

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

In the Matter of

Notice of Inquiry Concerning a Review of  
the Equal Access and Nondiscrimination  
Obligations Applicable to Local Exchange  
Carriers

CC Docket No. 02-39

**REPLY COMMENTS OF VERIZON**

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Summary ..... 1

I. The Commission Should Eliminate the Section 251(g) Equal Access Obligations  
in Favor of Rules of General Applicability. .... 3

    A. Equal Access and Nondiscrimination Requirements Will Remain When  
    Those Preserved By Section 251(g) Are Eliminated..... 3

    B. The Decrees’ Requirements, and Therefore Those of Section 251(g), Are  
    Not as Broad as Some Commentors Claim. .... 4

II. AT&T’s Market Analysis Misses the Point. .... 7

III. There Is No Need for Additional “Equal Access” Regulations..... 11

Conclusion..... 18

Attachment Concerning Decree Court Decisions

NECPUC Consumer Affairs Staff Committee Report “Getting the Customer Out of the Middle”

Reply Declaration of Robert W. Crandall

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**Summary**

“Equal access and nondiscrimination” sound like good ideas. Therefore, many of the commentors reflexively support the continuation of the section 251(g) equal access and nondiscrimination requirements without identifying exactly what those requirements are or explaining why those requirements are still needed today and not otherwise provided for in the Commission’s rules. This is not a particularly helpful response to the Commission’s Notice.

Verizon does not propose the elimination of equal access. However, as we explained in our comments, the consent decree nondiscrimination requirements that section 251(g) preserved were narrowly and precisely drawn to deal with a problem that existed when the telecommunications industry was restructured in the 1980’s, primarily a bias in favor of AT&T and against other long distance companies. Those problems no longer exist, and the requirements preserved by section 251(g) are outdated and have been superceded by rules of general applicability. Other decree provisions required equal access and governed its implementation. The Bell companies (and the industry generally) long ago completed the deployment of equal access, the Commission has required other local telephone companies to

provide it under the Communications Act and the Act has been amended to require dialing parity. The decree-based provisions are no longer necessary, and the Commission should eliminate them.

AT&T does attempt to go beyond the generalities and platitudes of the bulk of the commentors. However, it wants the Commission to respond to an era of more competitive markets by imposing new rules and regulations. This, of course, is backwards — more competition means that there is less need for regulatory rules, not more.

There is no justification today for retaining different obligations on local exchange carriers based solely upon their origins as Bell operating companies, GTE operating companies, “independent” local exchange carriers and “competitive” local exchange carriers, except as Congress directed in section 251(c) that the requirements be different in order to facilitate the introduction of local competition. All local exchange carriers are the means by which their customers get access to other service providers and other service providers get access to those customers. All local exchange carriers are required to interconnect with interexchange carriers and provide dialing parity. When a Bell company has passed the section 271 test, all exchange carriers in an area will be able to offer customers a full range of telecommunications products and services. When that happens, all should be subject to the same rules, again except where Congress has otherwise directed.

Where regulation is no longer necessary, it is harmful to retain it, and the Act requires that it be eliminated. The Commission, therefore, must re-examine all the various requirements that have been adopted in the name of “equal access and nondiscrimination” and decide which, if any, need to be retained. Among those that should be eliminated are those that require any LEC — incumbent or non-incumbent, BOC or non-BOC — to maintain lists of its competitors to be

read in case some customer asks. As Dr. Crandall explained, it is impossible to believe that in 2002 consumers are not aware of the existence of scores of long-distance and wireless carriers from which they can purchase long-distance service, while they may be unaware of the fact that their local Bell company, which hasn't been in the interLATA business for decades, has recently been allowed to offer such services. "Forcing the new industry entrant to market on behalf of established competitors that already have a marketing advantage," he concluded, "is a curious strategy to promote competition."

**I. The Commission Should Eliminate the Section 251(g) Equal Access Obligations in Favor of Rules of General Applicability.**

Equal access and nondiscrimination rules were included in section 251(g) as a transitional measure — to preserve for a while the consent decree obligations that the 1996 Act otherwise would have eliminated. Instead of having these rules eliminated with the stroke of the President's pen in 1996, Congress wanted to give the Commission the opportunity to sort through what the decrees required and see what, if anything needed to be retained in the form of Commission regulations. The answer is that existing Commission rules of general applicability are all that's needed now.

