

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

In the Matter of	)	
	)	
July 1, 2004	)	WCB/Pricing 04-18
Annual Access Charge Filings	)	
	)	
John Staurulakis, Inc.,	)	
Tariff FCC No. 1	)	Transmittal No. 96
	)	
Coastal Utilities, Inc.	)	
	)	
Concord Telephone Company	)	
	)	
Farmers Telephone Cooperative, Inc.	)	
	)	
Hargray Telephone Company	)	
	)	
Horry Telephone Cooperative, Inc.	)	
	)	
Warwick Valley Telephone Company, Inc.		

**REPLY**

John Staurulakis, Inc. (JSI), pursuant to section 1.773 of the Commission's rules,<sup>1</sup> submits this Reply to a petition (Petition) from AT&T Corp. (AT&T) requesting suspension of revisions filed by JSI on behalf of the issuing carriers referenced above for the 2004 annual access charge filing made by JSI on behalf of the carriers pursuant to Section 38 of the Commission's rules as part of the above-captioned tariff filing.<sup>2</sup>

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<sup>1</sup> 47 C.F.R. § 1.773

<sup>2</sup> See Petition of AT&T Corp. Addressing July 1, 2004 Annual Access Charge Tariff Filings, WCB 04-18, (June 23, 2004) (*AT&T Petition or Petition*).

Coastal Utilities, Inc. (Coastal), Concord Telephone Company (Concord), Farmers Telephone Cooperative, Inc. (Farmers SC), Hargray Telephone Company (Hargray), Horry Telephone Cooperative, Inc (Horry) and Warwick Valley Telephone Company, Inc. (WVTC) file interstate access rates subject to section 61.38 of the Commission's rules.<sup>3</sup> Section 61.38 of the Commission's rules requires carriers filing pursuant thereto to make mandatory filings every two years effective on July 1 of even-numbered years. The filings made by JSI on behalf of these carriers under JSI Transmittal No. 96 were for the purpose of meeting the even-numbered year annual access charge filing for these carriers under Section 61.38 and in accordance with the Commission's *2004 Annual Access Filing Order*<sup>4</sup> together with the *Commission's 2004 TRP Order*.<sup>5</sup> These carriers represent six of the ten issuing carriers for JSI Tariff FCC No. 1 who file pursuant to Section 61.38.<sup>6</sup>

In Section I of the Petition, AT&T raises nine separate issues as bases for suspension of the filings of various rate-of-return carriers making filings on June 16, 2004. JSI has attached hereto Appendix I comprising is a summary of these issues based on the captions used under Section I of the *AT&T Petition* f the for purpose of indicating which, if any, issuing carriers for JSI Tariff FCC No. 1 are mentioned with respect to each issue.

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<sup>3</sup> 47 C.F.R. § 61.38.

<sup>4</sup> In the Matter of July 1, 2004 Annual Access Charge Tariff Filings, WCB/Pricing 04-18, Order, DA 04-1048 (Rel. Apr. 19, 2004) (*2004 Access Filing Order*),

<sup>5</sup> In the Matter of Material to be Filed in Support of 2004 Annual Access Charge Tariff Filings, Tariff Review Plans, WCB/Pricing, DA 04-1048 (Rel. Apr. 19, 2004) (*2004 TRP Order*),

<sup>6</sup> The remaining four Section 61.38 issuing carriers filed on June 24 on 7 days notice pursuant to Section 204(a)(3) of the Communications Act, as Amended, 47 USC § 204(a)(3). Under Section 204(a)(3), carriers proposing revisions limited to decreases in rates may file on seven days notice. Carriers whose filings include at least one rate increase or, although not applicable to the annual filing, a change in regulation or suspension of service must file on fifteen days notice as was the case for the six issuing carriers for JSI Tariff FCC No. 1 filing under JSI Transmittal No. 96.

**I. Replies to the Individual Issues Raised by AT&T in Its Petition Supporting Denial of the Petition With Respect to the Issuing Carriers for JSI Tariff FCC No. 1.**

Following are the responses to the issues raised by AT&T in the Petition provided by JSI on behalf of the respective issuing carriers for JSI Tariff FCC No. 1 addressed by each issue.

