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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
C.F. Communications Corp., et al.	)	EB Docket No. 01-99
	)	
Complainants,	)	
	)	File Nos. E-93-43, E-93-44, E-93-45
v.	)	
	)	
Century Telephone of Wisconsin, Inc., et al.	)	
	)	
Defendants	)	
	)	

To: Arthur I. Steinberg
Administrative Law Judge

MOTION OPPOSING THE TAKING OF DEPOSITIONS OR, IN THE ALTERNATIVE, MOTION TO LIMIT DEPOSITIONS AND MOTION OBJECTING TO THE SUBSTANCE OF DEPOSITIONS REQUESTED BY COMPLAINANT ASCOM COMMUNICATIONS, INC.

Carolina Telephone and Telegraph Company, in File No. E-93-43, United Telephone Company of Pennsylvania, in File No. E-93-44, and United Telephone Company of Florida in File No. E-93-45, ("Defendants") by their attorneys and pursuant to Sections 1.315 and 1.319 of the Commission's Rules, hereby oppose the Notice of Deposition filed by Complainant on July 6, 2001, and ask that the Notice be quashed. In the alternative, Defendants ask that the scope of the Deposition be limited as discussed herein.

While discovery allows for a broad search of the facts, Complainant's Topics of Inquiry as specified in the Notice are unreasonably cumulative, duplicative, unduly burdensome and not relevant. As shown herein, most of Complainant's Topics of Inquiry are substantially the same or seek to obtain the same information as the questions posed in Complainant's First

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Set of Interrogatories and First Document Production Request. Defendants have already properly answered or objected to those requests. Complainant's multiple filings, asking again and again for the same information, will not yield any new answers from Defendants and appear designed only to harass Defendants and waste their resources.

With respect to the Interrogatories and Document Requests already answered, it is unreasonably duplicative and a waste of resources to require Defendants to produce officers or employees for deposition to be asked the same questions already answered. With respect to the Interrogatories and Document Requests to which Defendants have raised objections and the Topics of Inquiry to which Defendants object herein, it is premature, duplicative and a waste of resources to proceed with depositions until there is a final resolution of the objections. If the Defendants' objections are not challenged or if they are upheld by the Administrative Law Judge, a deposition on the same issues would not produce any facts or evidence useful to the proceedings and, therefore, the burden or expense of the proposed discovery outweighs its likely benefit. Even if Defendants are ultimately required to answer certain Interrogatories and Document Requests to which they objected, this process should be concluded before it can be known whether there is any additional need for depositions.

In addition, the taking of depositions in this case is extremely burdensome to Defendants because the potential deponents are employed in Kansas and other states not in the Washington, DC metropolitan area. Thus, Defendants would incur the cost of making the deponents available in Washington, DC, as well as the cost of lost productivity for missed workdays.

Moreover, the Topics of Inquiry could effectively be addressed in interrogatories and, in fact, the Complainant has already submitted interrogatories on many of the inquiries. As recognized by the Commission, depositions are a more costly and burdensome discovery method

than interrogatories. Moreover, although the Commission's rules allow for depositions and written interrogatories, the Administrative Law Judge has wide discretion to limit or restrict discovery. In this case, where the Topics of Inquiry have previously been asked through written interrogatories and document requests, this discretion should be used to prevent abuse and the unnecessary expenditure of resources. Accordingly, Defendants request that the Notice of Deposition be quashed.

