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FRN: 0006-1662-76

May 24, 2010

Application No. 359

Ms. Marlene Dortch
445 12th Street SW
Washington, DC 20554
Secretary, Federal Communications Commission
Washington, D.C. 20554

Attention: Wireline Competition Bureau, Request for Special Permission

Dear Ms. Dortch:

Pursuant to Section 61.152 of the Commission's rules, Alascom hereby requests special permission to waive Section 61.38 of the Commission's Rules to file revisions to Tariff F.C.C. No. 11 (Tariff 11) without cost support. The proposed revisions would reduce the recurring and non-recurring charges for each rate element in Tariff 11 by three percent.

There is good cause for the Bureau to grant special permission and waive the cost support requirement in this case. Section 61.38 requires carriers to file cost support for proposed rate revisions. The requirement that Alascom file a tariff for its wholesale common carrier services was imposed by the Commission's *Market Structure Order*¹. That Order required Alascom to file a tariff for its common carrier services at cost-based rates. AT&T filed Tariff 11 in 1995 and it became effective in early 1996. Tariff 11 was the subject of a tariff investigation that lasted a decade, and was only terminated following the passage of the Consolidated Appropriations Act in 2004.² Paragraph (a) of the Act froze the rates in effect as of November 15, 2004 and ordered them reduced by three percent annually through the end of 2009.³ Paragraph (b) of the Act

¹ See *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers Between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands*, Memorandum Opinion and Order, 9 FCC Rcd 3023 (1994) ("*Market Structure Order*")/

² Consolidated Appropriations Act, 2005, Pub. L. 108-447, 118 Stat. 2809 (2004).

³ Section 112 of the Act provides, in pertinent part:

(a) Notwithstanding any other provision of law or any contract: (1) the rates in effect on November 15, 2004, under the tariff (the "tariff") required by FCC 94-116 (reduced three percent annually starting January 1, 2006) shall apply beginning 45 days after the date of enactment of this Act through December 31, 2009, to the sale and purchase of interstate switched wholesale service elements offered by any provider originating or terminating anywhere in the area (the "market") described in section 4.7 of the tariff (collectively the "covered services"); ...

terminated the tariff filing requirement imposed by the *Market Structure Order* and related proceedings.

In terminating the investigation into the lawfulness of Tariff 11, the Commission stated:

The document referred to as “FCC 94-116” is the Commission’s *Market Structure Order*, and the tariff required by “FCC 94-116” is Alascom’s common carrier services tariff, Tariff FCC No. 11. The legislation also states that, “all pending proceedings related to the tariff, shall terminate.” The tariff investigation is a proceeding related to the tariff. Therefore, we find that the legislation terminates the pending investigation.⁴

Although AT&T believes that the Act terminated the requirement that Alascom price its wholesale services based on cost supported rates required by 47 C.F.R. 61.38 for dominant carriers and dominant carrier services, AT&T recognizes that this interpretation has not currently been adopted by the Commission. And until some final decision is made as to how to proceed, it would appear the Commission believes certain requirements remain in effect such as an annual filing and cost supported rates-based on the fact that Alascom Tariff 11 services are still dominant carrier services.

Therefore, Alascom requests a waiver of 47 C.F.R. 61.38 for the rates that will be proposed and filed in the annual filing. Alascom proposes to continue reducing the rates by three percent a year in this annual filing similar to what was done under the Consolidated Appropriations Act for the past few years. Although the three percent reduction was not cost supported, the Act established it as a reasonable basis for rate making for Alascom Tariff 11 for the interim period which ended in 2009. As an interim measure continuing this reduction seems like a reasonable rate making methodology which will allow reduced rates and avoid the necessity of detailed cost support. Detailed cost support has not been required since 2005; it would be burdensome to have to create it now for what may be an interim period; and therefore it is in the public interest to allow the regime established by the Act to continue until the permanent status of Alascom Tariff 11 is legally resolved.

Accordingly, for the foregoing reasons, it is requested that Alascom be allowed to apply the three percent reduction as was formerly done during the period of the Consolidated Appropriations Act and waive the requirement for the filing of cost support usually required under 61.38.

In accordance with Section 61.153, this Application letter and the appropriate illustrative tariff pages are being filed electronically today via the Federal Communications Commission’s Electronic Tariff Filing System (ETFS).

(b) Effective on the date of enactment of this Act: (1) the conditions described in FCC 95-334 and the related conditions imposed in FCC 94-116, FCC 95-427, and FCC 96-485; and (2) all pending proceedings relating to the tariff, shall terminate. ...

⁴ See *Investigation of Alascom, Inc. Interstate Transport and Switching Services Tariff FCC No. 11*, Order, FCC 05-182 (2006) (“*Termination Order*”). ¶ 5.

Payment in the amount of \$815.00 has been electronically transmitted to the US Bank in St. Louis, Missouri, in accordance with the fee program procedures. The Form 159 is being transmitted electronically via ETFS as a proprietary document. These actions have been committed on the date established as the issued (filed) date as reflected above.

All correspondence and inquiries concerning this application should be addressed to Debra L. Clemens, Director-Federal Regulatory, (202) 457-3066, 1120 20th Street, N.W., Suite 1000, Washington, D.C. 20036.

Sincerely,

/s/ M. Robert Sutherland

Attachments:

Application Letter

Illustrative Tariff Pages