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

In the Matter of	)	
	)	
AT&T Corp. Petition for Declaratory Ruling	)	
Concerning the Duty of Local Exchange	)	CCB/CPD File No. 01-24
Carriers to Provide Exchange Access to	)	
Interexchange Carrier Points of Interface	)	

MEMORANDUM OPINION AND ORDER

Adopted: May 2, 2003 **Released: May 5, 2003**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. On November 7, 2001, AT&T Corp. (AT&T) filed a Petition for Declaratory Ruling (Petition) requesting that the Commission rule that a local exchange carrier (LEC) must provide exchange access services to a "point of interface"[1] designated by an interexchange carrier (IXC) within the IXC's point of presence (POP).[2] AT&T states that the petition was filed in response to actions by SBC Corp. (SBC) and Verizon Corp. (Verizon). Both LECs have declared that they no longer will provide facilities beyond the LEC equipment room within an AT&T-controlled POP as part of their tariffed access service.[3] For the reasons that follow, we deny AT&T's petition.[4]

[1] The parties use the terms "point of interface" and "point of termination" interchangeably. Both terms refer to the specific point where a LEC's equipment is connected to an IXC's equipment. To avoid confusion, we will use the term "point of termination" (POT) in this order.

[2] *See AT&T Corp. Petition for a Declaratory Ruling Concerning the Duty of Local Exchange Carriers to Provide Exchange Access to Interexchange Carrier Points of Interface*, CCB/CPD File No. 01-24, Petition of AT&T (2001) (AT&T Petition).

[3] *See* AT&T Petition, Appendices C-E.

[4] This Order is issued pursuant to the Bureau's delegated authority to administer Commission policies regarding the rates, terms, and conditions under which carriers provide interstate access services. 47 C.F.R. § 0.91. No novel questions or law or policy are presented, and we are able to resolve the question presented by the petition under the Commission's outstanding precedents and guidelines. 47 C.F.R. § 0.291(a)(2); *see, e.g., Petitions for Reconsideration and Applications for Review of RAO Letter 21*, Order on Reconsideration, AAD 92-86, 12 FCC Rcd 10061, paras. 25-27 (1997).

II. BACKGROUND

2. In 1982, the District Court for the District of Columbia entered the Modification of Final Judgment (MFJ),[5] divesting the Bell Operating Companies (BOCs) from AT&T. Under the terms of the MFJ, AT&T retained the assets and legal authority necessary to provide interexchange services. The BOCs were granted the assets and legal authority necessary to provide local exchange and exchange access services and were required by the MFJ to provide IXCs with exchange access services on a tariffed basis.[6] A Plan of Reorganization was filed with, and approved by, the district court specifying the division of assets and responsibilities among AT&T and the BOCs.[7] Section 251(g) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, requires the BOCs to continue to be subject to the same exchange access obligations established by the MFJ unless explicitly superseded by the Commission.[8]

3. The buildings in which AT&T locates its interexchange equipment are generally referred to as POPs (points of presence). At the time of divestiture, the equipment to be used by the BOCs to provide access services often was located in the same room within AT&T's POPs as the equipment used by AT&T to provide interexchange services. Over time, as technology evolved, usage increased, and new services became possible, it has been necessary for AT&T to place new equipment in its POPs and connect that equipment to the BOCs' networks. During the period immediately following divestiture, according to the SBC and Verizon, AT&T typically would locate any new equipment in reasonably close proximity to the BOC equipment already in the POP, and the BOCs would extend their facilities to the new AT&T equipment as part of their tariffed access services.[9] More recently, however, as AT&T POPs have become more crowded and the distance between AT&T's new equipment and the BOCs equipment has increased, there have been disputes between AT&T and the BOCs regarding which company should bear the costs of this intrabuilding cabling.[10]

4. Two of the BOCs, SBC and Verizon, have responded to these developments by instituting new practices pursuant to which they will no longer provide facilities beyond the LEC equipment room in the POP as part of their tariffed access services.[11] SBC, for example, now treats the last piece of SBC-owned equipment as the demarcation point between its network and AT&T's network and separately charges for cabling to connect its equipment to AT&T's

[5] *See United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982) (MFJ), *aff'd sub nom*., *Maryland v. United States*, 460 U.S. 1001 (1983).