**A. Equal Access and Nondiscrimination Requirements Will Remain When Those Preserved By Section 251(g) Are Eliminated.**

Nobody is suggesting the elimination of equal access, which today is required of all local exchange carriers under Commission rules of general applicability. The Commission defines equal access as:

"The features of full equal access are: (1) dialing parity; (2) rotary dial access; (3) network control signalling; (4) answer supervision; (5) automatic calling number identification; (6) carrier access code; (7) directory services; (8) testing and

maintenance of facilities; (9) provision of information necessary to bill customers; and (10) presubscription.”<sup>1</sup>

Sections 201 and 202 were all the legal authority the Commission needed to require the “independent” LECs to provide equal access in the 1980’s. Section 251(b)(3) now requires that all LECs provide dialing parity. Section 251(g) was not the basis for the equal access rules, and the elimination of the requirements preserved by section 251(g) will not affect equal access.

The Texas commission underestimates the Commission’s powers under the Communications Act when it says, “For instance, it is conceivable that without these requirements, BOCs and other LECs could lack incentive to retain today’s open networks, which allow competing LECs, IXC’s and ISP’s access to their customers.”<sup>2</sup> The Commission has used its ample authority under the Act to open local exchange networks to LECs, IXC’s and ISP’s, and there is no danger that elimination of the requirements carried over from the antitrust decrees will cause any such problems.

B. The Decrees’ Requirements, and Therefore Those of Section 251(g), Are Not as Broad as Some Commentors Claim.

The nondiscrimination provisions of the decree were narrower than the nondiscrimination obligations that have been imposed under the provisions of the Act in that they prohibited only discrimination between AT&T and other providers.<sup>3</sup> Section 202(a), of course, prohibits all unreasonably discriminatory practices by all LECs. There is, therefore, no need to continue to preserve narrower — and now outdated — obligations through section 251(g).

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<sup>1</sup> *MTS and WATS Market Structure Phase III*, 100 F.C.C.2d 860 ¶¶ 56-59 (1985).

<sup>2</sup> TX PUC at 3.

<sup>3</sup> The decree nondiscrimination provisions dealt with matters, not relevant here, that went beyond the reach of the Act, like discrimination in favor of AT&T as a manufacturer of telecommunications equipment.

In their attempt to convince the Commission that there is something worth preserving in section 251(g), some commentators invest it with content and meaning that simply is not there. ASCENT, for example, says that 251(g) “safeguards against discrimination by the former BOCs in favor of their retail interexchange operations.”<sup>4</sup> AT&T, in the same vein, claims that section 251(g) incorporates the consent decree’s “rule of non-favoritism in the area of joint marketing.”<sup>5</sup> This is nonsense. The decree did not include any such “safeguards against discrimination by the former BOCs in favor of their retail interexchange operations” or any “rule of non-favoritism” because the decree flatly prohibited the Bell companies and their affiliates from providing or marketing interLATA service — there would have been nothing to favor or discriminate in favor of. In addition, the decree court found that marketing interLATA service was the same as “providing” that service, which the BOCs were forbidden to do. The very decision AT&T cites establishes this point, as AT&T acknowledges in a footnote, as the court found marketing an interLATA service was the same as providing that service and violated the section II(D) line-of-business restrictions.<sup>6</sup>

The Texas commission says, without citing anything in the legislative history of the 1996 Act, “The intent of the [1996 Act’s] existing equal access and nondiscrimination safeguards was to provide ample opportunity and time for competition to develop in all markets and to prevent BOC discrimination in favor of their affiliates.”<sup>7</sup> The legislative history described by Verizon and others shows, however, that Congress included section 251(g) because the Act would

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<sup>4</sup> ASCENT at 7.

<sup>5</sup> AT&T at 25.

<sup>6</sup> *United States v. Western Elec. Co.*, 627 F. Supp. 1090, 1101 (D.D.C. 1986).

