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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 14, 2000

Magalie Roman Salas, Secretary
Federal Communications Commission
Portals II
445 12th Street, S.W.
Suite TW-A325
Washington, D.C. 20554

Re: Comments of Total Telecommunications Services, Inc.
CC Docket No. 96-262

Dear Ms. Salas:

Enclosed herein and filed on behalf of Total Telecommunications Services, Inc. ("TTS") is a copy of TTS's Comments which were filed in response to the Commission's Public Notice requesting comments on RICA and the Minnesota CLEC Consortium's Requests for Emergency Temporary Relief Enjoining AT&T Corp. From Discontinuing Service Pending Final Decision, CC Docket No. 96-262.

Please date stamp the enclosed "File Copy" and return it to the undersigned.

Should you have any questions concerning this matter, please contact the undersigned.

Very truly yours,


Loretta J. Garcia

Encl.

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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
)
Requests for Emergency Temporary Relief)
Enjoining AT&T Corp. from Discontinuing)
Service Pending Final Decision)
_____)

CC Docket No. 96-262

COMMENTS OF TOTAL TELECOMMUNICATIONS SERVICES, INC.

1. Pursuant to the Commission's Public Notice in the captioned docket,¹ Total Telecommunications Services, Inc., ("TTS") hereby submits the following comments supporting the Request for Emergency Relief filed by the Rural Independent Competitive Alliance ("RICA") on February 18, 2000, and the Request for Emergency Temporary Relief of the Minnesota CLEC [competitive local exchange carrier] Consortium ("Minnesota Consortium"), filed on May 5, 2000.

2. TTS is a corporation organized under the laws of Oklahoma providing competitive access services in Big Cabin, Oklahoma. TTS is a common carrier principally engaged in the business of providing terminating switched access services to interexchange carriers ("IXCs"), including AT&T, MCI Worldcom and Sprint, whose customers want to call TTS' customers. TTS' access services permit the completion of long distance calls between IXC customers and the end user customers of TTS. TTS has suffered from AT&T's refusal to complete calls to TTS' facilities and therefore has a substantial interest in the disposition of these Petitions.²

¹ Public Notice, DA 00-1067, released May 15, 2000.

² TTS has a pending complaint against AT&T seeking redress for AT&T's unlawful blocking of calls, its failure to pay TTS for the calls TTS terminated to local exchange carriers,

3. Specifically, the Public Notice requested comment on whether RICA and the Minnesota Coalition have satisfied the standards for emergency relief. RICA and the Consortium have satisfied the accepted standards for relief, demonstrating that: (1) AT&T's actions are clearly illegal, making it likely that RICA and the Consortium will succeed on the merits; (2) RICA and Consortium members and the public will suffer irreparable harm if the Commission does not act; (3) AT&T will not be harmed if relief is granted; and (4) the requested relief serves the public interest.³ Given the Petitioners' strong showing that AT&T has contravened its carrier obligations under the Communications Act, TTS urges the FCC to grant the injunctive relief requested by Petitioners. Competition under this nation's communications laws simply will not work if AT&T can get away with eliminating emerging competitive carriers and mistreating small rural telephone companies.⁴

I Petitioners Are Likely To Succeed on the Merits Because AT&T's Actions Contravene its Obligations as a Carrier under the Communications Act and the Commission's Rules and Policies Thereunder.

4. Petitioners RICA and the Minnesota Consortium are likely to succeed on the merits. Petitioners state that AT&T is illegally withdrawing its interexchange services from, and refusing to provide its services to, the customers of Petitioners. In addition, AT&T is ceasing

and the deceptive statements AT&T made to customers after it refused to terminate calls via TTS. *Total Telecommunications Service, Inc., and Atlas Telephone Co., Inc., v. AT&T Corp.*, File No. E-97-03, filed Oct. 18, 1996.

³ *Virginia Petroleum Jobbers Ass'n v. Federal Power Comm'n*, 259 F.2d 921 (D.C. Cir. 1958).