In the alternative, Defendants request that the Notice of Deposition be limited to only those areas that are the subject of this dispute and to which an objection has not been sustained. In this regard, Defendants generally object to the Inquiries to the extent that they ask for information concerning end user common line (EUCL) charges imposed by entities other than the named Defendants on entities other than the named Complainant, Ascom Communications, Inc., and to the extent that they ask for information on telephone lines other than pay telephone lines. Ascom Communications, Inc. filed complaints against Carolina Telephone and Telegraph, United Telephone Company of Pennsylvania and United Telephone Company of Florida in connection with charges assessed on the provision of pay telephone service. Complainant's broadly worded Topics of Inquiry and definitions require Defendants to be prepared to answer questions concerning service provided by companies other than the named Defendants and to payphone providers other than Ascom Communications, Inc. Defendants also object to the Inquiries to the extent that they ask for information after Complainant sold its payphones, "in or about November 1993."[1] Accordingly, all information outside of these parameters is not

[1] Complainant has admitted that it sold the payphones associated with these disputes "in or about November 1993" in its response to question 2 of the Defendants' First Set of Interrogatories.

relevant to these cases and the determination of Complainant's damages, and is not reasonably calculated to lead to the discovery of admissible evidence.

Defendants also object to the Inquiries to the extent that they ask for information back to 1987 as barred by the statute of limitations. Ascom has argued that its damages prior to January 11, 1991, are not barred by the statute of limitations because it filed informal complaints against the Defendants in 1990 and, because of an intervening bankruptcy proceeding, it was not required to file its formal complaint within six months of the Defendants' answers to the informal complaints. In the Hearing Designation Order (HDO), the Common Carrier Bureau (CCB) found that it could not make a decision on the merits of Ascom's contention without additional information provided by Ascom. Complainant has presented no evidence to support its claim. Until Ascom provides such evidence and the Administrative Law Judge finds in favor of Ascom's position, it is premature to require Defendants to go through the burdensome process of ascertaining the existence and content of the extremely old documents and information requested.

In addition, there is no need for Defendants to incur the cost and burden of producing or identifying the old billing records because Complainant has stated that it already has these records. In its formal complaint filings, Complainant attached copies of its informal complaints filed in 1990, which stated that Complainant had telephone bills from the Defendants which, at a minimum, show the amounts billed by the Defendants for the period covered by the informal complaints. Thus, in the informal complaints, Complainant alleged estimated total damages in the amount of $4,391.40 for Carolina Telephone and Telegraph Company, $294.00 for United Telephone Company of Pennsylvania, and $5,760.00 for United Telephone Company of Florida. In each informal complaint, Complainant also represented that it attached bills showing that over

the last 24 months it had been billed EUCL charges in these amounts by the Defendants.[2] These attachments, however, apparently were not included in the formal complaint filings.

In any event, even if Complainant's position were upheld, the period of the dispute would be limited to two years before the informal complaints were filed. Complainant has alleged that the informal complaints were filed on August 5, 1990, against United Telephone Company of Pennsylvania and July 20, 1990, against Carolina Telephone Company and United Telephone Company of Florida. Although Defendants dispute these allegations, even assuming the truth of Complainant's position, any damages that accrued before August 5, 1988 against United Telephone Company of Pennsylvania and before July 20, 1988 against Carolina Telephone Company and United Telephone Company of Florida are barred by the statute of limitations.

The CCB has rejected Complainant's only possible argument to extend the statute of limitations period to before 1988, namely, Complainant's argument that a 1989 Petition for Declaratory Ruling filed by the American Public Communications Council (APCC) should be considered a section 208 complaint that would enable Complainant to recover damages for the two-year period prior to the filing of that 1989 petition.[3] Accordingly, Complainant's request for documents and information from the period 1987 through August 5, 1988 against United Telephone Company of Pennsylvania and through July 20, 1988 against Carolina Telephone Company and United Telephone Company of Florida must be rejected as beyond the statute of limitations.

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[2] A copy of the Complainant's informal complaints is attached.

[3] Hearing Designation Order at ¶11.

