

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

RECEIVED
JUL 24 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Access Charge Reform)
)
Hyperion Telecommunications, Inc.)
and Time Warner Petitions for)
Forbearance, Complete Detariffing)
for Competitive Access Providers)
and Competitive Local Exchange)
Carriers)

CC Docket No. 96-262

CC Docket No. 97-146 /

To: The Commission

**REPLY COMMENTS OF THE
RURAL INDEPENDENT COMPETITIVE ALLIANCE**

The Rural Independent Competitive Alliance ("RICA"), by its attorneys, hereby files these reply comments in response to comments filed pursuant to the Commission's request to "update and refresh" the records in the above-captioned proceedings on whether, in the Commission's words, "mandatory detariffing of CLEC interstate access service rates would provide a market-based deterrent to excessive terminating access charges."¹

RICA is opposed to mandatory detariffing on the grounds that such action would undermine effective competition in the delivery of competitive local exchange services to rural

¹ *Commission Asks Parties to Update and Refresh Record on Mandatory Detariffing of CLEC Interstate Access Services*, Public Notice, DA 00-1268 (rel. June 16, 2000)("Public Notice"). The Commission's invitation arises from a recent court decision upholding a 1996 Commission order requiring mandatory detariffing for all interstate, domestic, interexchange services of nondominant interexchange carriers. See *MCI WorldCom v. FCC*, 209 F.3d 760 (D.C.Cir. 2000).

areas across the United States.

I. Commenters In Support of Mandatory Detariffing Base Their Arguments on the False Premise that Access Charges are Excessive

As set forth in RICA's Comments, the Commission's inquiry is based on the false assumption that CLEC access charges are excessive.² However, the large interexchange carriers ("IXCs") continue to perpetrate this false assumption by describing CLECs as having "unreasonably high" and "supracompetitive" rates and as having "excessive" rates due to their "bottleneck power over access by long-distance carriers."³

AT&T and Sprint continue to allege that CLEC access rates are excessive because the rates exceed the amounts charged by the incumbent LEC serving the same territory, although the Commission summarily rejected this argument.⁴ AT&T uses the access rates charged by the ILEC in the same territory as the watermark for which mandatory detariffing should begin. According to AT&T, those CLECs that "insist on charging supracompetitive rates," *i.e.*, rates that exceed those of the incumbent LEC, should be required to negotiate intercarrier contractual arrangements rather than file tariffs.⁵ Sprint seeks to quantify the "excessive" rates by stating its

²See RICA's Comments at 3.

³See Worldcom's Comments at 3-4; AT&T's Comments at 1; and Sprint's Comments at 2-3.

⁴See *Sprint Communications Company, LP v. MCG Communications, Inc.*, Memorandum Opinion and Order, File No. EB-00-MD-002, FCC 00-206 (rel. June 9, 2000) at para. 6 ("[w]e decline Sprint's invitation to hold that any access rate that is higher than the ILEC's is necessarily unjust and unreasonable under section 201(b)).

⁵AT&T's Comments at 9. In its Reply Comments in the Access Charge Reform proceeding, RICA demonstrated that AT&T's proposed tariff mechanism is defective in several respects. See RICA Reply Comments in Docket 96-262 filed November 29, 1999 at 9-10.

belief that “the difference between the tariffed access charges of the CLECs and the amounts charged by the ILECs serving the same territories could amount to \$1 billion on an annual basis for the long-distance industry, at current volume levels” and compares the “billions of dollars” that it claims that customers will ultimately have to pay with the reductions from the recently adopted CALLS plan.⁶

