

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

In the Matter of)	
)	
Federal-State Joint Conference on)	WC Docket No. 02-269
Accounting Issues)	
_____)	

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

The United States Telecom Association (USTA),¹ through the undersigned and pursuant to the Public Notice issued by the Federal Communications Commission (FCC or Commission)² and pursuant to sections 1.415 and 1.419 of the Commission’s rules,³ hereby submits its reply comments in response to the comments filed by several parties in this proceeding (*i.e.*, the comprehensive review of the Federal-State Joint Conference on Accounting Issues (Joint Conference) on regulatory accounting and related reporting requirements), who claim that the Commission has authority to implement or maintain regulatory accounting and reporting requirements solely for the benefit of the states. USTA maintains, as stated in its comments, that the Commission does not have such authority and that it must be vigilant in repealing and modifying all regulations that are no longer necessary for a federal purpose.⁴ USTA also responds to commenters who claim that there is no meaningful competition in the local telecommunications market to justify repeal or modification of the Commission’s regulatory accounting requirements. USTA maintains that these commenters simply fail to acknowledge

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 Public Notice, DA 02-3449 (rel. Dec. 12, 2002) in which the Federal-State Joint Conference on Accounting Issues solicits comment on its comprehensive review of regulatory accounting and related reporting requirements (Public Notice).
³ 47 C.F.R. §§1.415 and 1.419.

the significant amount of the facilities-based, intermodal competition for narrowband and broadband services from wireless and cable providers and providers of Internet protocol (IP) telephony and the significant penetration of competitive local exchange carriers (CLECs) into the local market through resale, use of unbundled network elements (UNEs), and their own facilities, all of which is evident based on the Commission's grant of incumbent local exchange carriers' (ILECs') Section 271 applications in the majority of states and based on state commissions' approval of numerous other pending Section 271 applications.

DISCUSSION

Several commenters argue that the Commission can implement and maintain regulatory accounting requirements simply because state regulators need or use the information the Commission obtains from those requirements. The National Association of State Utility Consumer Advocates (NASUCA) maintains that where state regulators have a need for regulatory accounting information, referring to information that exists due to requirements of the Commission, "the detriment of losing access to the information outweighs any benefit resulting from reducing the regulatory burden on the carriers."⁵ Similarly, the Public Staff of the North Carolina Utilities Commission (NCUC) states that the "FCC, as the only regulatory body possessing jurisdiction over all of the major ILECs, is uniquely positioned to prescribe national uniform accounting rules that permit *all regulators*, including the FCC, to adequately perform their oversight responsibilities."⁶ The Wisconsin Public Service Commission (WI PSC) presents another view, arguing that the "FCC will help minimize costs for the entire industry, a benefit to

⁴ See USTA Comments at 2, 14.

⁵ NASUCA Comments at 3.

⁶ NCUC Public Staff Comments at 3 (emphasis added). The NCUC is incorrect in its assessment that the FCC is the only regulatory body possessing jurisdiction over all of the major ILECs relative to accounting matters. The major ILECs are publicly traded companies and are also under the jurisdiction of the Securities and Exchange Commission.

all telecommunications consumers, if it maintains a system of accounts that reflects the needs of both federal and state telecommunications industry regulators.”⁷ Although the WI PSC acknowledges that it can establish its own regulatory accounting requirements, it continues to argue that “eliminating accounts or the entire USOA at a future date simply because the FCC believes it is not required for federal purposes may result in the elimination of the word ‘uniform’ in the acronym USOA.”⁸ The Florida Public Service Commission (FL PSC) simply states that it “believes that the Communications Act specifically allows the FCC to collect data that is used solely by the states, if it is in the public interest.”⁹ Likewise, Sprint Corporation (Sprint) also “believes that there are instances where the ‘public interest’ requires the Commission to maintain accounts used solely by the states.”¹⁰

These general statements of NASUCA, Sprint, the state commissions, and state commission staff, which advocate the authority of the Commission to implement and maintain regulatory accounting requirements that have no federal purpose but that solely benefit the states, disregard the Commission’s statutory jurisdictional authority and its previous consideration of states’ requests to implement and retain requirements that solely benefit states. As USTA emphasized in its comments, the Communications Act of 1934, as amended (Act), limits the regulatory authority and reach of the Commission to matters of interstate and foreign commerce in communication and more specifically the Act prohibits the Commission from exercising jurisdiction over intrastate communication service.¹¹ In addition, USTA noted in its comments

⁷ WI PSC Comments at 17.