As for specific objections, Defendants object to the Topics of Inquiry as specified below.[4]

1. Defendants object to Inquiry 1, which asks Defendants to provide the total amounts of EUCL charges imposed by Sprint on telephone lines subscribed to by Complainant. In addition to the objections raised in response to Interrogatories 4 and 5, Defendants object to this Inquiry as beyond the scope of the issues designated for hearing. In the HDO, the Common Carrier Bureau (CCB) designated for hearing the issue of the amount of EUCL charges paid for the public payphones identified. It is not necessary to know the amount of EUCL charges imposed to ascertain this information.
2. Defendants object to Inquiry 2, which asks Defendants to state whether any EUCL charges billed by Defendants were not paid, or were paid late, for the same reasons as stated in response to Complainant's Interrogatories 7, 8 and 9.
3. Defendants object to Inquiry 3, which asks Defendants to provide the criteria employed by Sprint for determining whether a payphone should be tariffed as "public" or "semi-public." Defendants object to this Inquiry as beyond the scope of the issues designated for hearing. The CCB designated for hearing the issue of the number of payphones each Complainant owned during the period covered by the statute of limitations and the amount of EUCL paid for the "public" payphones, as defined by the CCB. Accordingly, any definition of "public" payphone in Defendant's tariff or any criteria employed by Defendant to determine whether a payphone should be tariffed as public or semi-public would not provide or lead to the discovery of relevant admissible evidence, nor would it be relevant to the outcome of this proceeding.

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[4] Defendants' responses to Complainants First Interrogatories and First Document

4. Defendants objects to Inquiry 4, which asks Defendants to provide determinations or considerations made by Sprint for determining whether a payphone should be classified as "public" or "semi-public." In addition to the objections raised in response to Complainant's First Interrogatory 17, Defendants object to this Inquiry as beyond the scope of the issues designated for hearing for the same reason as Inquiry 3.

5. Defendants object to Inquiry 5, which asks Defendants to provide attributes that Sprint considers relevant to determining whether a payphone is "public" or "semi-public" under the Commission's definition. In addition to the objections raised in response to Interrogatory 18, Defendants object to this Inquiry. This Inquiry asks for testimony about legal theories and argument, and is not a proper subject of discovery.

6. Defendants object to Inquiry 6, which asks Defendants to provide the ratio of "public" to "semi-public" payphones to the total number of Sprint payphones. In addition to the objections raised in response to Complainant's Interrogatories 21 and 22 and 33 in case E-93-43 and 35 in cases E-93-44 and E-93-45, and Document Request 23, Defendants object to this Inquiry as beyond the scope of the issues designated for hearing. In the HDO, the CCB stated that it might be difficult to determine the exact number of public and semi-public payphones. Therefore, the CCB encouraged the parties to consider proxies that can be used to obtain a reasonable estimation of that number. The CCB, however, did not designate this as an issue for hearing. Rather, the CCB designated as an issue the question of how many payphones each Complainant owned during the period covered by the statute of

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Requests were previously filed on July 6, 2001 and are incorporated herein by reference.

limitations. Information on the number of payphones or the ratio of payphones owned by Defendants would not provide or lead to the discovery of relevant admissible evidence, nor would it be relevant to the outcome of this proceeding.

7. Defendants object to Inquiry 7, which asks Defendants to provide information on Sprint's business practices and/or policies during the period from 1987 through April 16, 1997 regarding non-payment of telephone bills and EUCL charges. In addition to the objections raised in response to Interrogatory 31 in case E-93-43 and 33 in cases E-93-44 and E-93-45, Defendants object to this Inquiry as beyond the scope of the issues designated for hearing. In the HDO, the CCB designated for hearing the issue of the amount of EUCL charges paid for the public payphones identified. It is not necessary to know Defendants' practices or policies to ascertain this information and, in fact, such information would not provide or lead to the discovery of relevant admissible evidence, nor would it be relevant to the outcome of this proceeding. In addition, because Complainant filed for bankruptcy in 1991, Defendants' actions regarding nonpayment were governed by bankruptcy law. Accordingly, Defendants' practices and policies are not relevant to this case.

