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

In the Matter of	)	
	)	
Investigation of Tariffs Filed by ACS of Anchorage, Inc., and the National Exchange Carrier Association	)	CC Docket No. 02-36
	)	
December 17, 2001 MAG Access Charge Tariff Filings	)	CCB/CPD No. 01-23
	)	

OPPOSITION OF AT&T CORP. TO THE
DIRECT CASE OF ACS OF ANCHORAGE, INC.

Pursuant to the Commission's *Order*,[1] AT&T Corp. ("AT&T") files this Opposition to the Direct Case of ACS of Anchorage, Inc. ("ACS").

The baseline revenue requirement on which ACS' MAG access tariff filing is premised unlawfully assigns the cost of ISP-bound traffic to the interstate jurisdiction in violation of the Commission's express orders requiring carriers, and specifically ACS, to assign the cost of ISP-bound traffic to the intrastate jurisdiction.[2] By understating the amount of traffic that is assigned to the intrastate jurisdiction, ACS substantially overstates its revenue requirements for traffic-sensitive rate elements, and hence inflates its access tariffs.

---

[1] *Investigation of Tariffs Filed by ACS of Anchorage, Inc., and the National Exchange Carrier Association; December 17, 2001 MAG Access Charge Tariff Filings*, CC Docket No. 02-36, CCB/CPD No. 01-23, Order, DA 02-502 (released March 1, 2002).

[2] *See* GCI Opposition at 4 (*citing GCI* v. *ACS*, 16 FCC Rcd 2834, ¶ 22 (2001) ("*GCI Order*")) (filed April 4, 2002).

For example, the *Rate-of-Return Access Charge Reform Order*[3] requires carriers to shift recovery of line port costs from the traffic-sensitive category to the common line category. To estimate line port costs carriers can either submit a cost study or simply shift 30 percent of the switching revenue requirement to the common line category. ACS chose to shift 30 percent of its switching revenue requirement to the common line category. However, because ACS' switching revenue requirement is substantially inflated by ACS' improper assignment of inbound ISP traffic to the interstate jurisdiction, the amount of costs that ACS shifted to the common line category (30 percent of the inflated switching revenue requirement) was also overstated. Moreover, although ACS allocated a portion of its switching costs to its common line costs, ACS has manipulated its local switching costs in such a way that its switching rate actually remained *unchanged*. *See* AT&T Dec. 24, 2001 Petition at 12; GCI Opposition at 15-16.

ACS' improper allocation of inbound ISP traffic also results in double recovery of certain costs. AT&T Dec. 24, 2001 Petition at 11; GCI Opposition at 13-15. ACS is recovering ISP costs both from IXCs through access rates (by misallocating inbound ISP traffic to the interstate jurisdiction) and from ISPs through local business rates in its local tariff. AT&T Dec. 24, 2001 Petition at 11; GCI Opposition at 13. As a result, ACS is actually recovering costs

[3] *See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19,613 (2001) ("*Rate-of-Return Access Charge Reform Order*").

in excess of its total company costs. *See* GCI Opposition at 15 (pointing out that ACS recovers over 109 percent of its costs).[4]

ACS offers no legitimate reason to justify its use of an inflated baseline revenue requirement to compute access rates for its 2001 MAG access tariff filing. ACS first claims that it was under no obligation to fix its unlawful methodology for recovering ISP costs in its MAG access tariff filing because in the introduction to the *Rate-of-Return Access Charge Reform Order* and in the body of the *MAG Tariff Filing Order*,[5] the Commission indicated that implementation of the *Rate-of-Return Access Charge Reform Order* would be "revenue neutral." ACS Direct Case at 5. However, nowhere in those orders does the Commission conclude that "revenue neutrality" requires guaranteed recovery of revenues secured through unlawful practices. Rather, those orders are designed to ensure that carriers continue to recover *legitimate* interstate costs. *See* GCI Opposition at 5-6. There is no basis in the Commission's rules that would allow ACS to unlawfully over-recover costs simply because it has done so in the past.

