

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

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

To: Marlene H. Dortch
Office of the Secretary

**REPLY OF MOULTRIE INDEPENDENT TELEPHONE COMPANY
TO AT&T CORP. PETITION TO SUSPEND AND INVESTIGATE**

Pursuant to Section 1.773(b) of the Federal Communications Commission's (Commission) rules and the Commission's Order, DA 04-1049, released on April 19, 2004,¹ Moultrie Independent Telephone Company (Moultrie) respectfully submits this Reply (Reply) to AT&T Corp.'s (AT&T) Petition to Suspend and Investigate (Petition) the annual interstate access tariffs filed on June 16, 2004 by various local exchange carriers (LECs), including Moultrie.²

As demonstrated below, AT&T fails to sustain its burden under the Commission's Rules regarding its claim against Moultrie. Thus, the Commission must dismiss AT&T's Petition. AT&T claims that Moultrie's operational expenses are unreasonable, but it fails to provide any substantiation of its naked claim. In fact, Moultrie denies AT&T's claim that its operational expenses are unreasonable because they are mostly related to regulatory compliance and

¹ *In the Matter of July 1, 2004 Annual Access Charge Tariff Filings*, Order, DA 04-1049, (Apr. 19, 2004).

² Petition of AT&T Corp. WCB/Pricing 04-18 (June 23, 2004).

participation in Commission rulemakings. Therefore these costs are *per se* lawful. Further, they are on a par with other companies and a national average that AT&T supplies. Moultrie respectfully requests that the Commission dismiss AT&T's Petition and allow Moultrie's tariff to become effective as filed.

DISCUSSION

Moultrie is a small, rural independent telephone company operating 836 residential and business access lines in and about the village of Lovington, Illinois. As such, Moultrie qualifies as a "rural telephone company" pursuant to 47 U.S.C § 153(37), and it operates in a high-cost rural area.

I. CLAIMS RAISED BY AT&T DO NOT SATISFY THE BURDEN IMPOSED BY COMMISSION RULES

As demonstrated below, AT&T has not met its burden as set forth in the Commission's Rules and, therefore, its claim to suspend Moultrie's tariff because of allegedly high operational expenses must be denied. As required by the Commission's Rules, a tariff filing is "considered prima facie lawful . . . unless the petition . . . shows . . . [t]hat there is a high probability the tariff would be found unlawful after . . . investigation."³

In acknowledgment that its claim fails to rise to the level of an unlawful act AT&T states that there is a "gap in the Commission's Rules."⁴ Assuming the relevance of such a gap in the Rules, this is not a rulemaking proceeding under the Administrative Procedure Act, so the gap, such as it may be, can not be bridged by the instant Petition. Nevertheless, AT&T fruitlessly

³ 47 C.F.R. 1.773 (a)(1)(ii).

⁴ AT&T Petition, *supra* note 2, at 7.

attempts to supplant the Universal Service Fund (USF) limit on the amount of corporate operations expense into access charges. Moultrie submits that any arbitrary disallowance of operational expenses into its access charges can not be universally imposed because these expenses vary dramatically across the country from company to company. Superficially placing a limit on operational expenses could drive LECs out of places like Lovington, Illinois, or other high cost communities. AT&T has patently failed to demonstrate any lawful basis for suspension or that an investigation would uncover an unlawful act as required by the Commission's Rules.⁵

AT&T's claim against Moultrie mostly relates to legal counsel and regulatory compliance costs insofar as they fit under the definition of operational expenses.⁶ Any arbitrary limit on operational expenses related to obtaining advice and counsel essential for Moultrie to understand and comply with the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act), and the subsequent regulations implemented by the Commission, would constitute an unconstitutional erosion of the right to counsel. Compliance with the Commission's Rules and the Act is inherently complex and costly in the post-1996 Act environment. As it happens, Moultrie's management is steadfast in complying with the Act and the Commission's Rules thereunder and it follows the practice of obtaining the advice of counsel and its business consultants, as it deems prudent.

Over the last two years, compliance with Communications Assistance for Law Enforcement (CALEA), Local Number Portability (LNP), E-911, Universal Service Fund (USF), ILEC payphone compensation obligations and various other Commission filings accounted for

⁵ 47 C.F.R. 1.773 (a)(1)(ii)(A).

⁶ AT&T Petition, *supra* note 2, at 7.

the bulk of Moultrie's legal (operational) expenses. It is evident that AT&T's effort to superficially place a limit on Moultrie's or any other company's operational expenses is both unlawful and contrary to the public interest, especially insofar as Universal Service is concerned.

AT&T has failed, as it must, to demonstrate how Moultrie's alleged high operational costs -- assuming *arguendo* that they can be deemed high -- actually harm competition substantially more than "the injury to the public arising from the unavailability of the [exchange carrier] service pursuant to the rates and conditions proposed in the tariff filing."⁷ It is clear that here, too, AT&T has failed to satisfy its burden under the Rules.

Contrary to AT&T's conclusory statement that might lead the Commission to believe otherwise, exchange carrier competition is alive and well in Lovington, Illinois, as a result of Moultrie's compliance with its Equal Access obligations under the Rules. If competition is "impeded" as AT&T suggests, why was AT&T the only Interexchange Carrier ("IXC") that filed a petition to suspend Moultrie's tariff?

AT&T has also failed to demonstrate, as required by the Commission's Rules, that "irreparable injury will result if the tariff filing is not suspended"⁸ and that "suspension would not otherwise be contrary to the public interest."⁹ Without rationale or other justification, AT&T merely parrots the "magic words" about lessening competition. So, AT&T has clearly failed to meet its burdens under the Rules, and its Petition for suspension must be denied.

