

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

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In the Matter of)
)
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)
_____)

CC Docket No. 96-262 /

**ERRATUM TO REPLY COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA), through the undersigned, hereby files this *Erratum* to the Reply Comments it filed in this proceeding on June 29, 2000.

In Section 2. of its Reply Comments, USTA cites to an FCC rule ("FCC Rule 214(a)"). The citation is incorrect and actually corresponds to the statutory provision that serves as the basis for the FCC rule that should have been cited. This *Erratum* is filed in order to correct that error. In all places in Section 2. of its Reply Comments where USTA cites to "FCC Rule 214(a)," the correct and intended citation is to "FCC Rule 63.71." The Reply Comments are otherwise unchanged by this *Erratum*.

For the convenience of the parties to this proceeding and the FCC, attached please find a corrected copy of USTA's Reply Comments, which replaces the incorrect citation with the

correct citation, and may be substituted for the original, filed Reply Comments. USTA regrets any inconvenience caused by the filing of this *Erratum*.

Respectfully submitted,

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June 30, 2000

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

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**REPLY COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA), through the undersigned and pursuant to the Public Notice¹ released by the Federal Communications Commission (FCC) in the above-referenced docket, hereby presents its reply comments. The comments filed in this proceeding were predictable in that the interexchange carriers (IXCs) (specifically AT&T Corp., Sprint Corporation and WorldCom, Inc.) opposed the Requests for Emergency Temporary Relief (Requests) and the CLECs (as well as a number of ILECs and their trade associations) supported the Requests. The vigor with which both sides argue their positions evidences the significance of the issues raised in the underlying rulemaking proceeding with respect to the future of local competition and the availability of interexchange services in rural and high cost areas. The way

¹Requests 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, CC Docket No. 96-962, DA 00-1067, Public Notice (rel. May 15, 2000).

in which the IXCs have attempted to frame the issues makes it very clear that the FCC will be required to determine what it means to be a common carrier in a competitive market (in this case the interstate, interexchange services market), what constitutes withdrawal from a community by a common carrier and what processes are required, in this context, to ensure that customer choice is maximized without the imposition of unreasonable or unnecessary regulatory burdens on carriers.

DISCUSSION

1. The FCC Should Preserve the Integrity of its Rulemaking Process.

Nothing in the filed comments changes USTA's belief that the primary issue raised by the Requests is the preservation of the integrity of the FCC's rulemaking process.

AT&T initially brought this matter before the FCC in 1998 in a petition for declaratory ruling asking the FCC to confirm that "under existing law and Commission rules and policies, IXCs may elect not to purchase switched access services offered under tariff by CLECs."² The filing of the petition for declaratory ruling was an acknowledgment by AT&T that, at least in its view, clarity is lacking as to its common carrier obligations to interconnect with certain CLECs and purchase interstate access services. This, of course, is not simply a matter of a commercial dispute between carriers. The purchase by AT&T of originating access services from CLECs

²See Access Reform; Price Cap Performance Review for Local Exchange Carriers; Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers; Petition of U S WEST Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA, 14 FCC Rcd 14221, 14316 (1999) (Fifth R&O and FNPRM).

serves to effectuate the decisions of the CLECs' end user customers to choose AT&T as their presubscribed IXC. If AT&T refuses to purchase originating access services from certain CLECs, the CLECs' end user customers are unable to secure AT&T interexchange services. If end user customers who desire AT&T's interexchange services are forced to choose another local exchange carrier (LEC) in order to secure AT&T's interexchange services, the long term viability of the CLEC is threatened.³

