

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

In the Matter of

American Telephone
and Telegraph Company

Transmittal No. 3585

Revisions to Tariff F.C.C. No. 12

ORDER

Adopted: January 23, 1992; Released: January 24, 1992

By the Chief, Common Carrier Bureau:

1. American Telephone and Telegraph Company (AT&T) has filed Transmittal No. 3585 to modify Virtual Telecommunications Network Service (VTNS) Option 31. Option 31, as modified, is described by AT&T as a generally available offering designed and engineered for voice and data communications service among stations in the United States, Puerto Rico, the U.S. Virgin Islands, and specific international locations. The revisions to Option 31: decrease the basic charge; reduce rates in Schedule C; introduce a domestic usage volume pricing plan; modify the international usage volume pricing plan; modify the minimum annual charge; modify the changes provisions; introduce a domestic data transmission capability (DTC) volume pricing plan; introduce an international DTC, voice transmission capability and satellite transmission capability volume pricing plan; and modify the outage credit units. See AT&T Transmittal No. 3585 Description and Justification (D&J) at 2-5. Transmittal 3585 is scheduled to take effect on January 28, 1992.

2. US Sprint Communications Company Limited Partnership (Sprint), Williams Telecommunications Group, Inc. (Williams), and Competitive Telecommunications Association (CompTel) filed petitions to reject or suspend and investigate the transmittal on November 14, 1991. AT&T filed a reply on November 22, 1991.

3. Petitioners argue that the Commission's action in CC Docket 90-132¹ prohibits the Commission from accepting the revisions to Option 31. In the *Interexchange Order*, the Commission determined that, pending 800 number portability, 800 or inbound services cannot be legally bundled with other services, but also "grandfathered" existing options. *Interexchange Order* at para. 149. Petitioners argue that the Commission intended to grandfather only those options on file as of August 1. Sprint Petition at 3-4; Williams Petition at 4; CompTel Petition at 3.

4. The petitioners contend that the proposed revisions substantially alter Option 31, which they assert establishes that AT&T is using revisions as a way of avoiding the 800 bundling restriction. See Sprint Petition at 3; Williams Petition at 5; CompTel Petition at 2. Sprint and Williams allege that these modifications expand the scope of 800 service bundling in Option 31 and should not be permitted. See Sprint Petition at 4; Williams Petition at 5.

5. CompTel insists that these modifications are objectionable because they are material changes in the option. CompTel Petition at 1. Sprint asserts that the changes in Transmittal 3585 are not being made to serve the current customer but to make this offering more attractive to other customers and thereby avoid the Commission's prohibition on bundling of inbound service. Sprint Petition at 2-4. Williams alleges Tariff 12 cannot be justified under the principles enunciated in the *Tariff 12 Remand*² and *Sea-Land*³ decisions, claiming that those cases require that the tariff filing or contract provide sufficient information to ensure compliance with statutory anti-discrimination provisions. *Id.* at 8-9. Williams argues that the Tariff 12 options are not generally available and are otherwise unlawful violations of Section 202(a) of the Communications Act. *Id.* at 9-12.

6. AT&T replies that this filing makes no fundamental change to Option 31; the rate elements, rate structure, and functionality remain essentially as originally filed. AT&T Reply at 1. AT&T asserts that the *Interexchange Order* does not prohibit revisions to existing VTNS options that include inbound capability. *Id.* at 2-5. Furthermore, AT&T contends that the proposed revisions to Option 31 would not thwart the policy of promoting competition for inbound services. *Id.* at 6.

7. The Commission's *Interexchange Order* precluded AT&T from including any inbound service in new Tariff 12 options until 800 numbers become portable, but "grandfathered" existing Tariff 12 options containing such service. *Interexchange Order* at para. 149. The Commission reasoned that, while this action would inconvenience customers who were in negotiations for Tariff 12 options, such customers would not have to reconfigure their existing service offerings, which existing customers would be required to do in the absence of the grandfathering provision. *Id.* at n.237. On November 25, 1991, the Commission released an Order extending the grandfathering provision of the *Interexchange Order* to include the additional Tariff 12 options that had been filed with the Commission before September 1, 1991.⁴

8. The Common Carrier Bureau has reviewed AT&T Transmittal No. 3585, the revisions, and the pleadings. We conclude that this transmittal must be rejected because these revisions substantially change Option 31, which includes inbound service, and are therefore inconsistent with the Commission's decision in CC Docket 90-132 to prohibit any further bundling of inbound services in Tariff 12 Packages and in contract-based tariffs.⁵

¹ Competition in the Interstate Interexchange Marketplace, Report and Order, 6 FCC Rcd 5880, 5905-06 (1991) (*Interexchange Order*), reconsidered in part, FCC No. 91-930, Mimeo 38289 (released Nov. 25, 1991), petitions for further recon. pending.

² *MCI Telecommunications Corp. v. FCC*, 917 F.2d 30 (D.C. Cir. 1990).

³ *Sea-Land Service, Inc. v. ICC*, 738 F.2d 1311 (D.C. Cir. 1984).

⁴ Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, Memorandum Opinion and Order, FCC No. 91-390, Mimeo 38289 (released Nov. 25, 1991).

⁵ See American Telephone and Telegraph Company, Transmittal No. 3375, DA 91-1577 (released Dec. 19, 1991) at para. 11.

9. Accordingly, IT IS ORDERED that American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal No. 3585, IS REJECTED.

10. IT IS FURTHER ORDERED that the petitions to reject or suspend and investigate American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal No. 3585, filed by US Sprint Communications Company Limited Partnership, Williams Telecommunications Group, Inc., and Competitive Telecommunications Association, ARE GRANTED to the extent indicated herein, and otherwise ARE DENIED.

11. IT IS FURTHER ORDERED that American Telephone and Telegraph Company SHALL ISSUE revisions to the tariff no later than five business days from the release of this Order removing the rejected material and reinstating currently effective material. These revisions shall be scheduled to become effective on not less than one day's notice. For this purpose, Special Permission No. 92-13 is assigned and Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58, 61.59, are waived.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau