

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the matter of)	
)	
Petition of AT&T Inc. for Forbearance)	
under 47 U.S.C. § 160(c) With Regard To)	WC Docket No. 06-120
Certain Dominant Carrier Regulations for)	
In-Region, Interexchange Services)	
)	

COMMENTS OF ACS OF ANCHORAGE, INC.

ACS of Anchorage, Inc. (“ACS”) hereby submits these comments in support of the petition filed by AT&T, Inc. (“AT&T”) requesting forbearance from Commission rules that subject independent local exchange carriers (“LECs”) offering in-region, interexchange services to the equal access scripting requirement and separate affiliate requirements.¹ ACS urges the Commission to grant such relief not only to AT&T but to all LECs.

I. INTRODUCTION AND SUMMARY

ACS agrees with AT&T’s assessment of the state of competition in the market for interexchange services and for service bundles that include both local exchange and interexchange services. The intense competition throughout these markets justifies forbearance from the equal access scripting requirement and independent LEC separate affiliate requirements.² Competition for voice services, including local exchange and interexchange service, stems from not only traditional wireline providers, but also wireless and Internet-based providers. The equal access scripting requirement, which obligates LECs to list all competitive long-distance providers when a customer orders service, is rendered obsolete by the prevalence

¹ *Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160(c) With Regard To Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, Petition of AT&T for Forbearance, WC Docket No. 06-120 at 36-37 (filed June 2, 2006) (“*AT&T Petition*”).

² *See AT&T Petition* at 11-24.

of bundled service packages that include competitively-priced local and long-distance services.³ Likewise, independent LEC separate affiliate requirements are no longer necessary due to the fierce competition for long-distance services. Separate affiliate requirements are a legacy of the Bell system divestiture and now only serve to create operational inefficiencies. Based on widespread and well-established competition in the long-distance service market, the forbearance criteria are satisfied with respect to all independent LECs subject to these rules. The Commission has ample authority under Section 10 of the Communications Act of 1934, as amended (the “Act”) to extend forbearance relief to all independent LECs.

II. THE EQUAL ACCESS SCRIPTING REQUIREMENT NO LONGER SERVE ITS INTENDED PURPOSE

ACS urges the Commission to grant AT&T’s requested relief from the equal access script requirement for all LECs. AT&T states that these requirements obligate Bell Operating Companies (“BOCs”) with an interexchange service affiliate to read new customers a list of all available long distance providers.⁴ However, the Commission extended the equal access scripting procedure to independent LECs in 1985.⁵ This legacy scripting requirement was preserved by Section 251(g) of the Act, which carried forward any equal access requirement that applied to a carrier prior to the adoption of the 1996 Act until the Commission explicitly supersedes the requirement.⁶ Because the Commission has not revisited the scripting

³ *Id.* at 37.

⁴ *Id.*

⁵ *MTS and WATS Market Structure Phase III*, Report and Order, 100 F.C.C.2d 860 ¶ 59 (1985).

⁶ 47 U.S.C. § 251(g); *see also*, *Regulatory Treatment of LEC Provision of Interexchange Services Originating In The LEC’s Local Exchange Area and Policy and Rules Concerning the Interstate Interexchange Marketplace*, Second Report and Order and Third Report and Order, 12 FCC Rcd 15756 at ¶ 172 (1997) (“*LEC Classification Order*”).

requirement, BOCs and independent LECs are still required to comply with the outdated obligation.

The scripting requirement is no longer relevant for any LECs due to the rampant competition from wireline and intermodal carriers competing for long-distance customers on the basis of bundled service packages. Consumers today are made aware through a wide range of advertising sources that they have several choices in long distance service providers, both from local and national carriers. In Alaska, for example, ACS offers service bundles that include local and long-distance service in order to remain competitive with its primary competitor, General Communication Inc. (“GCI”), which offers a bundle that also includes cable television and broadband Internet services.⁷ Further, ACS considers the prices and capabilities of wireless and Internet services in determining its pricing and marketing strategy for its local exchange service and bundles. Indeed, the Commission has acknowledged that many customers choose a CMRS carrier based on the long-distance calling package offered.⁸ Thus, enforcement of the scripting requirement is not necessary to protect consumers.⁹ Because CMRS service plans include local and long-distance minutes for a single rate, many customers now expect other providers to bundle long-distance service with the local service of their choice. As a result, customers are sometimes confused when they are read a list of long-distance carriers.

