

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
2000 Biennial Regulatory Review) CC Docket No. 00-175
Separate Affiliate Requirements of Section)
64.1903 of the Commission's Rules)

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

I. INTRODUCTION

Pursuant to the Federal Communications Commission's (Commission) Notice of Proposed Rulemaking (*NPRM*),¹ the United States Telecom Association (USTA)² respectfully files its reply comments in this proceeding and requests that the Commission eliminate Subpart T and Sections 64.1901-64.1903 of its rules.

¹ *In re 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, CC Dkt. No. 00-175, Notice of Proposed Rulemaking, FCC 01-261 (Adopted, Sept. 13, 2001; released, Sept. 14, 2001); 66 Fed. Reg. at 50,139-50,140 (Oct. 2, 2001).

² USTA is the nation's oldest trade organization representing the local exchange carrier industry. USTA represents over 800 domestic telecommunications companies that provide a full array of voice, data and video services over wireline and wireless networks; most of which are independent incumbent local exchange carriers (Independent ILECs).

After the Commission issued its Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-149, where the Commission imposed these structural requirements on Independent ILECs, USTA petitioned the Commission for reconsideration of the order, and its decision to impose the structural separation requirement. "Petition for Reconsideration United States Telephone Association" in CC Dkt. No. 96-149 (Aug. 4, 1997).

II. DISCUSSION

A. The Majority of Parties Agree that Separate Long-Distance Affiliates Are Not Necessary and Urge that The Commission Eliminate § 64.1903 of Its Rules.

USTA believes the separate affiliate and separate corporate division rules should never have been imposed on Independent Incumbent Local Exchange Carriers (IILECs) providing in-region, long-distance services. History has shown that the rules are unnecessary because the perceived dangers never materialized. Therefore, the rules should now be discontinued. The Commission can and should use its powers (generally under Section 4i³ or specifically under Section 11⁴) to eliminate Subpart T and Sections 64.1901-1903 of the Commission's rules.

USTA agrees with the comments filed in this proceeding by ALLTEL,⁵ ICORE, Inc.,⁶ Joint Comments of The Independent Telephone & Telecommunications Alliance and The Organization for the Promotion and Advancement of Small Telecommunications Companies,⁷ National Telephone Cooperative Association (NTCA),⁸ and Sprint Corporation (Sprint),⁹ calling for the Commission to eliminate

³ 47 U.S.C. § 4i.

⁴ 47 U.S.C. § 11.

⁵ "Comments of ALLTEL Communications, Inc. in CC Dkt. No. 01-175 (Nov. 1, 2001)(ALLTEL Comments).

⁶ "Comments of the ICORE Companies in CC Dkt. No. 00-175 (Nov. 1, 2001)(ICORE Comments).

⁷ Joint Comments of The Independent Telephone & Telecommunications Alliance and The Organization for the Promotion and Advancement of Small Telecommunications Companies in CC Dkt. No. 00-175 (Nov. 1, 2001)(Joint Parties).

⁸ "Initial Comments of The National Telephone Cooperative Association" in CC Dkt. No. 00-175 (Nov. 1, 2001)(NTCA Comments).

Section 64.1903 of its rules. The reasons supporting the conclusion that the rule is unnecessary include compelling evidence that (a) the harms were speculative and never materialized; and (b) that there are adequate, less burdensome, alternative safeguards, which could be employed to address misallocation, discrimination and price fixing.¹⁰

On the other hand, USTA strongly disagrees with both The Association of Communications Enterprises (ASCENT),¹¹ AT&T Corp.¹² and WorldCom¹³ that the Commission should keep this burdensome and unnecessary rule in place. Neither ASCENT, AT&T nor WorldCom offers any compelling evidence to support their position. In particular, Worldcom's assertion that, absent the retention of the separate affiliate requirement, there would be a tendency to misallocate costs and inflate revenue require or the NECA pool's revenue requirement, is offered without supporting example(s) and should be rejected outright.¹⁴ Alternatively, even if such a harm could occur, there is no evidence of any widespread or even minimal abuse of

⁹ "Comments of Sprint Corporation" in CC Dkt. No. 00-175 (Nov. 1, 2001)(Sprint Comments).

