

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

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In the Matter of _____)
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)
Amendment of 47 C.F.R. § 1.1200 *et seq.*)
Concerning Ex Parte Presentations in)
Commission Proceedings)
_____)

GC Docket No. 95-21

AT&T CORP. COMMENTS ON PETITIONS FOR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, AT&T Corp. ("AT&T") hereby submits these comments on the petitions for reconsideration of the Report and Order ("Order") in the above-captioned proceeding.¹

I. "PERMIT BUT DISCLOSE" SHOULD BE THE DEFAULT EX PARTE STANDARD FOR COMMISSION PROCEEDINGS

AT&T supports Hogan & Hartson's request that the Commission designate "permit but disclose" rather than "restricted" as the default ex parte standard for proceedings in which another rule is not specified.

The Commission newly issued ex parte rules could be interpreted in such a way that an entity engaged in ongoing informal discussions with the Commission staff could find that all ex parte contacts were suddenly prohibited simply because another person had submitted a

¹ Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings, GC Docket No. 95-21, Report and Order, FCC 97-92, released March 19, 1997 ("Order").

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document “seeking affirmative relief.”² Thus, as Hogan & Hartson’s petition demonstrates, the mere filing of a document “seeking affirmative relief” could completely foreclose opportunities for informal discussion and exchange of information. Moreover, because the Commission has no regular means of notifying the public that a document “seeking affirmative relief” has been filed until it issues a public notice concerning it, applying a default “restricted” rule is both inequitable and impracticable, and creates a substantial risk that parties will unwittingly attempt to contact the Commission’s staff about matters recently deemed “restricted.” This risk is likely to significantly chill parties’ efforts to provide information to the staff.

II. THERE IS NO BASIS FOR THE COMMISSION TO MODIFY THE PROCEDURES GOVERNING INFORMAL COMPLAINTS

Lukas, McGowan, Nace & Gutierrez’s (“LMNG”) requests that the Commission either designate all informal complaint proceedings as “permit but disclose,” or prohibit any person other than a common carrier’s customers from filing a complaint against that carrier. The Commission should reject both requests.

First, LMNG’s proposal to make the informal complaint remedy available only to a carrier’s customers is well beyond the scope of the instant proceeding. The NPRM proposed only to amend the Commission’s ex parte rules, not to rewrite the wholly separate provisions governing informal complaint proceedings.³ If the Commission were to consider altering its longstanding practice of permitting any entity to file an informal complaint (as it did not do in the

² 47 C.F.R. § 1.1202(d)(1).

³ Compare 47 C.F.R. § 1.1200-1.1216 (ex parte rules) with id. § 1.716-1.718 (rules governing informal complaint proceedings).

instant proceeding), it would be required to issue an NPRM that included “sufficient detail on its content and basis in law and evidence to allow for meaningful and informed comment”⁴

Even if LMNG’s request were properly before the Commission in the this proceeding, it proposes a “cure” for a problem that simply does not exist. Years of experience have demonstrated that the informal complaint process is an efficient and effective means of resolving many disputes. In some cases complainants may simply not have access to sufficient documentary or other evidence to meet the Commission’s fact-pleading standards for formal complaints, or may be unwilling to undertake the relatively onerous task of prosecuting a formal complaint proceeding.⁵ However, a brief letter stating an informal complaint can often serve to frame issues for the Commission’s review and can permit it effectively to mediate between the parties to a dispute.

In any event LMNG’s proposal would not prevent the ex parte contacts it seeks to eliminate. LMNG argues that a party could “game” the ex parte process by filing an informal complaint without serving it on the named defendant, so as to be able to lobby the Commission’s staff without disclosing those contacts. However, even if service of informal complaints were required (and consequently ex parte discussions in such proceedings were treated as “permit but disclose”), a complainant could simply meet with the Commission’s staff before making its complaint filing and thereby avoid any disclosure requirements. Indeed, the new rules permit parties to contact the Commission’s staff prior to filing formal complaints, as did the prior ex parte regulations.

⁴ American Medical Ass’n v. Reno, 57 F. 3d 1129, 1132 (D.C. Cir. 1995); see also Home Box Office, Inc. v. FCC, 567 F.2d 9, 55 (D.C. Cir.) (proposed rule must provide sufficient information to permit informed “adversarial critique”), cert. denied, 434 U.S. 829 (1977).

⁵ See 47 C.F.R. § 1.720.

Finally, the Commission's rules have long exempted ex parte contacts in informal complaint proceedings from disclosure, in order to facilitate prompt and economical resolution of those disputes. LMNG offers no evidence of any kind that these discussions have caused the Commission's staff to prejudge such complaints or have otherwise prejudiced defendants, or that such contacts have undermined carriers' confidence in the informal complaint process.

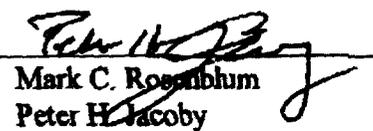
CONCLUSION

For the reasons stated above, AT&T respectfully requests that the Commission grant Hogan & Hartson's petition for reconsideration and deny the petition of LMNG.

Respectfully submitted,

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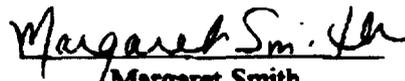
May 30, 1997

CERTIFICATE OF SERVICE

I, Margaret Smith, do hereby certify that on this 30th day of May, 1997, a copy of the foregoing "AT&T Corp. Comments on Petitions for Reconsideration" was mailed by U.S. first class mail, postage prepaid, to the parties listed below.

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May 30, 1997