In arguing for mandatory detariffing, Worldcom not only asserts that CLEC access rates are excessive, but it also claims that some CLECs are using the Commission’s tariff process to “extort payments from IXCs.”⁷ However, instead of providing any evidence of situations in which a CLEC’s charges were deemed to be unreasonable or situations in which CLECs have used the tariff process to “extort” payments from IXCs, Worldcom merely references the controversy over what constitutes excessive access charges and notes in particular the emergency relief petitions filed by RICA and the Minnesota CLEC Consortium as examples of groups of CLECs that are seeking “a preliminary injunction to prevent AT&T from refusing to accept their access services.”⁸ Yet, these petitions do not provide any evidence that CLECs are extorting payments from AT&T in that they are petitions from small and rural CLECs requesting that the Commission maintain the status quo while it decides what constitutes excessive access charges. RICA urges the Commission to reject all arguments based upon the false assumption that CLEC

⁶Sprint’s Comments at 2. Although Sprint claims that CLEC charges are excessive, it only favors mandatory detariffing if the Commission does not adopt its proposal that CLEC access rates not exceed a ceiling which would be the rates of the incumbent LEC. Sprint Comments at 2-3.

⁷Worldcom at 4.

⁸Worldcom’s Comments at 3.

access rates are excessive and refrain from requiring mandatory detariffing for CLECs.

II. Commenters Agree with RICA That Mandatory Detariffing Increases Administrative Burden

In its Comments, RICA demonstrated that mandatory detariffing increases, rather than decreases, the administrative burden for small, rural carriers.⁹ Most Commenters agree that mandatory detariffing would increase administrative costs. *See e.g.*, Minnesota CLEC Consortium Comments at 7-8. In contrast, the Ad Hoc Telecommunications Users Committee (“Ad Hoc”) argued that detariffing “lowers transactions costs for service providers by eliminating the need to expend resources on preparing and filing tariffs.”¹⁰ RICA contends that Ad Hoc failed to take into account the vast time and expense that is involved in negotiating with each and every IXC in the country to ensure compensation for terminating access services and each and every IXC offering services to its subscribers for originating service. Additionally, the process of negotiating contracts tends to favor large IXCs. *See* RICA’s Comments at 4-5; Sprint’s Comments at 3-4 (process of negotiating contracts tends to favor the largest IXCs and the largest CLECs over their smaller competitors).

⁹RICA’s Comments at 4-5.

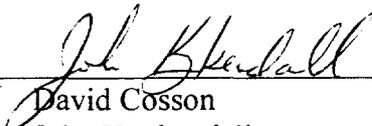
¹⁰Ad Hoc at 3.

III. Conclusion

Although the recent court decision makes it possible for the Commission to require mandatory detariffing of CLECs, it is clear from the record that there is no need to require mandatory detariffing at this time. Additionally, it is clear that to impose on newly-born CLECs the administrative burden of negotiating individual contracts would severely cripple, and in the cases of small, rural CLECs, kill their chances of survival.

Respectfully submitted,

RURAL INDEPENDENT COMPETITIVE ALLIANCE

By: 
David Cosson
John Kuykendall

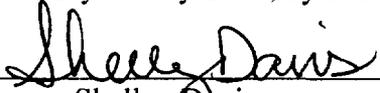
Its Attorneys

Kraskin, Lesse & Cosson, LLP
2120 L Street, NW, Suite 520
Washington, DC 20037
(202) 296-8890

July 24, 2000

CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Reply Comments of the Rural Independent Competitive Alliance" was served on this 24th day of July 2000, by first class, U.S. mail, postage prepaid to the following parties:


Shelley Davis

Chairman William E. Kennard *
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, DC 20554

Commissioner Susan Ness *
Federal Communications Commission
445 12th Street, SW, Room 8-B115
Washington, DC 20554

Commissioner Michael Powell *
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington, DC 20554

Commissioner Harold Furchtgott-Roth *
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, DC 20554

Commissioner Gloria Tristani *
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, DC 20554

Carolyn C. Hill
Alltel Communications, Inc.
601 Pennsylvania Avenue, NW, Suite
720
Washington, DC 20004

Joseph DiBella
Michael E. Glover
Bell Atlantic
1320 North Courthouse Road, 8th Floor
Arlington, VA 22201

