

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

In the Matter of )  
 ) WC Docket No. 08-225  
Petition of the United States Telecom ) DA 09-1816  
Association for Waiver From Application of )  
the Equal Access Scripting Requirement )

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION  
REPLY COMMENTS**

The National Telecommunications Cooperative Association (NTCA)<sup>1</sup> responds to the initial comments filed September 11, 2009,<sup>2</sup> regarding the Federal Communications Commission's (Commission's or FCC's) August 14, 2009 Public Notice<sup>3</sup> seeking comment on the United States Telecom Association (USTA)'s November 10, 2008 petition for USTA's small and mid-sized carrier members from the Equal Access Scripting Requirement (EASR).<sup>4</sup> The EASR requires certain small and mid-sized wireline incumbent local exchange carriers (ILECs), including NTCA wireline members, to inform new exchange service consumers that

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<sup>1</sup> NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents over 585 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

<sup>2</sup> Silence on any positions raised by parties in these proceedings connotes neither NTCA's agreement nor disagreement with their positions or proposals.

<sup>3</sup> *Pleading Cycle Established for Comment on Petition of United States Telecom Association for Waiver From Application of the Equal Access Scripting Requirement*, WC Docket No. 08-225, DA 09-1816, Public Notice (rel. Aug. 14, 2009) (Public Notice).

<sup>4</sup> The Commission's Public Notice also characterizes the Petition as a request for forbearance as well as a waiver. Public Notice, p. 1. Cincinnati Bell, CenturyLink, Frontier, Iowa Telecom, Windstream, and the Minnesota Independent Companies accurately demonstrate in their comments that the forbearance requirements under Section 10 of the Telecommunications Act have been met. Cincinnati Bell Comment, p. 7; CenturyLink *et al.* Joint Comments, p. 16; Minnesota Independent Companies Comment, p. 5.

they have a choice of wireline long distance providers. Large wireline carriers, wireless, cable and VoIP providers are not subject to the EASR.

The Commission should grant USTA's Petition because the EASR reflects an antiquated approach to consumer information disclosure on available long distance and "all-distance" services, and because not all long distance service providers are subject to the EASR. In granting the Petition, the Commission should exert its waiver authority or its forbearance authority to remove the EASR from all ILECs, not just those listed in the Petition. Many commenters agree.<sup>5</sup>

## **I. BACKGROUND.**

The EASR, mandated in 1983 and preserved in 47 U.S.C. § 251(g), requires small and mid-sized wireline incumbent local exchange carriers (ILECs), including NTCA wireline members, to inform new exchange service consumers that they have a choice of long distance providers. As noted in the Petition, the EASR was an outgrowth of the Modified Final Judgment (MFJ) in the structural separation of AT&T.<sup>6</sup> The EASR also requires the ILECs to read a randomized list of available stand-alone wireline long distance providers.

AT&T and the other Bell Operating Companies (BOCs) and their ILEC affiliates, for example, were awarded EASR relief as part of the Commission's Section 272 Sunset Order:

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<sup>5</sup> Joint Comments of the National Exchange Carrier Association (NECA), the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), the Eastern Rural Telecom Association (ERTA), and the Western Telecommunications Alliance (WTA) (NECA *et al.* Joint Comments), p. 1; the Independent Telephone & Telecommunications Alliance (ITTA) Comments, p. 1; Cincinnati Bell Telephone Company (Cincinnati Bell) Comment, p. 2; Time Warner Cable Comment, p. 1; the Minnesota Independent Coalition Comment, p. 1; ACS Local Companies Comment, p. 1; Joint Comments of CenturyLink, Frontier, Iowa Telecom, and Windstream (Century Link *et al.* Joint Comments), p. 2; and Hawaiian Telecom Comment, p. 1.

<sup>6</sup> Petition, pp. 1-2, 5.

In the *Section 272 Sunset Order*, we grant the BOCs and their independent incumbent LEC affiliates relief from the EA Scripting Requirement.<sup>7</sup> This relief reflects our expert policy judgment regarding the appropriate relief from the EA Scripting Requirement balanced against the competing public interest concern.

Section 251(g), which now preserves the EASR for non-BOC LECs (small and mid-sized ILECs), states as follows:

**g) Continued enforcement of exchange access and interconnection requirements -** On and after February 8, 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding February 8, 1996, under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after February 8, 1996. During the period beginning on February 8, 1996, and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

Wireless, cable and VoIP providers are not obligated under the EASR, nor does the EASR require ILECs to list wireless, cable or VoIP providers of long distance services. It is these inequities and distortions that USTA's Petition seeks to redress.

