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FRN 0001-5726-76

May 23, 2013

Application No. 362

Ms. Marlene Dortch
Secretary, Federal Communications Commission
Washington, D.C. 20554

Attention: Wireline Competition Bureau, Request for Special Permission

Dear Ms. Dortch:

Pursuant to Sections 61.152 and 61.153 of the Commission's rules, Alascom hereby requests special permission for waiver of Section 61.38 of the Commission's rules and 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 almost a decade, and was only terminated following the passage of the Consolidated Appropriations Act in 2004 (Appropriations Act).[2] Paragraph (a) of the Appropriations 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 Appropriations Act terminated the conditions

[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 Appropriations 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"); …
>
> (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. …

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

Accordingly, AT&T requests a waiver of 47 C.F.R. § 61.38 for the rates that will be proposed and filed in the annual filing. As noted above, the Appropriations Act requirement to reduce rates by three percent annually expired in 2009. In subsequent years, Alascom has reduced rates by three percent, which matched the requirement of the expired legislation. Last year, Alascom proposed and was permitted to implement a six percent reduction. In this filing, Alascom proposes a three percent reduction. Rates for this type of service have gone down over the past few years and the industry contains various innovative rate plans that Alascom has not been in a position to employ due to regulatory requirements that remain in effect from the period when Alascom was the primary provider for this type of service. Today, there are alternative providers to Alascom with far more innovative pricing based on market realities. The rates will benefit all customers equally and will avoid the necessity of detailed cost support. It would be burdensome to require cost support now for what may be an interim period, and therefore it is in the public interest to allow rate reductions identical or similar to those established by the Appropriations Act to continue until the permanent status of Alascom Tariff 11 is resolved. For the foregoing reasons, Alascom requests that it be allowed to reduce rates by three percent and that the Commission waive the requirement of cost support under Section 61.38.

In accordance with 47 C.F.R. § 61.153, this Application letter and the appropriate illustrative tariff page are being filed electronically today via the Commission's Electronic Tariff Filing System (ETFS). Payment in the amount of $845.00 has been electronically transmitted to the US Bank in St. Louis, MO in accordance with the fee program procedures. Form 159 is being transmitted electronically via ETFS. These actions have been committed as the issued (filed) date as reflected above.

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[4] *See Investigation of Alascom, Inc. Interstate Transport and Switching Services Tariff FCC No. 11*, Order, 21 FCC Rcd 871 (2006) (*Termination Order)* ¶ 5.

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

Sincerely,

Robert C. Barber
General Attorney