8. Defendants object to Inquiry 8 because they have already answered in response to Complainant's Interrogatory 34 in case E-93-43 and 36 in cases E-93-44 and E-93-45 and Document Request 24, that, to the best of their knowledge, they have not authorized Complainant to place any amounts billed for EUCL charges in escrow. Accordingly, a deposition on this question would not provide or lead to the discovery of any relevant admissible evidence.

9. Defendants object to Inquiry 9, which asks Defendants to state their document retention and destruction policy, for the same reasons as stated in response to Interrogatory 36 in case E-93-43 and 38 in cases E-93-44 and E-93-45.

10. Defendants object to Inquiry 10, which asks Defendants to state the location, storage and maintenance of billing, installation and payment records, for the same reasons as stated in response to Interrogatory 39 in case E-93-43 and 41 in cases E-93-44 and E-93-45.

11. Defendants object to Inquiry 11, which asks Defendants the scope and extent of any search conducted by Defendants for documents responsive to Complainant's First Set of Interrogatories and Requests for Production of Documents because this inquiry has been asked and answered by the totality of Defendants' answers and objections to Complainant's requests.

Finally, Defendants object to the Notice directing Defendants to appear at the offices of Complainant's attorney for these depositions on July 30, 2001. Defendants request that Complainant be ordered to conduct the depositions at Defendants' office at 401 9th Street, NW, Suite 400, Washington, DC 20004, on a day mutually agreed to by the parties, but in no event different from the day designated for any other depositions.

Respectfully submitted,

Carolina Telephone and Telegraph Company,
United Telephone Company of Pennsylvania,
United Telephone Company of Florida

Blooston, Mordkofsky, Dickens,
Duffy & Prendergast
2120 L Street, N.W., Suite 300
Washington, D.C. 20037
Tel: (202) 659-0830

By: Mary J. Sisak
Benjamin H. Dickens, Jr.
Robert M. Jackson
Mary J. Sisak

Dated: July 19, 2001

Their Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2001 a copy of the foregoing was served by first-class United States mail, postage prepaid, on the following parties:

The Honorable Arthur I. Steinberg
Administrative Law Judge
Federal Communications Commission
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Washington, D.C. 20554
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Bell South Telecommunications Inc.
675 West Peachtree Street
Suite 4300
Atlanta, Georgia 30375

Douglas W. Everette

Douglas W. Everette

Exhibit 2

U.S. COMMUNICATIONS OF WESTCHESTER, INC.

15 NORTH BROADWAY, WHITE PLAINS, N.Y. 10601
TELEPHONE (914) 940-4000 FAX (914) 940-5004

July 20, 1990

Ms. Kathie Kneff
Chief
Informal Complaints Branch
Federal Communications Commission
Washington, DC 20554

Dear Ms. Kneff:

I am President of U.S. Communications of Westchester, Inc., located at 15 North Broadway, White Plains, New York 10601.. USC provides public coin telephones and coin telephone services in the state of North Carolina, in competition with the public payphones provided by Carolina Telephone. We have been illegally assessed interstate end user common line (EUCL) charges by Carolina Telephone. I hereby request that you order Carolina Telephone to cease billing us for EUCL charges and to refund the charges that we have been improperly assessed.

We have been subject to overcharges in the estimated total amount of $ 4,391.40. As shown in the attached records, over the last 24 months, we have been billed by Carolina Telephone in an estimated amount $ 4,391.40 for EUCL charges. Each of the attached bills is for service to a public pay telephone. We have complained to Carolina Telephone about these charges.

For the reasons stated in the pending petition filed by the American Public Communications Counsil (APCC) on April 21, 1989, EUCL charges cannot be applied to any public payphone. In 1983, the FCC concluded that EUCL charges should not apply to public payphones. MTS/WATS Market Structure, Order on Reconsideration, 97 FCC 2d 682, 703-05 (1983). This ruling must apply equally to telephone company and non-telephone company public payphones.