Patricia D. Kravtin
Scott C. Lundquist
Economics and Technology, Inc.
One Washington Mall
Boston, MA 02108-2617
Economic Consultants for Ad Hoc
Telecommunications Users Committee

Colleen Boothby
Levine, Blaszak, Block & Boothby, LLP
2001 L Street, NW, Suite 900
Washington, DC 20036
Counsel for Ad Hoc Telecommunications
Users Committee

Robert W. McCausland
Mary C. Albert
Allegiance Telecom, Inc.
1950 Stemmons Freeway, Suite 3026
Dallas, Texas 75207-3118

Russell M. Blau
Patrick Donovan
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
Counsel for Allegiance Telecom, Inc.

Jonathan Askin, Vice President - Law
Emily Williams, Senior Attorney
The Association for Local
Telecommunications Services
888 17th Street, NW, Suite 900
Washington, DC 20006

Jonathan E. Canis
Charles M. Oliver
Enrico Soriano
Kelley Drye & Warren, LLP
1200 19th Street, NW, 5th Floor
Washington, DC 20036
Attorneys for The Association for Local
Telecommunications Services

Albert H. Kramer
Robert F. Aldrich
Dickstein Shapiro Morin & Oshinsky
2101 L Street, NW
Washington, DC 20037-1526
Attorneys for the American Public
Communications Council

Mark C. Rosenblum
Peter H. Jacoby
Judy Sello
AT&T
295 North Maple Avenue, Room 1135L2
Basking Ridge, NJ 07920

David A. Irwin
Tara B. Shostek
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., NW, Suite 200
Washington, DC 20036
Counsel for Haxtun Telephone Company

M. Robert Sutherland
Richard M. Sbaratta
Bellsouth Corporation
1155 Peachtree Street, NE, Suite 1700
Atlanta, GA 30309-3610

Rachel J. Rothstein
Brent M. Olson
Cable & Wireless USA, Inc.
8219 Leesburg Pike
Vienna, VA 22182

Carol Ann Bishoff, EVP/Gen. Counsel
Competitive Telecommunications Assoc.
1900 M Street, NW, Suite 800
Washington, DC 20036

Danny E. Adams
Robert J. Aamoath
Joan M. Griggin
Kelley Drye & Warren, LLP
1200 19th Street, Suite 500
Washington, DC 20036
Attorneys for Cable & Wireless USA Inc

Douglas A. Dawson, Principal
Competitive Communications Group, LLC
Calvert Metro Building
6811 Kenilworth Avenue, Suite 302
Riverdale, MD 20737

Robert J. Aamoath
Joan M. Griffin
Kelley Drye & Warren, LLP
1200 19th Street, Suite 500
Washington, DC 20036
Attorneys for Competitive
Telecommunications Association

Christopher A. Holt, Asst. General Counsel
Regulatory and Corporate Affairs
CoreComm Limited
110 East 59th Street, 26th Floor
New York, NY 10022

Stuart Polikoff
OPASTCO
21 Dupont Circle, NW, Suite 700
Washington, DC 20036

James L. Casserly
Ghita J. Harris-Newton
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, PC
701 Pennsylvania Avenue, NW, Suite 900
Washington, DC 20004
Attorneys for CoreComm Limited

Laura H. Phillips
J.G. Harington
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Ave, NW, Ste 800
Washington, DC 20036
Attorneys for Cox Communications, Inc.

Andrew D. Lipman
Tamar E. Finn
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
Counsel for CTSI, Inc.