**A. Given the Significant Decreases in Switched Access Rates Proposed by Concord, Together with Complete Justification of Those Rates, There Is No Basis for AT&T's Request for the Commission to Suspend And Investigate The Tariff of Concord because of a "History Of Overearnings"**

AT&T first requests that the Commission suspend and investigate the tariff filing of certain carriers, including Concord, merely because they have a "history of overearnings." AT&T's request for a suspension of a tariff filing based solely on historical earnings is unsupported by Commission precedent, ignores the substantial reductions in Concord's filing and is not otherwise justified by the circumstances. To support its filing for Concord, JSI presented as part of JSI Transmittal No. 96 detailed supporting documentation that demonstrates with reasonable certainty that the proposed switched access rates for Concord will produce an approximate 11.25% return on Concord's switched access revenue requirement. AT&T has presented nothing more than a lesson on *recent* history.

AT&T's request to suspend the proposed rates is based entirely on its allegation that the rates will produce a return in excess of the allowed rate because rates in some, but not all, prior years have produced excessive earnings. These historical achieved rates of return were realized under rates that were filed under Section 204(a)(3) and therefore

“deemed lawful.” Concord developed and implemented its past rate revisions under different market circumstances than those extant today and are therefore not a valid basis for prediction of future earnings patterns including those that will arise out of the rates proposed to become effective July 1, 2004 for Concord as filed under JSI Transmittal No. 96 on 15 days notice pursuant to Section 204(a)(3). Moreover, the prior rates for Concord are significantly higher than those proposed to become effective July 1, 2004.

Contrary to AT&T’s suggestion, this Commission has not suspended a tariff merely due to historical rates of return. The Commission precedent cited by AT&T consists of instances where specific identifiable projections in the subject companies’ tariff filing were viewed as flawed by the Commission.<sup>7</sup> Unlike the proceedings cited in its Petition, AT&T’s elementary “statistical analyses” does not show the projections in Concord’s 2004 annual filing result in “systematic errors in rates.”<sup>8</sup> As explained below, Concord’s 2004 annual filing does not present the same projections utilized in past years, and AT&T is unable to mount any sustainable substantive challenges to the cost and demand data reflected in Concord’s 2004 annual filing. In fact, AT&T’s specific challenges to the 2004 filing, which are easily refuted below, reflect a misunderstanding of those projections and application of Commission rules.

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<sup>7</sup> See *1997 Annual Access Tariff Filings*, CC Docket No. 97-149, Memorandum Opinion and Order, FCC 97-403 (“1997 Tariff Order”). In this docket the Commission did use a previously adopted statistical analysis that relied on historical data to aid it in evaluating the reasonableness of the carriers’ base factor portion of their revenue requirement. See *1997 Annual Access Tariff Filings*, CC Docket No. 97-149, Memorandum Opinion and Order, DA 97-1609, ¶¶ 7-34 (Com. Car. Bur., released July 28, 1997). The FCC’s rationale for this approach was the inconsistent methods used by carriers to develop their demand projections, the lack of supporting analysis for such projections and the deviation of the projections from the current trend. *Id.* The demand projections at issue resulted in a substantial impact on the CCL and EUCL rates charged by the carriers. *Id.* As discussed in this Response, AT&T has not identified any errors or suspect projections (in demand or otherwise) in Concord’s filing that, if changed even to the level proposed by AT&T, would result in a material change to the rates proposed by Concord in its filing. .

<sup>8</sup> 1997 Tariff Order, at ¶¶ 19-21.

The only substantive issues raised by the Petition with respect to Concord comprise those of understated demand and overstated cash working (CWC) allowance. As shown following, AT&T has significantly overstated the impact of the alleged understated switched access demand. Moreover, AT&T's estimate of such an "understatement" is speculative. With respect to the CWC issue, JSI has shown following that the CWC calculation methodology used by Concord is proper. AT&T, therefore, has not raised any sustainable substantive issues with respect to the proposed rate changes filed by Concord in JSI Transmittal No. 96.

AT&T's complaint of insufficient time and data to review the filing rings hollow. Contrary to AT&T's assertions, AT&T has ample data to test Concord's filing, and has not requested or identified a single piece of data that it requires to more fully analyze the reasonableness of Concord's projections. In addition, based on the apparently arcane nature of AT&T's specific challenges to Concord's data, AT&T appears to have had more than sufficient time and resources to review Concord's filing and prepare its Petition.

