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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of )  
 )  
Implementation of Section 402(b)(2)(A) of ) CC Docket No. 97-11  
the Telecommunications Act of 1996 )

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**REPLY COMMENTS OF THE  
UNITED STATES TELEPHONE ASSOCIATION**

**INTRODUCTION AND SUMMARY**

The United States Telephone Association ("USTA") hereby files these reply comments in response to comments filed to the Commission's Notice of Proposed Rulemaking ("NPRM").<sup>1</sup>

USTA is the principal trade association of the incumbent local exchange carrier industry.

Forbearance from unnecessary regulations is consistent with Congressional intent provided by the Telecommunications Act of 1996 ("Act") for a "pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans ...."<sup>2</sup> USTA,

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<sup>1</sup> *In the Matter of Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking ("NPRM") (January 13, 1997).

<sup>2</sup> Telecommunications Act of 1996, Joint Explanatory Statement of the Conference Committee, Senate Report 104-230 at 113.

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however, opposes requiring price-cap LECs with sharing and rate-of-return companies to seek Commission approval under Section 214.<sup>3</sup> Comments by AT&T and MCI in support of strict application of Section 214 requirements to carriers based upon their regulatory status is inconsistent with the intent of the Act and should be rejected. Contrary to the Comments of the Alaska PUC, applying streamlined Section 214 requirements for all carriers seeking to discontinue service provides opportunity for more, not less competition. The adoption of a single definition for a line that is simple and universally applied to all carriers regardless of their regulatory status will eliminate confusion, unnecessary delay, and promote flexibility for carriers as they respond to competition and the needs of consumers.

**ASYMMETRICAL REGULATIONS ARE ANTI-COMPETITIVE  
AND SHOULD BE ELIMINATED**

MCI states that “it supports the Commission’s desire to reduce the regulatory costs associated with Section 214 applicants.”<sup>4</sup> MCI, however, argues that “Section 214 review ... remains the most appropriate method of limiting the impact of discriminatory investments.”<sup>5</sup> In addition, MCI urges the Commission to use Section 214 review to address MCI’s concerns about “numerous anti-competitive investment opportunities an incumbent may take ....”<sup>6</sup> Moreover, MCI asserts that the Commission cannot ignore precedent that Section 214 is intended to prevent

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<sup>3</sup> 47 U.S.C. §214.

<sup>4</sup> *MCI Comments* at 14.

<sup>5</sup> *Id.* at 4-5.

<sup>6</sup> *Id.* at 5.

“anti-competitive and discriminatory practices.”<sup>7</sup>

MCI is mistaken regarding the direction the Commission should pursue regarding Section 214 forbearance.<sup>8</sup> Section 402(b)(2)(A) of the Act states “The Commission shall permit any carrier to be exempt from the requirements of section 214 ... for the extension of any line.” Congress stated its intent in the conference agreement: “New Section (b) of section 402 also eliminates the section 214 approval requirements for extension of lines ....”<sup>9</sup> If Congress had intended that Section 214 be used for the purposes proposed by MCI, the Act would have contained such language. Clearly, should the Commission adopt MCI’s recommendations, such regulations would be contrary to the explicit language of the Act and the intent of Congress that the Commission forebear from regulating extension of lines by all common carriers.

USTA also stated in its Comments that the Commission should forbear from applying Section 214 requirements to all carriers regardless of their current regulatory status.<sup>10</sup> In support of its position, USTA noted that the Commission concluded in the NPRM that “additional regulation under Section 214 is not required to protect ratepayers adequately against potentially higher rates resulting from investment in unnecessary facilities.”<sup>11</sup> USTA agrees with the

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<sup>7</sup> *Id.* at 7.

<sup>8</sup> MCI’s reliance on Dr. Selwyn’s criticism of LEC centrex loop investment is clearly misplaced in this proceeding. Investment in loops under ten miles in length, which would include virtually all centrex loops, do not require Section 214 approval. *See* 47 U.S.C. §214(a)(2).

<sup>9</sup> Telecommunications Act of 1996, Joint Explanatory Statement of the Conference Committee, Senate Report 104-230 at 186.

<sup>10</sup> *USTA Comments* at 3-6.

<sup>11</sup> *Id.* at 3-4, citing *NPRM* at 19, ¶41.

