

September 12, 2017

**Ex Parte via ETFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

*Re: Windstream Petition to Reject or Suspend and Investigate Ameritech Operating Companies Tariff F.C.C. No. 2 Transmittal Nos. 1861 & 1862; BellSouth Telecommunications, LLC Tariff F.C.C. No. 1 Transmittal No. 131; Nevada Bell Telephone Company Tariff F.C.C. No. 1 Transmittal No. 302; Pacific Bell Telephone Company Tariff F.C.C. No. 1 Transmittal No. 554; Southwestern Bell Telephone Company Tariff F.C.C. No. 73 Transmittal No. 3445*

Dear Ms. Dortch,

Windstream writes in reply to several points raised in AT&T's Response to Windstream's Petition to Reject or Suspend and Investigate the above-referenced transmittals.<sup>1</sup> AT&T's Response misreads the relevant contract tariff provisions, and misdirects from the real issue—immediate price increases of up to 24%—by casting its proposals as a “necessary step” to its network deployment plan. AT&T could, but did not, propose tariff revisions that would both comply with the transition rules set out in Commission's *BDS Order*, and be consistent with AT&T's implied network deployment timeframe.

First, AT&T argues that eliminating its lowest-priced terms for DS1 and DS3 circuits does not change the contract tariffs that expressly incorporate provisions making those terms available for purchase.<sup>2</sup> AT&T does not dispute that each of the Price Flex Contract Tariffs incorporates tariff provisions that include the 5- and 7-year rates. Instead, it selectively quotes parts of the Price Flex Contract Tariffs purporting to “permit AT&T to change the underlying

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<sup>1</sup> Per section 1.204(b)(3) of the Commission's rules, Windstream files this ex parte letter in an “exempt proceeding,” and is sending copies to counsel for AT&T listed in AT&T's Response.

<sup>2</sup> See Nevada Bell Telephone Company Tariff FCC No. 1, Contract Offer No. 37; Pacific Bell Telephone Company Tariff FCC No. 1, Contract Offer No. 173; Southwestern Bell Telephone Tariff FCC No. 73, Contract Offer No. 193; Ameritech Tariff FCC No. 2, Contract Offer No. 223; and BellSouth Tariff FCC No. 1, Contract Offer No. 88 (each a “Price Flex Contract Tariff”).

tariffed terms.”<sup>3</sup> In fact, these provisions do not support AT&T’s contention, but rather affirm the integrity of the Price Flex Contract Tariff that AT&T seeks to undermine.

For illustrative purposes, AT&T quotes a section of the Price Flex Contract Tariff for Southwestern Bell stating that the terms and conditions for the relevant services “that are tariffed are governed by their respective tariff sections.”<sup>4</sup> However, that very sentence continues: “except as otherwise provided in this Contract Offer No. 193.”<sup>5</sup> The Price Flex Contract Tariff “otherwise provides” by expressly incorporating the rates set out in the general tariff.<sup>6</sup> It also makes clear that the Contract Tariff does not prevent AT&T from making changes to the general tariff, but only “to the extent permitted by applicable law.”<sup>7</sup> As Windstream explained, the *BDS Order* is “applicable law” that specifically prevents changes to existing contract tariffs during the transition period outlined in the *BDS Order*.<sup>8</sup>

AT&T also quotes a provision of the Price Flex Contract Tariff stating that “Subject Services are subject to certain rates, charges and general terms and conditions in other sections of SWBT Tariff F.C.C. No. 73 . . . and such terms and conditions may be modified through the filing of tariff changes at any time during the Contract Term.”<sup>9</sup> In the first instance, the full quotation, including the parts AT&T elides, makes clear that it is limited to certain sections of the tariff that AT&T *does not* propose to revise in the transmittal.<sup>10</sup> This provision is thus not relevant to the issues raised by Windstream. Moreover, the next sentence of the same provision states that “such tariff modifications will not change the Terms and Conditions described in this Contract Offer No. 193,”<sup>11</sup> but that is precisely what the transmittals seek to do with through changes to *other* sections of the tariff.

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<sup>3</sup> AT&T Response at 3.

<sup>4</sup> Southwestern Bell Telephone Tariff FCC No. 73 § 41.193.2(C).

<sup>5</sup> *Id.*

<sup>6</sup> *See id.* § 41.193.6(B).

<sup>7</sup> *See id.* §§ 41.193.6(B); 41.193.9.

<sup>8</sup> *See* Windstream Petition at 7-14; *See Business Data Services in an Internet Protocol Environment*, Report and Order, 32 FCC Rcd. 3459 ¶ 170 (Apr. 28, 2017).

<sup>9</sup> AT&T Response at 6.

<sup>10</sup> *See* Southwestern Bell Telephone Tariff FCC No. 73 § 41.193.5(I) (“Subject Services are subject to certain rates, charges and general terms and conditions in other sections of SWBT Tariff F.C.C. No. 73 (*Sections 2-General Regulations, 5-Ordering Access Service, and 13-Additional Engineering, Additional Labor & Miscellaneous Services*), and such terms and conditions may be modified through the filing of tariff changes at any time during the Contract Term.”) (emphasis added). AT&T’s transmittal for Southwestern Bell proposes revisions to portions of Section 7, Section 20, and Section 39.

<sup>11</sup> *Id.*

Second, the Commission should not accept AT&T's suggestion that supporting its deployment of IP-based networks requires subverting the *BDS Order*'s transition provisions. As Windstream explained in its Petition, raising the prices Windstream and others pay in the near term is far from a "necessary step" to meeting AT&T's own network transition plans.<sup>12</sup> AT&T could simply borrow its own language from the Price Flex Contract Tariffs for the solution. Rather than eliminating the 5-year and 7-year terms for newly ordered DS1 and DS3 circuits, it could revise those tariff provisions to allow AT&T to terminate those services after the expiration of the Price Flex Contract Tariffs but prior to the end of the circuits' own terms.<sup>13</sup> Because the Price Flex Contract Tariffs expire in June 2018, this solution would not "commit AT&T to maintaining legacy TDM networks into the mid-2020s."<sup>14</sup> Instead, it would enable AT&T to execute its network transition on its own schedule, but also preserve existing contract tariffs and allow customers to continue to purchase longer-term circuits, for as long as AT&T continues to provide DS1 and DS3 services over those circuits.

Please contact me if you have any questions.

Sincerely,



John Nakahata  
*Counsel to Windstream*

cc: Jay Schwarz  
Lisa Hone  
Pamela Arluk  
David Zesiger  
James P. Young  
Christopher T. Shenk  
Keith M. Krom  
Scott Murray (via fax)

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<sup>12</sup> See Windstream Petition at 18-19.

<sup>13</sup> See Southwestern Bell Telephone Tariff FCC No. 73 § 41.193.9. If AT&T were to terminate a service prior to the end of the 5- or 7-year term, it should likewise remove any early termination liability for customers that purchased those circuits. See *id.* AT&T states that it currently plans to transition

<sup>14</sup> AT&T Response at 2.