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July 19, 1991

**VIA FEDERAL EXPRESS**

Steve C. Tribble  
Director  
Division of Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32399

TS 109  
TS 110  
TS 111  
TS 112  
TS 114

910783-TS

Re:

Dear Mr. Tribble:

Enclosed herewith is an original and thirteen (13) copies of Fairchild Communication Services Company's Petition for Rate Relief.

Please date-stamp the extra copy and return it to me in the enclosed self-addressed, stamped envelope.

Should you have any questions concerning this filing, please do not hesitate to contact me.


Very truly yours,

  
Robert G. Berger

Enclosures

RGB/tpm

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DOCUMENT NUMBER-DATE

07390 JUL 22 1991

FPC-RECORDS/REPORTING

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

**In re Petition of Fairchild  
Communications Services Company**

DOCKET NO. 910783-TS

**PETITION OF  
FAIRCHILD COMMUNICATIONS SERVICES COMPANY  
FOR RATE RELIEF**

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Dated: July 22, 1991

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FPSC-RECORDS/REPORTING

## SUMMARY

Fairchild Communications Services Company ("Fairchild") provides shared tenant services ("STS") at five locations in Florida. As an STS provider, Fairchild is subject to the 12¢ per message rate adopted in 1987 by this Commission in Order No. 17111. The message rate applicable to STS providers in that proceeding was predicated on an identical rate to which Pay Telephone Service ("PATS") providers were subject at that time. The Commission explained in the STS order that it would apply the same usage-sensitive rate to both PATS and STS providers, since both are resellers of local exchange service. The rate selected reflected the Commission's prevailing concerns as to the desirability of usage-sensitive rates for resale; the infeasibility of measured, time sensitive rates because of the inability of LECs to bill access charges in certain cases; and the need to ensure against the cross-subsidization of STS and PATS providers by the general body of ratepayers.

In the intervening four and a half years, the STS message rate has remained static. At the same time, the Commission has converted PATS rates to a measured, time-sensitive rate structure and has ordered them to be adjusted downward from the initial message rate adopted in 1985 on three separate occasions, most recently in February 1991. Since April 1987,

therefore, PATS providers have been subject not to a single, flat message rate but rather to a measured, time-of-day sensitive, minute of use ("MOU") rate for local interconnection. The Commission has determined, most recently in the February 1991 PATS Order (Order No. 24101), that the measured rates adopted for PATS providers "will still recover costs and provide a reasonable amount of contribution to LEC services."

The failure to continue to mirror the PATS rates for STS providers has meant that STS providers continue to pay a message rate based upon local exchange carrier ("LEC") billing capabilities and other factors which are no longer appropriate. This has resulted in an unanticipated revenue windfall to the LECs which provide service to STS providers such as Fairchild.

Accordingly, Fairchild respectfully requests relief from the prevailing 12¢ message rate for STS providers. Fairchild urges that the Commission, consistent with its finding in the STS order, make STS providers subject to the same measured, time-sensitive rates as PATS providers by directing LECs to amend their STS tariffs to adopt the measured, MOU rates adopted for PATS providers in the February 1991 PATS Order, as may be modified by the Commission on reconsideration.

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

\_\_\_\_\_) )  
In re Petition of Fairchild ) DOCKET NO. \_\_\_\_\_  
Communications Services Company ) )  
\_\_\_\_\_) )

**PETITION OF  
FAIRCHILD COMMUNICATIONS SERVICES COMPANY  
FOR RATE RELIEF**

Fairchild Communications Services Company ("Fairchild"), by its undersigned counsel, hereby submits its Petition for Rate Relief. Since 1987, Fairchild<sup>1/</sup> and other shared tenant service ("STS") providers in Florida have been subject to a message-based PBX trunk rate based upon the rate then in effect for Pay Telephone Service ("PATS") providers.<sup>2/</sup> In the intervening four and a half years, however, the Commission has acted to shift the

<sup>1/</sup> By virtue of the Commission's Order No. 24002 in Docket No. 900780-TS et al. (effective Feb. 8, 1991), the shared tenant service certificates previously granted to AmeriSystems Partnership were transferred to Fairchild. (STS Certificate Nos. 1669, 1670, 1731, and 1735; transfer of IXC Certificate No. 127 from Amerisystems to Fairchild also was approved.) Simultaneously, Fairchild also was granted authority to provide STS at a new, fifth site: 201 South Biscayne Boulevard, Miami Center, Miami, Florida. AmeriSystems and its predecessor companies had initiated service prior to the Commission's 1987 STS order.