In addition, the assessment of charges on public pay telephones is not authorized by Carolina Telephone's tariffs. We request that the FCC order the local exchange carrier to cease the unjust and unlawfully discriminatory assessment of EUCL charges on its competitors payphones, and to refund the charges unlawfully assessed.

Thank you for your attention.

Sincerely,

Terry Ballard,
President

U.S. COMMUNICATIONS OF WESTCHESTER, INC.

15 NORTH BROADWAY, WHITE PLAINS, N.Y. 10601
TELEPHONE (914) 949-4000 FAX (914) 949-5004

August 5, 1990

Ms. Kathie Kneff
Chief
Informal Complaints Branch
Federal Communications Commission
Washington, DC 20554

Dear Ms. Kneff:

I am President of U.S. Communications of Westchester, Inc., located at 15 North Broadway, White Plains, New York 10601. USC provides public coin telephones and coin telephone services in the state of Pennsylvania, in competition with the public payphones provided by United Telephone. We have been illegally assessed interstate end user common line (EUCL) charges by United Telephone. I hereby request that you order United Telephone to cease billing us for EUCL charges and to refund the charges that we have been improperly assessed.

We have been subject to overcharges in the estimated total amount of $ 294.00. As shown in the attached records, over the last 24 months, we have been billed by United Telephone in an estimated amount $ 294.00 for EUCL charges. Each of the attached bills is for service to a public pay telephone. We have complained to United Telephone about these charges.

For the reasons stated in the pending petition filed by the American Public Communications Counsil (APCC) on April 21, 1989, EUCL charges cannot be applied to any public payphone. In 1983, the FCC concluded that EUCL charges should not apply to public payphones. MTS/WATS Market Structure, Order on Reconsideration, 97 FCC 2d 682, 703-05 (1983). This ruling must apply equally to telephone company and non-telephone company public payphones.

In addition, the assessment of charges on public pay telephones is not authorized by United Telephone's tariffs. We request that the FCC order the local exchange carrier to cease the unjust and unlawfully discriminatory assessment of EUCL charges on its competitors payphones, and to refund the charges unlawfully assessed.

Thank you for your attention.

Sincerely,

Terry Dallard,
President

U.S. COMMUNICATIONS OF WESTCHESTER, INC.

15 NORTH BROADWAY, WHITE PLAINS, N.Y. 10601
TELEPHONE (914) 949-4000 FAX (914) 949-6004

July 20, 1990

Ms. Kathie Kneff
Chief
Informal Complaints Branch
Federal Communications Commission
Washington, DC 20554

Dear Ms. Kneff:

I am President of U.S. Communications of Westchester, Inc., located at 15 North Broadway, White Plains, New York 10601. USC provides public coin telephones and coin telephone services in the state of Florida, in competition with the public payphones provided by United Telephone. We have been illegally assessed interstate end user common line (EUCL) charges by United Telephone. I hereby request that you order United Telephone to cease billing us for EUCL charges and to refund the charges that we have been improperly assessed.

We have been subject to overcharges in the estimated total amount of $ 5,760.00. As shown in the attached records, over the last 24 months, we have been billed by United Telephone in an estimated amount $ 5,760.00 for EUCL charges. Each of the attached bills is for service to a public pay telephone. We have complained to United Telephone about these charges.

For the reasons stated in the pending petition filed by the American Public Communications Counsil (APCC) on April 21, 1989, EUCL charges cannot be applied to any public payphone. In 1983, the FCC concluded that EUCL charges should not apply to public payphones. MTS/WATS Market Structure, Order on Reconsideration, 97 FCC 2d 682, 703-05 (1983). This ruling must apply equally to telephone company and non-telephone company public payphones.

In addition, the assessment of charges on public pay telephones is not authorized by United Telephone's tariffs. We request that the FCC order the local exchange carrier to cease the unjust and unlawfully discriminatory assessment of EUCL charges on its competitors payphones, and to refund the charges unlawfully assessed.

Thank you for your attention.

Sincerely,

Terry Ballard,
President