[6] *See* MFJ, 552 F. Supp. at 226-27, § II.A.

[7] *See United States v. Western Electric*, 569 F. Supp. 1057 (D.D.C. 1983) (approving, with modifications, plan of reorganization).

[8] *See* 47 U.S.C. § 251(g).

[9] *See* SBC Comments at 10; Verizon Comments at 1-3.

[10] *See* BellSouth Comments at 2; Verizon Comments at 1-3.

[11] *See* SBC Comments at 10; Verizon Comments at 4. *See also* AT&T Petition, Appendices C-E.

equipment.[12] Verizon has similarly stated that it will stop providing cabling to AT&T's frame and will terminate its access services on a Verizon frame within an AT&T POP.[13]

5. AT&T states that the new practices implemented by the BOCs have increased its cost of providing interexchange service by millions of dollars, and it suggests that shifting these costs to AT&T may be the primary motivation behind these new practices.[14] In an effort to stop the new practices implemented by SBC and Verizon, AT&T filed the Petition requesting a declaratory ruling that LECs have an obligation to provide access services to a POT designated by an IXC. In a Public Notice dated November 28, 2001, the Bureau invited comments from interested parties.[15] Comments were filed by the Association of Communications Enterprises (ASCENT), BellSouth, SBC, and Verizon. AT&T and SBC filed reply comments.

III. DISCUSSION

6. To resolve the question presented by AT&T's petition, we must first determine whether the MFJ or Commission precedent imposes on LECs a requirement to provide access service to any POT designated by an IXC.[16] If not, we must then determine whether the past practices of the LECs somehow create such an obligation. For the reasons explained below, we conclude that the ruling requested by AT&T is not supported by the MFJ, Commission precedent or the past practices of the LECs.

A. The MFJ

7. AT&T and ASCENT argue that the obligation of BOCs to provide service to an IXC-designated POT is contained in the MFJ. Both AT&T and ASCENT rely on section II of the MFJ, which requires BOCs to provide access services under tariff, and section IV.F., which obligates the BOCs to provide exchange access "at a point or points within an exchange area designated by an interexchange carrier for the connection of its facilities with those of the BOC."[17] Both parties also point to the Plan of Reorganization, which defined a POP as "a

[12] AT&T Petition, Appendix C.

[13] *Id.* at Appendix E.

[14] AT&T Reply at 12 (stating that "the BOCs new policies have the added benefit (to them) of directly raising their IXC rivals' costs").

[15] *See* Public Notice, *AT&T Files Petition for Declaratory Ruling Regarding Points Of Interface Between IXCs and LECs*, CCB/CPD File No. 01-24 (2001).

[16] As noted above, section 251(g) of the Act provides that the BOCs continue to be subject to the same exchange access obligations established by the MFJ unless explicitly superseded by the Commission.

[17] AT&T Petition at 2-3; ASCENT Comments at 2-3. The MFJ defines "exchange access" as "the provision of exchange services for the purpose of originating or terminating interexchange telecommunication…. Such services shall be provided by facilities in an exchange area for the transmission, switching, or routing, within the exchange area, of interexchange traffic originating or terminating within the exchange area, and shall include switching traffic within the exchange area above the end office and delivery and receipt of such traffic at a point or points within an exchange area designated by an interexchange carrier for the connection of its facilities with those of the BOC." MFJ, 552 F.Supp. at 228, § IV.F.

physical location where there is a point of interface between the LEC facilities providing a LATA access function and an interLATA carrier's facilities providing an interLATA function."[18]

8. BellSouth, SBC and Verizon concede that the MFJ requires BOCs to provide exchange access service to an IXC POP under tariff, but they challenge AT&T's argument that the MFJ requires the provision of access service to the precise point of termination (POT) designated by an IXC within a POP. Verizon states that the exact location of the POT was never determined because, at the time of divestiture, terminating and interexchange equipment were in the same area of the building that became AT&T's POP, or even the same room.[19] According to BellSouth and Verizon, AT&T has created a problem that did not exist at the time of divestiture by unilaterally designating new POTs far from the LECs' facilities, as far as several floors away in some cases.[20]

