

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

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

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 Illinois Consolidated Telephone Company (“ICTC”), by counsel, hereby opposes the “Petition of AT&T Corp.” (“Petition”) filed on June 28, 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 ICTC, AT&T alleged that a mid-course correction is necessary because ICTC appears to be earning in excess of 11.25% based on the preliminary Form 492 filed in March 2004.²

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

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

² Petition § III and Exhibit C.

II. RATE OF RETURN

AT&T claims, based on the preliminary Forms 492 filed in March 2004, that ICTC is 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 ICTC's rates – historical or prospective-- are lawful.

A. AT&T's Claim is Factually Flawed

Exhibit C to the Petition shows that ICTC's overall rate of return is 10.84%, which is less than the Commission-prescribed 11.25% target rate of return. Contrary to AT&T's assertion, ICTC is not earning in excess of 11.25%.

Moreover, ICTC has already made mid-course corrections in order to better target its rates to the 11.25% target rate of return. In Transmittal No. 117, filed on April 16, 2004, ICTC made a mid-course correction by reducing some rates and raising others to correct underearnings and overearnings in different categories. More specifically, ICTC reduced rates in the traffic sensitive switched category and raised rates in the special access category to better target rates in each category to 11.25%. The overall result was the 10.84% rate of return reported on the March 2004 Preliminary Form 492 and shown in Exhibit C.

In the instant tariff filing (Transmittal 122), ICTC is further reducing rates for both traffic sensitive and special access services. It is doing so based on its projections of costs and demand for the two years beginning July 1, 2004 in order to target rates to achieve a rate of return of 11.25%.³

³ See Description and Justification at p. 1.

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

Although AT&T several times refers to *ACS v. FCC*⁴ 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.

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.”⁵ 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.”⁶ Therefore, rate-of-return prescriptions notwithstanding, once a rate has been deemed lawful, “refunds are thereafter impermissible as a form of retroactive ratemaking.”⁷

The 2003 rates about which AT&T complains were filed initially as part of ICTC's 2002 annual access charge filing in which rates were set for the period beginning July 1, 2002. Those rates were filed on a streamlined basis pursuant to 47 U.S.C. § 204(a)(3) and the Commission's rules promulgated thereunder. The subsequent mid-course correction filings made by ICTC were similarly filed on a streamlined basis.

⁴ *ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403 (D.C. Cir. 2002) (“*ACS v. FCC*”).

⁵ *ACS v. FCC*, 203 F.3d at 411.

⁶ *ACS v. FCC*, 203 F.3d at 412 (emphasis in original, internal citations omitted).

⁷ *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)).

Thus, both the initial and revised rates were and are “deemed lawful.”⁸ 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 ICTC’s 2004 rates to correct for the alleged 2003 overearnings.

III. Cash Working Capital

AT&T mentions ICTC in Exhibit F-2 related to its analysis of lead-lag times for purposes of calculating cash working capital requirements. Data related to ICTC, and its affiliate Consolidated Communications of Fort Bend Company (“Fort Bend”), are used by AT&T in Exhibit F-2 to calculate an average lead-lag time. AT&T then uses this average lead-lag time as a basis for faulting the lead-lag times of the companies identified in Exhibit F-1. Neither ICTC nor Fort Bend are listed in Exhibit F-1 or elsewhere in the Petition as companies having improperly projected cash working capital requirements.

Thus, although AT&T mentions both ICTC and Fort Bend in Exhibit F-2, AT&T does not allege that either company has improperly calculated its cash working capital requirement. To the contrary, AT&T upholds them as exemplary with respect to appropriate lead-lag times used in calculating the cash working capital requirement.

IV. CONCLUSION

AT&T’s Petition provides no basis for suspending or investigating ICTC’s 2004 annual access tariff filing, or for issuing an accounting order. AT&T fails to present any evidence to demonstrate that ICTC’s rates are unjust and unreasonable, or even credibly to suggest that something might be awry. Instead, AT&T’s claims rest on legal and factual error. The rates at issue were developed in accordance with the Commission’s

⁸ 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”).

rules and sound financial principles, and are just and reasonable. The Petition should be rejected as it applies to Illinois Consolidated Telephone Company.

Respectfully Submitted,

Illinois Consolidated Telephone Company

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