<sup>2/</sup> Investigation into Appropriate Rates and Conditions of Service for Shared Local Exchange Telephone Service, Order No. 17111, Docket No. 860455-TL, at 15-16 (Jan. 15, 1987) ("STS Order" or "Order No. 17111").

PATS message-based rate to a measured time-sensitive rate structure, and to adjust the PATS rates downward on three separate occasions.<sup>2/</sup> The rate applicable to STS providers, on the other hand, has remained static.

Accordingly, Fairchild hereby respectfully requests that the message rate for STS providers be adjusted to the PATS measured rates adopted by the Commission in PATS IV, as may be modified on reconsideration. Such relief is consistent with the Commission's decision in the STS proceeding to set the STS rates at the rate level in place for resale of local exchange service by PATS providers.<sup>3/</sup>

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<sup>2/</sup> Order No. 14132, Docket Nos. 820537-TP et al. (Feb. 27, 1985) ("PATS I") (establishing initial 12¢ message PATS rate); Order Accepting Stipulation, Order No. 17440, Docket No. 860723-TP (Apr. 20, 1987) ("PATS II"); Order No. 20129, Docket No. 860723-TP (Oct. 6, 1988) ("PATS III"); Order No. 24101, Docket No. 860723-TP (Feb. 14, 1991) ("PATS IV").

<sup>3/</sup> Order No. 17111, at 16. Fairchild does not seek in this petition to reopen other issues resolved in the 1987 STS proceeding, and its request for an adjustment of the current message rate does not seek any reexamination of the appropriateness of a usage-sensitive rate structure for resale of local telephone service. Rather, as discussed infra, Fairchild simply requests that this Commission reaffirm its determination that the PATS "rate is appropriate for the STS environment as well," and revise the rates and rate structure which today are applicable to STS providers so that they are "consistent with existing tariffs now in place for resale of local exchange service by PATS providers." Order No. 17111, at 15-16.

**I. BACKGROUND AND STATEMENT OF INTEREST**

Fairchild provides STS at five locations in Florida. Four of these sites are located in Tampa and therefore receive local exchange service from General Telephone of Florida ("GTEFL").<sup>2/</sup> Fairchild received certification to provide STS at the fifth site, in Miami, at the time of the AmeriSystems transfer to Fairchild. Local exchange service at that location is provided by Southern Bell Telephone and Telegraph Company ("Southern Bell"). In addition to these STS services, Fairchild also provides interexchange ("IXC") services at the five STS locations pursuant to its IXC certificate.<sup>6/</sup>

With the recent addition of the AmeriSystems Florida operations, Fairchild currently provides STS services in over 135 buildings in fifteen jurisdictions nationwide. As an experienced competitor in the highly competitive STS market, Fairchild is acutely aware of the impact that an inflated rate can have both on the provider's competitive viability, and on the provider's ability to deliver high quality, cost-effective telecommunications services to its STS customers. In the years since the Commission first adopted a 12¢ per message rate for PATS providers in 1985,<sup>1/</sup> and thereafter applied that same rate

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<sup>2/</sup> These four sites were all previously served by AmeriSystems Partnership prior to Fairchild's purchase of that company and have been STS locations since before the Commission's 1987 STS Order.

<sup>6/</sup> See n. 1, supra.

<sup>1/</sup> Order No. 14132, Docket Nos. 820537-TP et al. (Feb. 27, 1985).

to STS providers in 1987,<sup>2/</sup> the market has become increasingly competitive. Moreover, since those early dates, the Commission has honed its ability to develop measured rates for resellers such as PATS and STS providers while at the same time ensuring that such services are not cross-subsidized at the expense of the general ratepayer. And, as indicated in its decisions reviewing and repeatedly adjusting downward the measured rates paid by PATS providers, the Commission consistently has recognized that such adjusted rates provide more than adequate compensation to LECs and make a proper contribution to the maintenance of universal service.

