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.	)	

AT&T CORP.'S OBJECTIONS TO INTERROGATORIES

Pursuant to Section 1.729 of the Federal Communication Commission's (the "Commission") Rules, 47 C.F.R. § 1.729, AT&T Corp. ("AT&T") hereby submits these objections to the First Request for Interrogatories in "Damages" Phase made by Defendants All American Telephone Co., e-Pinnacle Communications, Inc., and ChaseCom ("Defendants").

GENERAL OBJECTIONS

In addition to any specific objections set forth below, AT&T objects generally as follows:

1. AT&T objects to the Interrogatories to the extent that they do not meet the requirements of Section 1.729 of the Commission's rules. First, the Commission's rules allow defendants to request up to ten *written* interrogatories yet each of Defendants' requests are for the production of documents. Defendants have provided no explanation of why written interrogatories are not sufficient for their purposes or why document production is justified in this case – particularly because this case comes to the Commission on a primary jurisdiction

referral, and discovery was due to close in the underlying proceeding about one month after the Defendants sought referral. Furthermore, the Commission's rules at Section 1.729(b) require the proponent of interrogatories to provide "an explanation of why the information sought in *each* interrogatory is both necessary to the resolution of the dispute and not available from any other source." Defendants fail to satisfy this requirement and provide only a few cursory sentences at the end purporting to justify categories of requests. Defendants never address the need for each individual request nor do they address the necessity of obtaining the requested information from AT&T. Because the requests violate the Commission's rules as discussed above, AT&T objects to answering them.

2. AT&T objects to the Interrogatories, and the instructions and definitions thereto, to the extent that they seek information or documents that are protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege. Any inadvertent disclosure of material protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or exemption is not intended, and should not be construed, to constitute a waiver.

3. AT&T objects generally to any interrogatory that calls for proprietary and confidential information and/or trade secrets. Notwithstanding this objection, to the extent the Commission determines that discovery of such information is necessary, AT&T is willing to provide it but only pursuant to the terms of the Protective Order adopted in this proceeding.

4. AT&T objects to the Interrogatories, and the instructions and definitions thereto, to the extent that they seek information or documents that are publicly available to, or already in the possession of, Defendants or their Counsel.

5. AT&T objects to the Interrogatories, and the instructions and definitions thereto, to the extent that they purport to impose upon AT&T any obligation not imposed by the rules of the Federal Communications Commission.

6. AT&T objects to the Interrogatories, and the instructions and definitions thereto, to the extent they purport to require AT&T to provide information that is not presently within its possession, custody, or control.

7. AT&T objects to Definition No. 7 to the extent it defines "you," "your," "Defendant," or "AT&T" to include any person other than AT&T Corp. AT&T objects to Definition No. 8 on the same grounds. The responses provided herein are provided on behalf of AT&T Corp. and not on behalf of any of its affiliates.

8. AT&T objects to Instruction No. 7 to the extent it purports to require AT&T to respond to ambiguous interrogatories on the grounds that all interrogatories must be stated with clarity and specificity. To the extent that any of the interrogatories are unclear or ambiguous, AT&T objects to answering them.

9. AT&T objects to the Interrogatories, and the instructions and definitions thereto, to the extent that they imply the existence of facts or circumstances that do not or did not exist, and to the extent that they state or assume legal conclusions. In providing these responses and objections, AT&T does not admit the factual or legal premise of any of the Interrogatories.

OBJECTIONS TO SPECIFIC INTERROGATORIES

Interrogatory No. 1:

In the Joint Statement of Stipulated Facts, dated July 16, 2010, Stipulation # 58 states that "AT&T has paid some tandem switching and transport charges to Beehive for traffic destined to the CLECs [i.e., the CAPs].

(a) For the Relevant Time Period, please provide all documents you referred to in researching and making this stipulation.

(b) On what percentage of MOUs bound to the CAPs did AT&T pay Beehive Tandem Switching, Tandem Transport, or Tandem Switched Termination charges?

