

ORIGINAL

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

DOCKET FILE COPY ORIGINAL

In the Matter of )  
 )  
Telephone Number Portability )  
 )  
 )  
 )  
 )

CC Docket No. 95-116

AT&T CORP. OPPOSITION TO PETITION FOR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules, AT&T Corp. ("AT&T") hereby opposes the petition filed jointly by the Organization for the Promotion and Advancement of Small Telecommunications Companies and the United States Telephone Association (collectively, "OPASTCO") seeking reconsideration of the Second Report and Order in the above-captioned proceeding.<sup>1</sup> In that order, the Commission approved the North American Numbering Council's ("NANC") recommendations concerning local number portability ("LNP") administration. Among other things, the order adopted the LNP administration structure overwhelmingly favored by the industry, in which regional Limited Liability Companies ("LLCs") oversee the operations of the vendors selected to provide LNP database services.

<sup>1</sup> Second Report and Order, Telephone Number Portability, CC Docket No. 95-116, FCC 97-289, released August 18, 1997. ("Second Report and Order").

02-10

OPASTCO's petition argues that the membership fees levied by the LLCs impose an unacceptable burden on small LECs, and asks the Commission to require that any carrier that wishes to join an LLC may do so at no cost. There is simply no basis for this claim, and the Commission should reject it forthwith so that LNP implementation can proceed without disruption.

Although the LLC structure has been in place for many months and the terms of the agreements governing membership in those organizations have long been publicly available, OPASTCO's petition is the first time that any party has complained that it is improper for the LLCs to charge fees to their members on a pro rata basis to defray the costs of legal services, insurance and other essential services. Indeed, the petition concedes that the NANC recommendations approved in the Second Report and Order expressly disclose these charges;<sup>2</sup> and USTA filed comments in this proceeding that nowhere address this issue. OPASTCO attempts to redress this omission by stating that it "only lately learned that" in addition to one-time membership fees, "LLCs typically require either ongoing fixed contributions or periodic assessments on members to cover LLC expenses."<sup>3</sup> However, the membership agreements governing the LLCs have plainly disclosed these

---

<sup>2</sup> See OPASTCO Petition, pp. 3-4.

<sup>3</sup> Id., p. 4. OPASTCO also contends that "it was not until the recent release of the Second Report and Order that the FCC delegated important functions to the LLCs..." Id., p. 5. While it is true that the LLC structure was not approved by the Commission until the issuance of the Second Report and Order, this in no way alters the fact that the terms of the agreements governing those organizations were well known prior to that time, and that the Commission sought comment on that structure in this very proceeding.

charges from the inception of those organizations. If OPASTCO's members were unaware of the fees required of LLC members, it can only be because they were never sufficiently interested in LLC membership to inquire about its requirements. OPASTCO has shown none of the special circumstances that 47 C.F.R. § 1.106(c) requires in order to permit reconsideration of Commission action based on new evidence.<sup>4</sup> In light of OPASTCO's ample notice of the LLCs' fee structures, there is simply no reason to permit the petitioners to raise this issue for the first time on reconsideration, and thereby disrupt LNP implementation as it enters the critical final months before the first MSAs must be converted to permanent number portability.

In addition to being untimely, OPASTCO's contentions are simply unfounded. Although the petition asserts that the requirement to bear a share of LLC expenses has deterred some carriers from joining those organizations, it does not suggest that the LLCs have in any way neglected those parties' interests. Indeed, the Second Report and Order expressly found that the Commission had "no basis for concluding that the LLCs will not treat all carriers fairly."<sup>5</sup> OPASTCO seeks to create the impression that the LLCs are not subject to sufficient controls, even going so far as to state that "The LLCs will exercise these oversight responsibilities with no guidelines or rules from the FCC."<sup>6</sup> In fact, the Second Report and Order unequivocally found that "there are significant protections to

---

<sup>4</sup> See, e.g., RCA American Communications, Inc., 3 FCC Rcd 1184, 1187 (1988).

<sup>5</sup> Second Report and Order, ¶ 115; see also id., ¶ 120.

