

ORIGINAL

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

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	)	

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JUN 29 2000  
FEDERAL COMMUNICATIONS COMMISSION  
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**REPLY COMMENTS OF  
ALLEGIANCE TELECOM, INC.**

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Allegiance Telecom, Inc. ("Allegiance") submits these reply comments in support of the Requests for Emergency Temporary Relief Enjoining AT&T from Discontinuing Service Pending Final Decision ("Petitions") filed on May 5, 2000 by the Minnesota CLEC Consortium and the Rural Independent Competitive Alliance (collectively "Petitioners") in the above-captioned proceeding.<sup>1</sup> AT&T in initial comments has failed to show that it may at this time lawfully decline to use the access services of competitive local exchange carriers ("LECs") necessary to complete its customers' calls. The Commission should grant the Petitions.

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<sup>1</sup> *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 (rel. May 15, 2000).*

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**I. AT&T MAY NOT LAWFULLY DECLINE TO PURCHASE ACCESS SERVICES FROM LECS NECESSARY TO COMPLETE ITS CUSTOMERS' CALLS**

AT&T suggests that it should be permitted to decline to purchase access services from certain LECs because customers could then choose between (1) continuing to receive local exchange service from the LEC without AT&T as a long-distance provider or (2) taking local exchange service from another LEC whose access services AT&T is willing to purchase. AT&T's analysis disingenuously tells only half the story. As Allegiance and other parties demonstrated in their initial comments, any official sanction of AT&T's position by the Commission would wreak havoc for consumers.

If AT&T is permitted to boycott the access services of certain LECs with whom it unilaterally determines not to do business, it will severely limit its customers' calling options. An AT&T customer would never know in advance whether a long distance call it places will go through. For example, an AT&T customer in New York would not be able to complete a call to an individual in California (or anywhere else) if that individual receives local exchange service from a LEC with whom AT&T has chosen not to do business. In addition, the large number of businesses who subscribe to AT&T's 8YY toll free calling services will not be able to receive calls universally from customers or potential customers. Any callers who obtain their local exchange service from LECs with whom AT&T has chosen not to do business will not be able to get through to AT&T's 8YY toll free numbers. Of course, the 8YY subscribers would have no way of knowing how many calls or business opportunities were missed as a result of AT&T's refusal to pay for the access services

of selected local exchange carriers. The public interest clearly requires that the Commission maintain the universal connectivity of the public switched telephone network and reject AT&T's view that the disruptions AT&T's actions would cause would be a desirable regulatory result.

AT&T also contends that allowing it to decline to purchase access from selected LECs is acceptable because AT&T could then simply negotiate appropriate access charges with the LECs of its choosing. However, AT&T is actually asking the Commission to bless the use of its overwhelming size, resources, and established relationships with millions of customers to effectively dictate the level of access charges that small LECs may impose. Simply stated, small LECs, and especially new entrants, do not have equal bargaining power with AT&T and lack the market power to cut a fair deal on access charges when faced with the threat that their customers would not be able to receive long distance service from AT&T.<sup>2</sup> While the Commission has determined that AT&T is nondominant in the provision of interexchange services to end users, it has not determined that AT&T would not enjoy a vastly superior negotiating position *vis-a-vis* small LECs concerning access charges. Nor could the Commission rationally make any such determination.

Even Sprint, the third largest domestic IXC, acknowledges that allowing carriers unilaterally to decide whether and on what terms to interconnect can result in inconvenience to the public and would permit carriers with market power to exert undue leverage *vis-a-vis* their smaller counterparts.<sup>3</sup> Sprint describes scenarios in which large IXCs may coerce smaller LECs to agree

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<sup>2</sup> See ASCENT at 3-4.

<sup>3</sup> Sprint at 2.

to uneconomic terms, such as the not unlikely possibility that a large IXC could extract lower access charges from a particular LEC than the LEC is willing to offer the rest of the IXC industry. Indeed, Sprint notes that it “has filed a formal complaint against one CLEC that it believes is charging less than its tariffed rates to Sprint’s larger [IXC] competitors.”<sup>4</sup> Allowing large IXCs to wield their market power in this way to the detriment of small LECs or new entrants clearly does not serve the public interest.

**II. CLEC ACCESS CHARGE RATES ARE NOT EXCESSIVE OR UNREASONABLE MERELY BECAUSE THEY ARE HIGHER THAN ILEC RATES**

AT&T asserts that Petitioners’ access rates are excessive because they are higher than the rates of the ILEC operating in the same geographic area.<sup>5</sup> Sprint contends that all CLECs should be required to meet or beat the ILEC’s access rates.<sup>6</sup> AT&T’s and Sprint’s positions must be rejected out of hand. As members of CALLS, AT&T and Sprint themselves affirmatively represented to the Commission that mid-size LECs (and by definition small LECs) incur greater costs to provide access service than do large LECs. “Due to their size, mid-sized LECs generally have different economies of scale than large LECs; they incur greater costs to provide service, do

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<sup>4</sup> *Id.* at 3.