⁷ 47 C.F.R. 1.773 (a)(1)(ii)(B).

⁸ 47 C.F.R. 1.773 (a)(1)(ii)(C).

⁹ 47 C.F.R. 1.773 (a)(1)(ii)(D).

II. MOULTRIE'S OPERATIONAL EXPENSES ARE NOT UNREASONABLE

Moultrie does not concur in the National Exchange Carrier Association (NECA) traffic sensitive tariff. This is because Moultrie has been obligated since 1986, by order of the Illinois Commerce Commission, to file its own cost-based interstate access tariff so that the rates, terms and conditions of the interstate tariff could be mirrored in Moultrie's state access tariff. Cost-based tariffs recover reasonable expenses, including as previously noted, legal fees for regulatory compliance. AT&T unfairly and incorrectly compares Moultrie's operational costs with those of concurring NECA members whose operational costs can be substantially lower than Moultrie's because their NECA tariff concurrence includes the legal services required for tariff filings, participation in FCC proceedings, and compliance with other regulatory burdens.¹⁰ Should the Commission rule in AT&T's favor, other non-concurring NECA members may be forced either to concur in the NECA tariff, or forego the legal counsel and representation for regulatory compliance that management would normally deem necessary and prudent. This would lead to a discriminatory, chilling effect on LECs' self-participation before the Commission and LECs' ability to redress grievances before the government.

Moultrie denies that its stated operational costs are substantially higher than any of the LECs listed on AT&T Exhibit C-4. Assuming any validity to AT&T's claim, which Moultrie does not, if one were to calculate the percentage of operating cost per loop¹¹ by analyzing the 15 LECs listed in AT&T Exhibit C-4, it is apparent that Moultrie is below the average operating

¹⁰ AT&T Petition, *supra* note 2, exhibit C-4 (comparing MOULTRIE with 97 NECA members and only two other non-NECA members). A true comparison is impossible with the data given by AT&T because total corporate expenses for 2004 and 2005 are only shown for Moultrie.

¹¹ See AT&T Exhibit C-4. The percentage was calculated as follows: $c/b \times 100 =$ percentage of cost for one loop.

cost per loop for those companies. Moultrie's percentage of operating cost per loop is .12% while the average of the 15 LECs is .28%, meaning Moultrie's operating costs per loop are under the average by .16% -- or better than the average by over 50%.

III. AT&T'S CLAIM AGAINST MOULTRIE APPEARS TO BE A SCANT AFTERTHOUGHT

AT&T has petitioned for suspension and investigation of nine LECs, but it only has a single, scant and unsupported claim against Moultrie. A brief summary of AT&T's claims against the eight other LECs makes it apparent that AT&T's claim against Moultrie was a mere afterthought. AT&T's petition initially claims that several LECs have exceeded the Commission-prescribed rate-of-return level of 11.25%, but Moultrie was not included in this claim.¹² Nor is Moultrie included in AT&T's assertion that the LECs should make adjustments in order bring their overall returns within the 11.25% range.¹³ Also, no assertion was made that Moultrie had understated prospective traffic and overstated local switching and information surcharge rates.¹⁴

AT&T does not claim that Moultrie failed to remove certain amounts for local switching support.¹⁵ Nor did it claim that Moultrie's tariff overstated access rates by implementing increases to pre-subscription expenses.¹⁶ Moultrie was also not included in the claim that certain

¹² AT&T Petition, *supra* note 2, at 2-3.

¹³ *Id* at 4.

¹⁴ *Id* at 9.

¹⁵ *Id* at 10.

¹⁶ *Id* at 11.

LECs forecast of DSL investment was overstated¹⁷ or that certain LECs tariffs unlawfully recover DSL costs for special access customers.¹⁸ AT&T did not claim that Moultrie filed an excessive cash working capital requirement,¹⁹ nor did it claim that Moultrie failed to comply with FCC regulations to provide required cost data in support of its access tariff filing.²⁰

IV. CONCLUSION

The *de minimis* claim brought by AT&T against Moultrie cannot be sustained because AT&T clearly did not meet its burden under Section 1.773(a) of the Commission's rules. A suspension of Moultrie's tariff leading to any disallowance of stated and just operating expenses – for regulatory compliance efforts – would have a chilling effect on LECs that make a legal and rational business decision not to concur in the NECA traffic sensitive tariff. AT&T's claims against Moultrie are not supported by any cogent analysis of the data on which it relies. In fact, this data demonstrates that Moultrie's operational expenses are on a par with other LECs. AT&T's petition for suspension and investigation must be denied. And, finally Moultrie can not constitutionally be stripped of advice of counsel and that of other consultants.

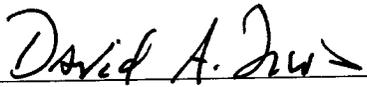
¹⁷ *Id* at 13.

¹⁸ *Id* at 14.

¹⁹ *Id* at 16.

²⁰ *Id* at 17.

Respectfully submitted,


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June 29, 2004

CERTIFICATE OF SERVICE

I, Jared B. Weaver, do hereby certify that I have, this 29th day of June 2004 caused to be sent first class United States mail, postage prepaid, a copy of the foregoing "Reply" to the following:

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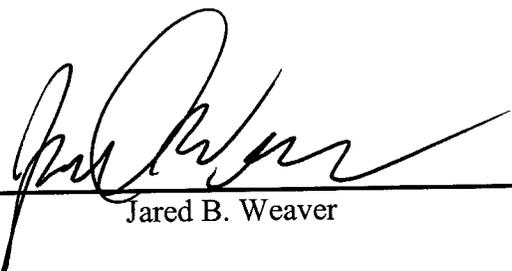
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