While PATS providers regularly have sought, and received, the benefit of a measured rate structure and lower rates which properly reflect current conditions, STS rates have not followed suit. It is time that STS providers, like the PATS providers on whom the STS rates were based, have their rates adjusted to reflect the currently appropriate rates for similarly-situated resellers of local service. Such rate revisions are essential if STS providers such as Fairchild are to remain competitive and to realize the full benefits of the economies of shared local telephone service.

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<sup>2/</sup> Order No. 17111, at 15-16 (characterizing STS and PATS providers as similarly-situated resellers of local service).



**II. STS PROVIDERS WERE MADE SUBJECT TO RATE TREATMENT IN ACCORDANCE WITH THAT TO WHICH PATS PROVIDERS ARE SUBJECT; IF LECs ARE NOT TO CONTINUE TO RECEIVE A WINDFALL, STS RATES SHOULD BE ADJUSTED TO REFLECT THE PREVAILING PATS RATE**

**A. The STS Rate Was Established To Mirror The Message Rate In Effect For PATS**

In Order No. 17111, the Commission held the provision of STS to be in the public interest and set forth a carefully structured regulatory approach. As part of that effort, the Commission prescribed a usage-based rate structure for the provision of STS, which included a message charge of 12¢ per message. The Commission explained its rationale for imposing this rate structure by equating STS providers with PATS providers, as follows:

We are persuaded that usage-sensitive rates are appropriate as part of the overall STS rate structure for resold services. In fact, we have already adopted a message charge of twelve cents (12¢) per message in Order No. 14132 -- our order approving interconnection of private pay telephones (PATS) to the local switched network. Although we considered the concept of billing STS based upon access charges, the testimony suggests some LECs do not have the capability of billing for access charges at this time. Furthermore, as we noted above, we have already adopted a message charge for PATS providers. We believe this rate is appropriate for the STS environment as well.

\* \* \* [W]e believe it is appropriate to classify utility customers based upon the nature of the service they receive. For example, distinctions may be drawn based upon the time and manner of use. STS providers' use of trunks, through sharing, represents a distinct difference from individual service. We have recognized this usage by approving a message rate. This rate is consistent with existing tariffs now in place for resale of local exchange service by PATS providers.<sup>2/</sup>

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<sup>2/</sup> Order No. 17111, at 15-16 (emphasis added).

The Commission therefore adopted the initial message rate in conjunction with a policy determination which distinguished between utility customers based upon whether they resell the service and created parity among members of the same class of customers (i.e., STS and PATS providers who both resell local service).

**B. Both The Structure And The Level Of PATS Rates Have Been Modified Substantially Since The STS Decision**

The factors which influenced the Commission to adopt a message rate structure for STS resellers were reflective of the reasons underlying its earlier adoption of an identical rate structure for PATS resellers. In its first PATS rate decision, which adopted the 12¢ per message rate later mirrored for STS, the Commission explained that it was adopting a usage-based charge because it wished to "encourage entry into the market at the lower volume locations" and also previously had "expressed a preference for usage sensitive rates where the service will be resold ...."<sup>10/</sup> The specific 12¢ per message rate level was selected because:

This is presently the per message rate in areas where we permit message rates for local calls. Additionally, 12¢ per message is equal to the charge that would result if one applied Southern Bell's proposed nondiscounted MOU rates of 6¢ for the first minute and 2¢ for each additional minute or fraction thereof.<sup>11/</sup>

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<sup>10/</sup> PATS I, at 13.

<sup>11/</sup> Id. The Commission assumed the average duration of a PATS local call to be 3.37 minutes, based on evidence submitted by the LECs.

It is clear, therefore, that the PATS twelve cent rate, initially adopted six years ago, was predicated on a relationship to prevailing nondiscounted MOU rates which existed in 1985.