⁸ *Id.* at 18.

⁹ FL PSC Comments at 4.

¹⁰ Sprint Comments at 7.

¹¹ *See* 47 U.S.C. §§151 and 152(b). *See also* USTA Comments at 13.

that the Commission has already found that if it “cannot identify a *federal need* for a regulation, . . . [it is] not justified in maintaining such a requirement at the *federal level*.”¹²

Other commenters claim that Section 220¹³ of the Act requires the Commission to implement or maintain regulatory accounting rules that will enable the Commission and the state regulators to carry out their responsibilities. WorldCom, Inc. (WorldCom) argues that “Section 11 of the 1996 Act does not compel the Commission to focus solely on whether federal regulators use particular accounts or information on a day-to-day basis. Indeed such an approach would be inconsistent with Section 220(i) of the Act, which specifically requires the Commission to ‘receive and consider’ the views of state commissions before modifying accounting rules.”¹⁴ Moreover, WorldCom argues that the “purpose of the Commission’s accounting rules is to ensure that the Commission *and state regulators* have available to them accounting information that enables them to carry out their regulatory responsibilities.”¹⁵ Likewise, AT&T Corp. (AT&T) cites to Section 220 of the Act as providing the Commission with “broad discretion to require other regulatory accounting and reporting standards to implement the goals of the Act, including the authority to adopt accounting regulations that are used primarily – or even exclusively – by states”¹⁶ and claims that “Congress contemplated a *uniform* system of accounts that would address both federal and state needs in regulating networks used to provide both

¹² USTA Comments at 14-15, citing *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting*, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286, Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, CC Docket Nos. 00-199, 97-212, 80-286, and 99-301 (rel. Nov. 5, 2001) (Phase 2 Order) (emphasis added).

¹³ See 47 U.S.C. §220. More specifically, certain commenters cite Section 220(i) of the Act, which states that the “Commission, before prescribing any requirements as to accounts, records, or memoranda, shall notify each State commission having jurisdiction with respect to any carrier involved, and shall give reasonable opportunity to each such commission to present its views, and shall receive and consider such views and recommendations.” 47 U.S.C. §220(i).

¹⁴ WorldCom Comments at 1.

¹⁵ *Id.* at 2 (emphasis added).

interstate and intrastate services.”¹⁷ AT&T specifically cites to Sections 220(a), (c)-(g), and (i)¹⁸ as the basis of its conclusion that the “Act does *not* preclude the Commission from implementing regulatory accounting measures that primarily, or even solely, benefit the states.”¹⁹

For the same reasons USTA provides in response to the comments of NASUCA, Sprint, the NCUC Public Staff, and the Wisconsin and Florida Public Service Commissions, specific statutes in the Act²⁰ and specific findings by the Commission²¹ prohibit the Commission from implementing or maintaining regulations solely for the benefit of the states. In addition, even if the claims of WorldCom and AT&T regarding the meaning of Section 220 of the Act have any validity, which USTA maintains they do not, under the principles of statutory construction, specific statutes pre-empt general statutes and Section 220 is a general statute that is pre-empted by the specific statutes of Sections 1, 2(a) and 11²² of the Act. The Commission’s specific biennial review obligations found in Section 11, trump even the requirements in Section 220(i) that the Commission consider the views and recommendations of the state commissions with regard to accounts, records, or memoranda that the Commission may prescribe. Beyond the matter of statutory construction, there is simply nothing in Section 220 that commands or authorizes the Commission to implement or maintain regulations solely, as a surrogate for state

¹⁶ AT&T Comments at 3.

¹⁷ *Id.*

¹⁸ See 47 U.S.C. §§220(a), (c)-(g), and (i). Section 220(a)(1) permits the Commission “in its discretion, [to] prescribe the forms of any and all accounts, records, and memoranda to be kept *by carriers subject to this Act . . .*” 47 U.S.C. §220(a) (emphasis added). Section 220(a)(2) requires the Commission to “prescribe a uniform system of accounts for use by telephone companies.” 47 U.S.C. §220(a)(2). Sections 220(c)-(g) provide the Commission with the authority to monitor and enforce carriers’ compliance with the requirements of Section 220(a). For a description of the provision of Section 220(i), see *infra* note 13.