9. We reject AT&T's argument that the phrase "point or points within an exchange area" in the MFJ's definition of exchange access refers to a POT and that the BOC's obligation is to extend its cabling to any location designated by an IXC within a POP. Rather, we conclude that the MFJ's requirement is ambiguous and that the MFJ does not clearly require BOCs to provide access to an IXC-designated POT within a POP. Given the fact that AT&T equipment and BOC equipment were located in such close proximity at divestiture, an equally plausible reading of the MFJ is that it requires only that BOCs provide access services to an AT&T-designated POP, but that it does not specify the location of the POT or how the POT should be determined. Although there are no judicial decisions regarding the MFJ that address the specific interpretation question raised by the Petition (the location of the POT), we note that the ILECs' more limited view of their access obligations is consistent with the interpretation of the district court responsible for administering the MFJ.[21] In light of these factors, we cannot conclude that any MFJ requirement compels us to grant AT&T's petition.

B. Commission Rules and Orders

10. Concurrent with the divestiture, the Commission adopted its access charge plan, which established a uniform system for the provision of exchange access services by LECs that substantively tracked the MFJ obligations applicable to the BOCs.[22] Pursuant to the

[18] AT&T Petition at 3; ASCENT Comments at 3 (citing Plan of Reorganization at 12 n.11). In addition, AT&T and ASCENT cite to section 251(g) to emphasize the LECs' continuing obligations. *See* AT&T Petition at 6; ASCENT Comments at 3.

[19] *See* Verizon Comments at 2.

[20] *See* BellSouth Comments at 2; Verizon Comments at 1-3.

[21] Specifically, the court characterized the obligation of the BOCs as follows: "The Operating Companies must deliver traffic originating or terminating within a LATA *to a point of presence (POP)* within the LATA designated by an interexchange carrier for the connection of its facilities with those of the Operating Company." *United States v. Western Electric*, 569 F. Supp. 990, 994 n.13 (emphasis added). *See also United States v. Western Electric*, 131 F.R.D. 647, 649 (D.D.C. 1990). As noted above, the Plan of Reorganization defined a POP as a "physical location where there is a point of interface." The "physical location" referred to in the Plan of Reorganization is a building or other premises, not the specific point where the networks meet.

[22] *See MTS and WATS Market Structure*, CC Docket No. 78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983), *recon.*, Memorandum Opinion and Order, 97 FCC 2d 682 (1983) (collectively *Access Charge Orders*).

Commission's *Access Charge Orders*, the BOCs filed their individual tariffs, and the Exchange Carrier Association (ECA)[23] filed a tariff on behalf of the majority of LECs in existence at that time (1328 out of the 1540 LECs in the U.S.). In the subsequent *ECA Tariff Order*, the Commission, *inter alia*, suspended and ordered investigation and modification of certain tariff provisions.[24] The ECA tariff was identical in format and structure to the BOCs' tariffs, regulations, and provisions.[25]

11. The parties all agree that the language adopted by the Commission in the *ECA Tariff Order* continues to reflect the Commission's expectations with respect to the location of the POT (*i.e.*, there have been no subsequent orders on this particular issue) and therefore is highly relevant in resolving this dispute. The final language approved by the Commission in the *ECA Tariff Order* is as follows:

> The services provided under this tariff (A) will include any entrance cable or drop wiring and wire or intrabuilding cable to that point where provision is made for termination of the Telephone Company's outside distribution network facilities at a *suitable location inside a customer-designated premises* and (B) will be installed by the Telephone Company to such Point of Termination. Wire required within a building to extend Access Service facilities will be provided, at the Customer's request, on a time sensitive charge basis. The labor rates for the installation of such wire are the same as those set forth in 13.2.6(C) following for Other Labor. [26]

12. We conclude that the final language selected by the Commission in the *ECA Tariff Order* means that an IXC is entitled to designate the POP, but not the POT. The critical phrase is "suitable location inside a customer-designated premises." Our rules define "premises" as a building or portion of a building.[27] A POP, therefore, is a form of premises, and the language in the *ECA Tariff Order* gives an IXC the right to designate the POP. The IXC's right

[23] The ECA is now known as the National Exchange Carrier Association (NECA).

[24] *See Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, Memorandum Opinion and Order, 97 FCC 2d 1082, 1086, para. 9 (1984) (*ECA Tariff Order*).

