

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

In the Matter of:)	
)	
Petition of United States Telecom)	
Association for Waiver from Application)	WC Docket No. 08-225
Of the Equal Access Scripting Requirement)	
)	

**COMMENTS OF CENTURYLINK, FRONTIER,
IOWA TELECOM, AND WINDSTREAM**

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INTRODUCTION AND SUMMARY

The United States Telecom Association (“USTelecom”) has petitioned the Commission to waive the Equal Access Scripting Requirement for its small and mid-sized carrier members.¹ The association explained that the Commission has already granted forbearance from the requirement for AT&T, Qwest, and Verizon and waived the requirement for their ILEC affiliates, finding it was no longer necessary to protect consumers and recognizing that forbearance and waiver were in the public interest. As the Commission found, “competition for stand-alone long distance services would function better absent the market-place distorting effects of the current EA Scripting Requirement.”²

¹ Petition of the United States Telecom Association for Waiver from Application of the Equal Access Scripting Requirement, WC Docket No. 08-225 (filed Nov. 10, 2008) (“Petition”). See Public Notice DA 09-1816 (rel. Aug. 14, 2009).

² *Section 272(f)(1) Sunset of BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission’s Rules; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c)*

CenturyLink,³ Frontier Communications Corp. (“Frontier”), Iowa Telecommunications Services, Inc. (“Iowa Telecom”), and Windstream Communications, Inc. (“Windstream”) support USTelecom’s Petition. The Commission’s findings in 2007 apply equally to USTelecom’s small and mid-sized carriers. The scripting requirement is no longer necessary to protect consumers, and it no longer serves the public interest. It has begun to harm, rather than help, competition. The Commission properly reached these conclusions for the Bell operating companies (“BOCs”), and the time has arrived to extend the same relief to other, smaller carriers.

The Commission had suggested, at the time, that it would gather more information about competition before addressing the issue beyond the three Bell operating companies.⁴ With USTelecom’s Petition, the Commission now has more than enough evidence to establish that the scripting requirement can and should be waived for all USTelecom carriers still subject to this obsolete rule.

with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440 at ¶ 122 (2007) (“EA Scripting Forbearance Order”).

³ Effective July 1, 2009, CenturyTel Corporation completed its acquisition of Embarq Corporation and its affiliates. The combined company has announced its intention to change its name to CenturyLink, Inc.

⁴ *EA Scripting Forbearance Order* at ¶ 126. In a concurring statement, Commissioner McDowell emphasized the importance of “regulatory parity,” and suggested the same relief may also be overdue for independent ILECs. *Id.* at 16555.

I. THE EQUAL ACCESS SCRIPTING REQUIREMENT HAS OUTLIVED ITS TIME.

A. The Equal Access Scripting Requirement was created when stand-alone long distance was in its infancy.

Under the Equal Access Scripting Requirement, small and mid-sized wireline ILECs -- including CenturyLink, Frontier, Iowa Telecom, and Windstream -- must advise customers seeking new telephone service that they have a choice of long distance service providers. They must read, on request, a randomized list of available providers of stand-alone long distance service.

The requirement was adopted in 1983 as part of the *Modified Final Judgment* (“MFJ”) that applied to the Bell Operating companies.⁵ At the time, stand-alone long distance was just in its infancy, and AT&T dominated the long distance industry. This new policy was designed to help allow a competitive long distance market to develop, by providing consumers information about alternatives to AT&T’s dominant long distance service. It had begun as a voluntary policy by AT&T’s local exchange companies, back in the days when few customers knew any long distance carrier but AT&T. The MFJ made the requirement compulsory, so that customers would not be routed by default to AT&T. The Commission extended this same requirement to all ILECs in 1985.⁶ The

⁵ See *U.S. v. Western Elec. Co.*, 578 F. Supp 668, 676-77 (D.D.C. 1983).

