

New Networks Institute

March 13th, 2016

Sent via ECFS

Ms. Marlene Dortch, Secretary
Federal Communications Commission

Re: AT&T's Objection to Disclosure of Confidential Or Highly Confidential Information to Mr. Kushnick Under the Governing Protective Orders, WC Docket No. 05-25 RM-10593

RE: Order, DA 16 – 260, March 9th, 2016.

This is a Huffington Post article and the FCC's actions and decision to block our access to the special access information. We will be filing a more complaint and a call for a review by the full commission.

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I'm "Guilty Until Proven Innocent", Claims the FCC Order.

Imagine you are in a kangaroo court and the judge and those across the aisle are in bed with each other and have decided– you are guilty first, even if you didn't actually do anything – but they also claim that since you could do something in the future, you are guilty.

According to Wikipedia, this goes against the long held concept of the '[presumption of innocence](#)', which harkens back to Roman law

“The sixth century *Digest* of Justinian (22.3.2) provides, as a general rule of evidence: *Ei incumbit probatio qui dicit, non qui negat* ‘Proof lies on him who asserts, not on him who denies’. It is there attributed to the second and third century jurist Paul. It was introduced in Roman criminal law by emperor Antoninus Pius.”

On September 30th, 2015, I signed a letter of confidentiality to see specific data recently collected by the FCC that was supplied by end users of broadband and data services, known as ‘special access’, offered by AT&T, Verizon and CenturyLink. They are the current incumbent phone companies that control not only the utility wires you know about, but the hidden networks of ‘special access’, which are not special; nothing more than the wires of the regular phone networks. (And, of course they claim that they don't really have a near-monopoly on special access.)

And AT&T and Verizon filed to block my access, twice each. Over the next few months, the FCC assisted blocking my access first by not responding to our replies to AT&T and Verizon's specious claims – By now the ‘comments’ period and the ‘reply comments’ period are over.

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On March 9th, 2016, the FCC's wireline bureau created [an official Order](#) where it backs AT&T's statement that I might, in the future, 'ring some bell that can't be un-rung', inadvertently and violate the letter of confidentiality.

“AT&T asserts it is concerned that Mr. Kushnick will improperly use any confidential information he reviews, even if inadvertently. It argues that Mr. Kushnick ‘believes special access information should be public, another obvious basis for concern....AT&T further argues ‘At the very least, once Mr. Kushnick were permitted to see the data, it would be difficult to ‘un-ring the bell,’ and to prevent his knowledge of those data from affecting his publicly written blog posts and books, potentially resulting in inadvertent but nonetheless harmful disclosure of highly confidential data.”

“We note that Mr. Kushnick has written publicly in a blog post that ‘In order to see this FCC data we had to sign a confidentiality agreement that restricts the use of the information in anything except what is filed in this original FCC proceeding, Docket Number 05-25. However, it will give us insight into a marketplace that is now totally obscured, hidden from view.”

AT&T and the FCC do not have any evidence that I ever violated a ‘letter of confidentiality’ – because I never have. And to make a claim that I might ‘inadvertently’ divulge some information, is saying – you will do it; we know it; you’re guilty, even before you commit any indiscretion.

And I never said that which is confidential, should be made public. But, of course, since I blog at HuffPost.com and write for other online pubs...

Why see the data?

First, and foremost, the basic aggregated information was public and part of the FCC's “Statistics of Common Carriers”, which started publication in 1939; the FCC stopped requiring and making it public in 2007.

But, I got very suspicious about this new information when the FCC's own data released in 2015 showed that there was \$24 billion, of mostly copper, telecommunications (TDM), ‘special access’ revenues – and this is 60% of a \$40 billion dollar market, as of 2013. The problem is, the FCC's previous proclamation in 2013 was that special access was only \$12-18 billion dollars in revenues.

Worse, the FCC data never mentioned a single access line -- zero lines. We even wrote the FCC to ask for this data as these wires are part of the state regulated utility; the same wires used for phone service.

How many total access lines are there? I wrote [an article](#) about this and we even filed it, appropriately redressed, in this proceeding.

