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

In the Matter of	)	
	)	
July 3, 2001	)	
Annual Access Tariff Filings	)	

<u>OPPOSITION OF TXU COMMUNICATIONS TELEPHONE COMPANY</u>

TXU Communications Telephone Company ("TXUC"), by its attorneys, opposes the June 25, 2001 Petition of AT&T Corp. ("AT&T") to the extent that it seeks suspension and investigation of: (a) the special access rates and (b) the dial equipment minutes ("DEM") factor (and corresponding switching rates) in TXUC's pending Transmittal No. 6, filed June 18, 2001.

<u>AT&T Has Failed To Meet Its Burden Of Proof</u>

Section 1.773(a)(1) of the Commission's Rules requires entities requesting suspension or rejection of tariff filings to demonstrate "the specific reasons why the protested tariff filing warrants investigation, suspension, or rejection under the Communications Act." <u>See</u> 47 C.F.R. §1.773(a)(1). The Commission requires AT&T and other petitioners to provide compelling evidence that a protested tariff conflicts with the Communications Act or a Commission regulation or order, and warrants a Commission investigation. <u>See</u> 1994 Annual Access Tariff Filings, <u>Memorandum Opinion and Order Suspending Rates</u>, DA-706, 9 FCC Rcd 3705, 3748 (1994); MCI Communications Corporation, Tariff F.C.C. No. 1, <u>Order</u>, 8 FCC Rcd 5246 (1993).

With respect to TXUC's pending transmittal, AT&T wholly fails to meet its burden of proof. Rather, AT&T's approach is to take a single estimate or factor completely out of context, and then to try to shift the burden of proof unto TXUC to prove that its proposed rates should not be suspended and investigated.

AT&T alleges that TXUC's proposed special access rates are "unjustified and unreasonable" solely because TXUC's total interstate special access revenue requirement increased "by more than $1.6 million above that projected in its 2000 annual filing" (AT&T Petition, page 32). AT&T makes no perceptible attempt to consider the reasons for this increase, or its ultimate impact (if any) upon the interstate special access rates to be paid by AT&T. Instead, AT&T claims that it cannot locate TXUC's most recent FCC Form 492 monitoring report (for the 1999-2000 reporting period), and jumps to the wholly unwarranted conclusion that it "is simply inconceivable that TXUC requires such a rate increase to attain the Commission's authorized rate of return on investment of 11.25 percent" (Id.). As a matter of law, AT&T's out-of-context revenue requirement "increase" and "inconceivable" surmise fall far short of the specific reasons and compelling evidence required to meet its burden of proof for suspension and investigation of the proposed changes in TXUC's interstate special access rates.

AT&T's petition does not expressly attack TXUC's interstate DEM allocation factor or the proposed TXUC interstate switching rate revisions affected by this factor. Rather, the only carrier specifically named in the DEM portion of the petition is ALLTEL-NC (Id., page 34). However, AT&T claims that "several LECs have proposed substantial and unexplained increases to their interstate allocation DEM factors" (Id., page 33), and includes TXUC on the second page of the chart attached to its petition as

Exhibit 14. To the extent that inclusion on Exhibit 14 means that AT&T intends to include TXUC among the "several LECs" whose DEM factors its is challenging, TXUC notes that the only "evidence" that AT&T presents is that DEM factors "have been decreasing" in general, and that a regression analysis conducted by AT&T indicates that such factors "should continue to decline" (Id., pages 33 and 34). Again, AT&T makes no perceptible effort to determine (much less, to present evidence) whether the increase in TXUC's DEM factor might to due to reasonable and appropriate changes specifically related to TXUC. And again, AT&T's generalities and surmises fall far short of the specific reasons and compelling evidence required to meet its burden of proof for suspension and investigation of TXUC's tariff filing.

There Are Reasonable Explanations For
The Increase In TXUC's Special Access Revenue Requirement

TXUC's total interstate special access revenue requirement increased from $3,535,147 in its 2000 annual access tariff filing to $5,141,596 in its 2001 annual access tariff filing for several reasons, including: (1) substantial increases in TXUC's investment in, and end-user customer usage of, relatively new and rapidly growing Asynchronous Digital Subscriber Line ("ADSL") and Frame Relay services; (2) the separation impacts of increased demand for TXUC's interstate Digital Data and DS-1 high-capacity services; and (3) the fact that TXUC's 2000 interstate special access revenue requirement and rates were far below the levels necessary to earn the authorized 11.25 percent rate of return.

