Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
July 1, 2004	)	WCB/Pricing 04-18
Annual Access Charge Filings	)	
	)	

JOINT OPPOSITION TO PETITION OF AT&T CORP.

Pursuant to Section 1.773 of the Commission's Rules, 47 C.F.R. § 1.773, and to the Commission's Order of April 19, 2004 in the above referenced proceeding,[1] Consolidated Communications of Texas Company ("CCTX") and Consolidated Communications of Fort Bend Company ("Fort Bend") (together, the "Consolidated Communications Companies"), by counsel, hereby jointly oppose the "Petition of AT&T Corp." ("Petition") filed on June 23, 2004 in the above-captioned proceeding.

I. BACKGROUND

In the Petition, AT&T requested that the Commission suspend and investigate the annual access tariff filings of several local exchange carriers ("LECs") and issue an accounting order. With respect to the Consolidated Communications Companies, AT&T alleged that:

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[1] July 1, 2004 Annual Access Charge Filings, *Order*, WCB/Pricing 04-18, DA 04-1049 (rel. April 19, 2004).

1) CCTX and Fort Bend should be required to make mid-course corrections because they appear to be earning in excess of 11.25% based on the preliminary Forms 492 filed in March 2004;[2]

2) CCTX and Fort Bend have overstated their corporate operations expenses based on AT&T's comparison of their expense levels on a per-loop basis to those of other companies;[3] and

3) Fort Bend's local switching rates are overstated based on its failure to apply the proper amount of local switching support.[4]

AT&T's arguments in favor of suspending and investigating the Consolidated Communications Companies' annual access tariff filings are not supported by the facts and are contrary to law.

II. RATE OF RETURN

AT&T claims, based on the preliminary Forms 492 filed in March 2004, that the Consolidated Communications Companies are earning in excess of the Commission-prescribed rate of return and that a mid-course correction, in the form of adjustments to 2004 rates, is necessary. AT&T's claim is both factually and legally flawed. No mid-course correction is necessary or appropriate in order to ensure that the Consolidated Communications Companies' rates – historical or prospective-- are lawful.

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[2] Petition § I.B.

[3] Petition § I.C.

[4] Petition § I.E.

A. AT&T's Claim is Factually Flawed

While it is true that the Consolidated Communications Companies' preliminary Forms 492 reflect earnings in excess of 11.25%, those reports contain unaudited and unadjusted data, including out-of-period revenues, investment, and expenses that must be removed and matched to the appropriate period. The Consolidated Communications Companies expect that their final Forms 492, which are not due until September 30, 2004, will reflect earnings at or below the Commission's rate-of-return prescription. They stated as much in their Description and Justification:

> The Companies reported preliminary earnings on their FCC Form 492s. This reflects unadjusted and unaudited data, which include out of period revenues, expenses and investment. CCC will file a final Form 492 report in September that will reflect lower overall interstate access earnings as well as lower earnings in the various access categories.[5]

B. AT&T's Claim is Legally Flawed and Seeks Retroactive Ratemaking

Although AT&T several times refers to *ACS v. FCC*[6] in the Petition, AT&T fails to appreciate the full impact of that case. AT&T's arguments turn that decision on its head by seeking to elevate rates-of-return over lawful rates. Moreover, if the Commission were to order the mid-course correction sought by AT&T, it would engage in prohibited retroactive ratemaking.

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[5] Description and Justification at p. 10.

[6] ACS of Anchorage, Inc. v. FCC, 290 F.3d 403 (D.C. Cir. 2002) ("ACS v. FCC").

In its *ACS v. FCC* decision, the D.C Circuit was crystal clear that the Commission is "empowered to ensure just and reasonable rates ("charges"), not rates of return."[7] Further, "the Commission acquires the authority to prescribe rates of return only as a means to achieve just and reasonable rates." Rates of returns are "but one element in the task of ratemaking" and are "merely a tool for determining the reasonableness of *rates*," but are not "ends in themselves."[8] Therefore, rate-of-return prescriptions notwithstanding, once a rate has been deemed lawful, "refunds are thereafter impermissible as a form of retroactive ratemaking."[9]

The 2003 rates about which AT&T complains were filed as part of the Consolidated Communications Companies' 2002 annual access charge filing in which rates were set for the period July 1, 2002 to June 30, 2004. Those rates were filed on a streamlined basis pursuant to 47 U.S.C. § 204(a)(3) and the Commission's rules promulgated thereunder. Those rates were and are "deemed lawful."[10] Therefore, any Commission action to effect a refund based on those rates constitutes retroactive ratemaking. Yet, that is exactly what AT&T seeks by asking the Commission to adjust the Consolidated Communications Companies' 2004 rates to correct for the alleged 2003 overearnings.

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7 *ACS v. FCC*, 203 F.3d at 411.

8 *ACS v. FCC*, 203 F.3d at 412 (emphasis in original, internal citations omitted).

9 *ACS v. FCC*, 290 F.3d at 411 (citing *Arizona Grocery Co. v. Atchison, Topeka & Santa Fe Railway Co.*, 284 U.S. 370, 52 S.Ct. 183, 76 L.Ed. 348 (1932)).

