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

In the Matter of	)	
Ameritech	)	Transmittal No. 1313
Pacific Bell	)	Transmittal No. 78
Southwestern Bell	)	Transmittal No. 2908

PETITION OF AT&T CORP.

Pursuant to Section 1.773 of the Commission's rules, 47 C.F.R. § 1.773, AT&T Corp. ("AT&T") submits this petition requesting the Commission to reject or suspend and investigate the above-referenced tariffs filed by Ameritech, Pacific Bell and Southwestern Bell.

The transmittals filed by these Bell Operating Companies ("BOCs") on August 9, 2002 propose to reduce – and for new customers eliminate – the ability of carriers to order high capacity SONET-type optical services on a short-term basis. These proposed tariff changes would preclude new Ameritech customers from ordering such services for a period of less than one year, and would preclude new Pacific Bell and Southwestern Bell customers from ordering such services for a period of less than three years.

These proposed tariff changes are unlawful and must be rejected. First, the discontinuance of shorter term services is not just, reasonable or in the public interest. The mandatory long-term contracts remove carriers' flexibility to meet short-term capacity requirements with corresponding short-term contracts. On the contrary, the proposed tariff revisions force carriers to enter into inefficient long-term contracts for capacity, thereby increasing carriers' costs and end-user customers' rates.

Second, Southwestern Bell's tariff establishes monthly extension rates ("MERs") that are significantly above the existing rates previously paid by Southwestern Bell's customers. But Southwestern Bell fails to explain how these MERs would impact the relationship between its actual price index ("API") and price cap index ("PCI"), as required by the Commission's price cap rules. Even worse, it appears that the impact of these tariff changes would increase Southwestern Bell's revenues above applicable PCI limits, and Southwestern Bell has not provided the necessary explanations to justify increasing its API.

For the foregoing reasons, the Commission must reject or suspend and investigate the tariffs filed by Ameritech, Pacific Bell and Southwestern Bell.[1]

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[1]A tariff is subject to rejection when it is *prima facia* unlawful, in that it demonstrably conflicts with the Communications Act or a Commission rule, regulation or order. *See, e.g., American Broadcasting Companies, Inc.* v. *AT&T*, 663 F.2d 133, 138 (D.C. Cir. 1980); *MCI* v. *AT&T*, 94 F.C.C.2d 332, 340-41 (1983). Suspension and investigation are appropriate where a tariff raises substantial issues of lawfulness. *See AT&T* (Transmittal No. 148), Memorandum Opinion and Order, 56 RR2d 1503 (1984); *ITT* (Transmittal No. 2191), 73 F.C.C.2d 709, 716 n.5 (1979) (citing *AT&T*, 46 F.C.C.2d 81, 86 (1974)).

I. LOCKING UP CUSTOMERS BY ELIMINATING THEIR ABILITY PROSPECTIVELY TO ORDER HIGH-CAPACITY SPECIAL ACCESS SERVICES ON A SHORT-TERM BASIS IS NOT JUST AND REASONABLE, NOR IS IT IN THE PUBLIC INTEREST.

As noted, the tariffs of Ameritech, Pacific Bell and Southwestern Bell each propose changes that would limit the ability of new customers to order high-capacity special access services for periods of less than one year (for Ameritech customers) or three years (for Pacific Bell and Southwestern Bell customers).[2] These new restrictions substantially limit the options available to access customers seeking additional capacity on a prospective basis, and likely will substantially increase these customers' costs. For example, a carrier in Southwestern Bell's region that experiences an unexpected need for additional capacity will now be forced to order service for at least three years, rather than ordering service on a month-to-month basis. Thus, the proposed tariff restrictions would not only limit customer choice, but would do so in an anticompetitive manner, *i.e.*, by "locking up" customers that may have only short-term capacity needs.

The inability to order capacity on a month-to-month or a year-to-year basis prospectively creates other practical problems that substantially increase carriers'

[2] Ameritech's proposed tariff would establish a minimum term of 12 months for OC-48/OC-48c and 36 month for OC-192 under the Optical Carrier Network Point-to-Point Service. Monthly arrangements for OCN Point to-Point or Dedicated Ring Service will be limited to existing customers. Ameritech Description and Justification ("D&J"), pp. 1-2. Pacific Bell proposes to limit the monthly rate and the 1-year rate to existing SONET Ring and Access Service Customers. Pacific Bell D&J, p. 1. And Southwestern Bell proposes to modify the minimum term period for ReliaNet Service orders to 3-year and 5-year terms, whereas that service is currently available on a 1-month and 1-year basis. Southwestern Bell D&J, pp. 1-2. The existing month-to-month option under Southwestern Bell's Self-Healing Transport Network also will no longer be available.

costs. For example, a carrier's contract to provide capacity to an end user customer may expire shortly after the period for which that carrier has ordered capacity from the BOC. In that case, the carrier will require additional capacity for a short period of time in order to continue providing capacity to its end user customers. However, under the proposed tariffs, new customers will be forced to order the required capacity for at least one year, placing that carrier at great financial risk, especially if the carrier is unable to find end user customers to purchase that additional capacity after its contracts with existing end user customers expire.

Given the substantial costs that the proposed tariffs will impose on carriers and end user customers, the BOCs bear a substantial burden to justify the new tariff provisions. Amazingly, the BOCs do not even attempt to justify those provisions. Nor could they. The SBC companies already earn exorbitant returns of over 50 percent on their access services,[3] and the proposed tariff revisions would allow those BOCs to further inflate their returns. By locking customers into long-term contracts, and by imposing substantial penalties (in the form of MERs) if those contract expire, the new tariff provisions deter existing customers from seeking to purchase capacity from competing access providers. Thus, the only apparent purpose of the proposed tariff revisions is to protect BOCs from competition and to contribute to the maintenance of the BOCs' massive rates of return from access services.