[25] *Id*.

[26] *Id.* at 1152 (App. D, § 2.1.5) (emphasis added). The original language proposed by the ECA would have included within tariffed access service any wiring to a "location of minimum penetration inside the [IXC] terminal location or End User premises," as well as installation of the wiring to "such Point of Termination." *Id.* Under the proposed language, the "point of termination" was "defined as the Point of Interface at the [IXC] terminal location and the Network Interface at the End User premises." *Id*. The Commission found that the proposed language was confusing and substituted "suitable location" for "location of minimum penetration", and "customer-designated premises" for "[IXC] terminal location or End User premises." The Commission also adopted a single definition of "point of termination" that applied to both end users and IXCs. *Id*. at 1196 (App. D, § 2.6).

[27] 47 C.F.R. § 68.3 (defining "premises" as "a dwelling unit, other building or a legal unit of real property such as a lot on which a dwelling unit is located, as determined by the provider of telecommunications service's reasonable and nondiscriminatory standard operating practices").

to designate the premises does not, however, extend to designating the POT. Because the Commission did not specify that the IXC could select the POT, the LEC, in its tariff, may identify as the POT any point that is a "suitable location" and "inside" the POP designated by the IXC.

13. We draw further support for this interpretation of the "suitable location" language from the sentence that follows it in the *ECA Tariff Order*, which provides that a separate charge may be imposed for "[w]ire required within a building to extend Access Service." If AT&T could designate unilaterally any point within its POP as the POT, this sentence would be rendered virtually meaningless because additional wiring "to extend Access Service" would rarely, if ever, be needed. We conclude that the more logical reading of this sentence is that a LEC may impose additional charges on an IXC for wiring that runs from the POT – which is at the "suitable location" – to the IXC's interexchange equipment.

14. We reject the argument of AT&T and ASCENT that other language in the modified section 2.1.5 of the ECA tariff gives IXCs the right to designate the POT. Specifically, AT&T and ASCENT point to the requirement that "entrance cable or drop wiring and wire or intrabuilding cable" be installed under tariff "by the [LEC] to such Point of Termination."[28] Although this language does obligate LECs to install entrance cable or drop wiring to the POT, it sheds no light on the question of how the location of the POT should be determined.

15. Our interpretation of the *ECA Tariff Order* is consistent with the policies underlying the Commission's inside wiring rules, which were adopted during the same period of time. As SBC and Verizon note, inside wire is furnished to end users by a LEC only up to a demarcation point just inside the building.[29] SBC is correct that granting AT&T's petition and allowing IXCs to designate the POT unilaterally would thereby result in disparate treatment of end-user and IXC customers.[30] The policy underlying the Commission's inside wiring rules is to place responsibility for intrabuilding wiring on customers, not carriers, and AT&T has offered no policy rationale for deviating from that principle for IXC customers.

16. In support of its legal arguments, AT&T has raised a number of arguments regarding the policy implications of the Petition. Specifically, AT&T expresses concern that coordinating installations under the LECs' new practices is more difficult and expensive than in the past and that the BOCs' interpretation of their obligation interferes with AT&T's ability to provide reliable interexchange service in a timely and efficient manner.[31] AT&T believes that SBC's refusal to provide access services to the POT designated by AT&T is blatant anticompetitive behavior.[32] Given the LECs' recent entry into the long-distance market, AT&T is concerned that the LECs will delay complying with their interconnection obligations while

[28] AT&T Petition at 4; ASCENT Comments at 2-3 (citing *ECA Tariff Order*, 97 FCC 2d at 1152).

[29] *See* SBC Comments at 10-12; Verizon Comments at 3-5. *See also* SBC Reply at 2.

[30] *See* SBC Reply at 2.

[31] *See* AT&T Reply at 12-14.