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In 2007, for example, the FCC's last published report showed 47 million total lines in just Verizon New York. Special access revenue went up over 50% since that time, based on Verizon NY's 2014 annual report

Yet, in 2014, Verizon New York claimed that it had 2.7 million lines in New York, but based on revenues, the total lines could be as high as 65 million access lines (with caveats).

And, as we pointed out, the FCC has been quoting the government agency for health issues, the 'Center for Disease Control, CDC, statistics on wireless-only households.

In short, the CDC, the phone companies and the FCC have manipulated the accounting of access lines in America as they do not count 'wires' -- just voice phone calling or just plain old telephone service (POTS) -- and that's only about 10% of the lines in service -- 90% is special access, which is hidden from view.

Manipulating Public Policy Made Easy

Verizon, AT&T and CenturyLink, of course, did this on purpose; they keep claiming to everyone that they are losing copper-based phone lines, that the networks are unprofitable and should be 'shut off' (where they want), that they are not going to maintain the copper networks and that their plan is to force customers onto wireless -- their wireless service, in areas they are going to 'shut off. They also use these 'loss of lines' as an excuse to raise rates -- your rates.

Moreover, this impacts your wireless/mobile services, even if you use a competitor. Why do you think you are paying about \$10.00 a gig extra? These Incumbents' wires and networks that control all providers wireless services in America since these calls, videos and selfies go to a cell site, then over an Incumbents wire. And they also control the costs paid by these competitors, both wireline and wireless -- as these Incumbent networks are the dominant utility wires and no one has yet come into a state and rewired it, much less most cities.

But, they figured out how to manipulate the accounting of lines in America to hide the majority of copper lines, which has grown dramatically and are very profitable.

Doesn't the Public have a right to know how many actual copper lines are in service, at least? Comparing the info that the FCC collected with what we already can prove -- without revealing the company details, is one reason why we wanted to examine this information.

And irony piled onto irony, even AT&T's own blog claimed that some of this data should be public.

Broadcasting & Cable states: (February 24th, 2016)

“AT&T: FCC Appears to Be Suppressing Info

Sees no reason to restrict free flow of aggregate special access info

“AT&T’s VP of federal regulatory Caroline Van Wie says the FCC appears to be ‘selectively suppressing the free flow of information to impede public debate on the merits of increased special access regulation,’ information AT&T says shows the marketplace is competitive and ‘heavy-handed, monopoly-era regulation’ is unnecessary.”

We’re Guilty because We Submitted “General Reports” – We Did Not.

The FCC quotes AT&T, which claims we’re making general facts that are not relevant.

“14. AT&T states that NNI has never filed comments in these proceedings. While NNI has submitted various general reports about telecommunications issues, they do not address the specific issues in this docket and have been simultaneously filed in multiple wireline proceedings. For example, on December 16, 2016, NNI filed two reports regarding Verizon’s financial accounting practices. Those reports were filed in a total of 29 Commission dockets.”

It’s a shame the FCC didn’t bother to actually read the NNI reports—We’re guilty by their ignorance of the facts.

But this is only part of the issue – our data contradicts the FCC’s information, and shows that the FCC’s rules have allowed for a massive financial shell game. In one of our filings on February 3rd, 2016, we detailed the FCC’s ‘Big Freeze’ [and called for an investigation](#). We uncovered that the FCC accounting rules, which are used by the state utilities, require for the accounting of expenses to be based on the “Big Freeze’ year 2000 – and it has thus helped the Incumbents to divert the majority of expenses into Local Service to make the utility networks look unprofitable --while making special access services obscenely profitable. We wrote:

“A) The FCC’s “Big Freeze” Manipulated the Incumbent Financial Accounting to Make Local Service Look Unprofitable through Massive Cross-Subsidies.

“The FCC’s own “Big Freeze” made sure that the affiliate companies and these other lines of business have had massive financial advantages over all competitors as all of the financial accounting has been cooked.

“The FCC’s “Big Freeze” assigns all expenses as if it was the year 2000, literally. And instead of assigning the costs to **offer special access services**, or any non-POTS service, the majority of expenses were placed

into Local Service with no care about actual expenses. This allowed all of the affiliate companies to enjoy major financial perks, especially when they are classified as Title II.

“And the FCC has no clue about actual costs; it has not audited these books, nor has any state (we could find) for the last 15 years.