Additionally, the scripting requirement is unnecessary to ensure that the charges, practices, classifications, or regulations of the independent LEC are just and reasonable and are

⁷ See GCI website at <http://www.gci.com/forhome/promos/ultimate/ultimate.htm>.

⁸ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 05-71, Tenth Report, FCC 05-173 at ¶¶ 197-8 (rel. Sept. 30, 2005).

⁹ See 47 U.S.C. § 160(a)(2).

not unjustly or unreasonably discriminatory.¹⁰ The Commission has determined that “competition is the most effective means of ensuring” this prong is met.¹¹ The fierce competition that AT&T describes in the market for interexchange services is not limited to AT&T’s service areas. For instance, in Anchorage, a market with less than 200,000 access lines, there are three interexchange carriers (“IXCs”), three major wireless carriers (in addition to wireless resellers), and numerous Internet service providers. As discussed above, IXCs, wireless service providers, ISPs and other providers of long-distance service often offer bundled service packages that include local service and thus, are not dependent on the LEC to gain access to the customer. Given the ultra-competitive market for long-distance services, no LEC can exercise market power to raise long-distance rates or prevent customers from selecting unaffiliated long-distance providers. Even if a customer does not know about a particular competitor IXC, the intense competition among LECs, CMRS carriers and now VoIP providers for both a customer’s local and their long-distance business ensures the customer will enjoy the benefits of competitive pricing. Lifting the requirement to read a list of competing long-distance carriers when a customer orders a service from the LEC will not change this dynamic.

Finally, forbearance from the scripting requirement is in the public interest because LECs will be better able to market bundles of services and compete in the long-distance market more efficiently.¹² The prevalence of bundled services packages offered by incumbent

¹⁰ *See id.* at § 160(a)(1).

¹¹ *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 USC § 160(c)*, 19 FCC Rcd 21496, FCC 04-254, at ¶ 24 (Oct. 27, 2004) (“*Verizon Petition*”).

¹² 47 U.S.C. § 160(a)(3).

LECs (“ILECs”), competitive LECs, wireless and other providers today are incongruous with a scripting requirement that applies to only one competitor in the market – the ILEC.¹³

III. THE COMMISSION SHOULD FORBEAR FROM ENFORCING THE INDEPENDENT LEC SEPARATE AFFILIATE REQUIREMENTS WITH RESPECT TO ALL LECS

ACS also urges the Commission to forbear from applying the separate affiliate requirements on independent LECs.¹⁴ When the Commission adopted rules extending the separate affiliate requirements to independent LECs, it recognized that these smaller carriers may face greater burdens than BOCs in maintaining separate operations for interexchange provider affiliates. As such, the Commission did not require the more stringent structural separation requirements imposed on the BOCs under Section 272 of the Act.¹⁵ However, while the BOC structural separation requirements under the Act sunset after three years from the date on which approval to provide interLATA services is granted,¹⁶ and thus already have been lifted for BOCs in almost all states, the separate affiliate requirement applicable to non-BOC LECs is not subject to the statutory sunset provision.¹⁷ The Commission explicitly declined to adopt an automatic

¹³ See *Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, 18 FCC Rcd 15090 at ¶¶ 31, 33 (2003) (although the Commission did not decide the issue, a number of parties commented that regulatory parity requires wireless eligible telecommunications carriers (“ETCs”) to provide equal access).

¹⁴ See *AT&T Petition* at 36; see also, 47 C.F.R. § 64.1903.

¹⁵ See *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC’s Local Exchange Area*, CC Docket No. 96-149, Second Order on Reconsideration and Memorandum Opinion and Order, FCC 99-103 at ¶ 12 (rel. June 30, 1999) (“*LEC Classification Second Order on Reconsideration*”) (finding that the level of separation imposed by the *Competitive Carrier Fifth Report and Order*, 98 FCC 2d 1191 (1984), “would ‘address [the Commission’s concerns regarding] cost shifting and discrimination, but [did] not appear to be overly burdensome.’”).

