

December 22, 2008

Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Written *Ex Parte* - Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135

Dear Ms. Dortch:

All American Telephone, Audiocom, LLC, Aventure Communication, Baraga Telephone Company, FBN Indiana, Inc., Free Conferencing Corp., Global Conference Partners, and Tekstar Communications, Inc., file this letter in response to the November 25, 2008, *ex parte* letter of AT&T Services, Inc., and the Rural Independent Competitive Alliance (“RICA”) in the above-referenced dockets (“November 25th Letter”). By the November 25th Letter, AT&T acknowledges, as it must, the validity of rural carrier practices under current FCC precedent and access tariffs. AT&T’s requests for rule changes along with a prospective declaratory ruling consistent with such proposed rulemaking changes can only confirm the underbelly of AT&T’s “traffic pumping” allegations: AT&T and other IXC’s have illegally refused to pay the LECs’ terminating access charges owing and valid under current FCC regulations and FCC access tariffs. If AT&T (and other IXC’s) believed that the LEC tariffs currently being billed were not legal or that the practice of charging were patently unlawful, they would have simply brought an FCC complaint to remedy those matters. Instead, they have refused to pay while at the same time trying to get the FCC to alter the LEC tariffing rules. A reasonable person can only conclude from this action that AT&T knows the charges owed under the LEC tariffs are legitimate, but AT&T just does not want to pay these LECs even though AT&T collected money for these toll calls from AT&T end users.

As it considers prospective rulemaking changes to reform permissible LEC access charge rates and practices, the Commission must first act to address the IXC’s illegal refusal to pay valid terminating LEC access charges, an illegal practice that has persisted without abatement for more than a year.¹ Indeed, the Commission’s 2007 *Call Blocking Order* admonished the IXC’s to cease illegal “self help” action on these very matters, but the IXC’s have simply shifted from one

¹ *Ex Parte* Letter of All American Tel. Co., *et al.*, to FCC Chairman Kevin Martin, *et al.*, WC Dkt. No. 07-135 (Filed Aug. 15, 2007) (requesting FCC declaratory ruling that IXC self-help in the form of refusal to pay LEC access charges owing violates the Communications Act).

illegal practice (call blocking) to another (refusal to pay access charges).² These “self help” activities of AT&T and other IXCs not only violate Title II of the Communications Act,³ but also openly flaunt the Commission’s authority to regulate the intercarrier compensation process in a manner that assures all carriers, including the largest IXCs, truly respect and follow FCC rules and precedent. The fact that these IXCs actively press the FCC for rulemaking changes while they simultaneously maintain a widespread practice of illegal self help now cannot be overlooked or condoned by the FCC.

The undersigned companies believe that a reasonable solution addressing access stimulation issues can be achieved on an industry-wide basis, and that some promising proposals have already emerged. AT&T’s particular approach advocated in the November 25th Letter, however, is both illegal and unworkable. The undersigned companies are ready and willing to participate in timely and constructive manner to craft reasonable and prospective rulemaking changes to permissible LEC access charge rates and practices. The IXC illegal self-help, however, makes such constructive progress impossible.

Further, to resolve the IXCs’ grievances regarding the rural LEC rates in a manner that ignores and acquiesces to the IXCs’ ongoing illegal self-help would send a clear signal to all industry players and especially the largest IXCs: the refusal by the most powerful carriers to pay access charges required under the FCC rules that the carriers’ do not favor will be tolerated by the FCC. Indeed, allowing the current IXC no-pay practice to continue blocks the ability to achieve a reasonable long-term solution since the IXCs have little reason to obey any intercarrier compensation rules, current or proposed, not suiting their immediate economic interests. The public interest, however, demands Commission action that ends this open and notorious illegal self-help and sends an unequivocal message that carrier’ refusals to pay intercarrier compensation owed is unacceptable. Once this matter is resolved, new rules can establish a framework for LECs, IXCs, and independent conference service providers to provide service to the public in a manner that promotes efficient interconnection, competitive services, and the interests of all consumers.

² *Establishing Just and Reasonable Rates for Local Exchange Carriers, Declaratory Ruling and Order*, 22 FCC Rcd. 11629, ¶1 (2007)(“carriers that contend that the access charges of a LEC are unreasonable should use these mechanisms [of informal and formal complaints] to seek relief and may not engage in self help actions . . .”).

³ *MGC Comm. v. AT&T*, 14 FCC Rcd 11647, ¶27 (1999) (“AT&T’s refusal to pay for the originating access service that it has received since August 22, 1998, amounts to impermissible self-help and a violation of section 201(b) of the Act”); *Business WATS, Inc. v. AT&T*, 7 FCC Rcd 7942, ¶2 (1992) (“a customer . . . is not entitled to the self-help measure of withholding payment for tariffed services duly performed but should first pay, under protest, the amount allegedly due and then seek redress if such amount was not proper . . .”).

For all these reasons, the FCC should issue a Declaratory Ruling, consistent with its prior rulings, that the IXCs' ongoing self-help violates the Communications Act, and cannot be used as a means of contesting access charges. Consistent with the Commission's *ex parte* rules, one copy of this letter is filed today in each of the above-referenced dockets.

Sincerely,

_____/s/
David Goodale
President
ALL AMERICAN TELEPHONE
COMPANY, INC.

_____/s/
Mark H. Taylor
President
FBN INDIANA, INC.

_____/s/
Theodore Shpack
Manager
AUDIOCOM, LLC

_____/s/
David Erickson
President
FREE CONFERENCING CORPORATION

_____/s/
James McKenna
CEO
AVENTURE COMMUNICATION
TECHNOLOGY, L.L.C.

_____/s/
Miles Arnone
Chairman of the Board
GLOBAL CONFERENCE PARTNERS

_____/s/
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_____/s/
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