 12.0 percent or show cause why they should not be ordered to do so. *See* Local Exchange Carrier Access Tariff Rate Levels, CC Docket No. 88-554, DA 88-1869, released Dec. 2, 1988 (*Order To Show Cause).* [3]

3. In the *Order To Show Cause*, we required that any LEC which elects to file an answer must demonstrate that the excessive rate of return for the first two quarters of 1988 is not representative of its probable rate of return for the first quarter of 1989 because there are other factors which are likely to reduce its rate of return for 1989 to an allowable level. We stated that these factors may consist of changes in demand, rates, separations rules, other rules, depreciation rates, or other matters. In addition, we required that these factors must be affirmatively identified in the answer. Finally, we directed that the answering LEC must also project its Form 492 results for the first quarter of 1989. *Id.* at paras. 7-8.

4. We also required that any LEC which elects to file a transmittal must retarget its rate of return to 12.0 percent, effective no later than January 1, 1989, and continuing through March 31, 1989, after which the Annual 1989 Access Tariff Filings as scheduled to become effective. In addition, we stated:

> In order to expedite rate reductions to reduce overall earnings to a reasonable level, we will not initiate an investigation of revised tariffs that achieve that result without a precise retargetting of each element.

Id. at para. 6.

5. Four of the subject LECs filed answers to the *Order To Show Cause* and the others filed transmittals to reduce their rates.[4]

II. DISCUSSION

6. The four LECs filing answers to the *Order To Show Cause* argued that no corrective filing was necessary to ensure earnings at the authorized level. Illinois Consolidated Telephone Company (Illinois) was listed in the *Order To Show Cause* as having a cumulative rate of return for the first two quarters of 1988 of 12.27 percent.[5] It has filed an answer and supporting information indicating an actual cumulative return of 12.01 percent for the third quarter 1988, a projected cumulative return of 11.84 percent for the fourth quarter 1988, and a projected return of 11.00 percent for the first quarter 1989.[6] Illinois attributes this decline to unforeseen changes in demand, changes in certain expenses, and changes resulting from the new Part 32 Uniform System of Accounts. On December 19, 1988, Illinois filed additional information indicating that very recent changes in high-capacity demand have resulted in a decrease in its projected cumulative return for the first quarter of 1989 from 11.0 percent to 10.23 percent.

7. Chillicothe Telephone Company (Chillicothe) was listed in the *Order To Show Cause* as having a cumulative rate of return for the first two quarters of 1988 of 52.36 percent.[7] It has filed an answer indicating that it previously filed Transmittal No. 13 revising its interstate access tariff to lower its rate of return to 11.44 percent for the first quarter of 1989. It states that the excess return in its current rates results from an unduly high rate for the local transport element of its switched access tariff and that it has accordingly reduce rates for that element.[8]

8. Kerman Telephone Company (Kerman) was listed in the *Order To Show Cause* as having a cumulative rate of return for the first two quarters of 1988 of 25.21 percent.[9] It filed an answer indicating that it previously filed Transmittal No. 17 revising its interstate access tariff to lower its rate of return to below 12.0 percent. It states that the reduction has become effective, and it presents tables indicating that its third quarter 1988 cumulative return is below 10.0 percent.[10]

9. Fidelity Telephone Company (Fidelity) was listed in the *Order To Show Cause* as having a cumulative rate of return for the first two quarters of 1988 of 23.75 percent.[11] It filed an answer indicating that recent addi-

tions of fiber optic facilities to its rate base has increased its revenue requirement such that its cumulative rate of return for calendar 1988 is under 9.0 percent.[12]

10. No comments or oppositions were filed against any of the answers of the four LECs just described. We have examined the submissions of each of them and, where appropriate, we have examined the previous tariff transmittals to which they have referred. We find that each of them has sustained its burden to show cause why we should not order it to lower its access rates.

11. The remaining 20 of the 24 subject LECs listed in the *Order To Show Cause* all filed tariff reductions to retarget their rates of return to no more than the maximum allowable 12.0 percent.[13] American Telephone and Telegraph Company (AT&T) filed a petition to investigate the filings of New York Telephone Company (New York), New England Telephone and Telegraph Company (New England), and The Bell Atlantic Telephone Companies (Bell Atlantic).

