

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

In the Matter of)
) WC Docket No. 09-206
Petition of Cincinnati Bell Telephone) DA 09-2451
Company LLC for Waiver from Application)
of the Equal Access Scripting Requirement.)



The National Telecommunications Cooperative Association (NTCA)¹ responds to the Federal Communications Commission’s (Commission’s or FCC’s) November 20, 2009 Public Notice seeking comment on Cincinnati Bell’s September 11, 2009 petition for waiver (Petition) from the Equal Access Scripting Requirement (EASR or EA Scripting Requirement).² The EASR requires certain small and mid-sized wireline incumbent local exchange carriers (ILECs), including Cincinnati Bell and NTCA’s wireline members, to inform new exchange service consumers that they have a choice of wireline long distance providers. Large wireline carriers, wireless, cable and VoIP providers are not subject to the EASR.

¹ 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.

² *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).

The Commission should take this opportunity to reflect that many small and mid-sized wireline ILECs, including NTCA's members and Cincinnati Bell, are subject to the EASR's antiquated approach to consumer information disclosure on available long distance and "all-distance" services, and that not all long distance service providers are subject to the EASR. The Commission should grant this Petition and all other similar future petitions by exerting its waiver authority or its forbearance authority to remove the EASR from all wireline ILECs, not just those in this Cincinnati Bell Petition or those listed in the similar US Telecom equal access petition.³

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. The EASR was an outgrowth of the Modified Final Judgment (MFJ) in the structural separation of AT&T. 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:

In the Section 272 Sunset Order, we grant the BOCs and their independent incumbent ILEC affiliates relief from the EA Scripting Requirement.⁴ 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:

³ See *US Telecom Petition for Waiver from Application of the Equal Access Scripting Requirement*, WC Docket No. 08-225, DA 09-1816 (US Telecom Petition).

⁴ *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.

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 wireline ILECs to list wireless, cable or VoIP providers of long distance services. It is these inequities and distortions that Cincinnati's Petition seeks to redress.

II. THE COMMISSION SHOULD GRANT THE CINCINNATI BELL 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 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. Cincinnati incorporates by reference the

marketplace proofs offered by USTelecom in its Petition to support waiver of the EASR.⁵ This is an appropriate adoption of evidence. Cincinnati Bell asserts that “the [2007] findings the Commission made relative to the BOCs and their independent ILEC affiliates are equally applicable to CBT.”⁶ Indeed, NTCA goes one step further to assert that those BOC findings are appropriate to all small wireline ILECs, including NTCA’s members. Cincinnati’s claim that “the EA Scripting requirement imposes additional costs on CBT relative to its competitors,” and this claim also applies to all small wireline ILECs as they face increasing competition for long distance services from wireless, cable, and VoIP service providers.⁷

The EASR creates market-place distorting effects because the long distance, bundled service and “all distance” markets, both urban and rural, have drastically changed since the MFJ. 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

⁵ Petition, p. 3.

⁶ *Id.* at 6.

⁷ *Id.* at 7.

VoIP providers offer stand-alone and bundled long distance services to carriers. 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's Petition provides just another example of that burden, and more EASR relief petitions may be filed as other wireline ILECs seek relief from this unnecessary burden. The EA Scripting Requirement no longer serves any useful purpose, so the Commission no longer needs to enforce the EASR against Cincinnati Bell or against small and mid-sized carriers.

B. In Granting the Petition, the Commission Should Extend the EASR to All Wireline ILECs.

The Commission should grant all wireline ILECs regulatory relief from EASR, not just Cincinnati Bell or those listed in the US Telecom petition. The regulatory burden of 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 Cincinnati Bell'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 wireline ILECs, not just Cincinnati Bell or those listed in the similar US Telecom Petition.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in WC Docket No. 09-206, DA 09-2451, was served on this 21st day of December 2009 via electronic mail to the following persons:

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