¹⁶ 47 U.S.C. § 272(f)

¹⁷ *LEC Classification Second Order on Reconsideration* at ¶ 15.

sunset provision for separation requirements applicable to independent LECs.¹⁸ Instead, the Commission stated its intention to commence a proceeding three years from the date of the *LEC Classification Order* to determine whether competition in the local exchange and exchange access markets justified removal of such requirements.¹⁹ The Commission began this inquiry in 2002 but never concluded the proceeding.²⁰

As discussed above, the level of competition in the market for interexchange services is sufficient to prevent ILECs from exerting market power in this market. Therefore, the separate affiliate requirements are unnecessary to protect consumers or to ensure that the charges, practices, classifications, or regulations of the independent LEC are just and reasonable and are not unjustly or unreasonably discriminatory. Moreover, forbearing from the enforcement of the separate affiliate requirements will allow independent ILECs to operate more efficiently. For example, ACS maintains separate transmission and switching facilities for its LEC and interexchange carrier affiliates, in accordance with the Commission's separate affiliate rules.²¹ However, the inability to use excess capacity on the LEC switches for interexchange traffic, and vice versa, creates inefficiencies in ACS's operations and resource allocation. ACS's competitor, GCI, has greater market share than ACS in both the interexchange market and the Anchorage local exchange market, yet it is not required to maintain such duplicate facilities. The public interest will benefit from the lower costs and more efficient competition that would result

¹⁸ *Id.* at ¶ 34.

¹⁹ *Id.*

²⁰ *See Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, CC Docket No. 02-39, Notice of Inquiry, FCC 02-57 (rel. Feb. 28, 2002).

²¹ *See* 47 C.F.R. § 64.1903(a)(2).

from the Commission's grant of forbearance from the separate affiliate requirement with respect to all independent LECs.

IV. NEITHER THE STATUTE NOR THE RULES REQUIRE THAT RELIEF BE LIMITED TO THE PETITIONER

The language of the statute allows the Commission to forbear broadly from the requirements of the Act. Specifically, Section 10(a) of the Act provides that “the Commission shall forbear from applying any regulation or any provision of this Act to *a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services*, in any or some of its or their geographic markets,” if the criteria for forbearance have been met.²² The Commission's ability, and its duty, to forbear is not limited to the petitioner or a particular carrier.

Commission precedent supports the use of Section 10 authority to forbear from applying particular provisions of the Act across an entire class of carriers, regardless of whether any of the carriers filed a petition. In its *Detariffing Order*, for example, the Commission concluded, pursuant to the requirements of Section 10, that it must forbear from applying the Act's tariff filing requirements to the interstate, domestic, interexchange services offered by nondominant interexchange carriers.²³ Although some interexchange carriers did not desire forbearance, the Commission determined that it had authority under Section 10 to refuse to permit any nondominant interexchange carriers to file tariffs for interstate, domestic,

²² 47 U.S.C. §160(a) (emphasis added).

²³ *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 245(g) of the Communications Act of 1934*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730 ¶ 77 (1996) (“*Detariffing Order*”).

interexchange services. Thus, the Commission ordered that all nondominant interexchange carriers cancel all such tariffs, and prohibited all such future filings.²⁴

Finally, the Commission's requirements under Rule 1.53 do not foreclose a grant of relief to all LECs of the inbound call scripting requirement and the separate affiliate requirement. Section 1.53 requires that any petition for forbearance under Section 10(c) of the Act be filed as a separate pleading and be captioned as a petition for forbearance.²⁵ The Commission indicated when it adopted the rule that its purpose was to ensure adequate notice and opportunity to consider the record. The Commission stated that the purpose of this rule is to "help ensure that the Commission and all interested parties have the opportunity to consider fully the issues raised in petitions for forbearance within the statutory period for Commission consideration of such petitions."²⁶ Thus, the rule is driven by the limited time allowed by the statute for consideration of forbearance petitions. So long as the original petition is properly captioned, as it was in the case of the AT&T Petition, there can be no argument that the Commission was unable to identify the petitions or consider these requests within the statutory timeframe.²⁷ However, the rule in no way limits the scope of the Commission's authority to forbear under Section 10 of the Act to petitioning parties.

²⁴ *Id.*

²⁵ 47 C.F.R. § 1.53; *Adoption of Section 1.53 of the Commission's Rules, Memorandum Opinion and Order*, 15 FCC Rcd 1140 ¶ 1 (2000).

²⁶ *Id.*

²⁷ *See id.* ¶ 3.

V. CONCLUSION

For the reasons set forth above, ACS respectfully requests that the forbear from applying the equal access scripting requirement and separate affiliate requirements as to AT&T and to all independent LECs, including ACS. The Commission has ample authority under Section 10 to expand the scope of AT&T request for forbearance to all similarly situated LECs.

Respectfully submitted,

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