



December 6, 2017

Ex Parte

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Re: WC Docket Nos. 10-90 & 07-135, CC Docket No. 01-92

Dear Ms. Dortch:

This *ex parte* letter responds to the August 15, 2017 reply comments filed by the AT&T Corp. (AT&T) in the above-numbered dockets ("AT&T Reply Comments"). Specifically, Teliax comments on AT&T's argument insisting consumers must pay new or higher existing rates to make what have always been "toll free calls."

As background, it is important to remember AT&T introduced toll free calling service¹ in 1967, many say as a method to reduce operator expenses for handling collect calls. Older Federal Communications Commission ("FCC" or "Commission") orders define toll free service as one where the caller pays nothing, with the called party or toll free subscriber paying all the costs. Some examples are illustrative.

- "InWATs is, in effect, an automatic reversed billing feature."²
- "[A]ll Inward WATS callers would have to continue to use the '800' prefix code, as since they directly dial the regular long distance telephone number, call charges will automatically be billed to the calling rather than called party."³
- "Every toll free number should have 'an identified subscriber who has agreed to be billed for service associated with each toll free number requested from the [toll free number] database.'"⁴

Just recently, the FCC described toll free calling as follows:

Toll free calling originated in 1967, and to this day remains an important feature of the communications system. Even with the growth of e-commerce, many businesses, large and small, continue to use toll free numbers for sales and customer service, as well as for advertising and marketing purposes. Government organizations and non-profit health, safety, educational, or other

¹ Over the years, toll free service has born additional names, such as InWATs, 800 service, 8XX service and 8YY service.

² *American Tel. & Tel. Co., Revisions to Tariff F.C.C. No. 259*, Memorandum Opinion & Order, 89 FCC 2d 889, at ¶ 9 (1982).

³ *American Tel. & Tel. Co.*, Final Decision & Order, 70 FCC 2d 593, at ¶ 15, n.10 (1978)

⁴ *Toll Free Service Access Codes*, Notice of Proposed Rulemaking, 10 FCC Rcd 13692, at ¶ 35 (1995)

non-profit public interest organizations also use toll free numbers to provide vital health and safety services to the public.⁵

In sum, we have 50 years of FCC precedent, business advertising and consumer expectation all coming to one indisputable point—any consumer who dials a toll free number (8YY), in lieu of a POTS number (NPA-NXX) in the United States will be connected to another party through an interexchange call and will NOT PAY A SINGLE PENNY for making that call.⁶

Yet despite 50 years of promoting toll free calling and earning billions, AT&T is now acting in shameless greed to force a regulatory environment where it has a right to use other carriers' networks for free to originate and complete calls for its customers who are charged for such calls. Because AT&T sees a regulatory path to a better bottom line, AT&T simply ignore 50 years of history and commercial expectation to get something for nothing. AT&T wants the Commission to turn "toll free" service into "Sort Of" toll free service to reduce AT&T's operating costs. Indeed, AT&T is not shy about its quest to make consumers pay to make toll free calls despite 50 years' promises 8YY numbers can be called without cost. As AT&T has explained elsewhere, "the 8YY customer will continue to pay most of the costs of its calls even after originating access is converted to bill-and-keep."⁷ Also, AT&T advises "Bill-and-keep, of course, merely shifts the source of cost recovery from IXCs to end users, and commenters have not shown that these originating 8YY access charges could not be absorbed into end-user rates."⁸ AT&T appears to believe local exchange carriers and I-VoIP providers should charge their customers, say, 25 cents per call to make "Sort Of" toll free calls and that the only service provider that can charge the toll free subscriber is the IXC—here AT&T.

Putting aside the amount of factual support and detailed explanation required of the Commission by the Administrative Procedure Act and the Communications Act of 1934, as amended, to reverse 50 years of precedent so that toll free calling can become "Sort Of" toll free calling,⁹ the public policy

⁵ *Toll Free Assignment Modernization and Toll Free Service Access Codes*, Notice of Proposed Rulemaking, WC Docket No. 17-192 and CC Docket No. 95-155, FCC 17-124 (rel. Sept. 28, 2017) ("Toll Free Assignment Modernization").

⁶ The Commissions' Consumer and Governmental Affairs Bureau tells the American public: "Toll-free numbers are numbers that begin with one of the following three-digit codes: 800, 888, 877, 866, 855 or 844. Toll-free numbers allow callers to reach businesses and/or individuals without being charged for the call. The charge for using a toll-free number is paid by the called party (the toll-free subscriber) instead of the calling party. Toll-free numbers can be dialed directly to your business or personal telephone line."