Objection:

In addition to its General Objections, AT&T objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant evidence. The general purpose of providing stipulated facts is to limit discovery, and thus there is simply no basis to require AT&T to identify the materials it considered in agreeing to the stipulation. As explained in General Objection 1, Defendants provide only a cursory explanation of the relevance of this request. Specifically, they claim that this information "is necessary to determine whether, and to what extent AT&T paid Beehive for the same calls for which it refused to pay" defendants. AT&T already undertook this analysis and, as explained in the Supplemental Complaint, determined on the basis of its billing records that AT&T paid Beehive about $15.4 million dollars in access charges related to the access stimulation scheme. *See* Supp. Compl. ¶ 49.

AT&T's billing analysis fully supports its damages claim, *see* Supp. Compl. Part I, and Defendants have provided no good reason why additional information about the MOUs charged by Beehive is relevant. They claim it is relevant to "the regulatory classification" and "the

value" of the traffic at issue. First, although the question of the regulatory classification was referred by the District Court, the *Liability Order* expressly held that the Defendants were sham entities that had not provided any service to AT&T on the calls at issue, *e.g. Liability Order* ¶ 17. As a result, no discovery is necessary on the classification issue. Further, if defendants had provided any service, it would have been common carrier services subject to Title II of the Act, as Defendants have conceded. *See* Pet. for Decl. Ruling, at 5 ("[t]he services at issue in this proceeding were at all times classified as interstate switched access service"). Second, no discovery is necessary regarding the "value" of the traffic because AT&T has fully supported the amount of its damages, and Defendants have no valid claim to a set-off, as explained in response to Interrogatories 3-6 below.

Interrogatory 2:

Produce documentation relating to the following questions: For terminating switched access traffic NOT destined to a number associated with CSP traffic, that was routed from AT&T to its point of termination by Beehive, what is the Local Switching rate that AT&T paid to Beehive, in both Utah and Nevada during the Relevant Time Period?

a) What is the volume of terminating switched access traffic that was NOT bound for any number associated with the CAPS, for which AT&T paid Beehive's Local Switching rates?

Objection:

In addition to its General Objections, AT&T objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant evidence. Preliminarily, this request is aimed at traffic for which Defendants *did not* bill AT&T and is thus not at issue in this proceeding. Discovery regarding traffic not at issue is not relevant in these circumstances. Further, as explained in General Objection 1, Defendants provide only a cursory explanation of the relevance of this request. Specifically, they claim that this information "is necessary to determine whether, and to what extent AT&T paid Beehive for the same calls for which it refused to pay" defendants. However, the calls described in the request are not "the same calls" for which it refused to pay Defendants – for example, the calls for which Defendants billed AT&T were not routed to end users, as the *Liability Order* determined. Further, to the extent the interrogatory intends to ask about the transport services Beehive provided on the calls for which the Defendants billed AT&T, AT&T already undertook this analysis and, as explained in the Supplemental Complaint, determined on the basis of its billing records that AT&T paid Beehive about $15.4 million dollars in access charges related to the access stimulation scheme. *See* Supp. Compl. ¶ 49.

AT&T's billing analysis fully supports its damages claim, *see* Supp. Compl. Part I, and Defendants have provided no good reason why additional information about the rates and volumes charged by Beehive is relevant. They claim it is relevant to "the regulatory classification" and "the value" of the traffic at issue. First, although the question of the regulatory classification was referred by the District Court, the *Liability Order* expressly held that the Defendants were sham entities that had not provided any service to AT&T on the calls at issue, *e.g. Liability Order* ¶ 17. As a result, no discovery is necessary on the classification issue. Further, if defendants had provided any service, it would have been common carrier services subject to Title II of the Act, as Defendants have conceded. *See* Pet. for Decl. Ruling, at 5 ("[t]he services at issue in this proceeding were at all times classified as interstate switched access service"). Second, no discovery is necessary regarding the "value" of the traffic because AT&T has fully supported the amount of its damages, and Defendants have no valid claim to a set-off, as explained in response to Interrogatories 3-6 below.

