

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

In the Matter of)	
)	
AT&T Corp.,)	
)	
Complainant,)	
)	
v.)	File No.: EB-09-MD-010
)	
All American Telephone Co., e-Pinnacle)	
Communications, Inc., ChaseCom,)	
)	
Defendants.)	

OPPOSITION TO MOTION TO DISMISS

Pursuant to 47 C.F.R. § 1.727, AT&T Corp. (“AT&T”) submits this Opposition to the Motion to Dismiss (the “Motion”) filed by Defendants All American Telephone Co., e-Pinnacle Communications, Inc., and ChaseCom (“Defendants”) with the Federal Communications Commission (the “Commission”) on December 1, 2014.

By their Motion, Defendants seek dismissal of the Supplemental Complaint of AT&T Corp. for Damages (the “Supplemental Complaint”) filed on October 24, 2014. As demonstrated in AT&T’s Legal Analysis, however, the grounds for dismissal which Defendants put forward in the Motion are both unsupported and unsupportable. Specifically, AT&T’s Legal Analysis demonstrates, *inter alia*, as follows:

- There is no merit to Defendants’ claim that Section 207 bars AT&T’s request for damages. Legal Analysis § I(A).
- The Commission’s finding in the *Liability Order* that Defendants operated as “shams” in no way means that Defendants—contrary to their repeated statements in this very case—are not “common carriers” subject to Title II jurisdiction. *Id.*

- AT&T's prior settlement with Beehive Telephone Company, Inc., is not relevant to this case and, in any event, does not preclude AT&T from obtaining damages from Defendants. *Id.* § II.
- AT&T is not estopped from bringing the Supplemental Complaint. *Id.* §§ II-III.
- AT&T's damages claims are fully supported by the facts of this case and the Commission's findings in the *Liability Order*, *id.* § IV, and the Commission should address all of AT&T's damages claims. *Id.* § VII.
- There would be no unjust enrichment to AT&T by requiring Defendants to repay charges they improperly billed in violation of their tariffs and pursuant to "sham" arrangements. *Id.* § V.
- An award to AT&T presents no takings issue. *Id.* § VI.

Accordingly, AT&T respectfully requests that the Commission deny the Motion.

* * *

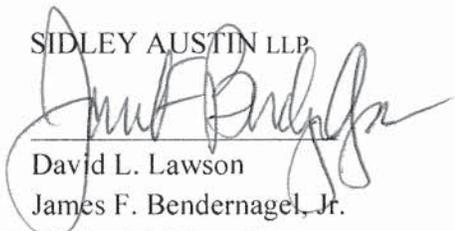
Dated: December 22, 2014

Respectfully submitted,

AT&T CORP.

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PROPOSED ORDER

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Defendants.)	

[PROPOSED] ORDER

Adopted: _____, 2014

Released: _____, 2014

By the _____, Market Disputes Resolution Division, Enforcement Bureau:

1. On December 1, 2014, Defendants All American Telephone Co., e-Pinnacle Communications, Inc., and ChaseCom (“Defendants”) filed with the Commission a Motion to Dismiss (the “Motion”) the Supplemental Complaint of AT&T Corp. (“AT&T”) for Damages (the “Supplemental Complaint”), which AT&T filed on October 24, 2014. Defendants filed their Motion as part of a series of interconnected filings along with (i) their Petition for Declaratory Ruling, (ii) their Answer and Affirmative Defenses to the Supplemental Complaint, and (iii) their supporting Legal Analysis (together, the “Answer”). On December 22, 2014, AT&T filed its Opposition to the Motion to Dismiss (the “Opposition”) as part of its reply to Defendants’ Answer, which also included (i) its Opposition to Petition for Declaratory Ruling, (ii) its Reply to Defendants’ Answer, and (iii) its supporting Legal Analysis (together, the “Reply”).

2. We have reviewed AT&T’s Supplemental Complaint, Defendants’ Answer and AT&T’s Reply. We find that AT&T has properly stated a claim for which relief can be granted and that the grounds for dismissal set forth in Defendants’ Motion are unsupported. Therefore, the Motion is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Market Disputes Resolution Division
Enforcement Bureau