<sup>6</sup> OPASTCO Petition, p. 3.

ensure fair and impartial action by the LLCs,"<sup>7</sup> and promulgated rules to help ensure that outcome.<sup>8</sup>

The Second Report and Order observed that LLC impartiality is protected because: membership is open to any LEC that intends to port numbers; LLC meetings are generally open to the public; supermajority or unanimity is required for important decisions; non-LLC members have the access to LNP services on the same terms and conditions as members; and "the LLCs have agreed to follow any and all directives from state and federal regulators."<sup>9</sup> In addition, the order held that "oversight by the NANC and by state and federal regulators provides additional protection against the possibility of partiality by the LLCs...."<sup>10</sup> The Commission provided still further protection by "expressly delegat[ing] authority to the Chief of the Common Carrier Bureau to monitor the activities of the carriers that comprise the LLCs and to take any action necessary to remedy possible partiality by those carriers with respect to the LLCs' oversight and management of the local number portability administrators,"<sup>11</sup> and by establishing expedited procedures for Commission resolution of disputes over the NANC's disposition of any complaints

---

<sup>7</sup> Second Report and Order, ¶ 121.

<sup>8</sup> See, e.g., 47 C.F.R. § 52.26(a) (incorporating NANC recommendations into Commission rules by reference); *id.* § 52.26(b)(3) (establishing expedited dispute resolution procedures for matters relating to LNP deployment).

<sup>9</sup> Second Report and Order, ¶ 121.

<sup>10</sup> Id.

<sup>11</sup> Id., ¶ 123.

concerning LNP deployment.<sup>12</sup> As the Second Report and Order unequivocally found, the LLCs are subject to ample controls to protect the interests of those carriers that elect not to join them.

Finally, it also is important to note that many LLCs expressly permit industry associations such as OPASTCO and USTA to join (although to AT&T's knowledge, no association has ever sought to do so). Thus, to the extent that any carriers otherwise eligible to become a member of an LLC are unwilling to pay their share of LLC operating costs, they have the option of joining via an industry group such as OPASTCO itself.<sup>13</sup>

---

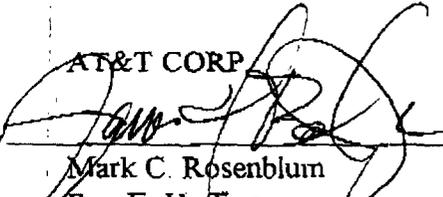
<sup>12</sup> Id., ¶ 130.

<sup>13</sup> See, e.g., Southwest Region Portability Company, L.L.C. Operating Agreement, Section 3.0(e) (Permitting qualifying industry associations to join the LLC "Because it is the members' desire that the financial obligations of membership, including payment of the initial contribution and assessments for Administrative Expenses, do not preclude Authorized Carriers from participating in the Company....").

CONCLUSION

For the foregoing reasons, the Commission should deny OPASTCO's petition for reconsideration of the Second Report and Order in CC Docket No. 95-116.

Respectfully submitted,

AT&T CORP  
By   
Mark C. Rosenblum  
Roy E. Hoffinger  
James H. Bolin, Jr.

Its Attorneys

Room 3247H3  
295 North Maple Avenue  
Basking Ridge, NJ 07920  
(908) 221- 4617

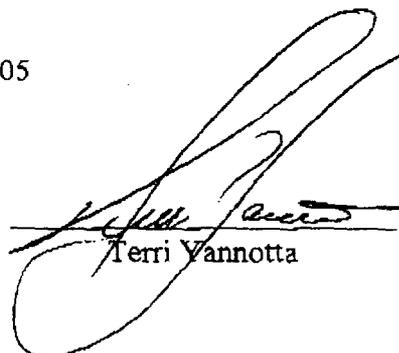
November 26, 1997

**CERTIFICATE OF SERVICE**

I, Terri Yannotta, do hereby certify that on this 26th day of November, 1997, a copy of the foregoing "AT&T Corp. Opposition To Petition For Reconsideration" was mailed by U.S. first class mail, postage prepaid, to the parties listed below:

Lisa M. Zaina, Esq.  
Organization for the Promotion and Advancement  
of Small Telecommunications Companies  
21 DuPont Circle  
Suite 700  
Washington, DC 20036

Mary McDermott, Esq.  
Linda Kent, Esq.  
Keith Townsend, Esq.  
Hance Haney  
United States Telephone Association  
1401 H Street, N.W.  
Suite 600  
Washington, DC 20005



Terri Yannotta

November 26, 1997