The situation which prevailed in 1985, and which still prevailed two years later when the Commission made its STS decision, however, has been significantly altered in the intervening years. Nowhere has this alteration been more clearly reflected than in the fact that, in April 1987, this Commission approved time-sensitive measured LEC rates for PATS<sup>12/</sup> and thereafter reduced PATS rates on two additional, separate occasions. In fact, PATS providers have benefitted from reduced, measured rates since April 1987, yet at the same time no corresponding change in rate structure and rate levels has been made in the charge levied on similarly-situated STS resellers.

The structure and level of PATS rates initially were converted from a message rate to a measured, time sensitive rate structure in April 1987, when the Commission approved (1) a measured rate element of 6¢ for the first minute of use and 2¢ for each additional minute "in accordance with the applicable LEC tariffs...."; and (2) an off-peak discount of 50 percent for

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<sup>12/</sup> PATS II. Clearly, since April 1987 the Commission has not felt constrained in approving measured rates for PATS by the continued inability of LECs to bill access charges in certain discrete instances. Rather, the Commission has approved a flat rate surrogate where local measuring and billing are not available, which most recently was set at \$50.00 per month in Order No. 24101 at 34, Docket No. 860723-TP (Feb. 14, 1991) (motion for reconsideration pending).

local calls.<sup>13/</sup> In addition, to protect against any increases in a PATS provider's rate, the Commission approved a transitional maximum average charge of 12¢ per message per PATS line per month.<sup>14/</sup>

In October, 1988, the Commission approved the first reduction in the measured time sensitive rates applicable to PATS.<sup>15/</sup> PATS III included the following provisions:

- (a) an on-peak measured rate for local calls of 4¢ for the first minute and 2¢ for each minute thereafter;
- (b) for Southern Bell, an off-peak measured rate discount for local calls of 2¢ for the first minute and 1¢ for each additional minute thereafter; and
- (c) for General Telephone of Florida, United, and Centel, an off-peak rate of 3¢ for the first minute and 1¢ for each additional minute thereafter. (Off-peak discount periods were to be the same as the then-current tariffs for non-LEC pay telephone interconnections.)<sup>16/</sup>

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<sup>13/</sup> PATS II at 5, ¶ A(2)-(3).

<sup>14/</sup> The Commission explained that the maximum monthly charge including the 12¢ average per call cap was adopted to insure that PATS providers would not pay more under the new measured rate structure "than would otherwise have been paid under the existing message rate structure." PATS II at 4. Per the terms of the Stipulation, the cap expired at the end of one year and no such cap subsequently has been adopted.

<sup>15/</sup> PATS III. The rate adjustments in PATS II, and the subsequent reduction in PATS III, resulted from Stipulations signed after Petitions seeking a rate reduction had been filed with the Commission. As a result, there is no detailed record or Commission decision in those proceedings and, as a technical matter, the rate adjustments in PATS II and PATS III may not constitute binding precedent. They are, however, highly instructive with respect to the issue of the appropriate level for STS rates, particularly in light of the Commission's later decision in PATS IV, discussed *infra*.

<sup>16/</sup> PATS III, at 4-5.

The rates, initially scheduled only to remain in effect for a two year period, continue to prevail today pending decision on the Florida Pay Telephone Association's ("FPTA's") Motion for Reconsideration with respect to interconnection charges adopted in the latest February, 1991 Commission order further reducing the PATS rates.<sup>17/</sup>

In PATS IV, the Commission approved a further significant reduction in measured access rates for PATS providers, and also eliminated the off-peak disparity previously applied to Southern Bell vis-a-vis GTEFL, United Telecommunications Inc. and Centel Corporation. Specifically, unless lowered even further on reconsideration, PATS IV will subject PATS providers to an on-peak measured rate element for local calls of 3¢ for the first minute of use and 1-1/2¢ for each additional minute of use; and an off-peak measured rate element for local calls of 2¢ for the first minute of use and 1¢ for each additional minute thereafter.<sup>18/</sup> In explaining the new reductions, the Commission noted:

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<sup>17/</sup> PATS IV (FPTA petition for reconsideration currently scheduled for consideration by the Commission as part of its July 30, 1991 agenda). It is our understanding that Commission Staff has recommended that the Commission deny the Motion to Reconsider with respect to the interconnection rates adopted in PATS IV, while the Petitioner has sought a further reduction. No entity is suggesting, however, that rates higher than those approved by the Commission in PATS IV be adopted upon reconsideration. It is therefore reasonable to presume that the measured access rates adopted in PATS IV may serve as a "worst case" bench mark for PATS providers.

