

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

In the Matter of)
)
Notice of Inquiry Concerning a Review of) CC Docket No. 02-39
the Equal Access and Non-Discrimination)
Obligations Applicable to Local Exchange)
Carriers.)

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

The National Association of State Utility Consumer Advocates (“NASUCA”)¹ submits these reply comments in response to the request of the Federal Communications Commission (“FCC” or “Commission”) to refresh the record on “whether there [is] a continued need for the equal access and nondiscrimination obligations contained in antitrust decrees and carried forward by section 251(g) of the Communications Act of 1934, as amended (Act).”² Only nine comments were filed, including NASUCA’s.

¹ NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. See, e.g., Ohio. Rev. Code Chapter 4911; 71 Pa.Cons.Stat. Ann. § 309-4(a); Md. Pub.Util.Code Ann. § 2-205; Minn. Stat. § 8.33; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

² DA 07-1071 (“Public Notice”) at 1, citing *Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, Notice of Inquiry, 17 FCC Rcd 4015 (2002).

The comments saying there is no longer a need for the equal access requirements came from mammoth carriers who would like nothing better than to be able to steer customers only to their own long distance affiliates,³ their association,⁴ and a carrier that seeks to preserve its right to do so.⁵ Opposition to the withdrawal of the requirements came from NASUCA; the New Jersey Division of Rate Counsel (“Rate Counsel”), a NASUCA member; and a competitive local and long distance carrier.⁶

AT&T is the single largest local and long distance carrier in the nation. AT&T says that “[c]ompetition in the telecommunications market is flourishing,”⁷ that “competitive options for telecommunications services have increased tremendously,”⁸ and that “customers are bombarded by telemarketers and advertising from these providers seeking to sell bundles of telecom, video and Internet services.”⁹

Based on this, AT&T says:

It is beyond belief that in today’s market, where customers are choosing not just between long distance carriers but between a myriad of providers operating over a variety of platforms, that

³ See, e.g., comments by Alaska Communications Systems, Inc. (“ACS”); AT&T Inc. (“AT&T”); Verizon. Embarq Corporation (“Embarq”) addresses only the the requirement that some incumbent local exchange carriers provide long distance services through a separate affiliate. See Embarq Comments at 1. NASUCA will not respond on this issue.

⁴ United States Telecom Association (“USTA”). USTA’s procedural suggestions (USTA Comments at 4-5), which would place the burden of continuing the equal access requirements on those who support equal access, turn the fundamental concept of proof (including the burden contained in the statutory forbearance review) on its head.

⁵ Time Warner Cable (“Time Warner”). Time Warner states (Time Warner Comments at 8) that “the imposition of equal access requirements imposes needless costs and burdens on selected competitors....” It is truly unusual for one company to be so solicitous of its competition.

⁶ General Communications, Inc. (“GCI”).

⁷ AT&T Comments at 1.

⁸ Id.

⁹ Id. at 2; see also Verizon Comments at 2-4.

customers don't know that they have a choice of long distance providers.¹⁰

Likewise, as Verizon correctly points out, "service providers of every variety -- wireline, cable, wireless and VoIP alike -- now all routinely offer distance-insensitive calling plans...."¹¹ AT&T's "solution" to this "problem," however, would be to remove the requirements that local carriers like AT&T give their customers access to long distance carriers other than AT&T. Under those circumstances, it would hardly make a difference that AT&T was no longer required to tell its customers they have a choice of long distance carriers, **because there would be no choice.**¹² AT&T's local customers, like Time Warner's local customers¹³ or the customers of wireless carriers, would have no choice for their long-distance calling.

Time Warner's alternative proposal is to exempt competitive providers of bundled services from the equal access requirements.¹⁴ In that case, why would any carrier continue to provide unbundled services, given the clear financial advantage to the carrier of requiring all its customers to subscribe to its own or its affiliates' services?

The fact that "customers are able to avail themselves of bundled local and long-distance service packages offered by BOCs, CLECs, wireless carriers, cable providers and even VoIP providers"¹⁵ does not mean that customers should be **required** to subscribe to such bundles. Where the choice remains to subscribe to a different carrier

¹⁰ Id.

¹¹ Verizon Comments at 5.

¹² So long as that choice exists for ILEC customers, it is crucial that they continue to be informed about it.

¹³ Time Warner Comments at 9.

¹⁴ Id. at 10.

¹⁵ AT&T Comments at 5.

for local service than for long-distance service -- that choice should be preserved. And, indeed, where the possibility of such choice remains meaningful, NASUCA would argue that similar requirements should be extended to other providers such as CLECs, wireless carriers and cable providers.¹⁶ As the Rate Counsel states, “The FCC should ... expand [the equal access and non-discrimination requirements] to all providers of voice in order to protect consumers and their right to choose the services they want to purchase.”¹⁷

If the Commission accepts Verizon’s position that there is only “a single ‘any distance’ market for communications services that includes both distance-insensitive services as well as any stand-alone offerings,”¹⁸ then the Commission will be condemning those consumers who do not want to buy a bundle of local and long distance service to purchasing a product that does not meet their needs yet is historically significant and technically feasible. This is not in consumers’ (or the general public) interest.

Verizon states that “under current market conditions, there is no plausible argument that traditional wireline carriers could use their local networks to dominate the provision of voice long distance service (e.g., by favoring their own long distance operations....).”¹⁹ Yet in the absence of the equal access and non-discrimination requirements, that is precisely what would happen. In order to seek an alternative to the long-distance service provided by their traditional wireline carrier, customers would be

¹⁶ “Nomadic” VoIP may not support such a distinction.

¹⁷ Rate Counsel Comments at 5. Time Warner’s assertion that the Federal-State Joint Board on Universal Service noted that equal access requirements “are best read as applying only to incumbent carriers” (Time Warner Comments at 2) confuses the Joint Board’s recognition of the distinction drawn by the Commission with advocacy for that difference.

¹⁸ Verizon Comments at 4.

¹⁹ Id. at 8.

required to switch platforms **including** their local service (i.e., with a wireless or cable telephony subscription) or would have to get that service **in addition** to the wireline service. Again, such forced choices do not meet the public interest.

USTA states that “[a]fter decades of marketing, American consumers know they may choose their long distance providers.”²⁰ This supposedly makes the requirement that local carriers inform consumers of this right no longer necessary. Yet if the requirement is eliminated, then consumers would have to fight with their local carriers, insisting on the right to choose a long-distance carrier in the face of telephone company denials and obfuscation.²¹

USTA says that the purpose of the equal access and nondiscrimination provisions of the consent decrees was to ensure that the divested BOCs did not abuse their power to disadvantage competitors of [the old] AT&T.”²² USTA probably needs to be reminded that this was all supposed to be for the benefit of consumers. Eliminating the equal access and nondiscrimination provisions would harm consumers, by depriving them of choice. Likewise, eliminating the requirement that local carriers inform their customers of the right to choose will effectively kill that right. These changes should not be made.

Rate Counsel notes that, despite the fact that many consumers have purchased bundles:

[t]here are significant numbers of local exchange customers who do not want or need to purchase bundles of services. Customers who make few toll and long distance calls still require the ability to

²⁰ USTA Comments at 6.

²¹ One could imagine the spiel: “Oh, no, we’re not required to let you get service from X company... and even if we were, our service is such a better deal!”

²² USTA Comments at 7-8; see also Time Warner Comments at 5.

select the toll and long distance carriers that offer them the best value.²³

But consumers who make many long-distance calls also deserve the ability to select the carrier that offers them the best value. The equal access requirements should be retained.

Respectfully submitted,

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²³ Rate Counsel Comments at 2.