For its part, Concord has taken substantial steps to ensure greater accuracy in its projections and reduce its special access revenues. This tariff filing prepared jointly by Concord and JSI utilizes not only projections and forecasts, but actual data to the extent available. This actual data demonstrate increases in costs and decreases in demand, and the calculations themselves have not been challenged by AT&T or any other party with the exception of the unsustainable challenges by AT&T to Concord's traffic sensitive demand and cash working capital calculations. Although JSI's past filings on behalf of Concord represent good faith efforts to reasonably project cost and demand, the 2004

annual filing has been made with full anticipation of the intense scrutiny to which Concord now finds itself subjected under the Petition.

Further, despite increased costs and decreased demand, switched access rates have nonetheless substantially decreased. JSI is providing Exhibits A-1 and A-2 for purposes of reviewing the impact of the proposed rates for Concord under JSI Transmittal No. 96. As shown on Exhibit A-1, the proposed rates for switched access, all of which were reduced and are substantially below NECA Tariff FCC No. 5, will effect a \$451,237 decrease in revenue based on projected demand. This represents a weighted average 15.9% decrease in switched access rates. This dramatic decrease in switched access rates should address concerns for continued overearning for traffic sensitive.

As also shown on Exhibit A-1, the proposed rates for special access will effect a \$3,327 decrease in revenue based on projected demand. While the decrease in special access rates is not as dramatic as that for switched access rates, the 2004 annual filing follows a recent filing by JSI on behalf of Concord that is unacknowledged by AT&T, and that significantly reduced Digital Subscriber Line (DSL) rates to realign DSL rates with the DSL revenue requirement concomitant to migrating Concord's former ADSL and SDSL to the Wholesale DSL regulations in JSI Tariff FCC No. 1.<sup>9</sup> As shown on Exhibit A-2, estimated overstated DSL billing totaled \$1,114,440 for 2003, an 83% excess over DSL revenues that would have been billed at the revised DSL rates filed in JSI Transmittal No. 93. Furthermore, the \$1,114,440 overstatement in DSL billing represents 24 percent of total special access revenues for 2003. Clearly, DSL revenues have been the main cause of special access overearnings for Concord.

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<sup>9</sup> See JSI Transmittal No. 93, JSI Tariff FCC No. 1, filed March 31, 2004 and effective April 15, 2004.

The reason for the overstated DSL rates for 2003 and earlier is the rapidity in increase in demand for Concord's DSL offerings.<sup>10</sup> As demand has increased significantly, costs per DSL access line have also decreased significantly. The impact of the overstated DSL rates was born principally by Concord's ISP affiliate and did not impact interexchange carriers such as AT&T.

Based on the foregoing, AT&T's call for suspension of Concord's 2004 annual filing is without merit. JSI and Concord are confident that the projected costs and demand meet the requirements of, and are consistent with, Section 61.38 and Section 204(a)(3) of the Act. AT&T has failed to raise any sustainable substantive issues involving these projections or any other data submitted in Concord's 2004 annual filing. In addition, significant rate reductions that will significantly mitigate potential overearnings have either taken place already in 2004 or are proposed in the annual filing now at issue. Accordingly, not only is suspension of Concord's tariff for historical overearnings not justified by the Act or Commission rules and regulations, it is unnecessary.

**B. Requiring Carriers to Make Mid-Course Adjustments To Account For Overearnings During The First Year Of The Monitoring Period Would Violate the Communications Act and Commission Rules and Create an Accelerated and Chaotic Cycle of Midcourse Filings.**

AT&T's second attempt at reinventing the streamlined tariff filing process under Section 204(a)(3) and the prospective filing regime under Section 61.38 is embodied in its request for the Commission to require carriers to make mid-course adjustments to account for overearnings during the first year of the monitoring period so that earnings

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<sup>10</sup> See JSI Transmittal 93 Description and Justification.

for the current 2003-2004 earnings monitoring period will fall within the 11.25 percent rate of return. This request is contrary to the subject carriers' clear rights under Section 204(a)(3) of the Act and the Commission's rules and precedent. Moreover, the request undermines the prospective filing procedures followed for annual tariff filings including those for JSI Tariff FCC No. 1. The JSI Tariff FCC No. 1 issuing carriers to which AT&T directs this request are as follows: Coastal, Concord, Farmers SC, Horry and WVTC.