¹⁰ "USTA Comments" in CC Dkt. No. 00-175 (Nov. 1, 2001); ALLTEL Comments, generally; ICORE Comments at 2-5; Joint Comments, generally; NCTA, generally; and Sprint, generally.

¹¹ "Comments of The Association of Communications Enterprises" in CC Dkt. No. 00-175 (Nov. 2, 2001)(ASCENT). (USTA points out that ASCENT's comments are filed a day after the required date of filing as specified by the Commission. *See*, 66 Fed. Reg. at 50,139-50,140 (Oct. 2, 2001). USTA is not aware that ASCENT has filed any motions for acceptance of a late pleading, nor whether the Commission has authorized ASCENT's filing its pleading after the required date of Nov. 1, 2001.)

¹² "Comments of AT&T Corp." in CC Dkt. No. 00-175 (Nov. 1, 2001)(AT&T).

¹³ "WorldCom Comments" in CC Dkt. No. 00-175 (Nov. 1, 2001)(Worldcom).

¹⁴ WorldCom Comments at 10-11.

this. To the degree, however, such a harm could occur, the Commission or the courts can address such abuse.¹⁵

As for AT&T, it also offers no proof of abuse, beyond speculation as to the likelihood or probability that an IILEC can advantage its position in its position in interexchange services provision. AT&T cites to alleged matters concerning SBC and Verizon.¹⁶ Neither of these companies are IILECs. Therefore, matters pertaining to these companies are not relevant to this proceeding and should be stricken from the record.

Sprint's take, however, that IILECs are unable to affect long distance competition is the reality.¹⁷ Therefore, the Commission should simply reject ASCENT's, AT&T's, and WorldCom's unsupportable arguments¹⁸ and follow the recommendations of the proponents in favor of elimination of the rule.

1. Elimination of the separate affiliate regulatory requirement is needed and would be in the public interest because it artificially discourages new investment and facilities deployment.

USTA,¹⁹ agrees with ALLTEL²⁰ that the separate affiliate requirement serves to stifle innovation and efficient use of resources and that the Commission should

¹⁵ See USTA Comments at 3-4; Joint Comments at 23; and Sprint Comments at 5-6. See, also, ICORE Comments at 4-5, which directly addresses the issue raised by WorldCom.

¹⁶ AT&T Comments at 4-5.

¹⁷ Sprint Comments at 3-4.

¹⁸ The Commission should consider whether it should strike, in whole, ASCENT's late comments, and whether it should strike, in part, AT&T's Comments. To the degree that AT&T raised points about alleged misconduct by certain Bell Operating Companies, whereas BOC matters are not the subject of these comments, such comments are not relevant to this proceeding and should be stricken from the record, *see* AT&T Comments at 4-5.

¹⁹ USTA Comments at 3-4.

eliminate its prohibition on the joint investment and ownership of resources by and between IILECs and their long-distance affiliates. This requirement does not serve the public interest.

Contrary to ASCENT's and WorldCom's assertions,²¹ the Commission has the authority, generally pursuant to Section 4i and specifically pursuant to Section 11 of the Telecommunications Act of 1934, as amended,²² to eliminate Subpart T of Part 64, as well as Sections 64.1901-64.1903 of the Commission's rules. USTA has repeatedly²³ called for the Commission to take this approach. USTA continues to believe, as do many others,²⁴ that because this separate subsidiary requirement lacks a fact-based public interest justification, was crafted based upon speculation about certain harms that have not materialized, and is unwarranted in light of the counter-productive burdens that it imposes. Accordingly, the Commission can and should eliminate the regulation, now.

²⁰ ALLTEL Comments at 4-5.

²¹ WorldCom Comments at 1; and ASCENT Comments at 4-5. Both parties suggests that Section 11 is not an appropriate vehicle because, pursuant to subsection (a)(2), there can only be elimination of a FCC regulation which is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service. However, the Commission is bound by law under subsection (b) of Section 11 to repeal any regulation it determines is no longer "necessary in the public interest." Neither WorldCom or ASCENT have supplied credible evidence that supports retention, whereas the majority of parties who filed comments in this matter have supplied ample support for repeal. The Commission must base its determination on the record produced. The record cries loudly and demonstrably for repeal.

²² 47 U.S.C. § 161.

²³ USTA Comments at 5; and "Comments of the United States Telecom Association" *in re Biennial Review 2000* (Oct. 10, 2000) at 29.