12. With respect to the transmittals other than the three against which AT&T petitioned, we have reviewed the submissions and find that, with one exception, there are no compelling reasons why any of the proposed tariffs are unlawful so as to require rejection and that investigations or other similar measures are unwarranted. The one exception to this view is Bourbeuse Telephone Company (Bourbeuse), which we discuss *infra* at paragraph 22.

13. AT&T first challenges the relationship between different access service categories in the proposed reductions of New York and New England. New York projects excess earnings for the first quarter of 1989 of $2.5 million from its combined switched traffic sensitive and special access service categories.[14] New York notes, however, that in the first two quarters of 1988, it overearned on switched access and underearned on special access. For this reason, New York states, it is proposing to decrease only its switched access traffic sensitive rates. It adds that this structure will create a "smooth transition" to the rates it intends to implement on April 1, 1989.

14. AT&T's petition asserts that this adjustment is improper because it effects the necessary rate of return reductions through totaled revenues and averaged rates of return for both service categories combined. AT&T argues that the Commission's Rules require New York to effect the adjustments for each of the two categories separately, without any offsets of excesses and deficiencies between them. AT&T then recomputes New York's necessary decrease, treating service categories separately, for an additional reduction of $5.8 million to switched access rates.[15]

15. New England's proposed reduction raises similar issues of offsetting service categories. New England's projected first quarter 1989 excess earnings arise from both service categories.[16] Its returns for the first two quarters of 1988 were higher for special access than switched access, and it intends to implement lower special access rates on April 1, 1989. Accordingly, it proposes to adjust its special access rates, leaving switched traffic sensitive access rates unchanged.[17] Here too, AT&T maintains that the reductions should be reflected individually in each service category.

16. We reject AT&T's argument. As we stated in the *Order To Show Cause*, we will not require a precise retargetting of each element because we wish to expedite implementation of the rate reductions proposed in the tariff transmittals. The same principle applies equally to precise retargetting of service categories. Accordingly, we deny AT&T's petition on this issue.

17. AT&T's petition also challenges Bell Atlantic's proposed reduction. The *Order To Show Cause* listed Bell Atlantic as having a cumulative rate of return in the first two quarters of 1988 of 14.20 percent, attributable to switched traffic sensitive access service.[18] In its Transmittal No. 24, Bell Atlantic states that, based on its data for the first three quarters of 1988, it must decrease its switched traffic sensitive access rates for the first quarter of 1989 by $26.6 million, or 3 percent, to bring its rate of return into compliance with the maximum allowable rate of 12.0 percent.[19]

18. Bell Atlantic further states that the projections and the rate reductions set forth in its transmittal are essentially the same as what it will submit on December 30, 1988 in its Annual 1989 Access Tariff Filing. It claims, however, that time constraints have limited the development of full Section 61.38 cost support and that it is therefore relying on a partial waiver of those requirements for this proceeding, which it obtained previously.[20]

19. AT&T's petition argues that Bell Atlantic has failed to provide any evidence that its proposed reductions will in fact bring its rate of return into compliance with the 12.0 percent maximum.[21] Moreover, AT&T maintains that the information in Bell Atlantic's Form 492 for the first two quarters of 1988, which is the only evidence currently available, indicates that Bell Atlantic would have to decrease its switched traffic sensitive rates by $84.2 million, rather than the $26.6 million which Bell Atlantic has proposed, in order to comply with the *Order To Show Cause*. Accordingly, AT&T requests that we institute an investigation of Bell Atlantic's filing.[22]

20. We have examined Bell Atlantic's filing, AT&T's petition, and data otherwise publically available to us. On the basis of this examination, we conclude that Bell Atlantic's reductions may indeed be insufficient. While Bell Atlantic submits information concerning calculations of revenue reductions, and thus the percentage reductions in rates, it has failed to provide any showing that these particular revenue reductions will in fact be sufficient to reduce its rate of return to the allowable 12.0 percent. Recognizing that Bell Atlantic received a partial waiver of the Section 61.38 cost support requirements, it is still bound to demonstrate that its proposed decreases are in compliance with our rate of return requirements.

21. AT&T does not request that we reject or suspend Bell Atlantic's proposed decrease, nor do we think we should. The instant proceeding is by its nature limited and expedited. Moreover, the evidence which Bell Atlantic claims will support its reduction will soon be before us in the normal tariff review process of the Annual 1989 Access Tariff Filing.

