

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

In the Matter of

Ameritech Operating Companies Transmittal Nos.
854, 914, 903

Tariff F.C.C. No. 2

ORDER

Adopted: December 6, 1995; Released: December 7, 1995

By the Chief, Tariff Division, Common Carrier Bureau:

1. On December 22, 1994 Ameritech Operating Companies (Ameritech) filed Transmittal No. 854 to introduce the rate structure for new term and volume pricing discounts for the following selected switched transport services: switched transport entrance facilities; direct trunk transport; and multiplexing. On January 17, 1995, Sprint Communications Company L.P. (Sprint) and MCI Telecommunications Corporation (MCI) filed petitions to reject or, in the alternative, to suspend and investigate Transmittal No. 854. On January 30, 1995, Ameritech filed an opposition to Sprint and MCI's petitions. On September 1, 1995, Ameritech filed Transmittal No. 914 to implement these new term and pricing discounts in Illinois.¹

2. On July 19, 1995, Ameritech filed Transmittal No. 903 to propose additional payment plans for its existing Digital Video Service (DVS) rate elements and to propose within band rate changes for three DVS rate elements for DVS. On August 3, 1995, MCI filed a petition to reject or, in the alternative, suspend and investigate and MFS Communications Company, Inc. (MFS) filed a petition to reject Transmittal 903. On August 14, 1995, Ameritech filed an opposition to the two petitions.

3. In each of these transmittals, Ameritech requests confidential treatment of its cost support data. Ameritech filed essentially the same data and made the same showing to support its request in each proceeding. Accordingly, this order will address all three requests for confidentiality.

THE TARIFF PROPOSALS

Transmittal No. 854

4. In Transmittal No. 854, Ameritech is proposing that customers can select entrance facilities, direct trunk transport, and multiplexing services over a 12, 36, or 60 month period. These services are currently available on a month-to-month basis only. In addition, Ameritech proposes to introduce a volume sensitive rate structure for LT-3 entrance facilities. Ameritech states that, although volume and term pricing plans for switched transport cannot go into effect within a study area until that study area has the required number of switched cross-connects under an operational expanded interconnection arrangement, it is proposing to establish the volume and term discounts "in advance" and will subsequently amend its tariff to reflect that it is offering the services once it has the required number of operational DS1-equivalent cross-connects per study area.² Ameritech filed portions of its cost support data for Transmittal No. 854 with a request for confidentiality in which it cited Sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457, 0.459, and Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), as justification for its confidentiality request.³

5. Sprint argues that Ameritech has failed to justify the larger term discounts for DS3s as compared to DS1s.⁴ Sprint and MCI contend that Ameritech has insufficient DS1-equivalent cross-connects to offer term and volume discounts, and for that reason the transmittal should be rejected.⁵ Both Sprint and MCI object to Ameritech's request for confidential treatment of its cost support data. They argue that public policy requires that cost support data be made available to all interested parties, and that Ameritech has violated the Commission's rules by failing to do so.⁶

6. In its reply, Ameritech contends that the discount rates will not be available until it has the threshold number of cross-connects; and that it will file a tariff amendment to specify the states where the discount will be offered.⁷ Furthermore, Ameritech maintains that the Communications Act does not prohibit offering different discounts for different types of services.⁸ Finally, Ameritech contends that it has furnished sufficient cost support data on the record to permit the Commission to make a determination regarding the lawfulness of its proposed tariff and that its request for confidential treatment for the remainder of the cost support data is appropriate given the competitive nature of the DS1 and DS3 services being offered.⁹

Transmittal No. 914

7. On September 1, 1995, Ameritech filed Transmittal No. 914 to implement the term and volume pricing plans in Illinois where there are now the requisite operational cross-connections for switched transport. In addition,

¹ See para. 7, *infra*.

² Ameritech Transmittal No. 854, Description and Justification (D&J) at 1-2. A study area generally consists of a Local Exchange Carrier's (LEC's) operating territory within a state, although there may be multiple study areas in one state. See Bell South Telecommunications, Inc., *et al*, Zone Density Pricing Plans, Order, 8 FCC Rcd 4443 (1993).

³ Letter from Michael Pabin, Ameritech to Acting Secretary, FCC, dated December 22, 1994.

⁴ Sprint Petition at 2.

⁵ *Id.* at 5-6, MCI Petition at 2.

⁶ MCI Petition at 5-8, Sprint Petition at 3-4.

⁷ Ameritech Reply at 2.

⁸ *Id.* at 3.

⁹ *Id.* at 4-5.

Ameritech requested that portions of the cost support data be kept confidential. On September 18, 1995, MCI and Sprint filed petitions to reject or, in the alternative, suspend and investigate Transmittal 914. On September 28, 1995, Ameritech filed an opposition to these petitions wherein it states that the petitioners are merely repeating the arguments they raised in response to Transmittal No. 854.