In essence, it appears that AT&T is proposing that rather than target rates to earn 11.25%, these carriers should have filed rates to be effective July, 1, 2004, targeted to earn sufficiently below 11.25%, so that on the conclusion of the two-year monitoring period ending December 31, 2004, the earnings for the monitoring period will be at 11.25%. AT&T's request is inconsistent with the Act and the FCC's rules and policies. AT&T's arguments for "mid-course adjustments" are, in effect, arguments for refunds for access charges billed at rates that were deemed lawful under Section 204(a)(3). AT&T's wish to undo the effect of the ACS decision,<sup>11</sup> thereby rolling back the clock, brings to mind the desperate complaint of AT&T's wish to undo the effect of the ACS decision<sup>12</sup>, thereby rolling back the clock, brings to mind the desperate complaint of Hamlet in the Shakespeare play of the same name: "The time is out of joint, o cursed spite I was ever born to set it right."

For AT&T, the time is out of joint because in its request that the Commission direct carriers to make mid-course adjustments in a prospective filing to account for prior overearnings belies the current controlling law with respect to this issue.

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<sup>11</sup> *ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403, 410-412 (D.C. Cir. 2002)

<sup>12</sup> *ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403, 410-412 (D.C. Cir. 2002)



AT&T's request for the Commission to direct carriers to make mid-course adjustments to account in a prospective filing half way through the second year of a monitoring period for overearnings during the first year of the monitoring period belies the current controlling law with respect to this issue. The Commission cannot order revisions to rates for a prospective period for the purpose of reducing prior earnings. The Commission has acknowledged that it cannot order refunds related in any way to charges billed pursuant to rates deemed lawful under earlier filings.

...[S]ection 204(a)(3) does preclude the Commission from subjecting a carrier to liability for damages in a section 208 complaint proceeding for charging such a rate ...during the period that the streamlined tariff was in effect and prior to the determination of unlawfulness.<sup>13</sup>

To support its misguided notion that the Commission can effect a refund of access charges billed at rates deemed lawful by mandating a mid-course correction or, more obtusely, reduced rates in a prospective filing under Section 61.38, AT&T quotes (inaccurately)<sup>14</sup> from a 2001 Commission order.

Rate-of-return carriers estimate their costs of providing exchange access services and project their demand for such services for a two year period in the future (i.e., the monitoring or enforcement period). They then file tariffs containing the rates for their access services that they believe, given their estimates of costs and demand, will result in earnings within the prescribed rate of return at the end of the two year forecast period. During the course of the two-year period, rate of return carriers must review how their actual costs and demand calculations compare to their earlier projections, and make rate adjustments, if necessary, to ensure that they do not exceed their prescribed rate of return. If a rate-of-return carrier ultimately exceeds its rate of return at the end of the two year monitoring period, the Commission may then require refunds of any such overearnings to affected customers.<sup>15</sup>

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<sup>13</sup> *GCI v. ACS Holdings, Inc., et al.*, 16 FCC Rcd 2834, 2855 (2001) (“*GCI v. ACS*”).

<sup>14</sup> The passage quoted correctly reads as shown below, including the last sentence which AT&T omitted entirely.

<sup>15</sup> See Petition at page 4. AT&T cites as follows: *In the Matter of General Communications Inc., Complainant, v. Alaska Communications, Inc. and Alaska Communications Systems, Inc. d/b/a ATU Telecommunications ATU Telecommunications d/b/a Anchorage Telephone Utility*, EB-00-MD-016, Memorandum Opinion and Order, 16 FCC Rcd. 2834, 5 (2001) (“*GCI v. ACS*”) (emphasis added) *citing*

The last sentence is what the Court found to be in error. To the extent this passage accurately represents the Commission's understanding of the Act prior to the ACS decision, the passage does not establish even then that the Commission believed the obligation to compare results with projections entailed any more than a requirement to revise rates prospectively to address prospective earnings. When the Commission went on to find that where rates were deemed lawful, but resulted in overearnings, the carrier had a refund obligation, the Court of Appeals reversed, finding that the rate of return is not separable from the rate and a deemed lawful rate cannot be subject to refund liability. Cognizant of the result in ACS, AT&T's request acknowledges that "retroactive refunds are no longer available" in the case of "deemed lawful" rates. Seeking a means to "end run" Congress and the ACS decision, AT&T argues that the FCC should mandate that prospective rates be decreased to lower earnings for a two-year monitoring period that overlaps the expected two-year effective period by six months.