[32] *Id.* at 12.

they attempt to capture AT&T's customers.[33] According to AT&T, an IXC has no incentive to place its equipment far away from the LECs' facilities because an IXC will be able to provide service to its customers more quickly if its equipment is close to the LECs' facilities.[34] Increasing the distance, on the other hand, would increase the IXC's cost because the IXC must install the racking to carry the cables within its POP.[35]

17. After weighing the evidence on the record, even assuming the legal interpretation set forth above permitted us the flexibility to so decide, we do not think AT&T's concerns would be addressed by granting the Petition. Regardless of where the POT is located, an IXC and a LEC must coordinate with each other regarding the connection of the two networks and the provision of service to their shared customer. AT&T has not demonstrated how granting its Petition, thereby giving LECs greater responsibility for wiring inside an AT&T building, will reduce or eliminate any of the coordination problems that currently exist. Similarly, granting this Petition would be an indirect and inefficient way for the Commission to deal with AT&T's concerns about the quality of service it receives from LECs. LECs remain subject to nondiscrimination requirements after they begin providing interexchange service,[36] and AT&T may bring specific allegations of discriminatory conduct to the Commission's attention through the section 208 complaint process.[37]

C. The LECs' Past Practices

18. AT&T argues that the LECs' willingness in the past to extend facilities beyond the equipment room to a POT designated by an IXC strongly suggests that the LECs had a legal obligation to do so.[38] AT&T describes network arrangements widely practiced among LECs since divestiture, whereby the IXC typically designated the POT, and the LEC brought facilities to the IXC-designated POT as part of its tariffed access service.[39] AT&T also argues that the costs of wiring within IXC POPs were never excluded from the incumbent LECs' rate bases in the period before price caps, and therefore these costs are being recovered in access rates today.[40] AT&T asserts that BOCs could not change the method by which they recover these costs (*i.e.*, through access charges) without a waiver of the MFJ, and that no incumbent LEC obtained such

[33] *Id.* at 12-14.

[34] *Id.* at 16.

[35] *Id.* at 16.

[36] *See* 47 U.S.C. §§ 202, 272(e)(1).

[37] *See* 47 U.S.C. § 208. For example, AT&T could attempt to demonstrate that a particular POT proposed by a LEC is not at a suitable location or that the location violates the provisions in the LEC's tariff. The resolution of any such complaint would depend on the specific tariff terms, the LEC's proposed point of termination, and other facts related to the suitability of the location chosen by the LEC.

[38] *See* AT&T Comments at 1; AT&T Reply Comments at 2, 6-7.

[39] *See* AT&T Petition at 5. *See also* Letter from Patrick H. Merrick, Director - Regulatory Affairs, AT&T, to Magalie Roman Salas, Secretary, FCC (filed Jan. 25, 2002) (AT&T Jan. 25 *ex parte*). In Appendix A to its petition, AT&T provides a block diagram depicting this network arrangement. *See* AT&T Petition, Appendix A.

[40] AT&T Reply at 15-16

a waiver.[41]

19. In response, both SBC and Verizon characterize the challenged practices as nothing more than an effort to enforce past practices more consistently across their territories. SBC states that for years its policy has been that access services terminate on SBC equipment in the POP, and that intrabuilding cable is provided on an off-tariff basis.[42] As SBC has acquired several LECs over the years, it has sought to make its practices consistent over its entire region.[43] Similarly, Verizon states that its practice is for exchange access services to terminate at the equipment room in the IXC POP housing the LECs' access equipment and that the IXC is responsible for any cabling beyond that point on an off-tariff basis.[44] Since the merger of GTE and Bell Atlantic, Verizon has attempted to implement this practice region-wide.[45] BellSouth permits the IXC to designate the POT if BellSouth agrees that the POT is in a "suitable location" as determined by BellSouth's tariff.[46]

20. SBC also challenges AT&T's argument that the cost of wiring within IXC POPs is already recovered in access charges. SBC argues that these costs were removed from access charges following the Commission's detariffing of inside wiring and that they are appropriately recovered through a separate charge if AT&T chooses not to install the wiring itself.[47]

21. We reject AT&T's argument that the past practices of the LECs demonstrate that they have a legal obligation to provide access services to an IXC-designated POT. A carrier's obligations to its customers are defined by statute, by our rules and orders, and by the carrier's tariffs.[48] We explained above that neither the MFJ nor Commission precedent require that we grant AT&T's requested ruling. As to tariffs, the Commission interprets tariff provisions based on the language of the tariff.[49] In any event, AT&T does not argue that the allegedly new

[41] *Id.* at 15

[42] *See* SBC Comments at 2; Attachment 1. *See also* Letter from Jonathan J. Boynton, Associate Director – Federal Regulatory, SBC, to William F. Caton, Acting Secretary, FCC (filed Mar. 8, 2002) (SBC Mar. 8 *ex parte*).