<sup>7</sup> TX PUC at 2.

supersede the AT&T and GTE consent decrees and it wanted to ensure that those equal access obligations were continued only until the Commission had an opportunity to adopt rules of its own, if any rules were necessary.<sup>8</sup>

AT&T works the hardest to portray the decree injunctions as broad in scope<sup>9</sup> in an effort to convince the Commission that there is something in them that still needs to be preserved. As shown in the attachment, none of the decisions it quotes from support its position. None of them suggests that the decree contained broad nondiscrimination obligations or established any broad principles of non-favoritism. And certainly none had anything to do with the situation when the BOC itself provided interLATA service.

AT&T also misrepresents the Commission's statements about the decree prohibitions. AT&T (repeatedly) cites the *Qwest Teaming Order* as if it had anything to do with the decree's (or the Act's) nondiscrimination obligations.<sup>10</sup> In that case, the Commission, after expressing concern over the defendants' practices, concluded, "we need not reach the issue whether they also violate Ameritech's and U S WEST's equal access and nondiscrimination obligations under section 251(g)" because it found that they violated section 271(a) of the Act.<sup>11</sup>

AT&T is also being more than a little disingenuous when it says, "§ 251(g) remains the *sole basis in § 251* for certain critical restrictions on the anti-competitive behavior of the BOCs, including discrimination with regard to provision of customer information and joint marketing

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<sup>8</sup> Congress twice referred to "[t]hese interim restrictions and obligations" and took care to point out, "The use of the provisions of the respective consent decrees to provide, on an interim basis, the substance of the new statutory duty in no way revives the consent decrees." Conference Report 104-458, 104th Cong. 2d Sess., at 123 (1996).

<sup>9</sup> AT&T at 21-23.

<sup>10</sup> AT&T at 13.

<sup>11</sup> *AT&T Corp. v. Ameritech Corp.*, 13 FCC Rcd. 21438 ¶ 53 (1998).

efforts such as teaming and marketing during in-bound calls.”<sup>12</sup> While section 251(g) might be the only part of *section 251* that could support such regulations, AT&T conveniently ignores sections 201 and 202. AT&T’s reason for wanting the Commission to ignore these provisions is as obvious as those provisions themselves. Those provisions apply to all carriers and would not support special rules that apply only to the BOCs that AT&T wants to continue to shackle.

AT&T claims that the basic provisions of the Act — sections 201 and 202 — “are inadequate substitutes” compared to section 251(g).<sup>13</sup> This is nonsense. The only independent support it offers for this proposition is a quotation from a 1987 decree court opinion which noted that in spite of section 202(a) “the FCC was unable to prevent or to remedy major anticompetitive abuses by the Bell System achieved through the activities of its local affiliates” before divestiture.<sup>14</sup> The days of the nationwide vertically integrated “Bell System” ended a generation ago, and whatever problems there were with the Bell System ended at that time.

As Verizon showed in its comments, the purpose of the equal access rules preserved by section 251(g) was fulfilled long ago. There is nothing left of them that is not in other Commission rules, and the transitional purpose of the section 251(g) equal access regime has also been fulfilled. The Commission should now terminate those requirements.

## **II. AT&T’s Market Analysis Misses the Point.**

The provisions of the Act that are the basis of the Act’s equal access and nondiscrimination requirements — sections 201, 202 and 251(b)(3) — apply to all local exchange carriers. They do not single out particular LECs based on their parentage or when they

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<sup>12</sup> AT&T at 22 (emphasis added).

<sup>13</sup> AT&T at 18.

<sup>14</sup> AT&T at 23.

went into business. It makes sense to treat all LECs the same, because they all provide their customers' connections to other service providers. AT&T itself notes that the rationale for the consent decree rules was, "Whoever controls bottleneck local exchange facilities — through which all interexchange traffic must pass — has the ability to discriminate, in numerous ways, against or among interexchange carriers."<sup>15</sup> AT&T ignores this observation, however, in its effort to saddle the Bell companies with obligations that would not apply to others who "control bottleneck local exchange facilities — through which all interexchange traffic must pass." And, perhaps more important for the current telecommunications marketplace, CMRS providers and cable operators have made the phrase "bottleneck local exchange facilities" as old fashioned as "nationwide integrated Bell System."