<sup>5</sup> AT&T at 2.

<sup>6</sup> Sprint at 3.

not receive the same volume discounts from vendors, and overall share a disproportionate burden, both in terms of time and expense, in meeting regulatory costs.”<sup>7</sup>

Moreover, the Commission previously has recognized that CLEC access rates may exceed ILEC rates because of differences in costs. In this proceeding, the Commission has acknowledged that “CLEC access rates may, in fact, be higher due to the CLEC’s start-up costs for building new networks, their small geographical areas, and the limited number of subscribers over which CLECs can distribute costs.”<sup>8</sup> In addition, ILECs are able to geographically average their access charges across large areas reflecting the costs of serving both urban and rural areas. CLECs generally do not have this opportunity. Moreover, CLECs compete with ILECs in ways other than price, such as service quality, responsiveness to customer inquiries, and product offerings. Accordingly, the Commission should reject in this proceeding the view that CLEC access charges are unreasonable merely because they are higher than ILEC access charges. The Commission separately has already done so.<sup>9</sup>

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<sup>7</sup> Memorandum in Support of the Revised Plan of the Coalition for Affordable Local and Long Distance Service, CC Docket Nos. 94-1, et al., filed March 8, 2000, at 13.

<sup>8</sup> Further Notice of Proposed Rulemaking, FCC 99-206 at ¶ 188 (rel. Aug. 27, 1999).

<sup>9</sup> *Sprint Communications Company v. MGC Communications*, EB-00-MD-002, Memorandum Opinion and Order, FCC 00-206 (rel. June 9, 2000).

**III. AT&T MUST OBTAIN SECTION 214 APPROVAL PRIOR TO TERMINATING SERVICE TO LEC CUSTOMERS**

Allegiance agrees with those commenters that assert that the Commission would be justified in requiring AT&T to obtain Section 214 authorization before discontinuing service to local exchange customers. This would be a useful regulatory tool to prevent AT&T from taking the precipitous steps that it may be contemplating and that would be harmful to consumers.

On its face, Section 214 requires prior approval when a carrier seeks to “discontinue, reduce or impair service to a community, or part of a community.”<sup>10</sup> If nothing else, terminating service to the community of CLEC customers would impair service to a part of a community. The case cited by AT&T for the proposition that such termination would not require Section 214 authorization is completely off the point.<sup>11</sup> In that case, the Commission held that when a service discontinuance merely causes a carrier “to make technical changes in the way it provides service to its customers . . . but in no way impairs its ability to continue providing service to its customers, then no Section 214 issue arises.” Allegiance submits that refusing to complete calls to or from CLEC customers would be considerably more than a “technical change” in the way service is provided to customers. Indeed, it would involve not providing any service at all to the customers. As a result,

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<sup>10</sup> 47 U.S.C. sec. 214.

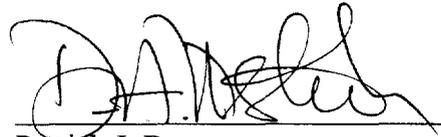
<sup>11</sup> AT&T at 22, (*citing Southwestern Bell Tel. Co. et al.: Application for Authority Pursuant to Section 214 of the Communications Act of 1934 to Cease Providing Dark Fiber Service*, Memorandum Opinion and Order, 8 FCC Rcd 2589, para. 48 (1993), *remanded on other grounds* 19 F.3d 1475 (1994)).

the Commission may, and should, determine that AT&T may not terminate service to CLEC customers without first obtaining Section 214 approval.

**V. CONCLUSION**

For these reasons, the Commission should grant 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.

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Dated: June 29, 2000

## CERTIFICATE OF SERVICE

I, Sharon Gantt, hereby certify that on this 29<sup>th</sup> day of June 2000, a copy of the foregoing Reply Comments of Allegiance Telecom, Inc. was served by hand or by first class mail (denoted by asterisks), postage prepaid, on the following:

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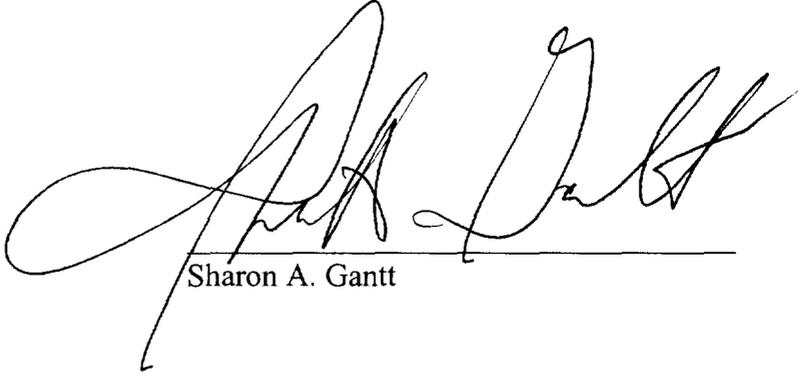
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