



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <https://www.fcc.gov>
TTY: 1-888-835-5322

DA 17-1078
November 3, 2017

WIRELINE COMPETITION BUREAU SEEKS COMMENT IN CONNECTION WITH COURT REMAND OF *TARIFF INVESTIGATION ORDER*

WC Docket No. 15-247

Comment Date: December 4, 2017
Reply Comment Date: December 19, 2017

In this Public Notice, the Wireline Competition Bureau invites parties to file comments in connection with the remand by the United States Court of Appeals for the District of Columbia Circuit of the Commission's *Tariff Investigation Order (Order)*.¹ In the *Order*, the Commission found that certain provisions in tariffed pricing plans for business data services (BDS) offered by AT&T, CenturyLink, Frontier and Verizon were unlawful.² AT&T sought court review of the *Order* and asserts that the *Order* is contrary to the D.C. Circuit's decision in *BellSouth v. FCC* that vacated an earlier Commission order finding that certain other BDS tariff terms were unlawful.³

The Commission filed a Motion for Voluntary Remand with the court, acknowledging that the *Order* does not address the *BellSouth v. FCC* decision.⁴ The Commission also explained that because "the composition of the Commission has changed since the agency issued the *Order*," "a majority of the current Commission dissented from the *Order*," and remand would therefore allow the Commission to reconsider its determination "separate and apart from *Bell[S]outh*."⁵ Sprint and INCOMPAS opposed the Commission's motion, asserting that the *BellSouth* decision is not relevant to the Commission's analysis in the *Order*.⁶ The D.C. Circuit granted the Commission's motion and remanded the *Order* to the Commission for further proceedings.⁷

¹ See *Business Data Services in an Internet Protocol Environment et al.*, WC Docket No. 15-247 et al., Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 4723, 4761-90, paras. 86-158 (2016) (*Tariff Investigation Order or Order*), remanded sub nom. *AT&T, Inc. v. FCC*, Nos. 16-1145, 16-1166, 16-1177, (D.C. Cir. Aug. 29, 2017) (*Remand Order*).

² See generally *Order*.

³ Pet. for Rev., *AT&T, Inc. v. FCC*, No. 16-1145 (D.C. Cir. May 11, 2016); Nonbinding Statement of Issues to be Raised, *AT&T, Inc. v. FCC*, No. 16-1166 (D.C. Cir. July 7, 2016) (citing *BellSouth v. FCC*, 469 F.3d 1052 (D.C. Cir. 2006)). CenturyLink intervened in the proceeding in support of AT&T's petition.

⁴ Mot. for Vol. Remand, *AT&T, Inc. v. FCC*, No. 16-1166, at 3 (D.C. Cir. June 13, 2017) (FCC Motion).

⁵ Repl. to Opp., *AT&T, Inc. v. FCC*, No. 16-1166, at 3 (D.C. Cir. June 30, 2017) (FCC Reply).

⁶ Intervenors' Opp. to the FCC Mot. For Vol. Remand, *AT&T, Inc. v. FCC*, Nos. 16-1166, 16-1145, 16-1177 (D.C. Cir. June 23, 2017).

⁷ See *Remand Order*.

Accordingly, in this Public Notice, we seek comment on the issues raised by the D.C. Circuit's Remand Order. Specifically, we ask parties to address issues that will permit the Commission "to consider the extent to which the reasoning in the *Order* is compatible with the *Bell[S]outh* decision . . . or to otherwise reconsider its determination" that the tariff provisions in question were unlawful.⁸

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before the dates indicated above. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, Annapolis, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington D.C. 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (tty).

This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the

⁸ See FCC Motion at 3 ("Because that [*BellSouth*] case, like the *Order* on review, addresses the lawfulness of BDS tariff terms, the Commission believes that it would be appropriate to consider the extent to which the reasoning in the *Order* is compatible with the *Bell[S]outh* decision."); FCC Reply at 3 (seeking "to revisit this *Order*, in light of *Bell[S]outh* or otherwise"). The Commission has sought comment on court remands of other orders released by the Commission. See, e.g., *Wireline Competition Bureau Seeks Comment on Remands of Verizon 6 MSA Forbearance Order and Qwest 4 MSA Forbearance Order*, WC Docket Nos. 06-172, 07-97, Public Notice, 24 FCC Rcd 10881 (2009); *Comments Requested in Connection with Court Remand of August 1998 Advanced Services Order*, CC Docket No. 98-11 et al., Public Notice, 14 FCC Rcd 15340 (1999).

⁹ 47 CFR §§ 1.1200 *et seq.*

presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information, please contact Marv Sacks, Pricing Policy Division, Wireline Competition Bureau at (202) 418-2017 or via email at marvin.sacks@fcc.gov.

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