

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

In the Matter of

ALLNET COMMUNICATIONS  
SERVICES, INC.,  
Complainant,

v.

File No. E-89-200

WISCONSIN BELL, INC.,  
Defendant.

MEMORANDUM OPINION AND ORDER

Adopted: January 10, 1992; Released: February 3, 1992

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On May 16, 1991, the Commission released a Memorandum Opinion and Order<sup>1</sup> granting in part and dismissing in part complaints filed pursuant to Section 208 of the Communications Act (Act)<sup>2</sup> by Allnet Communications Services, Inc. (Allnet) against the National Exchange Carrier Association (NECA) and thirty individual local exchange carriers (LECs). By further order adopted September 20, 1991,<sup>3</sup> the Commission denied requests for reconsideration of its original order filed by Allnet and Wisconsin Bell, Inc. (Wisconsin Bell).

2. On October 21, 1991, Wisconsin Bell filed a petition for further reconsideration of the *Allnet Order*. Allnet opposes the petition for further reconsideration and Wisconsin Bell replied to the Opposition. For the reasons stated below, we dismiss Wisconsin Bell's petition.

II. BACKGROUND

3. Allnet's complaints were based upon two Commission orders in CC Docket No. 88-1 in which the Commission disallowed certain projected revenue requirements associated with the LECs' 1988 access tariff filings.<sup>4</sup> In its complaints, Allnet sought to recover from the defendants its prorated share of the unlawful disallowed amounts. In that order, however, the Commission had emphasized that the defendants would be given an opportunity to disclaim liability for refunds by showing that revenue requirement overstatements identified by the Commission in the CC Docket 88-1 proceeding were offset by understatements in other related expense categories, or that their earnings for

the affected interstate access service category were below the Commission's authorized level for the relevant 1988 time period.

4. In the *Allnet Order*, the Commission found that a number of the defendant LECs successfully rebutted Allnet's claims by submitting evidence of offsets in other expense categories. The Commission also found, however, that since Ameritech, on behalf of Wisconsin Bell, had presented as evidence only overall corporate rather than individual access category earnings, it had failed to refute Allnet's claims of overearnings and was thus liable for refunds of a portion of the disallowed amounts to Allnet.<sup>5</sup> In its request for reconsideration, Wisconsin Bell argued that it was not aware of the Commission's refund standards when it made its original evidentiary submission, and claimed that its actual earnings in the relevant access category were well below the authorized level. In the *Reconsideration Order*, the Commission agreed with Allnet's contention that the earnings figures submitted by Wisconsin Bell were not properly targeted to the correct time period (calendar year 1988). Therefore, the Commission did not reach the question of whether Ameritech, acting on behalf of Wisconsin Bell, should have been aware of the Commission's refund standards during the time of the original complaint proceedings.

III. WISCONSIN BELL'S PETITION

5. Wisconsin Bell has now submitted a statement, in the form of an affidavit of its Director-Earnings Management, which it claims shows that its earnings level for the relevant 1988 time period was 9.79% for the access category at issue, well below the Commission's prescribed level. Wisconsin Bell states that since it was not previously aware that 1988 was the relevant time period of Allnet's complaint, and that since the Commission had failed to make this clear in the *Allnet Order*, the proffered data should be accepted as evidence of non-liability for refunds. Allnet, in its opposition, claims that Wisconsin Bell's affidavit should not be allowed in the record since it does not constitute a new fact under Section 1.106 of the Commission's rules, and that Wisconsin Bell has not justified why the affidavit was not presented earlier. Allnet further claims that, if Wisconsin Bell's new submission is considered by the Commission, Allnet should be given the opportunity to conduct discovery to challenge the accuracy of the earnings data presented. In this regard, Allnet argues, *inter alia*, that the affidavit is not properly executed since it is not signed by an officer of Wisconsin Bell.

IV. DISCUSSION

6. We have reviewed Wisconsin Bell's petition for further reconsideration, and find that the request is inconsistent with the rule prohibiting reconsideration of a Commission order where reconsideration had previously

<sup>1</sup> 16 FCC Rcd 2608 (1991) (*Allnet Order*).

<sup>2</sup> 47 U.S.C. § 208 (1988).

<sup>3</sup> 6 FCC Rcd 5663 (1991) (*Reconsideration Order*).

<sup>4</sup> Annual 1988 Access Tariff Filings, CC Docket No. 88-1, Phase II, 4 FCC Rcd 4115 (1988), *recon.*, 4 FCC Rcd 3965 (1989),

*further recon.*, 4 FCC Rcd 7906 (1989), *appeal pending sub nom.* Southern Bell Telephone and Telegraph Co. v. FCC, No. 89-1081 (D.C. Cir. filed Feb. 2, 1989).

<sup>5</sup> *Allnet Order* at Appendix.

been denied.<sup>6</sup> Wisconsin Bell has provided no new evidence which was not available at the time of the original complaint proceeding, nor has it shown that any changed circumstances or conditions warrant the requested relief.<sup>7</sup> Even granting Wisconsin Bell's repeated argument that it did not become aware of the Commission's standards for determining liability for refunds until the Commission issued its decision in *MCI Telecommunications Corporation v. Pacific Northwest Bell Telephone Company, et al.*,<sup>8</sup> there still remained adequate time for Wisconsin Bell, or Ameritech acting on its behalf, to endeavor to supplement the record in the Allnet complaint proceedings. We are not aware of any such attempt having been made.

#### V. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and authority delegated in Section 1.106(k)(3) of the Commission's rules, 47 C.F.R. § 1.106(k)(3), that the Petition for Further Reconsideration filed by Wisconsin Bell, Inc. IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone  
Chief, Common Carrier Bureau

---

<sup>6</sup> Section 1.106(k)(3) of the Commission's Rules, 47 C.F.R. § 1.106-(k)(3), provides in pertinent part that "[a] petition for reconsideration of an order which has been previously denied on reconsideration may be dismissed by the staff as repetitious."

<sup>7</sup> This ruling, however, does not preclude Wisconsin Bell from submitting the subject affidavit for consideration in the damages phase of this proceeding.

<sup>8</sup> 5 FCC Rcd 216 (1990), *recon. denied*, 5 FCC Rcd 3464 (1990), *appeal dismissed sub nom. Mountain States Tel. & Tel. Co. et al. v. FCC*, Case No. 90-9510 *et al.* (10th Cir. Dec. 13, 1991).