Such a mandate would violate Section 204(a)(3) by ignoring the deemed lawful status of the rates charged through June 30, 2004, and would be inconsistent with Section 61.38, which does not provide for adjusting rates for past overearnings.

Were the Commission to order mid-course filings for the purpose of bringing earnings down for the monitoring period, the Commission would inadvertently be effecting a new era of concatenated tariff filings to effect frequent modifications in rates. Such a regime would drastically increase ILEC cost study and tariff filing administrative

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MCI, 59 F.3d at 1415; see *In the Matter of Amendment of Part 65, Interstate Rate of Return Prescription: Procedures and Methodologies to Establish Reporting Requirements, Report and Order*, 1 FCC Rcd. 952, 954, ¶ 10 (1986).

burden and costs and, in turn, access charges. Furthermore, because such a regime would also necessarily be available where carriers underearned, the result could be as many increased rates as decreased rates.

The *reductio ad absurdum* of AT&T's request is that were it the case that carriers had to reduce prospective rates to address current monitoring period overearnings, JSI would also take action to file increases in rates for carriers underearning for the current earnings monitoring period either in total or for a specific rate category. For example, AT&T omitted Hargray from Schedule B-1, whose earnings for 2003 were 9.61% total including Common Line at 11.25% (indicating the return for interstate net of Common Line was even lower than 9.61%). For Horry, included on Exhibit B to the Petition, the net effect of reducing special access rates to target achieving 11.25% for the two-year monitoring period would be more than offset by the increases in switched access charges necessary to overcome the 2003 traffic sensitive rate of return for Horry of 4.4%. See Exhibit B-1. Moreover, it is necessary to keep in mind that for Hargray and Horry these underearning issues have carried forward into the first half of 2004 – increasing the extent to which proposed rates for July 1, 2004 would need to be increased to achieve 11.25%.

In any event, even where a carrier's first year report indicates overearnings, that fact alone does not support a firm conclusion that the second year earnings will also exceed the prescribed rate. The first year report is necessarily a preliminary report, which must be adjusted upon completion of the carrier's cost studies in the second year. Second, economic and market conditions may well change from one year to the next.

The Court of Appeals addressed this very concern in its *Vitelco* decision<sup>16</sup> in which it likened requiring a mid-course refund to a parent who restricts a child to one candy bar a day, then admonishes the child when it eats half the candy bar in the next minute.

AT&T's request that the Commission require Coastal, Concord, Farmers SC, Hargray, Horry and WVTC (in addition to carriers other than these issuing carriers for JSI Tariff FCC No. 1) to make mid-course adjustments to account for overearnings during the first year of the monitoring period should not be granted by the Commission as doing so would be inconsistent with Section 204(a)(3) and the construct for prospective filing represented by Section 61.38.

**C. Corporate Operations Expenses Over the High Cost Loop Support Corporate Operations Expense Cap Do Not Constitute an Overstatement of Corporate Operations Expenses**

The request in AT&T's Petition for the Commission to disallow corporate operations expense recovery or suspend the tariff filings for Hargray and Farmers SC under JSI Transmittal No. 96 for JSI Tariff FCC No. 1 should not be granted by the Commission. Hargray, Farmers SC and JSI will not be alone in opposing the proposition that a corporate operations expense cap adopted by the Commission for application limited to distribution of just one of several types of Federal Universal Service Support, that of High Cost Loop Support, can be used as *de facto* cap on inclusion of corporate operations expense for access charges. While it is one thing for the FCC to limit expenses included in the calculation of support funding for a carrier, it is quite another to use the limit for purposes of recovery of expenses allocated to interstate access charges consistent with the Commission's Part 36 jurisdictional separations rules and Part 69

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<sup>16</sup> *Virgin Islands Telephone Corporation v. FCC*, 989 F.2d 1231, (D.C. Cir. 1993) ("*Vitelco*")

access cost rules. Such a leap of faith leads right over the cliff – leaving behind the protection afforded regulated carriers by the Fifth Amendment Takings Clause.