10 *See* 47 U.S.C. § 204(a)(3) and *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, Report and Order, 12 FCC Rcd 2170, 2181-82 (1997) ("Streamlined Tariff Order").

II. Corporate Operations Expense

AT&T claims that CCTX and Fort Bend have unreasonably high corporate operations expense and therefore unreasonably high rates. These claims are unfounded.

AT&T bases this contention on its comparison of per-line corporate operations expenses among several companies as described in NECA USF filings for a single year. This analysis is misleading because corporate operations expenses can vary from year to year. Events that may result in increased corporate operations expenses (including expenses related to executive management, legal support, accounting and finance, human resources, information technology, and other administrative support functions) may impact one or some companies in a given year, but may not affect other companies. Corporate operations expenses are not homogenous across companies, and are not uniform on a per-line basis.

AT&T's analysis demonstrates this fact, but provides no evidence whatsoever that the Consolidated Communications Companies incurred any expenses in this category imprudently or that the expenses are artificially inflated beyond their true level.

To the contrary, the corporate operations expenses shown in the Consolidated Communications Companies' 2004 annual access tariff filing accurately reflect the expenses projected to be incurred, which is the Commission-accepted methodology for establishing prospective rates.[11] In addition to the more usual corporate operations expenses incurred in most years, both CCTX and Fort Bend have projected higher costs

[11] The Commission does not require normalization of these costs, even though that is essentially what AT&T's analysis suggests is proper. Using AT&T's logic, a company with unusually low corporate overheads in a given year should then adjust these expenses upward to normalize the corporate expense streams.

associated with the acquisition of their parent by another carrier.[12] Some of these anticipated expenses include information systems integration, legal expenses, severance payments, and hiring expenses related to anticipated employee turnover.[13]

At bottom, AT&T provides no information specific either to CCTX or to Fort Bend to demonstrate that their corporate operations expenses included in their 2004 annual access tariff filing are inaccurate, otherwise inappropriate, or in violation of law. Absent such a showing, there is no basis to suspend or to investigate their filings.

Finally, even though AT&T implies that the Commission should cap corporate operations expenses for ratemaking purposes as it does for universal service fund purposes, it admits, as it must, that the Commission has created no constraints on corporate operations expenses in its rate design methodology.[14] Because rule changes are beyond the scope of this proceeding, AT&T's suggestion that the rate design rules ought to be different merits little discussion. Suffice it to say that a host of policy considerations that may support limiting the amount of corporate operations expense recoverable from the USF do not exist when discussing just, reasonable, and non-confiscatory rates. In this proceeding, the Consolidated Communications Companies have applied the Commission-accepted methodology of estimating actual expenses to be incurred for the test period without normalizing data.

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12 *See* Description & Justification at pp. 3-4.

13 Lest there be any question, neither CCTX nor Fort Bend have included in their projected corporate operations expenses the recovery of any premium over book value paid by the acquiring carrier.

14 Petition at p. 7.

III. TREATMENT OF LOCAL SWITCHING SUPPORT

AT&T erroneously claims that Fort Bend failed to remove the appropriate amount of local switching support from its calculation of expenses to be recovered via the local switching rate element.

The appropriate methodology for removing local switching support from a carrier's local switching revenue requirement is to "match" the support amount to the year that generated the funds, not the year they are actually received.[15] For example, support received in 2004 is based on estimates of 2003 rate base and expense levels. The subsequent true up of the 2003 estimates is filed during the fourth quarter of 2004 and settlement is made during 2005. Thus, the total of the local switching support received during 2004 and the true up in 2005 appropriately are assigned to 2003 in the development of local switching rates.

AT&T, in Exhibit E of the Petition, incorrectly assigned local switching support amounts to years in which they were received, not the year that generated the support; thus violating the matching principal.

Fort Bend properly calculated local switching support amounts for 2004 and 2005 based on estimated rate base and expense levels for those years even though the funds would actually be received in subsequent years. Not only does this approach ensure proper "matching" of revenues with the correct period, it provides for a more accurate estimate of local switching support to be paid to Fort Bend for 2004 and 2005 than does AT&T's simplistic approach of basing estimates of support for future periods on support paid for historical periods that may have different rate base and expense figures.

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[15] For this same reason, out of period revenues, investment, and expenses are removed from rate of return calculations in the final Forms 492.

IV. CONCLUSION

AT&T's Petition provides no basis for suspending or investigating the Consolidated Communications Companies 2004 annual access tariff filing, or for issuing an accounting order. AT&T fails to present any evidence to demonstrate that the Consolidated Communications Companies' rates are unjust and unreasonable, or even credibly to suggest that something might be awry. Instead, AT&T's claims rest on innuendo and on legal and factual error. The rates at issue were developed in accordance with the Commission's rules and sound financial principles, and are just and reasonable. The Petition should be rejected as it applies to Consolidated Communications of Texas Company and Consolidated Communications of Fort Bend Company.

Respectfully Submitted,

Consolidated Communications of Texas Company and Consolidated Communications of Fort Bend Company

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