Russell M. Blau
Kemal M. Hawa
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007-5116
Counsel for Focal Communications Corp
and Hyperion Telecommunications, Inc.
d/b/a Adelphia Business Solutions

George N. Barclay, Assoc. Gen. Counsel
Michael J. Ettner, Sen. Asst Gen Counsel
Personal Property Division
General Services Administration
1800 F Street, NW, Room 4002
Washington, DC 20405

Snively King Majoros O'Connor & Lee
1220 L Street, NW, Suite 410
Washington, DC 20005
Economic Consultants for General
Services Administration

Gail L. Polivy
GTE Service Corporation
1850 M Street, NW, Suite 1200
Washington, DC 20036

Thomas R. Parker
GTE Service Corporation
600 Hidden Ridge, MS HQ-E03J43
P.O. Box 152092
Irving, TX 75015-2092

Gregory J. Vogt
William B. Baker
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006
Attorneys for GTE

Susan M. Eid
Richard A. Karre
MediaOne Group, Inc.
1919 Pennsylvania Avenue, NW, Suite 610
Washington, DC 20006

Alan Buzacott
Henry G. Hultquist
MCI Worldcom, Inc.
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Kenneth A. Kirley
Associate General Counsel
McLeodUSA Telecommunications Services
400 S. Highway 169, No. 750
Minneapolis, MN 55426

Kent F. Heyman, Senior VP/Gen. Counsel
Scott A. Sarem, Assistant VP, Regulatory
Richard E. Heatter, Assistant VP, Legal
MGC Communications, Inc.
3301 N. Buffalo Drive
Las Vegas, NV 89129

Michael J. Bradley
Richard J. Johnson
Moss & Barnett
4800 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402-4129
Counsel for Minnesota CLEC Consortium

Margot Smiley Humphrey
Koteen & Naftalin, LLP
1150 Connecticut Avenue, NW, Suite 1000
Washington, DC 20036-4104
Counsel for National Rural Telecom Assoc.

L. Marie Guillory
Jill Canfield
National Telephone Cooperative Assoc.
4121 Wilson Blvd, Tenth Floor
Arlington, VA 22203-1801

Lynda L. Dorr, Secretary to the
Commission
Public Service Commission of Wisconsin
610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

William L. Fishman
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Counsel for RCN Telecom Services, Inc.

Alfred G. Richter, Jr.
Roger K. Toppins
Michael J. Zpevak
Thomas A. Pajda
SBC Communications, Inc.
One Bell Plaza, Room 3003
Dallas, TX 75202

Leon M. Kestenbaum
Jay C. Keithley
H. Richard Juhnke
Sprint Corporation
1850 M Street, NW, 11th Floor
Washington, DC 20036

Robert M. Halpern
Crowell & Moring, LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004
Attorneys for the State of Alaska

John W. Katz, Esquire
Special Counsel to the Governor
Director, State-Federal Relations
Office of the State of Alaska
444 North Capitol Street, NW, Suite 336
Washington, DC 20001
Of Counsel for the State of Alaska

Lawrence G. Malone, General Counsel
Public Service Commission of New York State
Three Empire State Plaza
Albany, NY 12223-1350

Mr. Micheal Wilson
Mr. John Mapes
Department of Commerce and Consumer Affairs
State of Hawaii
250 South King Street
Honolulu, Hawaii 96813

Herbert E. Marks
Brian J. McHugh
Squire, Sanders & Dempsey, LLP
1201 Pennsylvania Avenue, NW
P.O. Box 407
Washington, DC 20044

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, NW, Suite 701
Washington, DC 20006
Attorneys for Telecommunications Resellers Association

Edward B. Krachmer, Regulatory Counsel
Teligent, Inc.
8065 Leesburg Pike, Suite 400
Vienna, VA 22182

David A. Irwin
Irwin, Campbell & Tannenwald, PC
1730 Rhode Island Avenue, NW, Suite 200
Washington, DC 20036-3101
Counsel for Total Telecommunications Services, Inc.

Robert B. Mckenna
Jeffry Brueggeman
US West, Inc.
1801 California Street
Denver, CO 80202

John H. Harwood II
Samir Jain
David M. Sohn
Julie A. Veach
Dan L. Poole
Wilmer, Cutler & Pickering
2445 M Street, NW
Washington, DC 20037-1420
Counsel for US West, Inc.

