

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

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**In the Matter of** )

**Madison River Telephone Company, LLC** )  
**Tariff F.C.C. No. 1** )  
\_\_\_\_\_ )

**Transmittal No. 9**

**AT&T PETITION TO REJECT OR SUSPEND AND INVESTIGATE**

Pursuant to Section 1.773 of the Commission's Rules, 47 C.F.R. § 1.773, AT&T Corp. ("AT&T") petitions the Commission to reject or suspend and investigate the above-captioned tariff revisions filed by the Madison River Telephone Company, LLC (hereafter "MRTC") on behalf of its affiliated local exchange carriers under Transmittal No. 9 with an effective date of October 9, 2002.<sup>1</sup>

**INTRODUCTION AND SUMMARY**

On September 24, 2002, MRTC filed Transmittal No. 9, which seeks to impose an increase in its uncollectible expense for its interstate traffic sensitive revenue requirement from zero dollars to almost \$424,000 dollars.<sup>2</sup> Like other incumbent LECs that have sought tariff amendments that would impose substantial and unprecedented costs on captive access customers, MRTC points to the bankruptcy filings of Global Crossing and WorldCom as a justification for its gigantic and sudden rate increase. MRTC D&J at 2. But MRTC's rate

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<sup>1</sup> The affiliated carriers are Gallatin River Communications, LLC ("Gallatin River") and Gulf Telephone Company ("Gulf") (collectively the "Companies").

<sup>2</sup> Transmittal No. 9, Description & Justification, Filed Sept. 24, 2002 ("MRTC D&J"), attachment entitled "Carrier Bad Debt Reserve."

increase is *not* aimed at recovering costs associated with past bankruptcies, and instead seeks to raise rates for *all* access customers based on MRTC's "theoretical" estimates of "potential future uncollectibles." *Id.* at 2-3. As with other incumbent LECs, MRTC fails to demonstrate any basis for its speculative fears that future bankruptcies may increase its bad debt expense. MRTC proffers a theoretical model to estimate the potential level of future uncollectibles, but the model is largely based on MRTC's entirely undisclosed "assumptions," including MRTC management's "opinion[s]" of the likelihood of "a bankruptcy filing by *each* of the top seven" access customers and of the "expected recoveries" if such filings occur. MRTC D&J at 3, 5. The record provides no basis to credit these assumptions, and MRTC itself concedes they were made on the basis of imperfect information. *Id.* at 5. MRTC's model provides no basis to credit its claims that there is a "potential for large uncollectibles." *Id.* at 4.

In fact, MRTC's claim that "recent bankruptcies" necessitate this enormous boost (MRTC D&J at 1) is simply astounding in light of the fact that MRTC proposed its revenue requirement just three months ago, on June 17, 2002. Nothing in the last three months – or, indeed, at any time – has occurred that would justify MRTC's attempt to so suddenly take the drastic steps provided in its transmittal. Rather, like other incumbent LECs, MRTC is protected from any risk of non-payment by access carriers through existing and longstanding tariff provisions that allow MRTC carriers to collect security deposits from carriers that present unusual risks of non-payment. Moreover, MRTC's transmittal is expressly designed to recover this incredible increase from *all* access customers. This is patently unreasonable even if MRTC had shown an increased risk of non-payment from certain carriers, because it would require carriers that pose little or no financial risk to pay inflated access rates for the risks posed by other carriers. Of course, the generalized harm to access customers – and, ultimately,

consumers – is even greater considering that non-payment risks have certainly been grossly exaggerated.

Finally, even if MRTC could show some measurable increase in costs due to risks of uncollectibles, it plainly could not show that its proposed increase (or, indeed, any increase) to its revenue requirement is necessary to provide MRTC with its allowed rate of return. To the contrary, MRTC has consistently earned in excess of its 11.25% allowed return, and is on course to do so yet again this year. The MRTC transmittal should be rejected or, at a minimum, suspended for five months and investigated.<sup>3</sup>

**I. THE MRTC TRANSMITTAL IS NOT JUSTIFIED BY ANY “NOW RATIONALLY ANTICIPATED” RISK OF UNCOLLECTIBLE REVENUE FROM ACCESS CUSTOMERS.**

MRTC claims that its proposed \$424,000 dollar increase comes as the result of MRTC’s need to establish an uncollectible reserve that was prompted by the bankruptcy filings of three carriers and “what they bode for the future of the telecommunications industry.” MRTC D&J at 2. But MRTC filed its 2002 annual access tariff filing on June 17, 2002, just over three months ago – and at that time, it claimed that its uncollectible reserve should be zero. MRTC never adequately explains what has happened since that filing that led it to reevaluate its uncollectibles requirement and increase it so substantially. To be sure, the telecommunications industry has experienced a downturn, but that fact has been evident for quite some time, and well before MRTC’s June filings. With regard to the specific instances cited by MRTC, Global Crossing filed for bankruptcy on January 28, 2002, and WorldCom’s

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<sup>3</sup> A tariff is subject to rejection when it is *prima facie* 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 Suspension Order* at 2.

financial plight was evident before MRTC's June filing.<sup>4</sup> Thus, nothing in recent events could possibly provide a valid basis for MRTC's assertion that, after only fourteen weeks, it must increase its revenue requirement by \$424,000.