22. Finally, we have reviewed the filing of Bourbeuse, and we find that it raises the same questions as Bell Atlantic's does. Accordingly, pursuant to Section 204(b) of the Communications Act, 47 U.S.C. § 204(b), we allow the proposed reductions of Bell Atlantic and Bourbeuse to take effect on a temporary basis, pending further order in the ensuing annual access filing. We also impose on Bell Atlantic and Bourbeuse accounting orders as provided in Section 204(b) of the Act, 47 U.S.C. 204(b).

III. ORDERING CLAUSES

23. Accordingly, IT IS ORDERED that the petition against the transmittals listed herein filed by American Telephone and Telegraph Company ARE GRANTED to the extent indicated herein and otherwise ARE DENIED.

24. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the tariff revisions filed by The Bell Atlantic Telephone Companies and Bourbeuse Telephone Company ARE SUSPENDED for one day.

25. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 204(a) and 204(b) of the Communications Act, 47 U.S.C. §§ 154(i), 204(a), and 204(b), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, The Bell Atlantic Telephone Companies and Bourbeuse Telephone Company shall keep accurate account of all amounts received pursuant to the revised rates which are the subject of this proceeding.

26. IT IS FURTHER ORDERED that The Bell Atlantic Telephone Companies and Bourbeuse Telephone Company shall file a supplement reflecting the suspension within 7 days of the release of this Order. For this purpose, we assign Special Permission No. 88-669 and waive 47 C.F.R. §§ 61.58 and 61.59.

27. IT IS FURTHER ORDERED that this Order is effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

APPENDIX A

United Telephone Operating Companies	Tr. No 213
The Bell Atlantic Telephone Companies	Tr. No.284
Contel Telephone Companies	Tr. No. 9
Rochester Telephone Corparation	Tr. No. 100
Southwestern Bell Telephone Company	Tr. No. 1747
The Lincoln Telephone and Telegraph Company	Tr. No. 31
New England Telephone and Telegraph Company	Tr. No. 961
New York Telephone Company	Tr. No. 948
Telephone Utilities Exchange Carrier Association	Tr. No. 81
GVNW Inc./Management	Tr. No. 21
Bourbeuse Telephone Company	
Leaf River Telephone Company	
Midland Telephone Company	
El Paso Telephone Company	
Inland Telephone Company	
Lakeside Telephone Company	
East Ascension Telephone Company	
Plains Cooperative Telephone Association	
Lajicarita Rural Telephone Cooperative	
GVNW Inc./Management	Tr. No. 18
Union Telephone Company	
Citizens Telephone Company	Tr. No. 36
Walnut Hill Telephone Company	Tr. No. 36

FOOTNOTES

[1] *Tariff Filing Deferral Order*, 3 FCC Rcd at 5496.

[2] *See* Section 65.700 of the Commission's Rules, 47 C.F.R. § 65.700.

[3] The 24 LECs subject to this requirement were listed in Appendices A and B of the *Order To Show Cause* and are likewise listed in Appendix A of the instant Order. They include seven holding companies having at least one Tier 1 operating company. The *Order To Show Cause* noted that five operating companies (which were not on the list) had already filed appropriate rate reductions. We subsequently released an erratum listing two additional operating companies which had filed such reductions. *See* Local Exchange Carrier Access Rate Levels, *Erratum*, CC Docket 88-554, DA 88-1988, released Dec. 21, 1988.

[4] *See* Appendix A to the instant Order, listing these filing LECs and their respective tariff transmittal numbers.

[5] *Order To Show Cause* at Appendices A and B.

[6] Illinois Answer at 1-3.

[7] *Order To Show Cause* at Appendices A and B.

[8] Chillicothe Answer, *passim*.

[9] *Order To Show Cause* at Appendices A and B.

[10] Kerman Answer, *passim*. Kerman's answer was filed through GVNW Inc./Management (GVNW), a consulting firm.

[11] *Order To Show Cause* at Appendices A and B.

[12] Fidelity Answer, *passim*. Fidelity filed its answer through GVNW.

[13] *See* Appendix A.

[14] New York Tr. 948, Description and Justification (D&J) at 1-2.

[15] AT&T Petition at 3-4.

[16] *Order To Show Cause* at Appendices A and B.

[17] New England Tr. 961, D&J at 1-2.

[18] *Order To Show Cause* at Appendices A and B.

[19] *Id.*

[20] Bell Atlantic Tr.284, D&J at 1-2.

[21] AT&T Petition at 4-5.

[22] *Id.*