A review of the history of the High Cost Loop Support corporate operations expense cap clearly shows the limited purpose for the cap.

61. The high-cost loop support fund provides support for a portion of the corporate operations expenses incurred by rural carriers in providing supported services. Corporate operations expenses consist of total company costs associated with the following activities: formulating corporate policy and providing overall administration and management; long-range planning; providing accounting and financial services; maintaining relations with government, regulators, other companies, and the general public; performing personnel administration activities; operating general purpose computers; providing legal services; procuring material and supplies; developing new products; and performing other general administrative activities. [Note 157: Corporate operations expenses include all of the expenses listed in sections 32.6710 through 32.6712 and sections 32.6720 through 32.6728 of the Commission's rules. 47 C.F.R. §§ 32.6710-32.6712; 47 C.F.R. §§ 32.6720-32.6728. Those categories of expenses include: executive; planning; general; administrative; accounting; finance; external relations; human resources; information management; legal; procurement; research and development; and other general and administrative expenses. ] Prior to 1998, the amount of corporate operations expenses that was supported through our universal service mechanisms was determined by multiplying the total corporate operations expense by the ratio of loop investment to total plant in service. As explained below, in the First Report and Order the Commission concluded that a carrier's ability to receive universal service support for corporate operations support should not be unlimited.<sup>17</sup>

62. The corporate operations expense limitation, adopted by the Commission in the First Report and Order, limits the amount of corporate operations expenses that a carrier may include in the high-cost loop support mechanism. Under the current mechanism, a carrier compares its actual corporate operations expenses with the expenses calculated by the existing corporate operations expense limitation formula and the lesser amount is used to calculate the carrier's high-cost loop support. The formula was developed to "ensure that carriers use universal service support only to offer better service to their customers through prudent facility investment and maintenance consistent with their obligations under section 254(k)." [Note 159 First Report and Order, 12 FCC Rcd at 8930, para. 283.] The Commission agreed with commenters that corporate operations expenses do not appear to be costs inherent in providing

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<sup>17</sup> Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 96-45, CC Docket No. 00-256, 16 FCC Rcd 11244, FCC 01-157 (Rel. May 23, 2001), at 61.

telecommunications services, but rather may result from managerial priorities and discretionary spending. [160 Id. at 8931 para. 283.] The Commission decided to "limit universal service support for corporate operations expense to a reasonable per-line amount," but recognized that "small study areas . . . may experience greater amounts of corporate operations expense per line than larger study areas." [161 Id.] The formula allows a greater amount of corporate expense per line for smaller study areas than larger ones because statistical analysis of carrier data show that study areas with fewer loops have more corporate operations expense per loop.<sup>18</sup>

The history of the High Cost Loop Support cap on administrative expenses shows clearly that the limit was adopted only for purposes of High Cost Loop Support. Thus, the Commission should not order investigation or suspension of the tariffs filings of Hargray and Farmers merely because of AT&T's comparison of corporate operations expense to the High Cost Loop Support corporate operations expense cap.

**D. Several Rate-of-Return LECs Understate Prospective Traffic Sensitive Demand and Overstate Local Switching and Information Surcharge Rates.**

AT&T suggests that errors were made in forecasting traffic sensitive demand and calculated incorrect rates for Local Switching and Information Surcharge. As AT&T knows firsthand, competition can cause a significant erosion of traffic. In the case of the JSI issuing carriers, this fact was one of the elements used in developing forecasts for traffic sensitive demand.

In the case of Concord, there are seven wireless carriers offering local services in its territory. Concord has interconnection agreements with eight CLECs on file with the North Carolina Utilities Commission and is actively working on an agreement with a ninth CLEC. A majority of access lines served by Concord fall within a top 100 MSA and became subject to wireless number porting beginning November 24, 2003. Time

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<sup>18</sup> Id. at Par 62.