⁷ AT&T Reply Comments, at 5, footnote omitted, emphasis added. Needless to say, AT&T does not mention that "most of the costs" would translate into "AT&T's interexchange costs, with free use of the originating and terminating carriers' or service provider's investments."

⁸ *Id.*, at 7.

⁹ Any action by an agency must "examine the relevant data and articulate a satisfactory explanation for its action." *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 US 29, 43 (1983). And when it reverses existing policy, it must clearly provide some explanation for a change, "so that the reviewing court may understand the basis of the agency's action and so may judge the consistency of that action with the agency's mandate." *Atchison, T. & S. F. R. Co. v. Wichita Bd. of Trade*, 412 US 800, 808 (1973). The agency must provide "a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513 (2009).

implications of such a change are unprecedented. When callers must pay to make a toll free call, the very advertising of toll free calling raises the question of whether such advertising is “false advertising,” given 50 years of consumer expectations. And since, an 8YY call would no longer be free to the dialing consumer, what level of disclosure is necessary for businesses to avoid civil investigations of by the Federal Trade Commission (“FTC”) or state attorneys general¹⁰ to possible false advertising?¹¹ Would a disclosure stating: “Toll Free Calling does not mean you will not be billed by another carrier or service provider for this call” be legally sufficient? Moreover, it is quite foreseeable the Plaintiff’s Bar will pursue class action lawsuits against toll free subscribers for false advertising, creating a new cottage industry similar to the many, expensive Telephone Consumers Protection Act (“TCPA”) lawsuits. AT&T’s is effectively willing to expose many of its biggest customers to a plethora of lawsuits and, likely, expensive verdicts or settlements. The bottom line is: “Sort Of” toll free calling is not in the interest of business or consumers even though it would likely increase AT&T’s management bonuses.

AT&T’s plans could create even more harm to toll free subscribers. Toll free subscribers will lose the benefits they get with 8YY calls, including the ability to have their RespOrg instantly reconfigure the service to another carrier in case of a network outage or to another call center in the case of an internal problem. To these companies, nonprofits and government agencies, toll free calling is a superior service to ordinary long distance. That is the very reasons toll free subscribers have paid higher prices for toll free calls for 50 years than they do for ordinary toll calls and continue today to pay willing for even more toll free calls than in the past.

Eliminating compensation to LECs for delivering toll free calls to IXC for completion to their toll free subscribers will also result in a substantial increase in uncompleted calls, not unlike what has occurred with calls dialed to rural markets.¹² In its 2015 *Report* on Rural Call Completion, the Commission’s introductory statement was “All Americans should expect that when a call is placed, that call is completed.”¹³ That is a true statement, but it will not be true if AT&T and Verizon are successful in their quest to eliminate compensation for originating 8YY calls. Moreover, since the 8YY market is much bigger

¹⁰ See, e.g., *Luskin’s v. Consumer Protection*, 726 A.2d 702 (Md., 1999).

¹¹ FTC GUIDE CONCERNING USE OF THE WORD “FREE” AND SIMILAR REPRESENTATIONS, 17 C.F.R., Part 251. Key language can be found in Section 251.1(c), which provides, “Disclosure of conditions. When making ‘Free’ or similar offers all the terms, conditions and obligations upon which receipt and retention of the “Free” item are contingent should be set forth clearly and conspicuously at the outset of the offer so as to leave no reasonable probability that the terms of the offer might be misunderstood. Stated differently, all of the terms, conditions and obligations should appear in close conjunction with the offer of ‘Free’ merchandise or service. For example, disclosure of the terms of the offer set forth in a footnote of an advertisement to which reference is made by an asterisk or other symbol placed next to the offer, is not regarded as making disclosure at the outset. However, mere notice of the existence of a “Free” offer on the main display panel of a label or package is not precluded provided that (1) the notice does not constitute an offer or identify the item being offered ‘Free’, (2) the notice informs the customer of the location, elsewhere on the package or label, where the disclosures required by this section may be found, (3) no purchase or other such material affirmative act is required in order to discover the terms and conditions of the offer, and (4) the notice and the offer are not otherwise deceptive.

¹² *Developing an Unified Intercarrier Compensation Regime and Establishing Just and Reasonable Rates for Local Exchange Carriers*, Declaratory Ruling, 27 FCC Rcd 1351 (2012); *Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154 (2013), *recon.*, 29 FCC Rcd 14026 (2014), *Report*, 32 FCC Rcd. 4980 (2015).

¹³ *Report*, 32 FCC Rcd. 4980, at ¶ 1.

and broader than the rural market, the results of eliminating access charges for 8YY traffic will be rural call completion problems on steroids. Yet, neither company seems concerned about their toll free subscribers nor the general public.

