BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 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,	)	Proceeding No. 14-209
	)	
Defendants.	)	

JOINT STATEMENT PURSUANT TO 47 C.F.R. §§ 1.733(b)(1)(i)-(iv).

Along with their Joint Statement of Stipulated Facts, Disputed Facts, and Key Legal Issues, AT&T Corp. ("AT&T") and Defendants All American Telephone Co., e-Pinnacle Communications, Inc., and ChaseCom ("Defendants") (together, the "Parties") hereby provide the following Joint Statement in accordance with 47 C.F.R. §§ 1.733(b)(1)(i)-(iv).

I. SETTLEMENT PROSPECTS.

The parties held a mediation session before the Commission's Staff on December 18, 2012. The mediation did not result in a settlement and revealed that the parties were not close to an agreement. On March 25, 2013, the Commission released its *Liability Order*.[1] In light of the foregoing, the Parties do not believe that a settlement is likely at this juncture.

II. ISSUES IN DISPUTE.

AT&T's Position. AT&T's position is that the issues in dispute include Counts I-III of AT&T's Supplemental Complaint, including those set forth in AT&T's Key Legal Issues, *supra*, and in AT&T's Reply Legal Analysis.

As set forth in its Complaint, AT&T believes that it has properly pled two categories of damages (its payments to Defendants and payments to Beehive arising from the Defendants' violations of the Act), as well as pre-judgment interest. While the Commission Staff has indicated in a letter that the Commission does not intend to address AT&T's second category of damages or AT&T's claim for pre-judgment interest, AT&T has explained in its Reply why it contends that those issues are properly before the Commission.

As to Defendants' affirmative defenses, AT&T's position is that those defenses do not have merit, for the reasons fully set forth in its Reply to Defendants' Answer (pp. 54-56) and its Legal Analysis (*e.g.*, Sections I(A), I(B), II, III, IV, V, VI). As to Defendants' Key Legal Issues, AT&T's response to those issues is set forth in its Legal Analysis and its Reply to Defendants' Answer.

As to Defendants' Motion to Dismiss and Motion for Declaratory Ruling, AT&T filed oppositions to those pleadings, and although its legal positions on those motions are fully set

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[1] *AT&T Corp.* v. *All American Tel. Co. et al.*, 28 FCC Rcd. 3477 (2013) ("*Liability Order*"), *recon denied*, 29 FCC Rcd 6393 (2014) ("*Order on Reconsideration*").

forth therein, AT&T's position is that its Complaint states a valid claim for damages, and that Defendants are not entitled to the Declaratory Relief they seek.

Defendants' Position. Defendants' position is that only two issues remain in dispute before the Commission: 1) AT&T's claim for refund of access charges already paid to Defendants, and 2) a comprehensive response to all the questions referred by the federal District Court for the Southern District of New York ("SDNY Court"). Defendants address the legal and procedural reasons that AT&T's damages claim must be dismissed in §§ II – VII of their Legal Analysis and throughout their Answer. The issue of a comprehensive response to the SDNY Court's referral questions is discussed primarily in § I of the Legal Analysis and in the Motion for Declaratory Ruling and appended Draft Order.

AT&T's Reply effectively seeks reconsideration of the October 29 Letter Ruling, which among other things, found that three of AT&T's four categories of damages – refund of payments to Beehive, interest, and attorneys' fees – are not properly before the Commission, and will not be included in the instant proceeding. Defendants relied on that Ruling in preparing their Answer, and so did not address the merits of these claims for damages. Should the Commission grant AT&T's request to re-include those asserted damages claims – and for the reasons stated in the October 29 Letter Ruling, it should not – equity and the American Procedure Act require that Defendants be given an opportunity to exercise their right to answer those claims.

III. DISCOVERY.

AT&T's Position. AT&T's position is that further discovery in this proceeding is not necessary, and AT&T did not seek additional discovery in support of its Supplemental Complaint for damages. While Defendants posed certain requests for Interrogatories, AT&T filed objections to those requests, and AT&T stands by its filed objections.

Defendants' Position. Defendants' position is that all remaining issues that must be addressed in order for the Commission to respond to the SDNY Court's referral are questions of law, for which no further proceedings, and no additional discovery, is required. (*E.g.*, Legal Analysis at 3; Answer at ¶ 19; Motion for Declaratory Ruling.) If the Commission answers the SDNY Court referral questions, and dismisses AT&T's damages claims, with or without prejudice, the necessary remaining discovery will be conducted at court, as the collection action pending before the SDNY Court finally proceeds. If however, the Commission chooses to decide AT&T's damages claim on the merits – and Defendants have shown that the Commission lacks authority to do so (*e.g.*, Legal Analysis at § II; Answer at ¶¶ 9, 17) – then additional discovery re AT&T's unjust enrichment will be necessary.

IV. SCHEDULE FOR PLEADINGS AND DISCOVERY

AT&T's Position. In light of its position that there does not need to be additional discovery, AT&T's position is that the Commission need not (i) hold a status conference in this matter, (ii) set a schedule for discovery; or (iii) set a schedule for further briefing. As to a status conference, AT&T's position is that the Commission can rule on the need for discovery without holding a status conference. If the Commission agrees with AT&T, then there is plainly no need to set a schedule for discovery. As to briefing, if the Commission agrees with AT&T that there is no need for further discovery, then the Commission rules ordinarily provide that additional briefing is not needed.[2]

Defendants' Position. If the Commission dismisses AT&T's claims for damages – either on the merits, with prejudice, or without prejudice, for eventual resolution by the SDNY Court – Defendants agree that there is no need to conduct discovery before the Commission, to convene

[2] 47 C.F.R. § 1.732(c) ("In cases in which discovery is not conducted, absent an order by the Commission that briefs be filed, parties may not submit briefs.").

any further proceedings, or to require further pleadings. Indeed, it is Defendants' position that they are not common carriers, and so are not subject to Title II jurisdiction, and cannot be compelled to participate in a § 208 proceeding. (*E.g.*, Legal Analysis at § 2(B).) Nevertheless, Defendants will agree, on a voluntary basis, to their counsel's participating in a status conference, if Commission Staff would find it helpful to ask questions or otherwise discuss the case.

Dated: January 20, 2015

Respectfully submitted,

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