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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of)	
)	
Lucent's Third Supplement to Petition)	
For Declaratory Ruling On State Consumer)	WC Docket No. 02-147
Protection Laws As They Relate to)	
AT&T/Lucent Leasing Of Customer)	
Premises Equipment)	

COMMENTS OF AT&T CORP.

Pursuant to the Commission's Public Notice of June 28, 2002, AT&T Corp. ("AT&T") respectfully submits these comments on the request of Lucent Technologies, Inc. ("Lucent") for a declaratory ruling concerning the permissible application of state consumer protection laws to the leasing of customer premises equipment ("CPE") by AT&T and Lucent. AT&T supports Lucent's Petition in its entirety.

Lucent's Petition has been filed as a result of claims that are being advanced in a nationwide class action that is pending in Madison County, Illinois, and that is now scheduled to be the subject of a six to eight week trial beginning on August 5, 2002. This is an action that the Illinois court initially dismissed. But it was reinstated after the Commission filed an *amicus curiae* memorandum that explained that its *CPE Detariffing* and related orders in the 1980s did not preempt the application of consumer protection laws that would apply equally to CPE vendors who are not telephone companies and who did not inherit an embedded base of customers who lease CPE. However, as Lucent's Petition has demonstrated in detail, the plaintiffs in that case have since recast their claims. In particular, they are seeking over \$10 billion in purported compensatory damages by contending that Illinois law imposes specific duties on AT&T and Lucent that are not applicable to other vendors and by advancing collateral

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attacks on the determinations that the Commission made when it detariffed CPE and *required* AT&T to give customers a lease option after providing specific notifications.

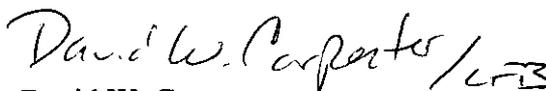
Indeed, the nationwide class that has since been certified in this case is defined as all persons who leased CPE pursuant to the Commission-prescribed lease option and notification between 1984 and 1986 and who also leased CPE thereafter. Plaintiffs' claims rest on assertions that the Commission-prescribed notification is inadequate, that AT&T's and Lucent's inheritance of the embedded base conferred market power that the Commission found did not exist, and that AT&T (and Lucent) thus had special duties that the Commission declined to impose and that do *not* apply to other CPE vendors under Illinois law. And contrary to the Commission's preemption of utility-style rate regulation of AT&T's and Lucent's CPE business, plaintiffs are seeking damages that represent the difference between the lease rates and "reasonable" rates to be determined by the court on a cost-of-service basis. It is elementary that bans on state utility rate regulation cannot be circumvented by having the rates prescribed by a court rather than a state commission. *See Texas & Pac. Ry. Co. v. Abilene Cotton Oil Co.*, 204 U.S. 426 (1907).

AT&T will not repeat the points made in Lucent's Petition, which contains a detailed description of the declaratory ruling that the Commission should issue. But the gist of the matter is quite simple. The Commission should declare that its orders foreclose any state law claim that is premised on the grounds that AT&T/Lucent had market power over CPE for any class of customers by virtue of the embedded base of CPE provided by AT&T/Lucent at the time of detariffing and thus owe special duties not applicable to other CPE vendors; or that the notifications that the Commission prescribed are insufficient to protect the interests of embedded base consumers who leased CPE from AT&T/Lucent after divestiture. And the Commission should declare that its detariffing orders foreclose utility type cost of service rate proceedings to

redetermine CPE prices under state law, whether they occur in state utility commission or in courts enforcing state consumer protection laws.

Finally, AT&T wishes to emphasize the urgency of this matter and the need for the Commission to issue the declaratory ruling presently. Through their collateral attacks on the Commission's prior determinations, plaintiffs have been able to allege damages of over \$10 billion, and absent a declaratory ruling from the Commission, a jury verdict or judgment of such magnitude could be issued in the next two months. Particularly because the telecommunications industry has been weakened by other events, such a judgment could have profound adverse repercussions for the industry even if (as AT&T believes would have to be the case) the judgment were later reversed. AT&T thus urges the Commission not only to grant Lucent's Petition, but also to issue its declaratory ruling in timely fashion that will enable the Illinois state trial judge to have the benefit of the Commission's declaratory ruling *before* the Court instructs the jury or itself makes any final determinations in the case.

Respectfully submitted,



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July 29, 2002

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Opening Comments of AT&T Corp. was served, by hand delivery, on this 29th day of July, 2002, on the following:

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