Everything that AT&T says about the Bell companies applies equally to every other LEC, including AT&T. Thus, AT&T says, "Nor can there be any serious argument that the BOCs have lost their incentives to discriminate. To the contrary, their increasing opportunities to provide their own interLATA services have, if anything, strengthened their incentives to discriminate in favor of themselves and against others."<sup>16</sup> To the extent that this is true, the same can be said for any LEC that also offers interLATA services. In fact, it may well be more true for LECs like AT&T and WorldCom, for whom interLATA service is their core business and which they might go to greater lengths to protect. Whatever equal access and nondiscrimination provisions are appropriate under the Act would apply equally to all such LECs.

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<sup>15</sup> AT&T at 5-6. NASUCA agrees, "With Section 271 approval, BOCs would have an incentive to discriminate in favor of their own affiliated long distance companies." NASUCA at 5.

<sup>16</sup> AT&T at 19.

AT&T says that it would be “irrational” for the Commission “to extend” equal access and nondiscrimination obligations to CLECs.<sup>17</sup> Congress, of course, had a different view. It made dialing parity, the heart of equal access, a requirement for all LECs, not just ILECs. And Congress did not amend sections 201 and 202 to have those provisions apply to ILECs only. AT&T itself claims that the danger is that one carrier controls the local facilities that must be used by other carriers to provide long distance service — and as to each customer that carrier is that customer’s own LEC, whether ILEC or CLEC. And there is no reason to suspect that a CLEC has any less incentive to discriminate in favor of its affiliate than an ILEC does. Given these facts and the words of the statute and its history, it would be “irrational” — and plain error — for the Commission to rule that equal access and nondiscrimination obligations do not apply to CLECs.

ASCENT is a little more subtle than AT&T. It argues that it’s fine for a LEC to discriminate in favor of its own businesses — it’s just not OK for a BOC to do so: “favoring one’s own retail interexchange operations or affiliates is not necessarily detrimental to competition. It becomes so, however, when the entity engaging in such favoritism retains control of the facilities necessary for connectivity with the preponderance of the customer universe.”<sup>18</sup> But if what gives rise to the need for regulation is, as AT&T argues, the fact that “[w]hoever controls bottleneck local exchange facilities — through which all interexchange traffic must pass — has the ability to discriminate, in numerous ways, against or among interexchange carriers,” then every LEC must be regulated in the same way. If it’s anticompetitive for Verizon to promote its long distance service to its local service customers when they call Verizon, then it’s

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<sup>17</sup> AT&T at 43-45.

<sup>18</sup> ASCENT at 10.

equally anticompetitive for AT&T or other CLECs to do likewise to their customers. Of course, it's not anticompetitive at all, and, as Verizon showed in its comments, regulations of the type supported by AT&T and ASCENT actually harm competition and consumers.<sup>19</sup>

In this attempt, AT&T cites rulings from the decree court which talk about the BOCs' control over local exchange facilities.<sup>20</sup> At that time, of course, the BOCs were the only local service providers in their territories. So the decree court's references to the BOCs' local exchange bottleneck were not intended to distinguish the BOCs' local facilities from those of other LECs, because there were no other LECs in BOC service areas at that time. The decree court's concerns about the BOCs' ability and incentive to act anticompetitively would apply equally to any company which, as AT&T puts it, "controls bottleneck local exchange facilities — through which all interexchange traffic must pass" — that is any LEC. Moreover, the court's references to local bottlenecks were written before CMRS providers and cable operators had widespread telecommunications networks that offered alternate paths to the customer.

AT&T and its economist spend many pages arguing that the Bell companies still have the kind of "bottleneck monopoly" that Judge Greene was concerned with. Wireless technology and the new competition brought about by the 1996 Act have completely changed the local service marketplace. Where the BOC has passed the section 271 test, the Commission has found the markets irreversibly open to such an extent that it was competitively safe for the BOC to provide interLATA service. In those cases, Congress determined that the only additional regulations that were required were those contained in section 272, and even those were to sunset after three years.

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<sup>19</sup> Verizon at 17-18, Crandall Dec. at ¶ 26-27.

<sup>20</sup> AT&T at 6-13.

