Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Ameritech Operating Companies Revisions to Tariff F.C.C. No. 2	)	Tariff Transmittal No. 1803
BellSouth Telecommunications, LLC Revisions to Tariff F.C.C. No. 1	)	Tariff Transmittal No. 71
Nevada Bell Telephone Company Revisions to Tariff F.C.C. No. 1	)	Tariff Transmittal No. 254
Pacific Bell Telephone Company Revisions to Tariff F.C.C. No. 1	)	Tariff Transmittal No. 498
Southern New England Telephone Company Tariff F.C.C. No. 39	)	Tariff Transmittal No. 1061
Southwestern Bell Telephone Company Tariff F.C.C. No. 73	)	Tariff Transmittal No. 3383

Petition to Suspend and Investigate

The Ad Hoc Telecommunications Users Committee (“Ad Hoc”) urges the Commission to suspend and investigate the tariff transmittals captioned above, for the reasons discussed in greater detail below.

I. AT&T's Proposed Tariff Revisions Would Substantially Increase Prices for Competitively-Sensitive Services

The rate increases that subscribers to special access term plans will be forced to absorb as a result of AT&T's proposed restructuring are in many cases quite substantial. As an example, the best rate available for a DS1 Channel Termination offered in Density Zone 1 under SWBT's existing tariff is $90 per month with a seven-year term commitment.[1] If AT&T's proposed restructuring takes effect, the best available monthly rate for that very same DS1 Channel Termination will increase by $22 (a 24% increase) to $112 per month (under a three-year term commitment).[2] The price increase for customers presently subscribing to five-year term plans is almost as great. The existing Density Zone 1 Channel Termination monthly rate with a five-year term is $92; it would be subject to a $20 per month increase (22%) under AT&T's proposed restructure.

AT&T's proposed restructuring will impact not only the rate for new channel termination installations that will be available only under three-year or shorter term plans but also the rates for circuits being purchased today under five- and seven-year term plans as those plans expire. Assuming for purposes of discussion that approximately 1/7th of SWBT's DS1 Channel Terminations purchased under seven-year term plans expire each year, almost 15% of the existing base would be subject to a minimum increase of 24% next year alone under the proposed restructure, and 20% of those same channel terminations

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1 SWBT Transmittal # 3383, SWBT FCC #73, 5th revised sheet 7-189.54.

2 *Id*.

purchased pursuant to five-year term plans would be subject to, at the least, [3] a 22% increase.

The potential impact of AT&T's proposed restructure is not limited to channel termination prices. In the SWBT example discussed above, the rates charged for interoffice circuits (both fixed and per-mile charges) will be similarly impacted. As a result, the monthly rate available today for a circuit configuration with one channel termination and five miles of interoffice mileage at a seven-year term plan rate of between $170 and $195 (depending upon density zone) will no longer be offered. The lowest term plan price available in its place will be some 23% to 27 % higher, at $216 to $240.[4]

The rate impacts of the proposed restructuring are not all as great as the SWBT DS1 illustration above – the impacts vary by service and by AT&T Operating LEC – with some smaller and some larger.[5] Without detailed information from each of the AT&T Operating LECs regarding the specific increases that will result from the restructuring, and estimation of the average rates that will be paid by purchasers under the restructured schedule it is

[3] This is because the price differential for one- and two-year term contracts in SWBT's tariff is even more substantial. To the extent a purchaser precluded from renewing its five- or seven-year term contract opts to sign a one-year deal in its place, the comparable monthly Channel Termination price would increase to $160 per month – a 78% increase.

[4] These figures are based upon the rates on the tariff sheet referenced in note 1 above. Over a seven-year term, this difference would be close to an additional $4000 in charges per circuit.

[5] For example, the monthly price of $977.50 for BellSouth's Lightgate DS3 Channel Terminations presently purchased under a term plan between 61 and 96 months would no longer be available (for new orders or term renewals) and the best available price would be $255 per month higher (a 27% increase) at $1232.50. BellSouth Transmittal # 71, BellSouth FCC Tariff 1, 1st revised sheet 7-263.

impossible to accurately gauge either the financial and market impacts of the proposed changes or the impacts upon the API and PCI of the restructure.