[43] *See* SBC Comments at 8-9 (citing SWBT and Ameritech as examples).

[44] *See* Verizon Comments at 4-5. *See also* Letter from W. Scott Randolph, Director – Regulatory Affairs, Verizon, to Magalie R. Salas, Secretary, FCC (filed Feb. 11, 2002) (Verizon Feb. 11 *ex parte*).

[45] *See* AT&T Petition, Appendix E. *See also* Verizon Feb. 11 *ex parte*.

[46] BellSouth Comments at 2-6

[47] SBC Comments at 10 n.24 (citing *In the Matter of Annual 1988 Access Tariff Filings*, CC Docket No. 88-1, Phase II, Memorandum Opinion and Order, 4 FCC Rcd 4115, 4120, para. 33 (1988) (*1988 Access Charge Order*).

[48] The Act "makes it unlawful to 'extend to any person any privileges or facilities in such communication, or employ or enforce any classifications, regulations, or practices affecting such charges' except those set forth in the tariff, § 203(c)." *AT&T v. Central Office Telephone*, 524 U.S. 214, 223-24 (1998) (quoting 47 U.S.C. § 203(c)).

[49] *See, e.g., The Associated Press Request for Declaratory Ruling*, File No. TS-11-74, Memorandum Opinion and Order, 72 FCC 2d 760, 764-65, para. 11 (1979) (quoting *Commodity News Services v. Western Union*, 29 FCC 1208, 1213, *aff'd*, 29 FCC 1205 (1960)) ("Tariffs are to be interpreted according to the reasonable construction of their language; neither the intent of the framers nor the practice of the carrier controls, for the user cannot be charged with knowledge of such intent or with the carrier's canon of construction…"); *Theodore Allen Communications v. MCI*, File No. E-93-094, Memorandum Opinion and Order, 12 FCC Rcd 6623, 6629, para. 14 (Common Carrier

(continued....)

practices implemented by the LECs violate their tariffs, nor does it argue that the tariffs violate the *ECA Tariff Order* or any other Commission rules or orders.

22. Furthermore, even if a carrier's past practices, as opposed to its tariff, were relevant, practices were not uniform among carriers and do not present persuasive evidence with respect to how the Commission's rules were, or should be, interpreted. Although SBC and Verizon concede that in the past they may have extended facilities within a POP all the way to an IXC-designated POT, the practice was not universal within either company.[50] Rather, different LECs had different interpretations of the applicable requirements, as did different IXCs. As Verizon notes, AT&T is unique among IXCs in moving its equipment to remote locations with a POP and asking LECs to pay for the additional cabling.[51] All other IXCs appear to accept that the location of the POT is in a common equipment room within the POP.[52]

23. In addition, the unique circumstances present at the time of divestiture explain why a LEC might have followed this practice, even in the absence of a legal requirement to do so, and why its willingness to do so in the past is irrelevant to whether it has an ongoing obligation to do so today. As the LECs note, at the time of divestiture, LEC equipment and AT&T equipment were typically located in the same area within an AT&T POP, often in the same room.[53] Given this proximity, it is not surprising that the MFJ and the Plan of Reorganization are silent with respect to which carrier was to bear responsibility for the cost of wiring to connect the two networks, nor is it surprising that a LEC might have absorbed this relatively minor expense.

24. We also disagree with AT&T's argument that the accounting treatment of wiring within IXC POPs either defines the incumbent LECs' legal obligation to provide such wiring, or constitutes convincing evidence of the scope of that obligation.[54] As an initial matter, given the relevant language in the MFJ, we disagree with AT&T's argument that a waiver of the MFJ was required for a BOC to change the way it recovered the costs of wiring within IXC POPs. The MFJ did not specifically mandate that the BOCs install wiring to a POT designated by an IXC, and therefore no waiver would be necessary to change the method by which a BOC recovered the cost of this wiring.

25. More importantly, the basic premise of AT&T's argument – that the accounting treatment of wiring prior to price caps somehow locks in place the demarcation point between an

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Bureau 1997) ("[U]nder the Filed Rate Doctrine and similar principles, any representations the parties may have made to each other regarding the discounts are secondary to the tariff language itself.").