Comments of ALLTEL that “The form of regulation applied to a company or geographic service boundaries are meaningless distinctions ....<sup>12</sup> Moreover, as ALLTEL argues, it makes no sense to require a rate-of-return company - or any company - in a competitive marketplace to seek Section 214 authority to provide services when competitors like AT&T, MCI and other large competitors are exempted.<sup>13</sup> USTA agrees with the Comments of Ameritech that “Asymmetrical regulation creates competitive advantages to those carriers with lesser obligations.”<sup>14</sup>

**STREAMLINED REGULATIONS FOR DISCONTINUING SERVICES PROVIDES AN APPROPRIATE BALANCE BETWEEN THE COMPETING INTERESTS OF CONSUMERS AND CARRIERS**

The Alaska PUC argues that the Commission’s proposal to streamline Section 214 requirements for discontinuing service will jeopardize existing service.<sup>15</sup> The Commission’s proposal would simply create uniform requirements for all carriers, regardless of regulatory status, who seek to discontinue service. As the Commission correctly states “the streamlined procedures contained in Section 63.71 appear to strike a reasonable balance between protecting consumers and reducing unnecessary barriers to exit for all carriers, whether dominant or non-dominant.”<sup>16</sup> Moreover, the Commission’s proposal furthers the pro-competitive goals of the Act by eliminating “unnecessary barriers to exit” for new competitors who may be otherwise

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<sup>12</sup> *ALLTEL Comments* at 4.

<sup>13</sup> *Id.* at 4.

<sup>14</sup> *Ameritech Comments* at 18.

<sup>15</sup> *Alaska PUC Comments* at 2.

<sup>16</sup> *NPRM* at 31, ¶70.

unwilling to assume the risk of entering new geographic or product markets where regulatory requirements “create significant barriers to exit.”<sup>17</sup>

Similarly, AT&T’s argument that only large competitors like AT&T and MCI should benefit from Commission forbearance when streamlining the requirements for discontinuance of service should be rejected.<sup>18</sup> AT&T’s bald speculation that service disruptions by incumbent LECs may occur is unfounded. Again, the Act requires that the Commission forbear from regulating the extension of any line by common carriers. The Commission should ignore efforts by MCI and AT&T to use this proceeding as a means to impose a laundry list of anti-competitive restrictions on incumbent LECs through Section 214. USTA urges the Commission to adopt forbearance policies that are fair and equitable to all common carriers without regard to their regulatory status.

#### **ADOPTION OF A SINGLE DEFINITION OF A LINE EXTENSION IS CONSISTENT WITH REGULATORY FORBEARANCE**

Most comments urge the Commission to adopt a single definition for a line extension.<sup>19</sup> A single definition of a line extension that incorporates extensions of existing service and deployment of new services is consistent with the intent of the Act that the Commission forbear from requiring prior Commission approval of construction activities in a competitive market. USTA agrees with the Comments of the Independent Telephone & Telecommunications Alliance

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<sup>17</sup> *Id.*

<sup>18</sup> *AT&T Comments* at 3.

<sup>19</sup> *See, e.g., USTA Comments* at 2-3; *Bell Atlantic/NYNEX Comments* at 3-4; *BellSouth Comments* at 6; *GTE Comments* 2-5.

that “Regardless of the activity involved, either the extension of an existing line or the deployment of a new line, the 1996 Act has established a competitive market structure that eliminates the need for the Commission to impose regulations that distinguish between these two types of activity.”<sup>20</sup>

## **CONCLUSION**

USTA generally supports the Commission’s NPRM. Elimination of burdensome regulations is key to successful implementation of the Act. AT&T, MCI and others appear unwilling to allow all incumbent LECs the opportunity to fairly compete for consumers by arguing that the Commission should selectively forbear from enforcing Section 214 requirements. The Commission, however, must eliminate unfair advantages for competitors by ensuring that forbearance from enforcement of Section 214 is applied fairly and equitably to all carriers regardless of how they are regulated. By adopting a single definition of a line extension,

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<sup>20</sup> *Independent Telephone & Telecommunications Alliance Comments* at 5.

the Commission will eliminate unnecessary, burdensome, and costly regulations.

Respectfully submitted,

**UNITED STATES TELEPHONE ASSOCIATION**



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**CERTIFICATE OF SERVICE**

I, Gina Thorson, do certify that on March 17, 1997 copies of USTA's Replies were either hand-delivered, or deposited in the U.S. Mail, first - class, postage prepaid to the persons on the attached service list.

A handwritten signature in cursive script, reading "Gina Thorson", is written over a horizontal line.

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