## **II. THE COMMISSION SHOULD GRANT THE USTA PETITION.**

The EASR was imposed at a time in the telecommunications industry's history when emerging interexchange carriers, such as MCI and Sprint as well as resellers, were trying to compete against the Bell companies on equal footing for long distance (interexchange) customers. A consumer seeking new service, at that time, would first contact a local exchange carrier (LEC) to establish local service. Typically, then the LEC would ask if the consumer wanted to sign up for the LEC's long distance service offering as well. The incumbent LEC

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<sup>7</sup> *In the Matter of Petition of AT&T Inc. for Forbearance Under 47 USC Section 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket No. 06-120, FCC 07-160, Memorandum Opinion and Order (rel. Aug. 31, 2007), ¶ 8.

may have had market power and no requirement to disclose the existence of any nascent competition. The MFJ changed this scenario by requiring LECs to disclose that new customers had an “equal access” choice of long distance provider, and by requiring LECs to read a randomized list of stand-alone wireline long distance carriers who could offer service to the new customer.

Today’s long distance market reflects a different scenario, reflecting the development of bundled services and “all distance” offerings. USTA correctly characterizes the EASR as creating “market-place distorting effects” while Time Warner Cable succinctly labels the EASR as “anachronistic.”<sup>8</sup> NECA and other commenters agree with NTCA that the long distance, bundled service and “all distance” markets, both urban and rural, have drastically changed since the MFJ.<sup>9</sup> The EASR listing is no longer a cost-effective consumer disclosure requirement because not all long distance providers are required to update and provide the list to new subscribers and because listing only wireline providers will omit segments of the competition. The Commission should recognize that the need for the EASR has passed.

**A. The EASR Reflects an Antiquated Approach to Consumer Information Disclosure on Available Long Distance Services.**

Times have changed in the 25+ years since the MFJ, and the Commission should review its perspective on the EASR to reflect the currently competitive long distance industry. As in the case of AT&T, Qwest and Verizon, the balance of continued regulation against the competing public interest shows that the EASR is no longer needed. Stand-alone wireline providers are no longer the only source of long distance services. Now cable providers, wireless providers, and VoIP providers offer stand-alone and bundled long distance services to

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<sup>8</sup> Petition, p. 3; Time Warner Cable Comment, p. 2.

<sup>9</sup> NECA *et al.* Joint Comments, p. 2; ITTA Comment, p. 2; Cincinnati Bell Comment, p. 2.

carriers.<sup>10</sup> Small and mid-sized ILECs who still bear the burden of the EASR spend time and resources training their customer service representatives, scouring the Internet and other sources for emerging wireline carriers, and preparing lists that, following the EASR mandate, intentionally omit wireless, cable and VoIP providers of long distance services. This regulatory burden on small and mid-sized carriers, especially small rural ILECs, reaps disproportionately little benefit to consumers. Cincinnati Bell agrees.<sup>11</sup>

USTA has amply demonstrated in its Petition that consumers in areas served by small and mid-sized carriers have more options for service and more ways of discovering those options.<sup>12</sup> NECA and others agree.<sup>13</sup> NTCA agrees with USTA that “the EA Scripting Requirement no longer serves any useful purpose.”<sup>14</sup> The Commission no longer needs to enforce the EASR against small and mid-sized carriers.

**B. In Granting the Petition, the Commission Should Extend the EASR to All ILECs, Not Just Those Listed in the Petition.**

NTCA agrees with NECA, OPASTCO, ERTA, WTA, ITTA, and Cincinnati Bell in urging the Commission to grant all ILECs regulatory relief from EASR, not just those listed in the Petition.<sup>15</sup> ITTA accurately portrays the EASR as “superfluous” for all ILECs and “an imbalanced anachronism” that should be removed for all ILECs.<sup>16</sup> The regulatory burden of

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<sup>10</sup> *In accord*, Cincinnati Bell Comment, p. 3.

<sup>11</sup> *Id.* at 6.

<sup>12</sup> Petition, pp. 10-23. ITTA provides additional examples and information for the record. ITTA Comment, pp. 3-6.

<sup>13</sup> NECA *et al.* Joint Comments, p. 3; Minnesota Independent Companies Comments, p. 3.

<sup>14</sup> Petition, p. 4.

<sup>15</sup> NECA *et al.* Joint Comments, p. 1; ITTA Comment, p. 8; Cincinnati Bell Comment, p. 5.

<sup>16</sup> ITTA Comment, pp. 9-10.

compliance with the EASR involves training employees, continually researching long distance wireline providers serving the area, and updating the scripts for new customers. The expense incurred by small rural ILECs to comply with the EASR outweighs the supposed benefits that rural customers would receive from a partial list of all potential service providers.

Furthermore, the burden is not fairly borne by other ILECs or other long distance service providers. Regulatory disparity is not supported by the current state of the long distance market, so waiver of this rule for all ILECs is appropriate.

### **III. CONCLUSION.**

For these reasons, the Commission should grant USTA's Petition. The Equal Access Scripting Requirement reflects an antiquated approach to consumer information disclosure of available long distance services. Also, not all long distance service providers are subject to the EASR, creating a regulatory disparity that does not justify the burden of compliance. In granting the Petition, the Commission should exert its waiver authority or forbearance authority to remove the EASR from all ILECs, not just those listed in the Petition.

Respectfully submitted,



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September 25, 2009

## CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in WC Docket No. 08-225, DA 09-16, was served on this 25<sup>th</sup> day of September 2009 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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