

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

In the Matter of

INDEPENDENT DATA
COMMUNICATIONS
MANUFACTURERS
ASSOCIATION, INC.

Petition for Declaratory Ruling That
AT&T's InterSpan Frame Relay Service
Is a Basic Service; and

AMERICAN TELEPHONE
AND TELEGRAPH COMPANY

Petition for Declaratory Ruling That
All IXC's be Subject to the Commission's
Decision on the IDCMA Petition

ORDER

Adopted: February 7, 1996; Released: February 7, 1996

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. This Order addresses Ameritech's motion requesting a 90-day extension of time in which to prepare and file tariffs for basic frame relay service.¹ On October 18, 1995, the Common Carrier Bureau (Bureau) released the *Frame Relay Order*,² which required AT&T and other facilities-based carriers to unbundle and tariff basic frame relay service within 60 days of the effective date of the Order.³ On December 7, 1995, a summary of the Order was published in the Federal Register,⁴ so the deadline for filing the requisite tariffs was February 5, 1996.

2. On November 20, 1995, AT&T filed a petition for reconsideration of the *Frame Relay Order*, challenging the Bureau's refusal to classify as private carriage either AT&T's frame relay service in general or its existing frame

relay service contracts.⁵ On February 5, 1995, in response to AT&T's request for an extension of time in which to file tariffs for frame relay service offered under contract,⁶ the Bureau released an order granting to all carriers subject to the *Frame Relay Order* an extension until May 6, 1996 of the tariff filing deadline for the purpose of filing contract tariffs required by that Order.⁷ This extension did not affect the February 5, 1996 deadline for carriers to file general basic frame relay tariffs.

3. On February 2, 1996, Ameritech requested a 90-day extension of the February 5, 1996 deadline for filing its general basic frame relay tariff.⁸ Ameritech states that it provides frame relay service through its separate subsidiary, Ameritech Advanced Data Services, Inc. (AADS).⁹ Ameritech suggests that the *Frame Relay Order* tariffing requirement is not applicable to its frame relay service offering because it claims that AADS is not a "facilities-based" carrier.¹⁰ Ameritech asserts that AT&T's pending *Frame Relay Order* reconsideration petition and the comments thereon raise issues relevant to the regulatory treatment of Ameritech's frame relay service offering.¹¹

4. Ameritech states that it has held a series of discussions with Bureau staff regarding proper categorization of its frame relay service and whether the *Frame Relay Order*'s unbundling and tariffing requirements apply to its frame relay offering.¹² Ameritech states that, due in part to the combined effects of the government furlough, an intervening federal holiday and several snow emergency closures, its most recent scheduled meeting with Bureau staff was postponed from December 21, 1995 to January 26, 1996. Ameritech states that at the January 26 meeting, Bureau staff advised Ameritech that it was subject to the *Frame Relay Order* requirement that all facilities-based carriers tariff a basic frame relay offering, notwithstanding the organizational structure through which it provides its frame relay offering. Ameritech claims that it could not reasonably have completed all drafting, cost studies, and other necessary supporting documentation required for filing a basic frame relay tariff within the ten days that remained between the January 26 meeting and the February 5 tariffing deadline.¹³

5. Ameritech states that it intends to file a petition for declaratory ruling to further clarify the status and appropriate regulatory treatment of Ameritech's frame relay offering.¹⁴ This petition will seek "a full assessment of the particular features and functionality" of Ameritech's frame relay service "especially with respect to Ameritech's configuration and mode of delivery" of the service.¹⁵

¹ Ameritech's Motion for Extension of Time (filed Feb. 2, 1996) [hereinafter Ameritech Motion].

² IDCMA Petition for Declaratory Ruling Regarding AT&T's InterSpan Frame Relay Service, DA 95-2190 (Com. Car. Bur. rel. Oct. 18, 1995) [hereinafter *Frame Relay Order*].

³ *Id.* at ¶ 61.

⁴ 60 Fed. Reg. 56124 (November 7, 1995).

⁵ Petition of AT&T Corp. for Reconsideration and Clarification, filed November 20, 1995 [hereinafter AT&T Recon. Petit.]. Because the *Frame Relay Order* was a non-hearing action taken pursuant to delegated authority, AT&T's petition for reconsideration does not automatically stay the effect of the Order. See 47 C.F.R. § 1.102(b).

⁶ Motion of AT&T Corp. for Extension of Time (filed Jan. 26, 1996) [hereinafter AT&T Motion].

⁷ IDCMA Petition for Declaratory Ruling Regarding AT&T's InterSpan Frame Relay Service, DA 96-137 (Com. Car. Bur. rel. Feb. 5, 1996) [hereinafter *Frame Relay Contract Tariff Extension Order*].

⁸ Ameritech Motion at 1.

⁹ *Id.* at 4, n.9.

¹⁰ *Id.* at 1-2.

¹¹ *Id.* at 3.

¹² *Id.* at 2.

¹³ *Id.* at 3-4.

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 4.

6. The Commission may, on its own motion, waive any provision of its rules or orders if good cause is shown.¹⁶ A showing of good cause requires the petitioner to demonstrate special circumstances or hardships that warrant deviation from the rules or orders and to show how such a deviation would be in the public interest.¹⁷

7. We conclude that grant of a limited extension of time for Ameritech to file its basic frame relay tariff pursuant to the *Frame Relay Order* is in the public interest. Although we note that Bureau staff held a series of discussions with Ameritech regarding its obligations under the Order beginning shortly after the Order's release in mid-October 1995, we are persuaded that the nearly month-long closure of the Commission hindered Ameritech's efforts to further clarify its obligations with regard to the singular organizational structure through which it offers frame relay service. We recognize that Ameritech must prepare cost studies and other documentation, an undertaking which requires significant effort, before it can file a fully supported frame relay service tariff. In light of the amount of work Ameritech must complete in order to file its tariff, we determine that 90 days is a reasonable extension period. Because we conclude that Ameritech has made a sufficient showing of special circumstances, we grant it an extension until May 6, 1996 of the deadline for filing its basic frame relay service tariff.

8. We decline at this time to address the merits of arguments raised by the petitioner or commenters in the *Frame Relay Order* reconsideration proceeding.¹⁸ We further decline in the context of this Order to address any of the substantive arguments raised or implied by Ameritech as to whether it is required to file a basic frame relay service tariff pursuant to the *Frame Relay Order*. We note that the *Frame Relay Contract Tariff Extension Order* provided all carriers subject to the *Frame Relay Order* an extension until May 6, 1996 to file contract tariffs for frame relay service arrangements entered into on or before February 5, 1996.¹⁹ With respect to filing contract tariffs required by the *Frame Relay Order*, Ameritech is subject to the terms of the *Frame Relay Contract Tariff Extension Order*. The extension we grant in the present Order applies only to Ameritech's obligation to file a basic frame relay service tariff.

9. Accordingly, IT IS ORDERED, that pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, the motion for extension of time by Ameritech IS GRANTED to the extent discussed herein.

FEDERAL COMMUNICATIONS COMMISSION

Regina M. Keeney
Chief, Common Carrier Bureau

¹⁶ 47 C.F.R. § 1.3.

¹⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), rehearing denied.

¹⁸ See Ameritech Motion at 2-3. We note that Ameritech filed

neither a petition for reconsideration nor an application for review of the *Frame Relay Order*, and did not file comments on AT&T's petition for reconsideration of that Order.

¹⁹ *Frame Relay Contract Tariff Extension Order* at ¶ 10.