ACS also claims that it must be allowed to continue to include ISP-bound traffic that it has unlawfully assigned to the interstate jurisdiction because the Commission's *MAG Tariff Filing Order* expressly contemplates that carriers would base their calculations "on

---

[4] As the Commission noted, ACS' treatment of ISP inbound traffic as interstate "also appears to have affected the development of the revenue requirement for the transport category, as well as that for the local switching category" and that the inflated transport revenue requirement "likely would have resulted in overstatement of the TIC revenue requirement." *Investigation of Tariffs Filed by ACS of Anchorage, Inc., and the National Exchange Carrier Association; December 17, 2001 MAG Access Charge Tariff Filings*, Order Designating Issues for Investigation, CC Docket No. 02-36, CCB/CPD No. 01-23, DA 02-371, ¶ 17 (released Feb. 15, 2002). And GCI notes (at 19) that "unexplained differences remain in ACS' recalculated TIC costs and the TIC costs that NECA reports are reallocated to common line."

[5] *See December 17, 2001 MAG Access Charge Tariff Filings*, 16 FCC Rcd 20960 (2001) ("*MAG Tariff Filing Order*").

demand data used in the last annual tariff filing made by the carrier." ACS Direct Case at 8. But this direction that is applicable to rate-of-return carriers generally cannot and does not overrule the specific Commission findings that ACS' tariffs and practices in question are flatly unlawful. ACS' failure to file a tariff using correctly computed demand data was entirely under ACS' control. As GCI points out, "[i]t would be an odd result indeed if, in spite of the Commission's direction in the *GCI Order* to allocate ISP costs correctly, ACS could avoid the effect of that order entirely by first declining to file a corrected tariff and then seeking to benefit from that failure by carrying over the illegal tariff in the MAG access tariff proceeding." GCI Opposition at 8.

ACS' prior NECA filings also undercut its claims that ACS believed that it was under no obligation to base its MAG tariff filing on updated demand that properly allocates inbound ISP traffic. ACS recently filed a cost study that "treated the traffic sensitive costs of ISP-bound traffic as intrastate," and ACS frankly concedes that this approach is "in compliance with the *GCI Order*." ACS Direct Case at 15. Thus, ACS' claims to the contrary are clearly disingenuous.

Given ACS' blatant disregard for Commission orders and apparent inability to correctly apply them, the Commission should prescribe lawful rates for ACS effective January 1, 2002. *See* 47 U.S.C. § 204(a) (providing that the Commission may suspend a "charge, classification, regulation or practice" and "enter upon a hearing concerning the lawfulness thereof" and may "require the interested carrier . . . to keep accurate account of all amounts received by reason of such charge for a new service or revised charge . . . and upon completion of the hearing and decision may by further order require the interested carrier . . . to

refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such charge for a new service or revised charges as by its decision shall be found not justified").

CONCLUSION

For the foregoing reasons, the Commission should prescribe lawful rates for ACS effective January 1, 2002.

Respectfully submitted,

/s/ Judy Sello

Mark C. Rosenblum
Judy Sello
AT&T Corp.
Room 1135L2
295 Maple Avenue
Basking Ridge, New Jersey 07920
Tel. (908) 221-8984
Fax (908) 221-4490

David L. Lawson
Christopher T. Shenk
Sidley Austin Brown & Wood LLP
1501 K St., N.W.
Washington, D.C. 20005
Tel. (202) 736-8000
Fax (202) 736-8711

Attorneys for AT&T Corp.

April 4, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of April, 2002, I caused true and correct copies of the forgoing Opposition of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: April 4, 2002
Washington, D.C.

/s/ Peter M. Andros

Peter M. Andros

SERVICE LIST

William F. Caton
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room CY-B402
Washington, D.C. 20554[1]

Douglas Slotten
Competitive Pricing Division
Federal Communications Commission
445 12th Street, SW
Room 5-A233
Washington, D.C. 20554

Qualex International
Portals II
445 12th Street, SW, Room CY-B402
Washington, D.C. 200554

Joe D. Edge
Tina M. Pidgeon
Drinker Biddle & Reath LLP
1500 K Street, NW, Suite 1100
Washington, D.C. 20005

Richard A. Askoff
National Exchange Carrier Association, Inc.
80 South Jefferson
Whippany, NJ 07981

Karen Brinkman
Richard R. Cameron
Nathan A. Vivan
Latham & Watkins
555 Eleventh Street, NW, Suite 1000
Washington, D.C. 20004

[1] Filed electronically via ECFS