Warner Cable serves the majority of Concord's territory with cable television services and has announced a rollout of telephony services in Concord's territory in 2004. Because of these multiple dimensions of competition and because of the historical access minute and access line losses indicated by data, up through May 2004, Concord projected a continued decline in traffic sensitive demand for its 2004 Annual Filing.

With respect to the impact of the allegedly understated prospective traffic sensitive demand as indicated by AT&T at Exhibit D-1, JSI points out that AT&T's schedule inadvertently applies the Information Surcharge rates on the basis of single minutes instead of the required 100 Minutes, thereby significantly overstating the alleged effect of understated traffic demand. Before adjusting for the miscalculation of Information Surcharge revenues at AT&T Petition Exhibit C-1, the alleged combined overstatement for the four carriers presented on Exhibit C-1 is \$1,728,682. After correction, the alleged impact is only \$471,549. The significantly decreased impact on Concord, Horry and Farmers is shown at page 2 of Exhibit C-1.

The respective downward trend in minutes of use for Concord, Horry and Farmers is clearly shown at Exhibit D at the respective page for each carrier, in order, 1, 2 and 3.

**H. Hargray Will Make a Filing on Less Than Fifteen Days Notice to Decrease Special Access Rate Other than DSL and Related Switched Access Direct Trunked Transport Rate, Thereby Addressing the Issues Raised by AT&T Respecting Hargray DSL and Special Access**

In response to this issue, Hargray has reviewed its proposed special access rates as filed in JSI Transmittal No. 96. JSI plans to file an application with the Commission for Special Permission to file, on behalf of Hargray, revised special access rates and Switched Access Direct Trunked Transport rates on less than 15 days notice. Based on discussions with AT&T, JSI and Hargray believe that the revisions will address AT&T's concern with respect to Hargray's proposed special access rates.

**I. AT&T's Interpretation that Concord, Coastal And Horry Rates Reflect Cash Working Capital in Excess of the 15-day Allowance Is Incorrect**

AT&T requests that the Commission suspend or order adjustments for the proposed rates filed by Concord, Coastal and Horry due to alleged overstatement of the Cash Working Capital allowance by each carrier. Concord, Coastal and Horry each include Cash Working Capital (CWC) in their revenue requirement based on application of the 15-day standard allowance method for Class B companies as allowed in Section 65.820(d).<sup>19</sup> on a "total company approach." AT&T's recalculation of the CWC allowance at AT&T Exhibit I is based exclusively on interstate expenses with the inadvertent omission of income taxes. AT&T's calculation as such inadvertently indicates lag days in excess of 15. Under the total company approach, carriers calculate CWC by applying the 15-day standard allowance factor ( $15/365 = 4.1096\%$ ) to unseparated total company expenses (adjusted for non-cash expenses) and, in turn,

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<sup>19</sup> 47 CFR §65.820(d).



allocating a portion of the total company CWC allowance to interstate based on the relative interstate expenses less non-cash items pursuant to Section 36.182.<sup>20</sup> JSI has attached Exhibits E-1, E-2 and E-3 respectively for Concord, Horry and Coastal to summarize calculation of the CWC allowance for each company under the total company approach as used for the annual filing with comparison to AT&T's calculations.

The total company approach to calculation of CWC conforms to FCC rules and is specifically supported as an acceptable method by the National Exchange Carrier Association (NECA).<sup>21</sup> Although issuing carriers for JSI Tariff FCC No. 1 under which they bill traffic sensitive and special access, Concord, Coastal and Horry are members of the NECA common line pool and bill common line charges based on reference to NECA Tariff FCC No. 5.<sup>22</sup> Thus, these carriers submit annual cost studies to NECA for purposes of settlement of revenue requirement against billed common line revenues. Because these carriers submit cost studies to NECA, they are subject to review of cost studies by NECA and direction by NECA regarding application of FCC rules, procedures and policies to the performance of cost studies for the purpose of determining interstate common line revenue requirements.

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<sup>20</sup> 47 CFR § 36.182(a) "The amount for cash working capital, if not determined directly for a particular operation, is apportioned among the operations on the basis of total expenses less non-cash expense items."

<sup>21</sup> NECA Cost Issues Manual – Separations Cost Issue 7.2, Revised June, 1998.