Interrogatory 3:

Produce all documents that refer, relate to, or evidence any "least cost routing" agreements between AT&T and other IXCs that affected switched access traffic in the Beehive service areas during the Relevant Time Period.

Objection:

In addition to its General Objections, AT&T objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant evidence. Defendants have made no effort to focus the scope of this request instead asking for "all documents," and, as explained in General Objection 1, they provide only a cursory explanation of the alleged relevance of these documents. Specifically, they claim that information on AT&T's revenues from "least cost routing" is "directly relevant to an assessment of asserted damages." As discussed below, this is not the case, and so no discovery on this issue is warranted. It should also be noted that the requested documents in addition to being irrelevant to the issues in this case are also highly commercially sensitive adding to the burden on AT&T should their production be required.

As demonstrated in Part I of the Supplemental Complaint, AT&T has fully supported its damages claims. As for Defendants' claims for compensation, they all fail as a matter of law. First, because the Commission found that Defendants had not provided any services to AT&T on the calls at issue, *e.g. Liability Order* ¶ 17, the Defendants are not entitled to any compensation from AT&T. Second, given the Commission's liability finding that Defendants operated as "sham CLECs" to perpetuate an "access stimulation" arrangement in violation of Section 201(b) of the Act, *e.g. Liability Order* ¶¶ 1, 10-18, 24-33, there is no valid basis for reducing AT&T's damages on the view that they are entitled to some type of set-off. *See* Supp. Compl. Part II.C. Third, as explained in Part III of AT&T's Supplemental Complaint, Defendants' equitable state

law claims conflict with Federal Law and thus are pre-empted under the Supremacy Clause. Further, even if Defendants equitable claims had any merit, which they do not, Defendants made only a *quantum meruit* claim, for which the relevant determination is the reasonable value of the service allegedly provided by Defendants, not the benefit, if any, received by AT&T.

Interrogatory No. 4:

Produce all documents that refer, relate to, or evidence the revenues that AT&T received from any "least cost routing" agreements between AT&T and other IXCs that affected switched access traffic in the Beehive service areas, during the Relevant Time Period.

Objection:

In addition to its General Objections, AT&T objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant evidence. Defendants have made no effort to focus the scope of this request instead asking for "all documents," and, as explained in General Objection 1, they provide only a cursory explanation of the alleged relevance of these documents. Specifically, they claim that information on AT&T's revenues from "least cost routing" is "directly relevant to an assessment of asserted damages." As discussed below, this is not the case, and so no discovery on this issue is warranted. It should also be noted that the requested documents in addition to being irrelevant to the issues in this case are also highly commercially sensitive adding to the burden on AT&T should their production be required.

As demonstrated in Part I of the Supplemental Complaint, AT&T has fully supported its damages claims. As for Defendants' claims for compensation, they all fail as a matter of law. First, because the Commission found that Defendants had not provided any services to AT&T on the calls at issue, *e.g. Liability Order* ¶ 17, the Defendants are not entitled to any compensation from AT&T. Second, given the Commission's liability finding that Defendants operated as "sham CLECs" to perpetuate an "access stimulation" arrangement in violation of Section 201(b) of the Act, *e.g. Liability Order* ¶¶ 1, 10-18, 24-33, there is no valid basis for reducing AT&T's damages on the view that they are entitled to some type of set-off. *See* Supp. Compl. Part II.C.

Third, as explained in Part III of AT&T's Supplemental Complaint, Defendants' equitable state law claims conflict with Federal Law and thus are pre-empted under the Supremacy Clause. Further, even if Defendants equitable claims had any merit, which they do not, Defendants made only a *quantum meruit* claim, for which the relevant determination is the reasonable value of the service allegedly provided by Defendants, not the benefit, if any, received by AT&T.

Interrogatory No. 5:

Produce all documents, including invoices, contracts or other agreements, or revenue data relating to any surcharges imposed by AT&T on wholesale service providers that directed traffic to area codes in Beehive service territories, or individual phone numbers or area codes associated with CSP traffic routed to the CAPS.