ADSL and Frame Relay Services. As indicated by Worksheet 14 of 51 from TXUC's 2000 annual filing and Worksheet 14 of 48 from TXUC's 2001 annual filing, over 55 percent of the increase in TXUC's total interstate special access revenue requirement from 2000 to 2001 is due to increases in its revenue requirements for ADSL Services and Frame Relay Services. TXUC has experienced large increases in demand by its end user customers for these services during the past year, and has incurred substantial new network investment costs and operating expenses to accommodate this demand. As a result, TXUC's revenue requirements for these services have increased as follows: (a) ADSL Services - Recurring: from $488,684 (2000) to $1,291,320 (2001); (b) ADSL Services - Nonrecurring: from $48,066 (2000) to $78,653 (2001); (c) Frame Relay Services - Recurring: from $210,061 (2000) to $261,728 (2001); and (d) Frame Relay Services - Nonrecurring: from $943 (2000) to $2,320 (2001).

These increases in TXUC's revenue requirements for ADSL and Frame Relay services do not affect TXUC's rates for the interstate special access services purchased by AT&T. Rather, the ADSL and Frame Relay revenue requirements are removed from TXUC's special access revenue requirement (and used to develop the rates charged by TXUC to the end user customers taking these services) before the interstate special access rates applicable to AT&T are calculated. When ADSL, Frame Relay and other items are so deleted, the difference between TXUC's net special access revenue requirements for 2000 ($2,498,212) and 2001 ($3,351,327) is reduced to $853,115.

Digital Data and DS-1 High-Capacity Services. The major portion of this residual $853,116 increase is the result of jurisdictional separations impacts of increasing demand for TXUC's interstate Digital Data and DS-1 High-Capacity services. As past and projected demand for these services continues to increase at a rapid rate, the resulting changes in separations formulas has resulted in the allocation of increasing amounts of investment and expenses to TXUC's interstate special access revenue requirement.

<u>Last Year's Rate of Return</u>. Finally, TXUC's 2000 annual access tariff filing underestimated its interstate special access revenue requirement, and issued reduced interstate special access rates that were much lower than warranted. As a result, TXUC earned only a 6.31 percent rate of return on its interstate special access services for calendar year 2000, and only a cumulative 9.40 percent rate of return on its interstate special access services for the 1999-2000 reporting period. <u>See</u> TXU Communications Telephone Company FCC Form 492, filed March 30, 2001.

TXUC has made no attempt in its 2001 annual access tariff filing to "make up" for its underearnings for special access service during the 2000 and 1999-2000 periods. However, given that TXUC's 2000 interstate special access revenue requirement was far too low to enable TXUC to earn the authorized 11.25 percent rate of return, it is not surprising that its 2001 interstate special access revenue requirement would be larger than the 2000 version.

<u>Summary</u>. In sum, AT&T's allegation that TXUC's proposed special access rates are "unjustified and unreasonable" solely because TXUC's total interstate special access revenue requirement increased "by more than $1.6 million above that projected in its 2000 annual filing" (AT&T Petition, page 32) made no perceptible attempt to consider the reasons or impacts regarding such "increase." Over 55 percent of the change was caused by increases in ADSL and Frame Relay revenue requirements that will have no impact upon the special access services and rates applicable to AT&T. The remainder of the difference is explained by the separations impacts of increases in demand for interstate Digital Data and DS-1 High Capacity services, and by the fact that TXUC's

2000 interstate special access revenue requirement was so low that TXUC earned only a 6.31 percent rate of return on its interstate special access services during the year,

There Are Reasonable Explanations For
<u>The Increase In TXUC's DEM Allocation Factor</u>

TXUC's DEM allocation factor increased from 9.2781% in its 2000 annual access tariff filing (1999 data) to 9.936% in its 2001 annual access tariff filing (2000). This was due in major part to the fact that the rapid growth in TXUC's ADSL Service has diverted a substantial amount of Internet traffic from passing through TXUC's switches. Previously, this Internet-bound traffic was required to be classified as "intrastate" traffic for jurisdictional separations purposes when it passed through TXUC's switches. However, because ADSL Service causes significant amounts of Internet traffic to by-pass TXUC's switches, the growth of ADSL Service has eliminated much of the impact of Internet traffic in reducing TXUC's DEM allocation factor. Meanwhile, TXUC's customers continue to increase their use of interstate switched access service, such that its DEM allocation factor has grown as the impact of the Internet traffic has been reduced.

In sum, notwithstanding AT&T's alleged national trends and AT&T's regression analyses, the continuing growth in the demand by TXUC's customers for interstate services, together with the diversion of substantial amounts of Internet-bound traffic via TXUC's expanding ADSL Services, has resulted in a small increase in TXUC's DEM allocation factor between its 2000 and 2001 annual tariff filings.

Conclusion

The Bureau should reject AT&T's request for suspension and investigation of TXUC's pending special access and switching rates, and allow TXUC's Transmittal No. 6 to go into effect on July 3, 2001.

Respectfully submitted,
TXU COMMUNICATIONS TELEPHONE COMPANY

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Dated: June 29, 2001

CERTIFICATE OF SERVICE

I, Gerard J. Duffy, hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, and that a copy of the foregoing Opposition of TXU Communications Telephone Company was served by first class mail, facsimile or hand delivery this 29th day of June, 2001, to the persons listed below.

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