### III. There Is No Need for Additional “Equal Access” Regulations.

In its comments, Verizon made the case that a competitive market needs less regulation than a non-competitive market. AT&T perversely argues the reverse — that now that there are more competitors in what the Commission has long found to be a competitive market, more rules are required. And, it argues even more perversely, these extra rules should be applied only to the new entrants into the long distance market, not to the established providers. These new rules are unnecessary and certainly cannot be justified if applied to the Bell companies alone.

BOC Marketing. AT&T urges the Commission to adopt new rules to prevent “the BOCs from unfairly trading on their market power over the LEC connect channel.”<sup>21</sup> Congress, however, clearly understood that the BOCs would be allowed to market the services offered by its long distance affiliate and, in the hopes of precluding arguments like the one AT&T is making now, explicitly stated in section 272(g)(3) that a BOC’s nondiscrimination obligations did not include marketing. Congress certainly did not intend that there be more restrictions after the sunset of the separation requirement of section 272 than there were while that requirement was in effect.

In trying to hamper the Bell companies’ marketing efforts, AT&T suggests that “joint marketing” is a bad thing. Of course, as Dr. Crandall explains in the accompanying declaration, “joint marketing” is exactly what every multi-service firm in the telecommunications business does:

“if a new WorldCom customer calls WorldCom to set up service, WorldCom will certainly alert that customer to its own local service, if it is available to that customer. Similarly, if an existing AT&T customer calls AT&T regarding billing,

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<sup>21</sup> AT&T at 26.

existing service, etc., AT&T most likely will take the opportunity to alert that customer to AT&T's local service if it is available.”<sup>22</sup>

In fact, AT&T itself trumpets the benefits it can offer consumers with its slogan “One Company. One Statement. Zero Hassle.”<sup>23</sup> Not only is there absolutely nothing wrong with these sorts of activities, but Congress in writing the 1996 Act recognized the benefit of them — “The Committee believes that the ability to bundle telecommunications, information, and cable services into a single package to create ‘one-stop-shopping’ will be a significant competitive marketing tool.”<sup>24</sup>

AT&T suggests that the Commission should be alarmed that BOC local service customers often choose the BOC for long distance service too.<sup>25</sup> But this is also true of long distance carriers' local customers. At the end of 2001, 83 percent of MCI's local exchange customers used MCI for long-distance as well. MCI touts the benefits it receives from this bundling strategy and states that these subscribers “deliver three times the lifetime revenue of standalone long-distance customers due to much higher monthly spending and lower subscriber churn.”<sup>26</sup>

Moreover, the Bell companies have done well where they have been allowed to enter the long distance business, not because they control “the LEC connect channel” or because of their historical position in the local services marketplace. Rather, they are doing well because they are offering consumers what they want — good service, convenience and fewer hassles at prices that

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<sup>22</sup> Crandall Reply Dec. at 4.

<sup>23</sup> AT&T Corp, AT&T Consumer Services: Local Calling Plans, <http://www.consumer.att.com/page?service=local>, visited June 3, 2002.

<sup>24</sup> S. Rep. No. 104-23 at 23 (1995).

<sup>25</sup> AT&T at 24-25.

<sup>26</sup> Crandall Reply Dec. ¶ 8.

are often lower than those offered by AT&T and the other major long distance companies.<sup>27</sup> As a result, consumers are now paying less for long distance service where the Bells have been allowed to compete.<sup>28</sup>

AT&T wants to extend the Commission's current requirements to instances when the BOC's local service customer calls the BOC for an additional telephone line.<sup>29</sup> But there is no reason for such an extension. The customer calling the BOC for a second line knows she may choose an interexchange carriers — she has already chosen one for her first line. And she probably has one in mind before she makes the call; most consumers choose the same carrier for both lines. The fact is that, in each one of the states in which Verizon provides interLATA service, Verizon has a lower “share” of residential second lines than of those customers' primary lines — the exact opposite of what one would expect if AT&T's claims about BOC “leverag[ing] the advantage of an ‘inbound channel’”<sup>30</sup> were correct. AT&T's prediction that unless the Commission extends its rules to cover orders for additional lines the BOCs will “capitalize[] on their ‘historical monopoly position’” and “remonopolize telecommunications services in their service areas”<sup>31</sup> is empty rhetoric which should be ignored.