The dollar differences between the wholesale special access rates of AT&T's operating companies and the retail prices of competitors reselling those circuits to end users in the retail market are likely to be less than the price increases that these competitors will be forced to absorb; retail mark-ups on these last-mile telecom services are historically slim since they are constrained by the end user's ability to purchase the circuits directly from the ILEC. Therefore, the impact upon the end user market – even for those customers that do not purchase circuits directly from AT&T's operating LECs – is likely to be substantial. Competitors at both the wholesale and retail level that utilize AT&T's special access circuits, either as an input to the products they sell or as unmodified resold circuits, will be required to flow those increases through to the retail market. Prices bid for new installations will therefore be set at levels that pass through the higher average circuit rates in AT&T's restructured special access pricing proposals. The overall competitive environment will also be weakened to the extent that competitors (in both the last mile and integrated interexchange service markets) are required to absorb increased access prices for in-place circuits that they are unable to pass through to the retail market as a result of long-term contracts.

II. AT&T's Proposed Tariff Revisions Demonstrate the Need for Commission Intervention Pending Systemic Reform of the Price Caps Rules

AT&T's tariff transmittals are a powerful demonstration of how deeply flawed the Commission's price caps rules have become and how urgently they need reform. The Commission identified these flaws nearly nine years ago when it initiated the special access rulemaking in WC Docket No. 05-25.[6] But the substantial rate increases that AT&T is seeking to impose on its customers unilaterally in the instant transmittals are painful reminders that the Commission has failed to fix the problems it identified and that the current price caps regime is fundamentally incapable of protecting customers and competition from unjust and unreasonable rates. The Commission must therefore intervene directly when carriers seek to exploit both the flaws in the current system and the delays in the system's reformation.

The Commission released its Notice of Proposed Rulemaking ("*NPRM*") for WC Docket No. 05-25 in January, 2005 to "commence a broad examination of the regulatory framework to apply to price cap local exchange carriers' (LECs) interstate special access services"[7] and in particular, to determine "what steps the Commission should take to ensure that rates for special access services remain just and reasonable"[8] under a price caps regime.[9] The *NPRM*

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6 *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25*, AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005) ("*NPRM"*).

7 *Id.* at para. 1.

8 *Id.* at para. 2.

9 The Commission sought comment "not only on traditional price cap issues, but also on the Commission's special access pricing flexibility rules." *Id*. at para. 4. The Commission

emphasized the "increased importance of special access services relative to other access services [which] warrants the initiation of a rulemaking proceeding specific to interstate special access charges."[10] In particular, the Commission observed that "business customers, commercial mobile radio service (CMRS) providers, interexchange carriers (IXCs), and competitive LECs all use special access services as a key input in many of their respective service offerings."[11]

The *NPRM* tentatively concluded that the Commission should continue to rely on a price caps regime to regulate special access rates in the future but identified "major issues with respect to implementing a price cap method to regulate special access rates" and sought comment "on how to resolve these issues."[12] Those "issues" encompassed virtually every component of the price caps rules, including the productivity or "X" factor, the growth factor, the low end adjustment, the appropriate service categories and sub-categories within the special access basket, whether special access rates must be re-set, and what re-set methodology to use.

This filing provides a useful and timely demonstration that the current price caps rules are broken. They fail to protect competition and customers from price increases even though the Commission has acknowledged record evidence in the special access rulemaking that structural flaws in the special access market

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subsequently suspended those rules pending final action in the rulemaking. *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25*, AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593, Report and Order, 27 FCC Rcd 10557 (2012) ("*Pricing Flexibility Suspension Order*").

10 *NPRM* at para. 3.

11 *Id.*

12 *Id.* at para. 25. *See generally* Section III.A of the *NPRM.*

have limited the emergence of facilities-based competitors for channel terminations; produced higher prices in de-regulated “Phase II areas” than in regulated areas; allowed ILEC DS1 and DS3 prices to rise higher than CLEC prices; enabled ILECs to impose anti-competitive terms and conditions on CLECs; and inhibited competitors’ ability to attract new customers and build new facilities.[13]

The market impact of the delay in reforming the price caps rules for special access continues to be adverse and substantial. Pending such reform, the Commission must protect competition and customers by intervening directly to suspend these tariff transmittals and investigate whether the rate levels they would establish are just and reasonable.

Respectfully submitted,

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13 *Pricing Flexibility Suspension Order,* note 9, *supra,* at n.15.