Lawrence E. Sarjeant
Linda Kent
Keith Townsend
John Hunter
Julie E. Rones
United States Telephone Association
1401 H Street, NW, Suite 600
Washington, DC 20005

Danny E. Adams
Joan M. Griffin
Enrico Soriano
Kelley Drye & Warren, LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036
Attorneys for Winstar Communications, Inc.

Russell C. Merbeth
Lawrence A. Walke
Winstar Communications, Inc.
1615 L Street, NW, Suite 1260
Washington, DC 20036

Catherine R. Sloan
Richard L. Fruchterman, III
Richard S. Whitt
Worldcom, Inc.
1120 Connecticut Avenue, NW
Washington, DC 20036

Leon M. Kestenbaum
Sprint Corporation
401 9th Street, NW
Washington, DC 20004

Mitchell F. Brecher
Debra A. McGuire
Greenberg Traurig, LLP
Time Warner Telecom Inc.
800 Connecticut Avenue, NW
Washington, DC 20006

Peter D. Keisler
Daniel Meron
C. Frederick Beckner III
Sidley & Austin
1722 I Street, NW
Washington, DC 20006
Attorneys for AT&T Corp.

Geoffrey A. Feiss, General Manager
Montana Telecommunications Association
208 North Montana Avenue, Suite 207
Helena, Montana 59601

Jonathan E. Canis
Michael B. Hazzard
Kelley Drye & Warren LLP
1200 Nineteenth Street, NW, Fifth Floor
Washington, DC 20036
Counsel to FairPoint Communications Solutions Corp.

Donald C. Davis
Claudia Earls
Z-Tel Communications, Inc.
601 South Harbour Island, Blvd.
Tampa, FL 33602

Jonathan E. Canis
Michael B. Hazzard
Kelley Drye & Warren LLP
1200 Nineteenth Street, NW, Fifth Floor
Washington, DC 20036
Counsel to Z-Tel Communications, Inc.

Renee R. Crittendon, Deputy Chief Counsel-
Telecommunications
Prism Communication Services, Inc.
1667 K Street, NW, Suite 200
Washington, DC 20006

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, NW, Suite 701
Washington, DC 20006
Attorneys for Association of
Communications Enterprises

Michael J. Shortley, III
Global Crossing North America, Inc.
180 South Clinton Avenue
Rochester, NY 14646

Timothy R. Graham
Robert G. Berger
Joseph M. Sandri, Jr.
WinStar Communications, Inc.
1146 19th Street, NW
Washington, DC 20036

Dana Frix
Morton J. Posner
Swidler & Berlin, Chtd.
3000 K Street, NW, Suite 300
Washington, DC 20007
Counsel for WinStar Communications,
Inc.

Gail L. Polivy
Michael E. Glover, Of Counsel
Edward Shakin, Of Counsel
Affiliated Verizon Companies
1850 M Street, NW, Suite 1200
Washington, DC 20036

John T. Nakahata
Harris, Wiltshire & Grannis, LLP
1200 Eighteenth Street, NW
Washington, DC 20036
Counsel for Coalition for Affordable
Local and Long
Distance Service

Jonathan E. Canis
David A. Konuch
Kelley Drye & Warren, LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036
Counsel for e.spire Communications, Inc., Fairpoint
Communications Solutions Corp., Intermedia
Communications Inc., Newsouth Communications Corp.,
Nextlink Communications, Inc. and Talk.com, Inc.

Russell M. Blau
Emily M. Williams
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007-5116

Mark DeFalco
CTSI, Inc.
100 CTE Drive
Dallas, PA 18612

Joseph Kahl
Patrick McGuire
RCN Telecom Services, Inc.
105 Carnegie Center
Princeton, NJ 08540

Steve Rubin
Theresa Atkins
Telergy, Inc.
One Telergy Parkway
East Syracuse, NY 13057

International Transcription Service *
1231 20th Street, NW
Washington, DC 20036

* Via Hand Delivery