But regardless of the timing of MRTC's request, it must be denied because MRTC simply has failed to provide any evidence that its uncollectibles will in fact increase by any significant amount. As AT&T and others have explained in objecting to prior incumbent LEC transmittals, there simply is no incumbent LEC bad debt crisis. MRTC points to MCI/WorldCom and Global Crossing to claim that apparently healthy carriers can quickly succumb to financial problems, but those companies' difficulties apparently resulted from massive – and unprecedented – accounting improprieties that masked their financial problems long after they would otherwise have been evident. MRTC's other access customers can hardly be painted with the financial difficulties of those companies.<sup>5</sup>

MRTC provides very speculative information to support its claims that, in the future, it will be unable to collect from remaining access carriers. Specifically, MRTC derives its proposed \$424,000 increase from a "theoretical" model to estimate the potential level of future uncollectibles, but the model relies heavily on MRTC management's subjective "opinions" and on "assumptions" that are entirely undisclosed and that MRTC itself concedes were made on the basis of imperfect information. MRTC D&J at 3-5. For example, MRTC's

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<sup>4</sup> See C. Stern, "Global Crossing Files For Bankruptcy," Washington Post, (Jan 29, 2002). Although WorldCom's accounting scandal was announced after MRTC's June filing, WorldCom was under investigation by the SEC well before and had slashed its expected revenue by a billion dollars in April, 2002. See S. Young, "WorldCom Cuts Revenue Forecast," Wall St. J. (Apr. 22, 2002).

<sup>5</sup> And, in all events, MRTC and other incumbent LECs can and are pursuing their Bankruptcy Code rights to adequate assurances of payment from Global Crossing and other bankrupt customers.

calculations reflect its management’s estimates of the “risk level” of “a bankruptcy filing by *each* of the top seven” access customers and the amounts MRTC might recover from the bankruptcy process. MRTC D&J at 3, 5. The record provides no basis to credit these assumptions, which are based on MRTC’s “management opinion about each of these carriers’ operations.” *Id.* at 3. Likewise, MRTC assumes that it will recover 12 percent of their pre-petition billings (*id.* at 6), but this estimate is based entirely on the Global Crossing bankruptcy, which may not be at all representative of future bankruptcies – if they occur at all – for other carriers. Because of these and other flaws, MRTC’s model provides no basis to credit its claims that there is a “potential for large uncollectibles.” *Id.* at 4.<sup>6</sup>

Indeed, like other incumbent LECs, MRTC apparently enjoys low levels of bad debt, as evidenced by the fact that it previously included no such expense in its annual access tariff to account for uncollectibles.<sup>7</sup> And, in fact, the MRTC companies, like other incumbent LECs, already receive sufficient protection from the risks of nonpayment by access customers, because their existing access tariffs have long permitted MRTC carriers to demand security deposits from customers with “a proven history of late payments” or with no “established credit.” *See* MRTC Tariff FCC No. 1, § 2.4.1(A), Original Page 2-28. The Commission itself

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<sup>6</sup> Indeed, MRTC admits that the “accuracy of these assumptions is not critical.” MRTC D&J at 5. According to MRTC, this is because over time, the reserve that MRTC is seeking will be automatically adjusted depending on the actual level of recoveries. *Id.* But that begs the question of whether the increase is necessary at all – the reserve can only be justified (if at all) only if uncollectibles increase in a significant manner, and MRTC simply has failed to show that such an outcome is likely.

<sup>7</sup> As AT&T has shown, other incumbent LECs generally experience bad debt levels of less than one percent. And even in the recent economic downturn that affects all of the LECs’ customers, these incumbent LECs have seen minimal increases in bad debt levels. MRTC provides no reason to believe that it has seen any larger increases in bad debt expense (and, if so, that the increases are attributable to access customers and not other customers).

prescribed that language in 1984 to balance properly the LECs' risk of nonpayment with the burden on customers. *See Investigation of Access and Divestiture Related Tariffs*, 97 F.C.C.2d 1082, 1168-70 (1984). That tariff language has been sufficient for years to protect incumbent LECs from non-payment risks, even in prior unfavorable economic circumstances. Under these circumstances, any bad debt risk that MRTC faces is purely speculative.