⁴ Petitioners note that their members are small CLECs and most are serving primarily rural communities. RICA Petition at 2; Consortium Petition at 2.

interconnection, and refusing to establish interconnection, between the facilities of AT&T and Petitioners.⁵

5. The Consortium is correct in its position that AT&T's actions violate section 201 of the Communications Act.⁶ As a common carrier, AT&T has the duty to provide interconnection to other carriers and must allow the traffic to flow among carriers. Specifically, the fundamental first clause of section 201(a) provides: "It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor." 47 U.S.C. § 201(a).

6. The courts and the FCC have affirmed the interconnection duty of common carriers. The Supreme Court --when interpreting common carrier duties under the Interstate Commerce Act, upon which the Communications Act of 1934 was based -- ruled that common carriers are required to interconnect with other carriers.⁷ The U.S. Court of Appeals for the D.C. Circuit validated an FCC determination that AT&T was required to provide interconnection.⁸ The Commission has held that section 201(a) requires common carriers to interconnect with other common carriers. For example, when approving AT&T tariffs which offered facilities to other carriers, the FCC ordered AT&T to furnish specialized carriers "the interconnection facilities essential to the rendition of all their

⁵ RICA Petition at 2-3; Consortium Petition at 2.

⁶ 47 U.S.C. § 201. Consortium Petition at 5-6.

⁷ *American Trucking Ass'n v. Atchison, Topeka, Santa Fe Rwy. Co.*, 387 U.S. 394, 406-07 (1967).

⁸ *MCI Telecommunications Corp. v. FCC*, 580 F.2d 590 (D.C. Cir. 1978). The D.C. Circuit also has ruled that the obligation to interconnect with other carriers applies between interexchange carriers and local exchange carriers. *Southern Pacific Comm. v. American Tel. and Tel. Co., et al.*, 740 F.2d 980, 1002 (D.C. Cir. 1984), *cert. denied* 470 U.S. 1005.

presently or hereafter authorized interstate and foreign communications services."⁹ The FCC ordered AT&T to cease and desist from "engaging in any conduct which results in a denial of, or unreasonable delay in, establishing physical interconnection" with MCI and other specialized common carriers.¹⁰ In sum, section 201(a) requires AT&T to interconnect with other common carriers upon reasonable request.

7. Likewise, section 251(a) of the Act provides an independent, irrefutable mandate for the interconnection of AT&T and other telecommunications carriers.¹¹ Section 251(a) provides: "Each telecommunications carrier has the duty (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers...."¹² AT&T, TTS, and the Petitioners are telecommunications carriers because all of these carriers provide services directly to the public for a fee.¹³ Thus, each must comply with the mandates of section 251(a).

8. AT&T's refusal to accept and carry traffic of certain carriers will frustrate the competitive objectives of the Telecommunications Act of 1996 ("1996 Act") which requires all telecommunications carriers to interconnect with the facilities and equipment of other telecommunications carriers. The Commission determined that the obligation of telecommunications

⁹ *Bell System Tariff Offerings*, 46 FCC 2d 413, 438 (1974), *aff'd sub nom. Bell Tel. Co. of Pennsylvania v. FCC*, 503 F.2d 1250, *cert. denied* 422 U.S. 1026 (1975).

¹⁰ *Id.* at 439.

¹¹ 47 U.S.C. § 251(a).

¹² 47 U.S.C. § 251(a)(1).

¹³ The term "telecommunications service" is defined in the Act as the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the facilities used." 47 U.S.C. § 153(46).

carriers to interconnect with other telecommunications carriers is a "fundamental" duty under the 1996 Act.¹⁴ AT&T falls squarely within the fundamental and unambiguous mandate of section 251(a) that telecommunications carriers interconnect with each other, and no exceptions to the statute apply to AT&T. Therefore, under section 251, AT&T must cease blocking calls to the facilities and networks of other carriers, like Petitioners and TTS.