[50] *See* SBC Comments at 10; Verizon Comments at 1-3.

[51] *See* Verizon Comments at 2; Verizon Feb. 11 *ex parte*.

[52] *See, e.g.*, BellSouth Comments at 2 ("BellSouth terminates its services in common access areas for all IXCs, not just AT&T. . . . AT&T's POI has traditionally been located in the common access area. . . . It is AT&T that is initiating the change.").

[53] *See* SBC Comments at 10; Verizon Comments at 1-3.

[54] *See* AT&T Reply at 15-16.

incumbent LEC and an IXC – is not correct. AT&T essentially argues that changes in an incumbent LEC's practices with respect to demarcation points create the potential for double recovery, and therefore such changes should be prohibited.[55] Although we are always concerned about potential double recovery of costs, we do not agree with AT&T that the accounting and ratemaking regime at issue controls how we resolve the specific question presented by AT&T's petition, *i.e.*, whether the demarcation point with respect to a particular customer (in this case AT&T) can be moved by the incumbent LEC. Rather, the appropriate forum for considering any alleged double recovery would be a challenge to a LEC's access charges.

26. Furthermore, given the operational arrangements and accounting rules in place between divestiture in 1984 and the transition to price caps in 1991, it seems likely that either no intraPOP wiring costs or only a minimal amount of such costs currently are being recovered through access charges. As discussed above, in the years immediately following divestiture, AT&T's equipment and a LEC's equipment typically were located in close proximity within an AT&T POP. Consequently, the amount of wiring costs at issue likely was smaller then than it would be today. In addition, only a portion of those costs would have been reflected in the rate base in the period before price caps. Under the Commission's accounting rules, carriers did not distinguish between wiring within a POP and wiring in other types of buildings.[56] As a result, the costs associated with wiring within POPs likely represented only a small portion of the account to which such costs were booked. Moreover, those costs were allocated between regulated and non-regulated services based on factors unrelated to the demarcation point within IXC POPs and, after the Commission detariffed inside wiring in 1986, the majority of such costs were treated as non-regulated costs.[57] Under this regime, the record does not provide an adequate basis for a finding that the challenged changes in demarcation practices will result in a material double recovery of costs.

[55] AT&T Reply at 15-16 ("Thus, the costs of intrabuilding cabling were included in the rate base used to determine price caps in 1991, *i.e.*, LECs always have (and continue to) recover the costs of providing intrabuilding cabling to access customers through exchange access rates.").

[56] Neither AT&T nor the ILECs cite to any Commission decision specifically discussing the accounting treatment of wiring within IXC POPs, nor do they explain whether such costs were booked to Account 6362 (Inside Wiring) or Account 6426 (Intrabuilding Network Cable). As the Commission noted in 1990, incumbent LEC practices for booking these costs were not uniform. *See 1990 Access Charge Order*, 5 FCC Rcd at 4181, para. 29 ("[S]ome companies are recording costs in Account 6426, Intrabuilding network cable expense, that other companies record in Account 6362."). In either case, costs associated with wiring inside IXC POPs are not tracked separately from the costs of wiring other types of buildings.

[57] For example, in the *1990 Access Charge Order*, the Commission held that no more than 40 percent of wire costs in Accounts 6362 and 6426 could be considered regulated, a decision that was based on a review of incumbent LEC procedures for assigning travel, testing, installation and repair times of field technicians, as well as recent changes in the definition of the demarcation point under the Commission's rules. *1990 Access Charge Order*, 5 FCC Rcd at 4181, paras. 26-31; *see also 1988 Access Charge Order*, 4 FCC Rcd at 4120, para. 31 ("Account 6362 expense is charged to regulated and nonregulated activities on the basis of the assignment of these [field technician] activity reports, and we believe that any error in the assignment process will lead to an erroneous charging of expense.").

IV. ORDERING CLAUSE

27. Accordingly, IT IS ORDERED, pursuant to sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, that the petition filed by AT&T Corp. IS DENIED to the extent detailed herein.

FEDERAL COMMUNICATIONS COMMISSION

William F. Maher, Jr.
Chief, Wireline Competition Bureau