[3] *See* Exhibit 1 (attached).

For these reasons, the proposed tariffs filed by Ameritech, Pacific Bell or Southwestern Bell are not just and reasonable, or in the public interest. Accordingly, the proposed tariffs must be rejected or suspended and investigated.

II. SOUTHWESTERN BELL FAILS TO DEMONSTRATE THAT THE RESTRUCTURED SERVICES DO NOT EXCEED APPLICABLE API AND PCI LIMITS.

Southwestern Bell proposes to establish MERs for its month-to-month Self-Healing Transport Network (STN) and ReliaNet Services and to apply MERs at the end of a 3-year or 5-year STN or ReliaNet term, until a new term agreement is selected or service discontinued.[4] Southwestern Bell also increases existing MERs for its Dedicated SONET Ring Services.[5] These MERs are approximately 50 percent to 75 percent higher than existing term rates.[6]

The MERs are likely to result in substantial revenue increases for Southwestern Bell. However, Southwestern Bell reports *zero* dollar increases on its revenues, apparently assuming that no customer will pay the MERs. Predictably, Southwestern Bell provides no justification or explanation for such unrealistic assumptions.

In reality, it is likely that many carriers will incur MERs. Some carriers will not require longer-term contracts, or may not be willing to be locked-in to such

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[4] Southwestern Bell D&J, pp. 1-2.

[5] Southwestern Bell D&J, p. 2.

[6] *See* Exhibit 2 (attached).

contracts, and will therefore default to the MERs. Thus, Southwestern Bell should at least have attempted to properly compute the revenues associated with the MERs.

By failing to properly compute the revenues generated by the MERs, Southwestern Bell also fails to make appropriate adjustments to its API, as required by Sections 61.46(c) and 61.47(d) of the Commission's rules, 47 C.F.R. §§ 61.46(c) and 61.47(d).[7] For this reason alone, Southwestern Bell's proposed tariff should be rejected or suspended and investigated.

Moreover, a simple analysis of Southwestern Bell's proposed tariff shows that the new MERs will likely inflate its API *above* its PCI, which triggers additional reporting burdens that it has not satisfied.[8] Although Southwestern Bell provides no legitimate estimate of the additional revenues that will be obtained under the MERs, the

[7] Section 61.46(c) states that "Any price cap tariff filing proposing rate restructuring shall require an adjustment to the API … This adjustment requires the conversion of existing rates into rates of equivalent value under the proposed structure, and then the comparison of the existing rates that have been converted to reflect restructuring to the proposed restructured rates. This calculation may require use of carrier data and estimation techniques to assign customers of the preexisting service to those services (including the new restructured service) that will remain or become available after restructuring." Section 61.47(d) states that "Any price cap tariff filing proposing rate restructuring shall require an adjustment to the affected SBI … This adjustment requires the conversion of existing rates in the rate element group into rates of equivalent value under the proposed structure, and then the comparison of the existing rates that have been converted to reflect restructuring to the proposed restructured rates. This calculation may require use of carrier data and estimation techniques to assign customers of the preexisting service to those services (including the new restructured service) that will remain or become available after restructuring."

[8] The Commission's rules prescribe that "[e]ach price cap tariff filing that proposes rates above the applicable band limits established in 61.47(e) must be accompanied by supporting materials establishing substantial cause for the proposed rates," 47 C.F.R § 61.49(3), and that "[e]ach price cap tariff filing that proposes restructuring of existing rates must be accompanied by supporting materials sufficient to make the adjustments to

(footnote continued on following page)

revenues for these charges can be estimated using the revenues for similar charges reported by Ameritech, Southwestern Bell's sister company.[9]

The extended monthly charges in Exhibits A and B of Ameritech's transmittal shows that MERs contribute to 1.12% of DDS and other special access revenues reported on Ameritech's TRPs.[10] Applying this percentage to the DDS and other special access revenues reported by Southwestern Bell, confirms that Southwestern Bell should have reported increased revenues due to the MERs of \$755,745.[11] Based on this estimate, Southwestern Bell's API exceeds its PCI limit by \$678,041.[12]

It is not surprising that the revenue increases associated with Southwestern Bell's MERs inflates its API to levels *above* its PCI – indeed, Southwestern Bell's existing API already is nearly equal its PCI.[13] According to Southwestern Bell's own estimates, its API is only \$77,704 below its PCI.[14] Thus, even a

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each affected API and SBI required by 661.46(c) and 61.47(d), respectively." 47 C.F.R. § 61.49(e).

[9] *See* Ameritech Transmittal No. 1313, Exhibit A for Rows 1-16 and Exhibit B for Rows 17-22.

[10] *See* Exhibit 3 (attached) and Ameritech RTE-1 TRP, p. 37, row 4978, column G.

[11] *See* Exhibit 3 (attached).

[12] *See* Exhibit 4 (attached).

[13] *See* IND-1 TRP, page 3, row 899, proposed Special Access Southwestern Bell PCI = 51.3778 and API = 51.3719.

[14] *See* IND-1 TRP and Exhibit 4 (attached).

de minimis increase in Southwestern Bell's demand figures would cause its API to exceed its PCI.

CONCLUSION

For the reasons stated above, the Commission should reject or suspend and investigate the Ameritech, Pacific Bell and Southwestern Bell tariff filings.

Respectfully submitted,

AT&T CORP.

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August 16, 2002

CERTIFICATE OF SERVICE

I, Judy Sello, do hereby certify that on this 16th day of August, 2002, a copy of the foregoing "Petition of AT&T Corp." was served by facsimile and U.S. first class mail, postage prepaid, on the parties named below.

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