

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

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In the Matter of)	
)	
The Valor Telecommunications Enterprises, LLC)	Transmittal No. 37
)	
Revisions to Tariffs F.C.C. No. 1)	
)	

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") petitions the Commission to reject or suspend and investigate the above-captioned tariff revisions filed by Valor Telecommunications Enterprises, LLC ("Valor") on November 18, 2003, under Transmittal No. 37.¹ In this transmittal, Valor proposes the introduction of a non-recurring Service Date Change - Additional Dispatch charge that would apply when a customer supplements the Access Order to be completed on a new service date because the customer has not allowed the technician to complete the Access Order on a previous service date. This charge does not offer customers an increased range of options, as compared to those that exist under Valor's tariff today, and

¹ 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 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 (Wide Area Telecommunications Service)*, 46 F.C.C.2d 81, 86 (1974)).

it is thus a “restructure” under the Commission’s rules. Yet, Valor has failed to provide the requisite supporting information to demonstrate that its rates, including the proposed \$200 Service Date Change Charge - Additional Dispatch (“Additional Dispatch Charge”), do not exceed applicable price cap index limits.

Currently, Valor’s Tariff F.C.C. No. 1 states:

“[a] customer may request a change of service date on a pending Access Order prior to the service date. A change of service date is a change of the scheduled service date by the customer to either an earlier date or a later date which does not exceed 30 calendar days from the original service date. If the Telephone Company determines that the customer’s request can be accommodated without delaying service dates for orders of other customers the service date will be changed and the Service Date Change Charge as set forth in Section 20 ... will be applied to the order.”²

The tariff also provides that if a customer’s service date is changed to an earlier date and extraordinary costs are necessary to meet that date, the customer will be notified that Expedited Order Charges, as set forth in 5.1.2, will apply in addition to the Service Date Change Charge.³

Currently, Valor’s Tariff F.C.C. No. 1 does *not* include a Service Date Change - Additional Dispatch Charge. This new charge would apply when the customer supplements the Access Order to be completed on a new service date because the customer has not allowed the technician to complete the order on the previous date. Under the current tariff, the only charge that would be incurred in this circumstance is a new Service Date Change Charge. The effect of the proposed tariff revision is to essentially restructure the \$50 Service Date Change Charge, which would apply today, and impose on top of that existing charge a \$200 Additional Dispatch Charge when the

² Valor Tariff F.C.C. No. 1 § 5.4.3(A).

³ *Id.* at § 5.4.3(A)(1).

technician is unable to complete the installation. Under these circumstances, Valor's proposed Additional Dispatch Charge clearly is *not* a "new service" because it does not enlarge the range of service options already available to ratepayers, but rather constitutes a "restructure" of an existing service.⁴ The Commission's rules define a restructured service as an "offering which represents the modification of a method of charging or provisioning a service; or the introduction of a new method of charging or provisioning that does not result in a net increase in options available to customers."⁵ Valor's Additional Dispatch Charge meets the definition of a restructured service because it increases the existing rate from \$50 to \$250 per circuit when an Additional Dispatch is required on a new service date to complete the installation.⁶

Pursuant to the Commission's rules, price cap LECs that restructure their access charges are required to demonstrate that the restructure results in rates that do not exceed applicable price cap index limits.⁷ In general, this requirement is satisfied if the rate restructure change is, on the whole, revenue neutral, assuming (as is the case here)

⁴ The Commission's rules define a new service offering as a "tariff filing that provides for a class or sub-class of service not previously offered by the carrier involved and that enlarges the range of service options available to ratepayers." 47 C.F.R. § 61.3(x).

⁵ 47 C.F.R. § 61.3(l).

⁶ The \$250 includes the \$50 Service Date Change Charge plus the \$200 Service Date Change – Additional Dispatch. *See* Valor Transmittal No. 37, Tariff F.C.C. No. 1, §§ 20.3.11(B) & (C).

⁷ 47 C.F.R. § 61.49(e).

that Valor is priced at its cap for both switched and special access services.⁸ At a minimum, Valor should be required to re-file the Additional Dispatch Charge portion of Transmittal No. 37 as a restructured service. This would include the requirement for a tariff review plan (“TRP”) and rate detail to demonstrate that the rates do not exceed the applicable price cap index limits. As filed, Valor’s tariff fails to comply with Commission rules and must be rejected.

CONCLUSION

For the reasons stated above, the Commission should reject or, in the alternative, suspend and investigate Valor’s Transmittal No. 37 for the full five months and impose an accounting order.

Respectfully submitted,

AT&T CORP.

By /s/ Judy Sello

Lawrence J. Lafaro

Judy Sello

Room 3A229
One AT&T Way
Bedminster, New Jersey 07921
(908) 532-1846 (voice)
(908) 532-1218-4490 (fax)

Its Attorneys

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⁸ Valor Transmittal No. 30, filed June 16, 2003, TRP, IND-1.

CERTIFICATE OF SERVICE

I, Judy Sello, do hereby certify that on this 21st day of November, 2003, 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.

Gregory J. Vogt
Wiley Rein & Fielding LLP
1776 K Street, NW
Washington, DC 20006
Fax No.: (202) 719-7049

/s/ Judy Sello
Judy Sello