¹⁹ AT&T Comments at 8.

²⁰ See *infra* n. 11.

²¹ See *infra* n. 12.

²² See 47 U.S.C. §§151, 152, and 161(a)(1) and (2), which requires the Commission to “review all regulations issued under this Act” and to “determine whether any such regulation is no longer necessary in the public interest.” Consistent with the jurisdictional authorizations and limitations set forth in Sections 1 and 2(a) of the Act, the Commission does not have authority to implement and maintain regulations that are solely for the benefit of the states.

regulatory agencies, for the benefit of the states. Finally, with regard to the issue raised by the Joint Conference about the Commission's authority to maintain accounts used solely by the states in light of the Commission's Section 11 biennial review obligations, consideration of Section 220(i) is just not pertinent to this issue. Section 220(i) directs the Commission to consider state commission views and recommendations when the Commission is *prescribing* regulatory accounting requirements. Yet, Section 11 does not involve *prescribing* regulations; it involves *repeal* and *modification* of regulations.

Finally, three of the commenters in this proceeding plainly state or infer that ILECs' local market power has not been eliminated by competition and even where competition does exist, it is not meaningful to justify repeal or modification of the Commission's regulatory accounting requirements pursuant to Section 11 of the Act.²³ These claims are simply not true. ILECs face growing intermodal competition from carriers that use cable, wireless, and IP facilities. ILECs also face growing competition from CLECs that use UNEs and their own facilities. Notably, in December 2002, the Commission released data on the growth of local telephone competition in its report "Local Telephone Competition: Status as of June 30, 2002."²⁴ In the Local Competition Report, the Commission states that CLECs now serve 21.6 million switched access lines, which is a 10% increase from the first half of 2002, and that these nearly 22 million lines constitute about 11.4% of the 189 million total switched access lines, which is an increase from 9% a year earlier.²⁵ Of these CLEC lines, about 50% of service is provided over UNEs and

²³ See AT&T Comments at 10, NCUC Public Staff Comments at 4, and NASUCA Comments at 3 and 6.

²⁴ See "Local Telephone Competition: Status as of June 30, 2002," Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, www.fcc.gov/wcb/stats (Dec. 2002) (Local Competition Report).

²⁵ See News Release, "Federal Communications Commission Releases Data On Local Telephone Competition (Dec. 9, 2002) (Local Competition News Release).

about 29% is provided over CLEC's own facilities.²⁶ The Commission also states that end-user customers are obtaining local telephone service from wireless and cable facilities (*i.e.*, there are 129 million mobile wireless telephone service subscriptions and 2.6 million cable-telephony lines).²⁷ Corresponding to the fact that local markets are open to competition and that competitive services are available, Regional Bell Operating Companies (RBOCs) have applied for and obtained authority to provide interLATA services, pursuant to Section 271 of the Act,²⁸ in 35 states of the 50 states and the District of Columbia. In addition, there are eight Section 271 applications pending, of which several have already been approved by state commissions. These numbers are not insignificant; without a doubt, there is meaningful competition for local services. Accordingly, the Commission should not reverse the deregulatory efforts of its Phase 2 Order and the Commission should continue with its deregulatory efforts in Phase 3 of that same proceeding. The Commission must continue to repeal and modify its regulatory accounting requirements as competition grows.

CONCLUSION

The Joint Conference should not recommend reinstatement or reconsideration by the Commission of the regulatory accounting requirements that it has already streamlined and eliminated. Any such recommendation would be contrary to the deregulatory goal of the Act, which must be fulfilled with the continuing growth of competition. Rather, the Joint Conference should recommend to the Commission that it continue to streamline and eliminate regulatory accounting requirements with the recommendations USTA made in its comments regarding

²⁶ *See id.*

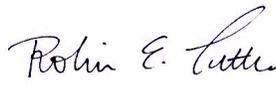
²⁷ *See id.*

²⁸ *See* 47 U.S.C. §271.

certain matters addressed in the Commission's Phase 2 Order and that it continue to move forward with additional deregulatory efforts in Phase 3 of the same proceeding.

Respectfully submitted,

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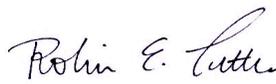
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February 19, 2003

CERTIFICATE OF SERVICE

I hereby certify that a copy of USTA's Reply Comments were served on this 19th day of February 2003 by electronic delivery or first class, postage prepaid mail to the persons listed below.

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