

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

In the Matter of)	
)	
Pacific Bell Telephone Company Tariff)	Transmittal No. 539
F.C.C. No. 1)	
)	
Southwestern Bell Telephone Company)	Transmittal No. 3428
Tariff F.C.C. No. 73)	
)	
Investigation of Certain Price Cap Local)	WC Docket No. 15-247
Exchange Carrier Business Data Services Tariff)	
Pricing Plans)	

ORDER

Adopted: December 2, 2016

Released: December 2, 2016

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we terminate the investigation initiated on July 15, 2016, regarding the tariff revisions filed on July 1, 2016, by Pacific Bell Telephone Company (PBTC), and Southwestern Bell Telephone Company (SWBT) (collectively AT&T) in Transmittal Nos. 539 and 3428, respectively. On July 15, 2016, the Wireline Competition Bureau (Bureau) suspended the tariff revisions and initiated an investigation.¹ Based on additional filings by AT&T and revisions to the tariffs that became effective on August 30, 2016, we conclude that the issues raised in the *July 15 Suspension Order* have been resolved.

¹ *Order*, Pacific Bell Telephone Company Tariff F.C.C. No. 1, Southwestern Bell Telephone Company Tariff F.C.C. No. 73, WC Docket No. 15-247, Transmittal Nos. 539 and 3428, Order, 31 FCC Rcd 7669 (Wireline Comp. Bur. 2016) (*July 15 Suspension Order*).

II. DISCUSSION

2. In the *Tariff Investigation Order*, the Commission concluded that various incumbent LEC pricing plans were unjust and unreasonable and directed the incumbent LECs at issue, including AT&T, to submit a number of tariff revisions modifying or removing language from those plans.² Among the modifications required, the Commission ordered AT&T to remove the shortfall and early termination provisions from the PBTC DS1 High Capacity Service Portability Commitment and SWBT DS1 High Capacity Service Portability Commitment, but noted that it may elect to file tariff revisions that set shortfall and early termination penalties at an amount that is no greater than the amount of revenue that a customer would have paid had it met its minimum volume or term commitments.³ The Commission provided sixty (60) days for impacted incumbent LECs to file the tariff revisions, which required the revisions to be filed by July 1, 2016.

3. On July 1, 2016, AT&T proposed tariff revisions to shortfall and early termination penalties included in PBTC interstate access Tariff F.C.C. No. 1 and SWBT interstate access Tariff F.C.C. No. 73, asserting that the proposed revisions were “in compliance with the Commission’s rules, F.C.C. Order No. FCC 16-54 (the Order) and the requirements of the Communications Act of 1934, as amended.”⁴ AT&T proposed to reduce the fixed per circuit shortfall charge and early termination liability to the current 2-year Zone 1 Channel Termination rate for the DS1 Term Payment Plan, which was \$126.00 for PBTC and \$195.00 for SWBT.⁵

4. On July 8, 2016, several parties filed petitions to reject or suspend and investigate AT&T’s proposed tariff revisions.⁶ The petitions cited numerous concerns regarding the proposed tariff revisions, raising questions about whether they complied with the *Tariff Investigation Order* requirements.⁷ On July 15, the Bureau concluded that substantial questions existed regarding the lawfulness of AT&T’s tariff filings and released the *July 15 Suspension Order* that suspended for one day and set for investigation the AT&T tariff revisions.⁸

5. On August 15, 2016, AT&T made additional compliance filings that addressed the shortfall and early termination penalty issues identified in the *Tariff Investigation Order* by decreasing the

² See *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans*, WC Docket No. 15-247, Tariff Investigation Order, FCC 16-54, 31 FCC Rcd 4723 (rel. May 2, 2016) (*Tariff Investigation Order*).

³ See *Tariff Investigation Order*, 31 FCC Rcd at 4784, 4788, 4790, paras. 140, 152, 158.

⁴ See Letter from Kristin Shore, Executive-Director, Regulatory, to Marlene H. Dortch, Secretary, Federal Communications Commission, Transmittal No. 539 (filed July 1, 2016); Letter from Kristin Shore, Executive-Director, Regulatory, to Marlene H. Dortch, Secretary, Federal Communications Commission, Transmittal No. 3428 (filed July 1, 2016). See generally *Tariff Investigation Order*.

⁵ See PBTC Description and Justification at 5; SWBT Description and Justification at 5.

⁶ See Petition of Windstream Services, LLC to Reject or Suspend and Investigate (filed July 8, 2016) (Windstream Petition); Petition of Birch Communications, Inc., EarthLink, Inc., INCOMPAS, Level 3 Communications, LLC, Sprint Corporation, and Windstream Services, LLC to Reject or Suspend and Investigate (filed July 8, 2016) (Birch *et. al* Petition); Petition of U.S. TelePacific d/b/a TelePacific Communications and Alpheus Communications LLC to Reject or Suspend and Investigate (filed July 8, 2016) (TelePacific/Alpheus Petition) (collectively, Petitioners).

⁷ See generally Windstream Petition; Birch *et al.* Petition; TelePacific/Alpheus Petition.

⁸ See generally *Suspension Order*. AT&T was directed to file a supplement advancing the currently scheduled effective date to July 15, 2016, and then suspend its tariff revisions for one day, until July 16, 2016. *Id.* at para. 9. AT&T was also directed to file a supplement within five business days from the release date reflecting the suspension. *Id.* at para. 10. AT&T complied with these requirements. AT&T was further directed to keep an accurate account of all amounts received that are associated with the penalties subject to the investigation. *Id.* at para. 11.

penalty amounts to the lowest available Price Cap Zone 1 Channel Termination rate for both PBTC and SWBT, which became effective on August 30, 2016.⁹ We conclude that these compliance filings resolve the issues raised in the *July 15 Suspension Order*. Accordingly, further investigation is not required.

II. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED that, pursuant to section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), and through the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, the further tariff investigation initiated on July 15, 2016 in WC Docket No. 15-247 as to the shortfall and early termination provisions from the Pacific Bell Telephone Company DS1 High Capacity Service Portability Commitment, Tariff F.C.C. No. 1, and Southwestern Bell Telephone Company DS1 High Capacity Service Portability Commitment, Tariff F.C.C. No. 73, IS TERMINATED.

7. IT IS FURTHER ORDERED that the accounting order applicable to Pacific Bell Telephone Company and Southwestern Bell Telephone Company IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Matthew S. DelNero
Chief
Wireline Competition Bureau

⁹ See Letter from Kristin Shore, Executive-Director, Regulatory, to Marlene H. Dortch, Secretary, Federal Communications Commission, Transmittal No. 543 (filed Aug. 15, 2016); Letter from Kristin Shore, Executive-Director, Regulatory, to Marlene H. Dortch, Secretary, Federal Communications Commission, Transmittal No. 3432 (filed Aug. 15, 2016).