“The DS1 special access service, etc, are all part of the state Public Switched Telephone Network and the data from Verizon New York’s Annual reports shows that Access is paying a fraction of every expense and it is clear that for access services, the affiliate companies are not paying market prices.”

The “DS1” is a special access circuit and we showed that the FCC can’t actually calculate whether prices are fair and reasonable because it never examined the actual financial accounting of these companies. Our data is from Verizon NY’s annual reports and the FCC’s own last published information, not some ‘blog info’.

And we are specific: [one of our reports](#) we submitted in this proceeding mentioned “special access” 23 times and has multiple exhibits about special access, including the ‘Big Freeze’ and the manipulation of special access line accounting.

Comparing this financial information with the end user information would give us some indication of the overcharging, the number of lines in service, and other things that the FCC should have been investigating for the last decade.

Also, the FCC quotes AT&T saying we had not ‘participated’ in this proceeding—So far we filed 8 times in WC Docket 05-25 – at our own expense.

Not only that, but the FCC didn’t bother to mention that the FCC, itself, also ignored this proceeding on and off for more than a decade as this proceeding started in 2002 when AT&T filed against what is now AT&T. AT&T wrote:

AT&T’s Petition to Investigate Special Access Services, October 15th, 2002

“THE BELLS’ SPECIAL ACCESS RATES ARE GROSSLY EXCESSIVE AND UNLAWFUL AND ARE BECOMING MORE! SO...”; “THE BELLS’ UNLAWFUL SPECIAL ACCESS RATES ARE HAVING SEVERE AND GROWING ANTICOMPETITIVE EFFECTS.”

I even wrote [an article](#) about this to make sure that the public – that’s you – knew that the FCC had not done anything interesting until 2015, when we filed.

We don’t have budget or staff like AT&T et al. to dedicate to paper the FCC, do exparte meetings, hire ‘experts’, pundits, lobbyists or astroturf groups to do the work either.

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Finally, both the FCC and AT&T took swipes at Teletruth, one of the only independent advocacy ‘for profit’ groups — though most of the work was done pro bono. Established in 2002 and now dormant (due to personnel changes and lack of funding)-- the FCC could have simply typed into its own ‘proceeding’ database to see we filed over 30 times; we were on the FCC Consumer Advisory Committee 2003-2004 until we exposed the [fact that most of the members](#) were either from the industry or funded by it. [Verizon is still on the Committee](#) and is one of the longest standing members, not to mention the NCTA, cable association, and a bunch of 'non-profits' funded by the phone and cable companies.

And we told the FCC about Truth-in-Billing issues to fix, starting in 2002, and outright overcharging, where customers were paying for non-existent services – including special access lines, in [multiple dockets](#).

In 2006, we helped to create a successfully-settled class action suit against Verizon New Jersey as 10% of all SPECIAL ACCESS circuits were ‘non-existent’.

[“Verizon New Jersey Settles Class Action Alleging Overbilling for Special Circuits](#)

What is an analog non-switched special circuit? These phone services are commonly used for:

- Burglar alarm circuit. Could also be used for a fire alarm.
- Telemetry circuit. Used for remote meter reading or control signals.
- Private line. Used as an automatic ringdown circuit, like a hotline.
- Radio tie line. Used to connect radio base stations to antennas.
- Off premise extension. Used to connect a dialtone line at a remote location.
- Secretarial line. Used to connect to an answering service.
- Data circuit. Low speed data line between 2 or more locations

That’s right. These are the exact same copper-based special access lines that the FCC has blocked us from examining. While searching for billing errors was not why I filed — this is mostly likely still happening in every state.

The fact that the FCC didn’t bother to do a basic search about what we did, and backed AT&T’s ‘guilty until innocent’ claim is a slap in the face of all public interest groups attempting to do the work that the FCC and State commissions should have been doing — basic consumer and small business protections.

I can go on about what’s in the Order to block my access to special access... but we will be filing an appeal, among other things.

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I think it may be time to update these ‘ditties’ about the FCC by Eric Idle and Family Guy.

- [The FCC Song](#) by Eric Idle
- [Fellas At The Freakin FCC](#) by Family Guy

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