As Verizon previously demonstrated, the existing practices were not required by the AT&T consent decree to begin with — they were either adopted by the BOCs to assist consumers through the transition to equal access or imposed by the decree court as a condition of

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<sup>27</sup> Crandall Reply Dec. ¶¶ 16-22.

<sup>28</sup> Crandall Reply Dec. ¶¶ 23-24.

<sup>29</sup> AT&T at 27-29.

<sup>30</sup> AT&T at 28.

<sup>31</sup> AT&T at 29.

defaulting non-selecting customers to AT&T.<sup>32</sup> These purposes are no longer relevant and these requirements no longer necessary. Unnecessary rules are harmful rules — especially when applied to only some competitors — and they should be eliminated. These requirements burden the BOC's marketing operations, reducing their effectiveness and adding to their costs, which together reduce the prospective benefits to consumers.<sup>33</sup>

Third-party PIC Administration. The Commission should also reject AT&T's request that the Commission establish a new infrastructure to manage customers' carrier selections and freezes.<sup>34</sup> This is not a new idea. It was first proposed several years ago, the Commission sought further comment on it in 1998<sup>35</sup> and has never seen the need to pursue it. Nothing has changed to suggest that this is a better idea now than it was then. In fact, the growth of competition since then is evidence of the fact that it is not necessary.

AT&T refers to a variety of reports and state proceedings which, it says, support this request. To the extent that Verizon is familiar with these proceedings, they do not help AT&T's case. First, AT&T refers to a report of a committee of the New England Conference of Public Utility Commissions, which, AT&T says, found "the evidence of abuse by the BOCs in this area is substantial and continuing."<sup>36</sup> The report, a copy of which is attached, says no such thing. While it certainly found that there was room for improvement in the existing system, it did not find any abuses by the ILECs. And, most important for this purpose, the NECPUC committee

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<sup>32</sup> See Verizon at 14-17.

<sup>33</sup> See Verizon at 17-18.

<sup>34</sup> AT&T at 29-39.

<sup>35</sup> *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 1508 ¶¶ 183-84 (1998).

<sup>36</sup> AT&T at 29.

*declined to recommend* AT&T's third-party administrator proposal.<sup>37</sup> AT&T also points to complaints that it and others have made about practices of various Bell companies. None of them, of course, has been resolved against the BOC. To the extent that these complaints are as accurate as AT&T's citation of the NECPUC committee report, we are confident that they never will be.<sup>38</sup>

AT&T also repeatedly refers to a proceeding in New York in which it complained about Verizon's carrier freeze practices.<sup>39</sup> AT&T quotes heavily from its own claims and filings in that proceeding and includes snippets from the New York commission's order.<sup>40</sup> AT&T fails, however, to tell the Commission that the New York commission concluded, "[o]ur analysis of much of AT&T's complaint has yielded inconclusive results" and that "the institution of a penalty action or imposition of the other sanctions sought by AT&T in this case is not warranted at this time."<sup>41</sup>

AT&T also argues that the BOCs are able to engage in anticompetitive behavior by submitting false "PIC dispute invoices" because the "PIC dispute process provides no opportunity to investigate a claimed slam."<sup>42</sup> It is not the BOC, of course, that claims a slam —

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<sup>37</sup> NECPUC Consumer Affairs Staff Committee, *Getting the Customer Out of the Middle, Examining Problems [in] the Carrier Change Process* at 5 (Mar. 19, 2002).

<sup>38</sup> NeuStar's opinion (quoted by AT&T at 37) is presumably based on its interest as a potential provider of any costly third-party administration system.

<sup>39</sup> *E.g.*, AT&T at 33-36, 38-39.

<sup>40</sup> That there might be "competitive concerns" (AT&T at 38) and that interexchange carriers claimed there was "disparity between Verizon's percentage of intraLATA PIC freezes versus interLATA PIC freezes" (AT&T at 34).

<sup>41</sup> *Complaint of AT&T Communications of New York, Inc. Against Bell Atlantic-New York Concerning Management of the Primary Interexchange Carrier (PIC) Program*, Case 00-C-0897, Order at 23 (NY PSC Mar. 23, 2001).