<sup>22</sup> Concord Telephone Company references NECA Tariff FCC No.5 for all common line rate elements other than Multiline Business End User Common Line (EUCL) charges. Concord files Multiline EUCL rates in JSI Tariff FCC No. 1 because its EUCL costs are below the Multiline-Business cap. Nonetheless, Concord is accountable to the NECA Common Line Pool for all EUCL charges billed.

Following is an excerpt from NECA Cost Issues Manual-Separations Cost Issue No. 7.2 supporting the reasonableness of the total company approach.

Analysis

A total company approach to the Simplified Lead-Lag or the Standard Allowance method is not mentioned in Part 65. However, Section 36.182(a) of the Commission's rules discusses the apportionment of total company CWC. "The amount for cash working capital, if not determined directly for a particular operation, is apportioned among the operations on the basis of total expenses less non-cash expense items. 47 C.F.R. § 36.182(a) NECA supports the Simplified Formula method and the Standard Allowance method using a total company expense base. There are two advantages associated with the total company approach. First, a total company approach is easier to calculate, since it allows readily available total company "cash" income tax and expense information to be used. Second, the circular problem that arises from using normalized income taxes is eliminated since only current period income tax amounts are included. In addition, analysis indicates that the total company approach yields results similar to those obtained under the current Standard Allowance method.<sup>23</sup>

Assuming, *arguendo*, that CWC were to be calculated based on application of the allowance method factor to separated interstate expenses, AT&T's recalculation is faulty at least with respect to Coastal inasmuch as it fails to include income taxes (see Exhibit E-3).

Based on the foregoing, JSI believes that the total company approach to calculation of CWC is accepted industry practice, not inconsistent with the Commission's rules and otherwise reasonable. Therefore, the Commission should not take any action directed at Concord, Coastal and Horry with respect to AT&T's CWC allegations.

JSI, Concord, Horry and Coastal Utilities (a subsidiary of Madison River Communications) have taken a consistent approach in calculation of CWC. In some cases the total company approach generates higher CWC and some cases it produces a lower CWC. Should the FCC determine that the total company approach using booked

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<sup>23</sup>

NECA Cost Issues Manual, Separations Cost Issue No. 7.2, Cash Working Capital, Page 4.

operating income taxes is not reasonable, JSI, Concord, Horry and Madison River Communications request the right to refile rates for those carriers not identified by AT&T in its petition for whom the total company approach produces a lower CWC allowance for interstate than the separated interstate approach suggested by AT&T.

Respectfully submitted,

John Staurulakis, Inc.

On behalf of:

Coastal Utilities, Inc.

Concord Telephone Company

Farmers Telephone Cooperative, Inc.

Hargray Telephone Company

Horry Telephone Cooperative, Inc.

Warwick Valley Telephone Company, Inc.

June 29, 2003

By



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Scott Duncan

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**AT&T Issues for Selected Issuing Carriers under JSI Tariff FCC No. 1.**

<b>AT&amp;T Issue</b>	<b>Issuing Carrier</b>
A. The Commission Should Suspend And Investigate The Tariffs Of LECs With A Long History Of Earnings That Exceed The Authorized Rate-Of- Return.	Concord Telephone Company (Concord)
B. Certain LECs Should Be Required To Make Mid-Course Adjustments To Account For Substantial Overearnings During The First Year Of The Monitoring Period.	Coastal Utilities, Inc. (Coastal) Concord Farmers Telephone Cooperative, Inc. (Farmers SC) Horry Telephone Cooperative, Inc. (Horry) Warwick Valley Telephone Company, Inc. (WVTC)
C. Several Rate-of-Return Carriers Have Overstated Their Corporate Operations Expenses.	Hargray Farmers
D. Several Rate-of-Return LECs Understate Prospective Traffic Sensitive Demand and Overstate Local Switching and Information Surcharge Rates.	Concord Farmers SC Horry
Issues E, F and G do not involve any issuing carrier for JSI Tariff FCC No. 1.	
H. Hargray Telephone Company's Tariff Unlawfully Recovers DSL Costs From Special Access Customers.	Hargray
I. Concord, Coastal And Horry Have Filed Excessive Cash Working Capital Requirements.	Coastal Concord Horry