Transmittal No. 903

8. Ameritech proposes to introduce 12, 24, 48 and 60 month Optional Payment Plan (OPP) periods for the existing DVS rate elements. Currently, only daily and monthly term periods are available for this service. Ameritech also proposes within band rate changes for selected DVS rate elements. The three rate elements for DVS include DVS Local Distribution Channel (LDM); Channel Mileage (CM); and Channel Mileage Termination (CMT). According to Ameritech, the proposed modifications qualify as a new service because the addition of the OPP rate structure increases the options available to customers. Ameritech states that it has furnished the appropriate cost support data required by the Commission's rules for new services. Specifically, Ameritech furnished the cost support for the Local Distribution Channel on the record.¹⁰

9. Ameritech, however, filed the cost support for the remaining two rate elements, which includes the DS3 portion of the filing, under separate cover with a request that it be treated as confidential. In its request, Ameritech states that the cost data provided here is virtually identical to that furnished in Transmittal No. 863. Ameritech states that the Tariff Division issued an order in Transmittal No. 863 in which it granted, on its own motion, a waiver to Ameritech of the Commission's rules requiring cost support data to be filed on the record. Ameritech requests that another waiver be granted in this transmittal.¹¹

10. MCI and MFS allege that Ameritech has violated the Commission's rules requiring all cost support data for new services to be filed on the record. MFS contends that Ameritech's failure to make sufficient cost material available to the public violates the Commission's rules and impedes the tariff review process.¹² MCI takes the position that all cost support data must be publicly available and that requests for confidential treatment should be denied. MCI contends that if such a request is entertained, Ameritech has not made an adequate showing that the data warrant confidential treatment.

11. In response, Ameritech contends release of the cost support data would cause it substantial competitive harm and therefore good cause exists to grant Ameritech a waiver of the Commission's rules requiring cost support data to be on the record.¹³

DISCUSSION

12. Sections 0.453(j) and 0.455(b)(11) of the Commission's rules, 47 C.F.R. §§ 0.453(j) and 0.455(b)(11), provide that material filed in support of tariff revisions are to be publicly available. Ameritech, however, has filed requests for confidential treatment of its tariff support material filed in Transmittal Nos. 854, 914, and 903 under the requirements of Section 0.459 of the Commission's rules, 47 C.F.R. § 0.459. In Transmittal 903, Ameritech also filed a request for a waiver of Sections 0.453(j) and 0.455(b)(11) of the Commission's rules requiring cost support data to be on the record. The waiver was filed pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.¹⁴ We note that Ameritech has filed the same data in these transmittals that it filed as part of its direct case in the investigation of the tariffs filed by the LECs to provide expanded interconnection of their facilities.¹⁵ We do not make a determination regarding the merits of Ameritech's request for confidential treatment of the cost support data filed with these transmittals for the purposes of tariff review. We will, however, address these issues within the framework of the *Expanded Interconnection* tariff investigation.

13. Accordingly, the Tariff Division finds that there is good cause to waive the Commission's rules that require tariff cost support data to be publicly available. The Division, therefore, grants Ameritech's request for a waiver filed in Transmittal 903 and grants such a waiver on its own motion in Transmittal Nos. 854 and 914 of Sections 0.453(j) and 0.455(b)(11) of the Commission's rules. As a result, the cost support material filed in Transmittal Nos. 854, 914, and 903 for which Ameritech sought confidential treatment will not be publicly available. The Division grants this waiver for the limited purpose of reviewing these transmittals.

14. We have reviewed the transmittals filed by Ameritech, and all the associated pleadings in these three proceedings. We conclude that no compelling argument has been presented that the tariffs are patently unlawful so as to warrant rejection and that an investigation of any of these transmittals is not warranted at this time.

15. Accordingly, IT IS ORDERED that, pursuant to Section 0.291 and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.291, 1.3, for the purposes of this proceeding, Sections 0.453(j) and 0.455(b)(11) of the Commission's rules, 47 C.F.R. 0.453(j), 0.455(b)(11), ARE WAIVED.

16. IT IS FURTHER ORDERED that the petitions to reject, or in the alternative, to suspend and investigate Ameritech Operating Companies Tariff F.C.C. No. 2, Transmittal Nos. 854 and 914 filed by MCI Telecommunications Corporation and Sprint Communications Company L.P. ARE DENIED.

17. IT IS FURTHER ORDERED that the petition to reject, or in the alternative, to suspend and investigate Ameritech Operating Companies Tariff F.C.C. No. 2,

¹⁰ D&J at 1 and 2.

¹¹ Ameritech Operating Companies, Transmittal No. 863, 10 FCC Rcd 10856 (Tar. Div., Com. Car. Bur. 1995), application for review pending.

¹² MFS Petition at 3.

¹³ Ameritech Opposition at 2.

¹⁴ Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, provides that the Commission may, on its own motion, waive

any provisions of its rules if good cause is shown. *Cf.*, *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. (1027 (1972)); *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (discussing standards for granting waivers filed by parties).

¹⁵ *Expanded Interconnection with Local Telephone Company Facilities*, Memorandum Opinion and Order, 9 FCC Rcd 5154 (1994) (*Expanded Interconnection*).

Transmittal No. 903 filed by MCI Telecommunications Corporation and the petition to reject filed by MFS Communications Company, Inc. ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Geraldine A. Matisse
Chief, Tariff Division
Common Carrier Bureau