²⁴ *See in the Matter of Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, Second Report and Order on Reconsideration and Memorandum Opinion and Order, in CC Dkt. Nos. 96-149 and 96-61, Separate Statement of Commissioner Michael K. Powell, at 84-86 (rel., Jun. 30, 1999); Joint Parties Comments at 10-15; and "USTA Petition for Reconsideration" in CC Dkt. No. 96-149 (Aug. 4, 1997) at 2 and n. 3, *citing*, a letter dated Jun. 25, 1997 to the Hon. Reed E. Hundt, FCC Chairman and signed by the Hon. U.S. House of Reps., Tausin, Oxley, Boucher *et al* at 2.

B. The Commission Should Also Eliminate the Separate Corporate Division Requirement for IILEC In-Region, Long-Distance Services Resellers.

USTA requests that the Commission also eliminate the requirement that IILECs engaged in resale of long-distance services in the local exchange area use a separate corporate division. NTCA²⁵ correctly observes that the overwhelming majority of IILECs are providing in-region, long-distance services on a resale basis.²⁶ However, USTA believes, though, that the Commission should eliminate the separate corporate division requirement imposed upon IILEC resellers of long-distance services.

There is no compelling reason to continue with prophylactic regulations predicated on the mere speculation of possible harm or abuse, when recourse is available through the Section 208 complaint process (or action in the federal district courts)²⁷ to those who feel aggrieved by IILEC conduct. Therefore, were an IILEC's reseller to demonstrate its ability and will to abuse its position in the local exchange market to the advantage of its position in the interexchange market, the Commission or the courts can address the bad actor, individually.

ASCENT also asks that the Commission maintain the separate corporate division requirement for IILEC resellers. ASCENT suggests, without providing any proof for this notion, that IILEC resellers can exercise market power in the provision of in-region long distance services. This is absurd. Clearly, the IILECs have no

²⁵ NCTA Comments at 1.

²⁶ USTA Comments at 4.

CERTIFICATE OF SERVICE

I, Gail Talmadge, do hereby certify that on November 20, 2001, a copy of *Reply Comments of the United States Telecom Association*, in CC Docket No. 00-175, was either e-mailed or hand-delivered to the persons listed below.

/s/ Gail Talmadge
Gail Talmadge

Jessica Rosenworcel, Attorney Advisor
Policy & Program Planning Division, CCB
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

William F. Caton
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Qualex International
445 12th Street, SW - Suite CY-B402
Washington, DC 20554

Dorothy Attwood, Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW - Room 5-C327
Washington, DC 20554

David Mitchell
National Telephone Cooperative Association
4121 Wilson Blvd. - 10th Floor
Arlington, VA 22203
Email: dmitchell@ntca.org

David W. Zesiger
Independent Telephone
& Telecommunications Alliance
1300 Connecticut Avenue, NW - Suite 600
Washington, DC 20036
Email: dzesiger@griffinjohnson.com

Stuart Polikoff
OPASTCO
21 Dupont Circle, NW - Suite 700
Washington, DC 20036
Email: Sep@OPASTCO.org

Jay C. Keithley
Sprint Corporation
401 9th Street, NW - Suite 400
Washington, DC 20004
Email: jay.c.keithley@mail.sprint.com

David C. Bartlett
ALLTEL Communications, Inc.
601 Pennsylvania Avenue, NW – Suite 720
Washington, DC 20004
Email: david.bartlett@alltel.com

Jan F. Reimers
ICORE, Inc.
326 South 2nd Street
Emmaus, PA 18049
Email: jreimers@ptd.net

Alan Buzacott
WORLD.COM, Inc.
1133 19th Street, NW
Washington, DC 20036

Charles C. Hunter
Hunter Communications Law Group
1424 16th Street, NW – Suite 105
Washington, DC 20036
Email: channan@huntercommunicationslaw.com

Lawrence J. Lafaro
AT&T Corp.
295 N. Maple Avenue
Basking Ridge, NJ 07920
Email: llafaro@att.com

David L. Lawson
Sidley Austin Brown & Wood
1501 K Street, NW
Washington, DC 20005
Email: dlawson@sidley.com

Rodney L. Joyce
Shook, Hardy & Bacon, LLP
600 14th Street, NW
Washington, DC 20005-2004
Email: rjoyce@shb.com