

Commissioner Quello
May 29, 1980

DISSENTING STATEMENT
OF
COMMISSIONER JOSEPH R. FOGARTY

IN WHICH COMMISSIONERS JAMES H. QUELLO AND ANNE P. JONES JOIN

In Re: American Telephone & Telegraph Company and the Bell System
Operating Telephone Companies--Charges for Interstate Service.

AT&T has petitioned this Commission to modify the allowable interstate rate of return prescribed in 1976 in Docket No. 20376.^{1/} At that time, we prescribed an allowable rate of return of 9.5%. In March 1979, AT&T petitioned the Commission to modify that amount to bring it into the range of 11 to 12 percent.^{2/} In response to that request, the Commission has designated an expedited evidentiary hearing in Docket No. 79-63, which is still in progress.

On March 3, 1980, AT&T filed tariff revisions which, if granted, would result in a 10.5% across-the-board rate increase, and which would correspond to an 11.9% rate of return prescription. AT&T submits that inflation and higher interest rates are eroding earnings and that the depressed level of their equity issues is causing the cost of capital to rise, thereby rendering the 1976 prescription obsolete.

The Order approved by this Commission today prescribes a rate of return of 10.5% to become effective, and thus to be reflected in AT&T tariffs, by June 1, 1980. I do not believe that the choice of this prescription was rationally determined. In commenting on the Bell petition for modification of the prescribed rate of return,^{3/} I observed that changing economic conditions suggested the need for an upward revision

^{1/} AT&T Charges for Interstate Telephone Service, 57 FCC 2d 960 (1976).

^{2/} AT&T 73 FCC 2d 639 (1979).

^{3/} Id. at 696.

of rates in accordance with upward pressures upon the cost of its capital. I also indicated that the record underlying the prescription then in effect was stale and that we should take into account the effects of regulatory lag "already experienced as well as anticipated."

I believe that that statement applies with greater force today. In this respect, the tentative prescription does not adequately address the cost of capital problem which was already significant when Docket No. 79-63 was initiated. In fact, it is clear from the examination of the testimony of non-Bell witnesses already in the record in that Docket that there is considerable disparity in the recommended rates of return. Even the witnesses of the FCC trial staff have suggested a rate of return of 10.88%. We all recognize that until the record in that proceeding is complete, any interim prescription of a rate of return is a judgment call and not a process of refined precision. In view of the fact that we have already subjected AT&T to a regulatory lag of over one year, we should acknowledge that circumstance and develop a solution which will insure AT&T's economic viability, as well as protect the interest of the consumer pending the final determination of the allowable rate of return in Docket No. 79-63.

Given the disparate recommended rates of return in Docket No. 79-63 and the inevitable imprecision in this prescription process, I would prefer to exercise discretion in favor of AT&T's March 3, 1980 tariff filing. Consumer interests would be protected by issuance of an accounting order and requirement that any earnings generated by these tariff revisions in excess of the rate of return ultimately prescribed in Docket No. 79-63 be subject to refund with interest.