

JAN 11 2001

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

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
CLEC Access Charge Reform	)	CC Docket No. 96-262
	)	

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**COMMENTS  
OF THE  
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA) respectfully submits its comments in the above-referenced proceeding. USTA is the oldest trade association for the local exchange carrier (LEC) industry. USTA represents more than 1,200 telecommunications companies worldwide. Its carrier members provide a full array of voice, data and video services over wireline and wireless networks. USTA members strongly support Commission policies that rely on marketplace solutions rather than regulatory solutions in order to ensure that customers reap the full benefits of competition.

In a Public Notice released December 7, 2000, the Commission requests additional comment on the manner in which competitive local exchange carriers (CLECs) may tariff charges for switched local exchange access services provided to interexchange carriers (IXCs). Specifically, the Commission requests comment on whether a rural exemption to a benchmarking mechanism currently under consideration would be appropriate. The Public Notice does not provide any information regarding what type of benchmark is under consideration.

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The issue of the level of CLEC access charges was initially raised by the Commission in 1996 in this proceeding.<sup>1</sup> The Commission requested comment on the regulation of terminating access charges of both incumbent LECs and CLECs. It suggested that, because neither the originating caller nor its long distance service provider can exert substantial influence over the called party's choice of terminating access provider, the terminating end of a long distance call may remain a bottleneck, controlled by the LEC providing the access to a particular customer. USTA argued that regulation of terminating access was not justified in a market-based approach to access pricing. The Commission concluded that non-incumbent LECs should be treated as non-dominant in the provision of terminating access.<sup>2</sup> The Commission found that, consistent with the market based approach to access pricing adopted in its First Report and Order, there was insufficient evidence in the record to determine that CLECs had the ability to exercise market power in the provision of terminating access and that competition could constrain CLEC terminating access rates.

The issue was raised again in a Further Notice of Proposed Rulemaking released by the Commission on August 27, 1999.<sup>3</sup> There the Commission requested comment on whether any statutory or regulatory constraints prevent an IXC from declining a CLEC's access service. AT&T initially brought this matter to the Commission in a Petition for Declaratory ruling asking the Commission 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.<sup>4</sup> AT&T argued that it should be permitted to withdraw service from CLECs that AT&T thought charged

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<sup>1</sup> Access Charge Reform, CC Docket No. 96-262, Notice of Proposed Rulemaking, 11 FCC Rcd 21354 (1996).

<sup>2</sup> Access Charge Reform, CC Docket No. 96-262, *First Report and Order*, 12 FCC Rcd 15985 (1997).

<sup>3</sup> Access Charge Reform, CC Docket No. 96-262, *Fifth Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 14221, 14316 (1999).

<sup>4</sup> AT&T Declaratory Ruling Petition filed 1998.

access prices that were too high.<sup>5</sup> The Commission denied AT&T's request. In raising the issue in the access charge proceeding, however, the Commission noted that it was reluctant to regulate rates charged by competitive entrants to the local exchange and exchange access markets and that it would prefer a marketplace solution.

In its comments USTA argued that the case had not been made that regulation of CLEC access prices was warranted. In addition, USTA pointed out that statutory constraints preclude AT&T from arbitrarily declining a CLEC or ILEC access service.<sup>6</sup> USTA maintains that nothing has changed to alter its position. The record in CC Docket No. 96-262 does not support regulation of CLEC access charges.

A benchmark should not be adopted based on the arguments raised in this or any other proceeding by AT&T. Neither AT&T nor any IXC should be permitted to unilaterally determine which CLECs' access rates are too high and, therefore, which CLECs' access services it will not purchase. Such action undermines the Commission's statutory authority to determine the just and reasonableness of rates, renders the complaint process and Section 214 requirements meaningless, limits customer choice, creates customer confusion and reduces competition. It could also threaten universal service by increasing the under-served and unserved areas of the country.

Section 201(a) of the Telecommunications Act of 1996 makes clear that it is the duty of every common carrier engaged in interstate communication to furnish such communication service upon request. Section 251(a) imposes upon each telecommunications carrier the duty to

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<sup>5</sup> See, also, 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, DA 00-1067, *Public Notice* (rel. May 15, 2000), USTA Comments and Reply Comments filed June 14, 2000 and June 29, 2000 respectively.

<sup>6</sup> USTA Comments and Reply Comments, CC Docket No. 96-262, filed October 29, 1999 and November 29, 1999 respectively.

interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. Section 214(a) limits a carrier's ability to arbitrarily discontinue service without Commission concurrence. These statutory provisions prevent the disruption of service to customers by IXCs refusing to pay tariffed access rates.

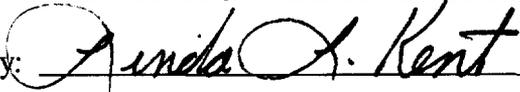
If AT&T or any party believes that a tariffed rate is unreasonable, Section 208 allows such a party to file a complaint with the Commission. After a full opportunity for a hearing or under an order for investigation, the Commission is authorized and empowered to determine and prescribe the just and reasonable charge. The Commission, not an IXC, can make a finding that a tariffed rate is or is not just and reasonable. Section 207 allows any party to sue for damages in federal district court. An IXC can avail itself of either Section 207 or 208 against any CLEC whose access rates it believes are too high.

The record in this proceeding does not support the imposition of a benchmark rate for CLECs. At a time when the Commission is seeking to encourage competition and reduce regulation in competitive areas, new regulations imposed on competitive entrants are not justified. USTA would, however, support expedited consideration of Section 208 complaints to ensure that disputed CLEC rates are resolved quickly. The Commission has correctly found that

the marketplace, not government mandates, should drive competition in the market for access services. The Commission should continue to rely on marketplace solutions coupled with the adjudicatory and administrative processes provided for by law as the appropriate vehicles for determining the reasonableness of access rates.

Respectfully submitted,

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