<sup>18/</sup> PATS IV, at 34. The Commission also imposed a minimum monthly charge of \$30.00 per line including both flat rate and usage charges.

The present rate structure was designed to capture both the non-traffic sensitive and the traffic sensitive costs inherent in the provision of access to and usage of the network. The flat rate element captures, in some sense, the non-traffic sensitive costs of access. The on-peak and off-peak usage elements capture the traffic sensitive nature of usage costs. The minimum monthly charge was designed to ensure that the LECs were not subsidizing the [non-LEC PATS] providers and to cover the costs of the loop in cases where there was little usage.<sup>19/</sup>

The Commission, therefore, expressly found that the rate structure which governs PATS providers today not only is workable and compensatory, but ensures that any problem of cross-subsidization has been adequately addressed.<sup>20/</sup> Moreover, at the same time the Commission has continued to adhere to, and honor, its policy of differentiating between individual service customers and customers who resell local exchange service.

**C. The Commission Should Adopt The Current PATS Rate Structure And Rate Levels For STS Providers, As Found To Be Reasonable In PATS IV And As Modified, If At All, On Reconsideration**

The analytical framework which the Commission used in PATS I and later mirrored in the 1987 STS order imposing the PATS rate structure and rate levels, continues to support the conclusion that the same usage-sensitive rates should be applied to both types of resellers of local exchange service. Indeed, LEC

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<sup>19/</sup> PATS IV, at 34.

<sup>20/</sup> The Commission, in adopting the 12¢ message rate for STS providers in 1987, had indicated that its principal concerns at that time involved the possibility of cross-subsidization. STS Order at 15. The Commission voiced identical concerns in first adopting the 12¢ message rate for PATS providers in 1985. PATS I, at 15.

witnesses acknowledged in the PATS IV proceeding that resellers such as STS providers are appropriately equated with PATS providers with respect to rate design issues:

All of the LECs took the position that the current [PATS III] rate structure and rate levels should be continued. Their position is based primarily on the belief expressed by GTEFL's witness James that services provided by the LEC to an entity which makes a direct profit from resale "must be reflective of the underlying costs involved, and should be designed to produce additional revenues as additional costs are incurred." . . . In Order No. 14132, according to GTEFL, we pointed out that we had previously expressed a preference that services which are resold be subject to usage sensitive rates. In particular, resale of WATS, MTS, and dial-it service was mentioned. GTEFL provides two other examples in which we have ordered usage sensitive rates since the issuance of Order No. 14132. Specifically, shared tenant service providers (Order No. 17111) and cellular carriers (Order No. 20554) pay usage sensitive rates.<sup>21/</sup>

The Commission itself noted the continuing appropriateness of its ratemaking classifications whereby resellers of local service are classified separately from residential and business users, and it established the new PATS rate level specifically to recover costs and provide a reasonable amount of contribution to LEC services.<sup>22/</sup>

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<sup>21/</sup> PATS IV, at 36 (emphasis added).

<sup>22/</sup> The Commission specifically stated:

[non-LEC PATS] should have a different rate structure from residential or business users because [non-LEC PATS] are resellers of local service and use telephone service as an input in their business in a manner very different from other businesses. The key difference between [non-LEC PATS] and other business users is not the amount of usage but the way in which the service is used. With other

(continued...)

Clearly, over time nothing has diminished the rationale which underlay the Commission's original decision to set rates for STS providers identical to those charged PATS providers. In fact, during these past four years, only one matter of substance has served to alter in practice the Commission's original determination in principle that STS providers should be subject to the same usage rates as PATS providers: the reality that on three separate occasions PATS providers have sought, and obtained, a favorable adjustment to the usage sensitive rates which they are charged by the LECs.

