

October 12, 2001

Via Electronic Filing
Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St., SW, Room TWB-204
Washington, DC 20554

Re: Notice of Ex Parte Presentation:
Access Charge Reform, CC Docket No. 96-262; Request for Emergency Relief of the Minnesota CLEC Consortium and the Rural Independent Competitive alliance, DA-1067; Mandatory Detariffing of CLEC Interstate Access Services, DA 00-1268; AT&T/Sprint Petitions for Declaratory Ruling, CCB/CPD No. 01-02

Dear Ms. Salas:

On Thursday October 11, 2001 Leonard Cali, Peter Keisler and I, representing AT&T, met with Commissioner Kevin Martin and Sam Feder, Legal Adviser to Commissioner Martin, to discuss AT&T's position in the above referenced proceedings. We explained that no provision of the Communications Act imposes a "duty to purchase" access services. In particular, we explained that Section 201 of the Communications Act cannot and should not be interpreted by the Commission to impose a retrospective "duty to purchase" CLEC access services. We explained that the second clause of Section 201 – authorizing the Commission under certain circumstances to issue orders prospectively requiring carriers to establish "through routes" – is inapplicable both because the primary jurisdiction referral in this matter relates to past periods and because no CLEC is seeking the establishment of a through route. We further explained that the first clause of Section 201 – requiring carriers to provide service to end users "upon reasonable request" – does not impose duties relating to connections with other carriers and cannot be used to circumvent the limitations on the Commission's authority to require such connections contained in the second clause. Indeed, we explained that the Commission has *never* before issued an Order that required a carrier to purchase another carrier's service retrospectively, and that the CLEC Access Charge Order – the only Order where the Commission has imposed any duty to purchase -- imposed that

obligation only prospectively.¹ Finally, we also explained that the “pay and litigate” doctrine has consistently been applied by the Commission *only* in circumstances where the objecting party had knowingly ordered the service in question and does not apply where the controverted issue is whether service has been ordered in the first place. Where, as here, AT&T contends that it has not ordered the CLEC services in question, and indeed has taken steps to affirmatively advise the CLECs that we have not ordered their service and request those carriers to direct traffic to other carriers, the application of the “pay and litigate” doctrine would be unlawful. We also emphasized that Judge Ellis has already ruled on this particular issue and that the litigants are moving forward in preparation to try the fact intensive issues of constructive ordering before Judge Ellis beginning November 6.

In addition, we provided an update on settlement negotiations with CLECs, emphasizing the fact that AT&T has already resolved several outstanding disputes with CLECs over access charges since the CLEC Access Charge Order was issued in April. We also advised Mr. Feder that AT&T has filed with the Enforcement Bureau (who are overseeing the mediation of informal complaints with the Advantel litigants) a confidential status report on settlement negotiations demonstrating the significant progress that has been made before that Bureau.

Our statements were consistent with the positions previously articulated by AT&T in filings in the above referenced proceedings. I have submitted two copies of this Notice in accordance with Section 1.1206 of the Commission’s rules.

Sincerely,

cc: K. Martin
S. Feder

¹ AT&T has appealed the Commission’s rationale in the CLEC Access Charge Order. *In the Matter of access Charge Reform*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking (April 26, 2001).