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June 15, 2000

VIA COURIER

JUN 15 2000

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Comments of Allegiance Telecom, Inc.
CC Docket No. 96-262

Dear Ms. Salas:

Pursuant to *Common Carrier Bureau Seeks Comment on the requests For Emergency temporary Relief of the Minnesota CLEC Consortium and the Rural Independent Competitive Alliance Enjoining AT&T Corp. from Discontinuing Service Pending Final Decision,* Public Notice, CC Docket No. 96-262, DA 00-1067, released May 15, 2000. I attempted yesterday evening to file the attached comments of Allegiance Telecom, Inc. using the Commission's electronic comment filing system ("ECFS"). On several occasions I was unable to obtain any contact with ECFS using our Internet browser. I was able to obtain contact with the system once, but received an error message to the effect that ECFS was not able to accept a filing for the specified proceeding. After that, I was unable to obtain contact again with ECFS. I do not know whether this was caused by problems with facilities at this firm, our communications links, or ECFS.

This proceeding is of great importance to Allegiance Telecom, Inc. In addition, acceptance of the attached comments as timely filed would not harm any party and would promote development of a complete record. Accordingly, and in view of the fact that I was unable to file electronically, I request that the attached Comments of Allegiance Telecom, Inc." be accepted as timely filed.

Sincerely,

Patrick J. Donovan

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Comments of Allegiance Telecom, Inc.
CC Docket Nos. 96-262 and 94-1
June 14, 2000

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

JUN 15 2000

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Requests for Emergency Temporary Relief Enjoining AT&T Corp from Discontinuing Service Pending Final Decision	)	

COMMENTS OF ALLEGIANCE TELECOM, INC.

Allegiance Telecom, Inc. ("Allegiance") submits these comments in support of the separate "Requests for Emergency Temporary Relief Enjoining AT&T from Discontinuing Service Pending Final Decision" filed by the Minnesota CLEC Consortium ("Minnesota CLECs") and the Rural Independent Competitive Alliance ("RICA") in the above-captioned proceeding.[1]

I. INJUNCTIVE RELIEF IS WARRANTED

In their petitions, the Minnesota CLECs and RICA bring to the Commission's attention AT&T's recent letter writing campaign to CLECs directing them to take various highly

[1] *Common Carrier Bureau Seeks Comment on the requests For Emergency temporary Relief of the Minnesota CLEC Consortium and the Rural Independent Competitive Alliance Enjoining AT&T Corp. from Discontinuing Service Pending Final Decision,* Public Notice, CC Docket No. 96-262, DA 00-1067, released May 15, 2000.

problematic and probably unlawful actions that would effectively preclude the CLECs'customers from receiving interexchange service from AT&T and from receiving calls from other business and residential consumers who use AT&T as their long distance carrier. These letters also state that, in view of these directions to CLECs, AT&T is not obligated to pay for any access services it receives.

For all the reasons cited by the Minnesota CLECs and RICA in their petitions, and based on arguments previously raised by Allegiance and other commenters in this proceeding, the Commission would be amply justified under applicable standards[2] to direct AT&T to maintain existing call origination and termination arrangements with CLECs and to pay tariffed CLEC interstate access charges pending the outcome of issues raised in the *CLEC Access Charge NPRM.*[3] The Commission prohibits customers of tariffed interstate communications services from refusing to pay tariffed charges while continuing to receive service,[4] and has specifically determined that it is unlawful for AT&T to refuse to pay tariffed interstate access charges to

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[2] *See Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F. 2d 921 (D.C. Cir 1958); *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F. 2d 841 (D.C. Cir. 1977).

[3] *Access Charge Reform*, Fifth Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-262, FCC 99-206, released August 27, 1999 ("*CLEC Access Charge NPRM*").

[4] *Business WATS, Inc. v. AT&T*, 7 FCC Rcd 7942 (1992)("a customer ... is not entitled to the self-help measure of withholding payment of tariffed services duly performed but should first pay, under protest, the amount allegedly due and then seek redress if such amount was not proper ...").

CLECs while continuing to receive service from them.[5] In short, it is flatly unlawful for AT&T to refuse to pay tariffed CLEC interstate access charges while continuing to receive service from them. It would also violate AT&T's fundamental obligations to interconnect with other carriers under Sections 251(a) and 201(a) of the Act to refuse to complete customers' calls. In addition, AT&T may not discontinue service to a CLEC's customers without prior approval under Section 214 of the Act and Section 63.71 of the rules.[6]

If the unlawful character of AT&T's refusal to provide service to CLEC customers CLECs by AT&T were not a sufficient reason to enjoin AT&T from taking such action, the harm to consumers and businesses is a sufficient basis to do so. It is hard to imagine a scenario more disruptive to consumers and businesses than AT&T unilaterally pulling the plug on CLECs. Customers would never know if their long distance calls would be completed, nor would they know if others are trying to call them. These disruptions in general, and the harm to specific commercial transactions that might be caused by such an intentional communications failure, could easily cost billions. Further, as previously pointed out by Allegiance in this proceeding, it is not hard to envision a situation in which the inability to complete a call could harm the public health and safety.[7]

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[5] *MGC Communications, Inc. v. AT&T Corp.*, 14 FCC Rcd 11647 (1999) ("*MGC Communications*").

[6] 47 C.F.R. Section 63.71.

[7] Allegiance Comments filed October 29, 2000, at 8.