Finally, but certainly not least, there are public health, welfare and safety concerns should the FCC agree to change toll free calling into "Sort Of" toll free calling. Virtually every American resident knows they will not be charged to make a toll free call. That is one of the reasons toll free numbers are used in cases of public disaster (such as with Hurricanes Harvey and Irma). The United States Department of Labor uses a toll free number for individuals to contact OSHA (Occupational Safety & Health Administration) to "report emergencies, unsafe working conditions, safety and health violations, to file a complaint, or to ask safety and health questions."¹⁴

New York uses a toll free number to allow residents to contact Child and Adult Care Food Program.¹⁵ Texas operates a rescue program for "motorists whose vehicles are disabled on state and federal roads in Texas" with a toll free number. Individuals are urged to call toll free in non-emergency situations where: stranded with car problems, hazardous road conditions, debris in the roadway, suspicious activity at a rest area, or obviously intoxicated or dangerous drivers."¹⁶ The Commission has just recognized the critical nature of toll free numbers by "government (federal, state, local and Tribal) agencies as well as by non-profit health, safety, education, or other non-profit public interest organizations," when it asked "whether certain desirable toll free numbers necessary to promote health, safety, education, and other public interest goals should be set aside for use, without cost, [by the aforementioned entities.]"¹⁷

The FCC needs to ask itself whether people finding themselves in "bad situations" and in need of help will always continue to dial toll free numbers when they must pay extra for what they were taught to believe was a free call. Would these systems work as well without real toll free service? Would they perform as well when affected parties need to look for and dial local numbers? It only stands to reason that, in the event consumers reduce their use of toll free numbers, the number of toll free numbers and subscribers will decrease.

And what about consumers who do not have large bundles of long distance minutes or all-distance domestic calling? Many of these individuals are low-income, elderly, non-English speakers or simply fearful of increasing their living expenses? Should the United States take the risk that many people will not make important and critical calls because they do not want to pay for "Sort Of" toll free calls? Is AT&T's desire to reduce its operating expenses sufficient to override the public interest? AT&T says of course it is. "The critical point, however, is the originating 8YY LEC's costs should be shifted to its end-users to eliminate the misaligned pricing signals that invite arbitrage and are increasingly causing system-wide damage."¹⁸ AT&T addresses none of these important issues, but rather, simply crusades for free service for it while leaving substantial problems for the rest of the public.

¹⁴ https://www.osha.gov/html/Feed_Back.html

¹⁵ <https://www.health.ny.gov/contact/doh800.htm>

¹⁶ http://www.dps.texas.gov/director_staff/public_information/roadsideinfo.htm

¹⁷ *Toll Free Assignment Modernization*, at ¶ 39.

¹⁸ AT&T Reply Comments, at 5-6.

For example, turning toll free calls into toll calls would impact Lifeline customers. Many Lifeline providers offer unlimited minutes of use to customers for use within the toll-free calling area,¹⁹ but generally these providers assess extra charges for toll calls. The FCC requires Lifeline providers to offer free toll blocking services that help prevent Lifeline subscribers from erroneously making toll calls.²⁰ Were toll-free options eliminated, subscribers utilizing toll blocking services would be cut off from making calls that were formerly toll-free. Meanwhile, those without toll blocking services enabled would be required to pay for the calls.

In sum, for 50 years, toll free calling is just that—a service where the called party assumes all charges for service and where the caller pays nothing. It has never been a service where the costs for toll free calls have been split between the caller and the called party. Many commercial, nonprofit and government services and access services rely on the existing model. Making callers pay to make toll free calls would likely create substantial problems and even harm to individuals. AT&T's greedy attempt to require local exchange carriers to give AT&T free access to other providers' network investments must be rejected. This is bad ratemaking and poor public policy.

If you have any questions about this filing or need further information, please contact the undersigned. This letter has been filed electronically with the Commission's EFCS platform.

Sincerely,

/s/ Robert H. Jackson
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¹⁹ See, e.g., <http://www.michbbs.com/wp/wp-content/uploads/2017/06/Lifeline-Terms-Conditions-for-Website-1.pdf>; <http://www.jbntelco.com/pdfs/JBN%20%20Lifeline%20Terms%20and%20Conditions.pdf>; http://www1.centracom.com/lifeline/terms/central_utah; <http://diodecom.net/lifeline-and-link-up-information/> (Lifeline terms and conditions for various local telephone service providers).

²⁰ 47 C.F.R. § 54.401 (a)(2).