Objection:

In addition to its General Objections, AT&T objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant evidence. Defendants have made no effort to focus the scope of this request instead asking for "all documents," and, as explained in General Objection 1, they provide only a cursory explanation of the alleged relevance of these documents. Specifically, they claim that information on AT&T's revenues from "wholesale service providers" is "directly relevant to an assessment of asserted damages." As discussed below, this is not the case, and so no discovery on this issue is warranted. It should also be noted that the requested documents in addition to being irrelevant to the issues in this case are also highly commercially sensitive adding to the burden on AT&T should their production be required.

As demonstrated in Part I of the Supplemental Complaint, AT&T has fully supported its damages claims. As for Defendants' claims for compensation, they all fail as a matter of law. First, because the Commission found that Defendants had not provided any services to AT&T on the calls at issue, *e.g. Liability Order* ¶ 17, the Defendants are not entitled to any compensation from AT&T. Second, given the Commission's liability finding that Defendants operated as "sham CLECs" to perpetuate an "access stimulation" arrangement in violation of Section 201(b) of the Act, *e.g. Liability Order* ¶¶ 1, 10-18, 24-33, there is no valid basis for reducing AT&T's damages on the view that they are entitled to some type of set-off. *See* Supp. Compl. Part II.C.

Third, as explained in Part III of AT&T's Supplemental Complaint, Defendants' equitable state law claims conflict with Federal Law and thus are pre-empted under the Supremacy Clause. Further, even if Defendants equitable claims had any merit, which they do not, Defendants made only a *quantum meruit* claim, for which the relevant determination is the reasonable value of the service allegedly provided by Defendants, not the benefit, if any, received by AT&T.

Interrogatory No. 6:

Produce all documents relating to the revenues that AT&T received from its long distance customers when they made long distance calls to numbers associated with the CAPs' CSP services during the Relevant Time Period. The documentation can reflect either average or aggregate revenues, or can reflect a representative sample of AT&T's long distance callers.

Objection:

In addition to its General Objections, AT&T objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant evidence. Defendants have made no effort to focus the scope of this request instead asking for "all documents," and, as explained in General Objection 1, they provide only a cursory explanation of the alleged relevance of these documents. Specifically, they claim that information on AT&T's revenues from "its long distance customers" is "directly relevant to an assessment of asserted damages." As discussed below, this is not the case, and so no discovery on this issue is warranted. It should also be noted that the requested documents in addition to being irrelevant to the issues in this case are also highly commercially sensitive adding to the burden on AT&T should their production be required.

As demonstrated in Part I of the Supplemental Complaint, AT&T has fully supported its damages claims. As for Defendants' claims for compensation, they all fail as a matter of law. First, because the Commission found that Defendants had not provided any services to AT&T on the calls at issue, *e.g. Liability Order* ¶ 17, the Defendants are not entitled to any compensation from AT&T. Second, given the Commission's liability finding that Defendants operated as "sham CLECs" to perpetuate an "access stimulation" arrangement in violation of Section 201(b) of the Act, *e.g. Liability Order* ¶¶ 1, 10-18, 24-33, there is no valid basis for reducing AT&T's

damages on the view that they are entitled to some type of set-off. *See* Supp. Compl. Part II.C. Third, as explained in Part III of AT&T's Supplemental Complaint, Defendants' equitable state law claims conflict with Federal Law and thus are pre-empted under the Supremacy Clause. Further, even if Defendants equitable claims had any merit, which they do not, Defendants made only a *quantum meruit* claim, for which the relevant determination is the reasonable value of the service allegedly provided by Defendants, not the benefit, if any, received by AT&T.

Dated: December 22, 2014

Respectfully submitted,

AT&T CORP.

Letty Friesen, Esq. – Litigation West
AT&T Services, Inc.
2535 East 40th Ave., B1201
Denver, CO 80205
Telephone: (303) 299-5708

SIDLEY AUSTIN LLP

David L. Lawson
James F. Bendernagel, Jr.
Michael J. Hunseder
Thomas E. Ross
Emily C. Watkins
1501 K Street, N.W.
Washington, D.C. 20005
Telephone: (202) 736-8000