<sup>42</sup> AT&T at 36-37 n.26.

it is the customer. And the Commission's rules give the accused slammer ample opportunity to disprove the accusation.<sup>43</sup>

AT&T says that the Florida commission is inquiring into whether ILECs are "imposing local service freezes on potential AT&T local customers without their consent and then erecting numerous bureaucratic obstacles to the customers' efforts to remove the freezes."<sup>44</sup> However, the very title of the proceeding AT&T cites — *Generic Investigation into Whether Competitive Practices of Incumbent and Alternative Local Exchange Carriers Comply with Section 364.01(4)(G)* — reveals that the commission is investigating complaints against all types of LECs.<sup>45</sup>

Nothing in AT&T's extensive recitation suggests that there is any problem that needs to be solved — only that AT&T has been aggressive in making complaints. AT&T does not tell the Commission how much a new infrastructure for handling carrier change orders will cost — and it surely will not be inexpensive — or demonstrate why it would be the right solution if its as yet unproven allegations of ILEC wrongdoing prove to be valid. The Commission should, therefore, reject AT&T's proposal.

CARE. Finally, AT&T proposes that the Commission require changes in the Customer Account Records Exchange (CARE) system that the industry uses to exchange customer information.<sup>46</sup> Verizon has participated in the CARE process since it began in 1984 and agrees

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<sup>43</sup> 47 C.F.R. § 64.1150(a)-(d).

<sup>44</sup> AT&T at 32 & n.22.

<sup>45</sup> Other items in AT&T's parade of horrors, such as its claims about improper "winback" activities (AT&T at 33 n.23) have nothing to do with equal access and would not be resolved by its third-party administrator proposal.

<sup>46</sup> AT&T at 39-43.

that it is important that carriers exchange accurate customer account information. However, the primary “problem” AT&T identifies cannot be cured by changing CARE or by any actions of the LEC.

AT&T, correctly, says that problems result because “if an IXC’s customer switches to a new LEC for local service, the current notice that is sent — albeit, not universally — to the customer’s IXC only explains that the customer has left the LEC for local service; in some cases, it may also identify the customer’s new LEC” and that “the notice does not inform the IXC whether the customer retained his former IXC for intraLATA toll or interLATA service or instead subscribed to another carrier when he switched his local service.”<sup>47</sup> The LEC that lost the customer’s business, however, is in no position to know “whether the customer retained his former IXC for intraLATA toll or interLATA service or instead subscribed to another carrier when he switched his local service.” Nor should the Commission put this LEC in the position of having to try to extract that information from the customer who is switching to another provider — the customer’s attitude is likely to be that it is none of the losing carrier’s business (and the customer would be right). And, as AT&T suggests,<sup>48</sup> the real problem here is not lack of cooperation by the ILECs, but rather lack of participation by the CLECs.

The CARE system can be improved if all carriers use it. The NECPUC committee report that AT&T disingenuously cites in support of its third-party administration proposal recommended the adoption of state rules “requiring all carriers of intrastate toll or local exchange

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<sup>47</sup> AT&T at 41.

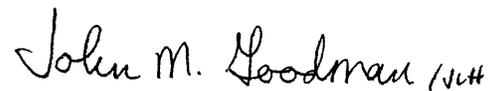
<sup>48</sup> AT&T at 43 (noting that “few CLECs” have participated in the CLEC CARE clearinghouse).

service within each state exchange a mandatory set of information elements in processing any change in a customer's intrastate or local exchange provider."<sup>49</sup>

### Conclusion

The Commission should revamp its rules to recognize the vast changes in the telecommunications marketplace since the AT&T decree in 1982. The equal access provisions of that decree have been superceded by other rules and are no longer needed. When both local and toll markets are fully open to competition, the Commission need not regulate at all, and rules concerning marketing should be rescinded.

Respectfully submitted,



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<sup>49</sup> NECPUC Consumer Affairs Staff Committee, *Getting the Customer Out of the Middle, Examining Problems [in] the Carrier Change Process* at 2 (Mar. 19, 2002).