The FCC denied the petition for declaratory ruling electing instead to address the issues raised by it in a rulemaking proceeding.⁴ Rather than await the outcome of this rulemaking proceeding, AT&T has elected to forge ahead without FCC guidance and unilaterally decide which CLECs' access rates are too high and, therefore, which CLECs' access services it will not purchase. As USTA stated in its comments, AT&T's unilateral actions are, at best, premature and threaten to undermine the integrity of the FCC's rulemaking process. AT&T is not required to act in such a heavy-handed and arbitrary manner in order to protect its legitimate interest to avoid paying excessive access rates. During the pendency of this rulemaking proceeding, AT&T can purchase the CLECs' access services and avail itself of Sections 207 and 208 of the Communications Act⁵ by bringing forward a complaint against any CLEC whose access rates it

³This may or may not be an undesirable outcome. It is, though, an outcome that must be considered. USTA believes that it is an outcome, among other possible outcomes, that the FCC is considering in this rulemaking proceeding.

⁴Fifth R&O and FNPRM at 14319.

⁵47 U.S.C. §§ 207 and 208.

believes to be excessive. AT&T can be made whole for any monetary damages it may suffer as a consequence of having paid unjust and unreasonable access rates while the complaint is being adjudicated. Equally important, end user customers are not, then, forced to forgo AT&T's interstate interexchange services or leave their chosen CLEC.

AT&T's unilateral actions prejudice the outcome of this rulemaking proceeding. It's unilateral actions deny end user customers their choice of IXC and threaten local competition. These are unnecessary outcomes when other options exist that will render AT&T whole should it, in fact, pay access rates that are determined to be excessive in an adjudicatory proceeding. Accordingly, the FCC should preserve the integrity of this rulemaking proceeding by enjoining AT&T from unilaterally withdrawing its services from CLECs or LECs until the FCC issues a final decision in this rulemaking proceeding.

2. AT&T is in Violation of FCC Rule 63.71.

AT&T asserts that its "decision not to purchase movants' access services is simply not a decision affecting a 'community' within the meaning of Section 214."⁶ This seems an incredible statement. The community, in the context of FCC Rule 63.71,⁷ must at a minimum include end users who want interexchange service. Certainly these end users are affected by AT&T's unilateral action if they are forced to use a local service provider other than their chosen

⁶Comments of AT&T Corp., filed June 14, 2000, at p. 21.

⁷47 C.F.R. § 63.71.

CLEC/LEC in order to secure AT&T interexchange services. To the extent that an end user has chosen a particular CLEC/LEC to provide it local exchange and exchange access services, AT&T's decision to not purchase access services from that CLEC/LEC has a clear and demonstrable impact on the end user's choice of service provider and very possibly the interexchange service options and rate plans available to the end user. In the context of the situation at hand, AT&T is a common carrier that is already serving an existing community. AT&T cannot credibly argue that FCC Rule 63.71 is inapplicable to it here.⁸

AT&T has failed to come forward in its comments with any evidence of its compliance with FCC Rule 63.71. AT&T is in violation of FCC Rule 63.71, and its violation is an independent basis for granting the requested injunctive relief.

CONCLUSION

The Requests seek limited injunctive relief while this rulemaking proceeding is pending. USTA believes that marketplace solutions are preferable to regulatory solutions and that in deciding upon final rules the FCC should give due deference to market-based solutions. While

⁸AT&T's attempt to draw an analogy to RBOC entry into long distance and RBOC obligations as true new entrants in the interexchange market is illogical and factually not comparable. See Comments of AT&T Corp. at p. 24 and p. 23, fn. 12. In AT&T's case, it is already serving existing communities, and it is attempting a selective exit from those communities without complying with the requirements of FCC Rule 63.71. This is not a case of defining a carrier's 214 obligations with respect to either a new community or a previously unserved community.

the rulemaking proceeding is pending, though, limited injunctive relief is appropriate and necessary in order to preserve the integrity of the rulemaking process as the FCC considers the rights and obligations of the affected parties.

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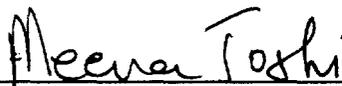
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June 29, 2000

CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on June 30, 2000 the above Erratum to Reply Comments of the United States Telecom Association was delivered via the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.



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