

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

In the Matter of)	
)	
AT&T Corporation)	
)	
Petition for Rulemaking to Reform)	RM No. 10593
Regulation of Incumbent Local Exchange)	
Carrier Rates for Interstate Special)	
Access Services)	
_____)	

COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

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December 2, 2002

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The United States Telecom Association (USTA),¹ through the undersigned and pursuant to Federal Communications Commission (FCC) Rules 1.415 and 1.419,² hereby provides comments to AT&T Corporation’s (AT&T) Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services (Petition). Pursuant to section 1.401 of the FCC’s rules,³ the FCC now seeks comment on AT&T’s Petition.

SUMMARY

AT&T in its Petition claims that large incumbent local exchange carriers (ILECs) retain market power and are the dominant providers of special access services.⁴ AT&T alleges that

¹ USTA is the Nation’s oldest trade organization for the local exchange carrier industry. USTA’s carrier members provide a full array of voice, data and video services over wireline and wireless networks.

² 47 C.F.R. §§ 1.415 and 1.419.

³ 47 C.F.R. § 1.401.

⁴ Special access is defined as “a variety of services and facilities which constitute the local portion of certain interstate telecommunications lines.” *See Review of section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, UNE Rebuttal Report 2002, CC Docket No. 01-338, Report Prepared for and Submitted by BellSouth, SBC, Qwest, and Verizon, V-18, (April 2002) (UNE Rebuttal Report) (citing *Investigation of Special Access Tariffs of Local Exchange Carriers*, 8 FCC Rcd 4712, ¶ 2 (1993)). Special access is the provisioning of “private lines” that are facility or network transmission capacity that is dedicated to the use of an individual customer. *Id.* “These dedicated facilities typically ‘run directly between the end user and the [interexchange carrier’s] point of presence (POP),’ or directly between end user locations.” UNE Rebuttal Report at V-18 (citing

ILECs are abusing their market power by charging unreasonable rates that harm local and long distance competition.⁵ In addition, AT&T asks the FCC to adopt interim relief, pending the completion of this proceeding. Specifically, AT&T requests that the FCC: (1) reduce all special access rates subject to Phase II pricing flexibility to levels that would produce an 11.25% rate of return; and (2) impose a moratorium on consideration of further pricing flexibility applications pending completion of the rulemaking.⁶ Moreover, AT&T asks that the FCC “specify that access purchasers may take advantage of this interim relief without triggering any termination liabilities or other penalties in the Bell’s optional pricing plans.”⁷

DISCUSSION

AT&T claims that the FCC’s existing rules have exacerbated the market power of ILECs which has led to unreasonable rates for interstate special access. AT&T wishes to resolve this issue by having the FCC initiate a rulemaking to reform regulation of price cap ILEC rates for interstate special access services. We disagree, and contend that the FCC need not readdress this issue in light of its determination in the *Price Cap Performance Review for Local Exchange Carriers* proceeding (*Pricing Flexibility Order*).⁸

In the *Pricing Flexibility Order*, the FCC determined that it would allow ILECs greater pricing flexibility as they face increasing competition.⁹ The FCC adopted regulatory relief for ILECs that met “current market conditions and do not require a further competitive showing.”¹⁰

Pricing Flexibility Order at ¶ 8. When ILECs provide special access circuits to interexchange carriers, the ILECs use a combination of local loops and interoffice transport and typically must build those circuits from the ground up. UNE Fact Report at V-18.

⁵ AT&T Petition at 1.

⁶ *Id.*

⁷ *Id.*

⁸ *Price Cap performance Review for Local Exchange Carriers*, Fifth Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-262, 14 FCC Rcd. 14221 (rel. Aug. 27, 1999) (*Pricing Flexibility Order*).

⁹ *Id.* at ¶ 67.

¹⁰ *Id.* at ¶ 68.

The FCC adopted requirements that ILECs make “competitive showings,” or satisfy “triggers,” to demonstrate that market conditions warranted the relief.¹¹

The FCC adopted a pricing flexibility framework that relies on a two-phase approach. In order for a price cap ILEC to obtain Phase I relief, “the incumbent must show that competitors have made irreversible investments in the facilities needed to provide the service at issue, thus discouraging incumbent LECs from successfully pursuing exclusionary strategies.”¹² In order to receive Phase II relief, “which allows LECs to raise and lower rates, the incumbent must demonstrate that competitors have established a significant market presence in the provision of the services at issue.”¹³ The FCC determined that the availability of alternative providers should ensure just and reasonable rates.¹⁴

We agree with AT&T’s assertion that the FCC’s special access pricing flexibility approach as all the “makings of a great regulatory success story.”¹⁵ And now, AT&T seeks to dismantle a highly competitive market that has attracted a large number of competitors for its own personal gain. Contrary to the deregulatory intentions of the 1996 Telecommunications Act, AT&T’s Petition attempts to bring back rate regulation instead of relying on the competitive market to set just and reasonable rates. USTA disagrees with AT&T’s contention that the FCC has been “duped” by the Bells into believing that substantial competition exists in the provisioning of high capacity loops and transports which has led to reduced regulation and reliance upon market forces.¹⁶

¹¹ *Id.*

¹² *Id.* at ¶ 69.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ AT&T Petition at 3.

¹⁶ *Id.* at 2.