Accordingly, the Commission should issue the requested injunctive relief to assure that AT&T meets its common carrier obligations and otherwise to protect the public interest pending the outcome of this proceeding. If the Commission does not issue injunctive relief, it should at least make clear that it will take prompt action to remedy any initiative by AT&T to actually unilaterally terminate service to CLEC customers.

II. AT&T'S LETTERS DO NOT ELIMINATE ITS OBLIGATION TO PAY TARIFFED CLEC INTERSTATE ACCESS CHARGES

As discussed, AT&T's threatening letters to CLECs raise the specter of unilateral efforts by AT&T to terminate service to CLEC customers.[8] While the Commission should take this threat seriously, Allegiance is frankly more concerned that AT&T's letter writing campaign is really an attempt to provide some basis for it to contend that it is not obligated to pay tariffed CLEC interstate access charges. Indeed, its letters to CLECs expressly state that it is not obligated to pay CLEC access charges. Allegiance requests that the Commission specifically determine that AT&T's recent letters to CLECs do not to any extent limit its liability to pay CLECs for the interstate access services it receives from CLECs.

In its letters to CLECs, AT&T instructs the CLEC to cease routing all traffic to AT&T's network, including 8YY traffic, or completing any calls terminating from AT&T's network that are intended for the CLEC's local exchange customers. AT&T additionally instructs the CLEC not to presubscribe any of its local exchange customers to AT&T's interexchange customers, to

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[8] Allegiance is hopeful that AT&T will disclaim any such intent in its reply comments to the Minnesota CLECs and RICA petitions.

notify any customers "improperly" presubscribed to AT&T that the CLEC is not authorized to presubscribe the customer to AT&T, and to assist those customers in switching to another IXC. These letters also state that to the extent the CLEC does not comply with AT&T's request not to presubscribe any customers to AT&T, the CLEC should nonetheless provide AT&T customer account/billing records so that AT&T can meet alleged legal obligations to bill its customers for long distance services received. AT&T further states, however, that AT&T's request for these records should in no way be construed as an order or purchase of access services from the CLEC.

The Commission has already addressed and rejected the position presented by AT&T in its letters cited by the Minnesota CLECs and RICA concerning its obligation to pay CLEC access charges. In *MGC Communications, Inc.*, the FCC determined that declarations by an IXC to a CLEC that it was declining to order the CLEC's switched access services while the IXC continued to receive originating calls from, and deliver terminating calls to, the CLEC presented an insufficient basis to eliminate the IXC's liability to pay the CLEC's tariffed interstate access charges.[9] The FCC found that it was unreasonable for an IXC to expect that the obligation would fall on the CLEC to take the steps necessary to terminate the IXC's status as a customer of the CLEC's tariffed interstate access charges.[10] In particular, the FCC noted that CLECs could not be expected to transfer their local exchange customers to another IXC since this could violate the

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[9] *MGC Communications, Inc. v. AT&T Corp.*, 14 FCC Rcd 11647 (1999) ("*MGC Communications*").

[10] *Id.* para. 20.

FCC's "slamming" rules.[11] Allegiance believes that it could also violate a CLEC's equal access and dialing parity obligations to refuse to presubscribe customers to an IXC when requested by customers to do so.

It is particularly absurd for AT&T to assert that it is not required to pay a CLEC's tariffed terminating interstate access charges when it is AT&T that sends the terminating traffic to the CLEC. AT&T also sends originating traffic to a CLEC when it offers originating long distance service to customers in the CLEC's local exchange area. AT&T's voluntary acceptance from, and delivery to, a CLEC of interstate interexchange traffic constitutes an order for the CLEC's interstate switched access services that subjects AT&T to liability to pay tariffed charges for those services.

Accordingly, the Commission should conclude that AT&T's letter writing campaign is a facile and completely ineffectual attempt to avoid financial liability for switched access services that it receives from CLECs. The Commission should conclude that AT&T remains fully liable for CLECs federally tariffed switched interstate access charges for calls that AT&T accepts from, or terminates to, them. In the *CLEC Access Charge NPRM*, the Commission left open the possibility, without deciding, that there may be some circumstances in which an IXC could decline to receive CLEC tariffed access services.[12] Assuming that there are any such circumstances, the Commission previously has determined that AT&T must do more than send a

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[11] *Id.* p. 16.

[12] *CLEC Access Charge NPR*M, para. 242.

flurry of letters to CLECs directing that CLECs take all the responsibility and difficult actions involved in effectively terminating either local or long distance service to end users. As the Commission stated in the *MGC* decision,

> AT&T's position throughout this proceeding essentially has been that, with a single notification letter to MGC, it could disrupt the long distance service on which thousands of MGC local service customers relied and that it could force MGC to bear the full burden of contacting the affected customers and moving them to another carrier. AT&T's assertions in this regard ignore the fact that these users were as much customers of AT&T as they were of MGC. We reject the notion that an interexchange carrier may withdraw the long distance service that it provides to an entire class of customers, then wash its hands of the matter, as AT&T has attempted to do in this case. . . . AT&T may not simply terminate its access arrangement with MGC in a way that suddenly would leave thousands of blameless consumers without the service that they have been receiving through the two companies. AT&T's apparent attempt to do so in this case was unjust and unreasonable.

MGC Communications, Inc. at ¶ 7. The Commission should conclude that AT&T's conduct vis a vis the CLECs here is no less unjust or unreasonable.

III. CONCLUSION

For these reasons, the Commission should grant the requested injunctive relief and otherwise determine that AT&T must pay tariffed CLEC interstate access charges.

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