9. AT&T also is prohibited under section 202(a) from any practice that is unreasonably discriminatory against any class of persons or locality. Section 202(a) explicitly prohibits common carriers from making any "unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities or services for or in connection with like communication service."¹⁵ By rejecting interconnection for the customers of carriers whose access rates it disputes, AT&T is abrogating its common carrier obligation under section 202(a). Controlling more than half of the nation's traffic as it does, AT&T has the ability to squash competitive access providers, incumbent LECs and competitive LECs by cutting off the carriers with whom it does not wish to do business and, instead, allow only the companies that it chooses to terminate its customers' calls. Under section 202, AT&T cannot lawfully discriminate in this manner.¹⁶

¹⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499, (1996), *rev'd in part, Iowa Utils. Bd., et al. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *rev'd and remanded in part sub nom. AT&T Corp., et al. v. Iowa Utils. Bd., et al.*, 119 S.Ct. 721 (1999).

¹⁵ 47 U.S.C. § 202(a).

¹⁶ *See e.g., Bell System Tariff Offerings*, 46 FCC 2d at 426; *see also Edwards Ind., Inc.*, 74 FCC 2d 322, 326 (1979) (where the Commission found even the threat to disconnect was a violation of section 202(a)).

10. Furthermore, AT&T's actions violate section 214 which prohibits carriers from discontinuing, reducing or impairing service to a community or a portion of a community without first obtaining FCC approval. Section 214(a) provides that: "[n]o carrier shall discontinue, reduce or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby...."¹⁷ The Commission has not made a finding or issued a certificate to AT&T for its discontinuance of interconnection services between itself and Petitioners or TTS. Indeed, AT&T has not sought a certificate from the Commission even though section 214 requires AT&T to obtain one. Instead, AT&T is taking matters into its own hands, exercising self-help measures, and pulling the plug on its own customers and the customers of Petitioners and TTS.

11. Commission precedent exists for prohibiting AT&T's impairment of service. The Commission considers carrier-to-carrier interconnection services to be subject to the requirements of section 214(a). For example, in an incident involving BellSouth, the FCC found that BellSouth had violated section 214(a) when it withdrew Calling Party Number ("CPN") service, which is used by IXCs to provide caller identification services.¹⁸ The Commission there stated that BellSouth was incorrect in its assertion that "Section 214 authorization is not required to discontinue CPN in North Carolina because it [was] not discontinuing CPN to the public, but only to its carrier-customers."¹⁹

12. Petitioners in this proceeding also observe that the FCC has ruled that AT&T was in

¹⁷ 47 U.S.C. § 214(a).

¹⁸ *BellSouth Tel. Cos.*, 7 FCC Rcd 6322 (1992).

¹⁹ *Id.* at 6322.

violation of section 214(a) for failing to seek FCC approval before discontinuing service to users of portable manual mobile telephones.²⁰ The FCC there stated that the determination of the public interest effects of discontinuance of service to a definable group of customers requires adherence to the procedures of section 214(a).²¹

II Irreparable Harm To the Public Will Result Unless the Commission Grants the Requested Relief.

13. Petitioners as well as the public at large will be irreparably harmed without the relief requested by Petitioners. It is imperative that AT&T interconnect with other carriers. Without interconnection to AT&T's network, small and rural carriers cannot survive. If AT&T is permitted to discontinue service to customers of its own choosing, and it is not required to establish or maintain interconnections with the facilities of other carriers, then customers nationwide that are presubscribed to AT&T's interexchange services will be unable to call thousands of other local customers. In addition, the customers of Petitioners and other targeted carriers will not be able to take advantage of AT&T's services, which undoubtedly will weaken the ability of Petitioners and other such carriers to attract and retain customers. AT&T is stifling competition in the telecommunications markets, and without Commission intervention competition in the provision of local services will be hampered across the country. The Commission itself has stated that "carrier

²⁰ *Referral of Chastain, et al. v. AT&T From the U.S. District Court for the District of Columbia*, 43 FCC 2d 1079 (1973); *recon. denied* 49 FCC 2d 749 (1974).