By contrast, STS providers to this time simply have not sought a parallel rate change. Such an adjustment, however, is now appropriate. The message unit rate paid by STS providers to LECs, originally established in the 1985 PATS I decision, was determined to be no longer appropriate in the PATS II decision and, on no less than two occasions thereafter (the PATS III and PATS IV decisions), the level was determined to be too high. The

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<sup>22</sup>/ (...continued)

businesses, telephone service is an adjunct. For [non-LEC PATS], it is their business. We have previously expressed our intention that resellers be charged rates which are in line with the costs they impose on the network. \* \* \* Upon consideration, we find it appropriate to reduce both the on-peak and off-peak usage elements. At the new rate level, both elements will still recover costs and provide a reasonable amount of contribution to LEC services.

PATS IV, at 39, 40 (emphasis in original).



rationale for equating STS and PATS providers set forth in the 1987 STS Order remains valid today, and the rates of STS providers should be adjusted accordingly.<sup>23/</sup> As implicitly recognized by the Commission in its PATS decisions, there no longer exists a rationale for a message rate structure for STS providers; accordingly, there is no basis for continued application of the per message rate structure in the STS context.

The substantial disparity between the STS rates and the current PATS rates graphically reflects the burden under which STS providers (and in turn, their customers) labor on the one hand, and the windfall which the LECs are afforded on the other. In point of fact, even the most conservative analysis

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<sup>23/</sup> Revisiting those factors which underlay the Commission's initial selection of the 12¢ per message rate in 1985 reveals the tremendous handicap under which STS providers today continue to labor. The 12¢ rate was, as discussed above, a reflection of the assumed 3.37 minute average length of a PATS call in 1985, based on LEC data submitted in the PATS I proceeding, to which was applied the then-prevailing on-peak rate of 6¢ for the first minute and 2¢ for each additional full or fractional minute. If, for the sake of argument, the on-peak measured rate adopted in the PATS IV order was applied to a call of the same average duration as was used in 1985 (3.37 minutes), the comparable rate would be only 7-1/2¢, while during off-peak times the comparable rate would be only 5¢. Furthermore, monitoring of the actual usage at Fairchild's four STS buildings in Tampa demonstrates that none of the STS sites has an average local call duration of three minutes or higher. (Fairchild's new Miami STS location is not yet fully occupied, and data for that site is therefore incomplete.) In fact, at one site, actual average duration is under two minutes per local call. Assuming an average call duration of three minutes or less, the LEC charges per average call under a PATS measured peak rate structure therefore would be 6¢ -- one-half of the current 12¢ message rate. Therefore, even under the approach originally used to derive the 12¢ PATS and STS message rate, Fairchild's experience-proven, actual average duration of local calls, applied to the PATS IV rates, would yield a rate of at most one-half of the current STS rate -- a glaring differential under any definition.

demonstrates that, far from realizing the Commission's original concern to protect ratepayers against any cross-subsidy, LECs receiving the 12¢ per message charge reap an extraordinary windfall each year. This windfall, in essence, represents profit to the LECs above and beyond the amount which the Commission has found to be a reasonable return on investment in its PATS IV decision.

This Commission, in the PATS IV Order, already has determined that the reduced measured rates adopted therein "still recover costs and provide a reasonable amount of contribution to LEC services." PATS IV at 40. There can be no question, therefore, that the difference between the 12¢ message rate to which STS providers currently remain subject, and the measured rates which the LECs are required to charge resellers of local service under the PATS decisions, represents a tremendous, pure windfall to the LECs at the expense of STS providers and the customers they serve. That situation should promptly be corrected by the Commission.

#### CONCLUSION

For the foregoing reasons, Fairchild respectfully submits that this Commission should grant STS providers the requested relief and replace the message rate to which they are currently

subject with the measured rates adopted for PATS providers in the PATS IV decision, subject to modification, if any, on reconsideration of that order by the Commission.

Respectfully submitted,



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Counsel for Fairchild  
Communications Services Company

Date: July 22, 1991

Dear **Robert Berger**

DATE **7/24/91**

RE: Docket No. **910783-TS**

This will acknowledge receipt of

**Petition for relief from prevailing  
12-cent message rate for shared  
tenant services providers by FAIR-  
CHILD COMMUNICATIONS SERVICES COMPANY**

which has been filed as of this date. Appropriate staff members will be advised.

**STEVE TRIBBLE, Clerk**

BY: **TB**