In the *Pricing Flexibility Order*, the FCC found that the customers for special access “are IXCs and large businesses, not residential or small business end users.”¹⁷ The largest purchasers of special access are interexchange carriers (IXCs), which use special access to transfer large amounts of traffic to their business customers.¹⁸ In addition, the FCC has concluded that long distance carriers “typically provide resale special access and private line services as part of toll service operations.”¹⁹ Not surprisingly, AT&T is an IXC in the highly lucrative large business market who seeks to use whatever possible means to increase its profits by competitively disadvantaging ILECs.

USTA agrees with the UNE Fact Report that competitive local exchange carriers (CLECs) are significant suppliers of special access service.²⁰ The FCC has determined that CLEC revenues primarily come from special access and local private services.²¹ We believe that CLECs have made significant inroads into the special access market and account for about 28-39 percent of all special access revenue, “which is significantly larger than their share of the local exchange market as a whole.”²² In addition, “CLECs have obtained fiber-based collocation in wire centers that contain a significant share of BOC special access revenues.”²³ Thus, USTA believes that AT&T has been disingenuous in its assertion that the Bell’s have “duped” the FCC into believing that competition does not exist in the provision of special access.

USTA disagrees with AT&T’s assertion that the FCC must address the special access crisis within the industry.²⁴ USTA believes that no such crisis exists within the industry and that

¹⁷ See UNE Fact Report at V18 (citing the *Pricing Flexibility Order* at ¶ 142).

¹⁸ UNE Fact Report at V-18.

¹⁹ *Id.* at V-19 (citing the *FCC, Local Telephone Competition at the Millennium* at Table 6, note **** (Aug. 2000)).

²⁰ *Id.*

²¹ *Id.* at V-20 (citing USTA, *Competition for Special Access Service, High Capacity Loops, and Interoffice Transport*, CC Docket No. 96-98, at 6-7 (FCC filed Apr. 5, 2001)).

²² *Id.* at V-20.

²³ *Id.*

²⁴ AT&T Petition at 7.

the FCC correctly instituted rules in the *Pricing Flexibility Order*, which is having the desired affect of creating pricing flexibility for special access services. ILECs have followed the parameters set forth in the FCC's *Pricing Flexibility Order* to obtain pricing flexibility via Phase I (contract tariffs) and eventually through Phase II (rate deregulation). USTA believes that the FCC's determination in the *Pricing Flexibility Order* was correct because in order for pricing flexibility to occur ILECs were required to make "competitive showings" or "satisfy triggers" to show that market conditions warranted relief. If the FCC were to grant the relief sought by AT&T it would competitively disadvantage ILECs against competitors who have established significant market presence.

In order for ILECs to deregulate special access under Phase I they must show that competitors have made irreversible investments in the facilities needed to provide the service at issue, and under Phase II, ILECs must show that competitors have established a significant market presence to raise and lower rates. The FCC requires that ILECs must show market presence of special access competitors in a geographic area, MSA. AT&T, however, believes that they need not file section 208 complaints²⁵ to address this issue, but rather that a rulemaking proceeding for the entire ILEC industry is appropriate.

USTA takes issue with AT&T over its belief that this issue requires a rulemaking proceeding.²⁶ We believe that in every geographic area that ILECs have received Phase I, and then subsequently Phase II, is factually driven and that the FCC makes its determinations based on those facts. In addition, ILECs that have sought pricing flexibility for special access were required to file a petition with the FCC. The FCC would then place the petition on Public Notice for comment, which afforded AT&T the opportunity to raise any objection that it may have in

²⁵ 47 U.S.C. § 208.

²⁶ *Id.*

regards to the ILECs petition. Moreover, the FCC granted ILEC requests that met the requirements for pricing flexibility for special access. AT&T was given an opportunity to be heard in those cases before the FCC. The FCC then ruled in accordance with the parameters set forth in the *Pricing Flexibility Order*. Thus, USTA believes that the FCC can not grant the relief sought by AT&T in this proceeding and that the proper vehicle for AT&T to raise its objections is on a case-by-case basis through section 208 complaints.²⁷

Finally, USTA believes that the interim relief that AT&T requests pending the completion of this proceeding would financially disadvantage and would be anti-competitive for ILECs. AT&T states that {R}etargeting the special access rates at an 11.25% return on an interim basis is necessary to align prices more closely with what would be expected in a competitive market (and, indeed, with what was expected when the Commission granted pricing flexibility).²⁸ USTA believes that law and equity requires that the FCC determine whether the special access rates are just through investigation, not AT&T. To have AT&T suggest that the rate for the entire nation would be 11.25% is ridiculous. AT&T seeks an interim rate that the FCC determined was reasonable for rate of return carriers three years ago, and as the FCC is well aware, much has occurred within the industry since 1999. Moreover, we believe that for the FCC to place a moratorium on ILECs who have been working towards compliance under the FCC's rules since 1999 is unjust and unreasonable. Thus, USTA contends that AT&T's interim request for relief pending completion of this rulemaking should be denied.

²⁷ 47 U.S.C. § 208.

²⁸ AT&T Petition at 39

CONCLUSION

For the reasons set forth above, USTA opposes AT&T's Petition and the interim relief sought by AT&T pending the completion of this proceeding.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION



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