²¹ 49 FCC 2d at 752.

compliance with, and our diligent enforcement of, the rights and obligations set forth in section 251 are absolutely necessary for achievement of the pro-competitive goals and policies of the 1996 Act.²²

III AT&T Will Not Be Substantially Harmed by a Grant of the Requested Relief.

14. On the other hand, AT&T would not be substantially harmed by a grant of the requested relief. Petitioners are merely asking that AT&T be directed to interconnect with all other telecommunications carriers as directed by Congress, and that AT&T be required to continue serving its customers on a nondiscriminatory basis until it has received authority from the Commission to discontinue such services. Any harm to which AT&T is exposed would be economic and only temporary since it would be capable of remedy through the award of monetary damages.

IV The Public Interest Will Be Served by Granting the Requested Relief.

15. The general public is ultimately affected by AT&T's discontinuance of interconnection to other carriers because members of the public can no longer use their chosen carriers' lines to reach their intended destinations. When it amended the Act in 1996, Congress found that the public interest would be served by greater competition in the telecommunications marketplace. This will only be accomplished if all telecommunications carriers are required to interconnect with other telecommunications carriers. AT&T must not be permitted to harm the public by stifling competition in the local marketplace by refusing to do business with potential competitors.

²² *Section 257 Proceeding To Identify and Eliminate Market Entry Barriers for Small Businesses*, Report, FCC 97-164, released May 8, 1997. AT&T's actions as described by Petitioners and in these comments are barriers against entry by small businesses into the telecommunications markets.

16. The public interest will be harmed if AT&T is permitted to discontinue service to the customers of Petitioners and other such carriers without first obtaining FCC authority to do so. It is not for AT&T to determine whether it is in the public interest for its customers to be denied access to the telephone numbers residing with other carriers. By enacting section 214, Congress made clear that it is up to the FCC to determine the public interest in these matters. The public must be informed of AT&T's intention to discontinue service to these customers and have the opportunity to protest any discontinuance or impairment of service.

17. Furthermore, AT&T cannot unilaterally decide with whom it will interconnect. If AT&T has a dispute with another carrier about interconnection rates, terms and conditions, it must follow the FCC's well-established procedures and file a complaint with the FCC. Instead, AT&T has chosen to usurp the Commission's processes by blocking and discontinuing service to other carriers. The public interest will clearly be served by the requested relief as it will ensure that other carriers are able to continue to provide competitive local exchange or access services to the customers of AT&T and other carriers.

Conclusion

17. TTS agrees with Petitioners that the Commission should prohibit AT&T from deciding on its own whether to provide, or not provide, access services to customers based on whether the carrier acquiesces to AT&T's demands regarding access rates.²³ If left unchecked, these unilateral

²³ Consortium Petition at 3-4.

actions by AT&T will harm users of telecommunications services, especially those in rural and high cost areas.

18. Petitioners have met the requirements for issuance of the requested relief. The public interest considerations outweigh any short-term harm that such relief may cause to AT&T's business interests. Therefore, the Commission should issue an order: (1) requiring AT&T to observe its carrier obligations of providing service under just and reasonable terms and conditions; and (2) prohibiting AT&T from unilaterally withdrawing interconnection with targeted carriers.

TOTAL TELECOMMUNICATIONS SERVICES, INC.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Loretta J. Garcia", is written over a horizontal line.

Its Counsel

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Loretta J. Garcia

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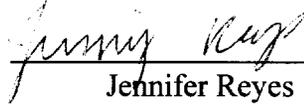
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June 14, 2000

CERTIFICATE OF SERVICE

I, Jennifer Reyes, hereby certify that on this 14th day of June, 2000, copies of the foregoing "Comments of Total Telecommunication Services, Inc." have been served by first-class United States mail, postage pre-paid or by hand delivery upon the following:


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