MRTC's transmittal is also unreasonable because, although MRTC justifies it by pointing to problems posed by bankrupt entities and customers that in the future may be unable to pay, its tariff revisions at issue here are not directed at bankrupts or even at deadbeats, but at *all* ratepaying access customers, even those with impeccable credit. Even if MRTC and other incumbent LECs could show truly increased levels of bad debt expense, this transmittal does not represent a limited, specified, and reasonable measure to recover the costs of bad debt caused by customers that can be demonstrated, by objective criteria, to present actual and unusual risks of nonpayment. Rather, the current transmittal openly seeks to require *all* customers to pay increased rates. That result would be unreasonable even if the non-payment risks faced by MRTC were substantial. But because MRTC has provided no evidence of any actual bad debt crisis, this transmittal will simply result in increased rates for customers, and higher rates of return for MRTC.

## **II. THE MRTC TRANSMITTAL IS UNNECESSARY TO ALLOW MRTC TO MEET ITS RATE OF RETURN.**

Even if MRTC could show some measurable increase in its bad debt exposure, that would still be insufficient to justify its huge revenue requirement increase. That is because MRTC provides *no* evidence that it will not collect revenues sufficient to achieve an 11.25% rate of return. Indeed, the evidence shows that MRTC will likely (once again) overearn.

On June 17, 2002, just over three months ago, MRTC filed its 2002 annual interstate access tariff filing (Transmittal Nos. 7 and 8), which provided supporting information for its projected revenue requirements, demand and traffic sensitive access rates for the prospective July 1, 2002 through June 30, 2003 tariff period. At that time, MRTC had filed revenue requirements and rates that it claimed would produce a set of rates that would yield precisely an 11.25 % rate of return for the prospective tariff period.<sup>8</sup> Now, only weeks later, MRTC asserts that its projection of bad debt costs was drastically wrong, and that it must increase rates to ensure that it will achieve a rate of return equal to 11.25 %.

MRTC's entirely unsupported assertion should be rejected. MRTC has consistently earned in excess of 11.25%.<sup>9</sup> And for the upcoming period, it is likely that the MRTC's traffic sensitive rates will achieve at least an 11.25% rate of return. MRTC's proposal to implement such a significant increase is all the more arbitrary considering that there are barely three months remaining in the current monitoring period. Given that short period, the only possible impact of such large rate increases will be to guarantee *further* inflation in its rate of return. Indeed, MRTC has already filed a preliminary FCC Form 492s for 2001 for Gallatin River and Gulf reporting combined interstate earnings of 13.15%.<sup>10</sup> Notwithstanding that fact, MRTC has *not* made any reductions in its rates to flow-through these excess earnings – even though the amount of any reductions would surely be significant and in fact would easily

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<sup>8</sup> See Transmittal No. 7, Part 36 Separation Program, Gallatin River Communications. Prospective Year-Row 110 and Transmittal No. 7, Part 36 Separation Program, Gulf Telephone Company. Prospective Year-Row 110.

<sup>9</sup> As reported in MRTC's FCC Form 492's for Gallatin River and Gulf (Sept. 28, 2001 & October 1, 2001 respectively), the Companies' reported cumulative overall interstate access returns for 2000 were 11.43% and 11.98%, respectively.

<sup>10</sup> FCC 492, Rate of Return Report, filed March 29, 2002, reports interstate earnings of 11.01% and 16.09% for Gallatin and Gulf, respectively.

surpass the \$424,000 increase that MRTC currently seeks to implement. Thus, rather than approving tariff changes that allow MRTC to further increase its rates (and its rate of return), MRTC should instead be required to flow-through its prior overearnings by implementing rate reductions.

**CONCLUSION**

For the foregoing reasons, MRTC's proposed tariff revisions should be rejected or at a minimum, suspended for the full five-month statutory period and investigated.

Respectfully submitted,

AT&T CORP.

/s/ Judy Sello

Mark C. Rosenblum  
Judy Sello  
AT&T Corp.  
Room A229  
900 Route 202/206 North  
Bedminster, New Jersey 07921  
Tel. (908) 532-1846  
Fax (908) 532-1281

David L. Lawson  
Michael J. Hunseder  
Sidley Austin Brown & Wood LLP  
1501 K Street, N.W.  
Washington, D.C. 20005  
Tel. (202) 736-8000  
Fax (202) 736-8711

*Attorneys for AT&T Corp.*

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