⁶ *MTS and WATS Market Structure, Phase II*, Report and Order, 100 F.C.C.2d 860 (1985) (subsequent history omitted).

requirement was continued in 1996, when it was implicitly, although not expressly, included in the Telecommunications Act.⁷

Today, customers do not need to hear such a list. More than ever before, they have a wide range of service alternatives, and ready access to information about their choices. The Commission has recognized for years that the rule would not remain in place forever. In a 2002 notice of inquiry on equal access issues, the Commission recognized the importance of deregulation to improve competition and benefit consumers, the need to evaluate the costs and benefits of the scripting requirement, and to ensure similarly-situated carriers were all subject to the same rules.⁸ In the same year, the Commission began a proceeding to review the rules (including the scripting requirement) governing BOC affiliates' marketing of long distance services after Section 272's requirements had sunset.⁹ In 2007, addressing a 2006 petition filed by AT&T and supported by other ILECs, the Commission found market changes warranted granting all three BOCs forbearance from enforcement of the scripting requirement and waiver for their ILEC affiliates.¹⁰

⁷ 47 U.S.C. § 251(g). Section 251(g) envisioned that the statutory requirement would continue until eventually "explicitly superseded by regulations prescribed by the Commission."

⁸ *Notice of Inquiry Concerning a Review of the Equal Access and Non-Dissemination obligation Applicable to Local Exchange Carriers*, Notice of Inquiry, 17 FCC Rcd 4015 at ¶ 2 (2002) ("*Equal Access NOI*").

⁹ *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, 17 FCC Rcd 9916 (2002).

¹⁰ *EA Scripting Forbearance Order* at ¶¶ 3, 117-126.

B. The Commission rightly granted forbearance and waiver to AT&T, Qwest, and Verizon.

Reviewing the scripting requirement for AT&T, Qwest, and Verizon, the Commission found that it was no longer necessary to ensure that the carriers' charges, practices, classifications or regulations are just and reasonable and not unjustly or unreasonably discriminatory.

Stand-alone long distance service, it found, is increasingly “a fringe market.”¹¹ Consumers now typically buy long distance within a bundle of other services -- selected from a variety of competing service providers. The scripting requirement consequently is not needed to protect consumers. Even in the declining stand-alone long distance market, consumers now enjoy ample competition, with many long distance choices. Consumers also have easy access to prepaid card and dial-around services, which were unheard of when the scripting requirement was adopted.

On a very large scale, consumers are “substituting” other services for traditional wireline long distance.¹² Consumers use wireless phones to make their long distance calls; even when at home, because wireless “bucket” plans routinely allow them to make

¹¹ *EA Scripting Forbearance Order* at ¶ 23. The Commission had already reached that conclusion in several prior orders. *Petition of Qwest Communications Int'l Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules as They Apply After Section 272 Sunsets*, WC Docket No. 05-333, Memorandum Opinion and Order, 22 FCC Rcd 5207 at ¶ 16 (2007); *AT&T Inc. and BellSouth Corp. Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662 at ¶ 97 (2007); *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290 at ¶ 91 (2005); *Verizon Communications Inc. and MCI, Inc. Application for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433 at ¶ 92 (2005).

¹² *EA Scripting Forbearance Order* at ¶ 123.

long distance calls at no additional cost. They use over-the-top voice over Internet protocol (“VoIP”) services for local and long distance calls. Many millions now use local and long distance services from their cable television providers. By addressing just stand-alone long distance, the scripting requirement overlooks the many other service alternatives available to consumers. Its “artificially narrow focus” actually could “mislead consumers,” rather than “increas[e] awareness of competitive alternatives.”¹³ Consumers would be better off, the Commission has concluded, without “the potential marketplace-distorting effects of the current EA Scripting Requirement.”¹⁴

The Commission found the requirement was no longer needed to protect consumers, for the same reasons. The market is now wholly competitive, and consumers know it. The public has “significant competitive alternatives available to them in the stand-alone long distance market, as well as number options for bundled service offerings by, among others, LECs, cable operators and interconnected VoIP providers,” as well as wireless carriers.¹⁵ Even though their long distance rates had fallen, the Bell operating companies were unable to raise prices without losing customers or long distance minutes to competitors.

The Commission found forbearance was in the public interest, because the outdated requirement distorted competition, harmed rather than benefited consumers, and imposed needless costs on AT&T, Qwest, and Verizon.¹⁶ Consumers, it also noted,

¹³ *EA Scripting Forbearance Order* at ¶ 122.

¹⁴ *Id.*

¹⁵ *Id.* at ¶ 123.

¹⁶ *Id.* at ¶ 124.

always retain the right to change carriers under equal access and nondiscrimination requirements.

The Commission properly found that the scripting requirement was no longer justified for the BOCs. The same is true for small and mid-sized ILECs.

II. THE COMMISSION SHOULD EXTEND THE SAME REGULATORY RELIEF TO OTHER ILECS.

A. The Commission has a sufficient record to support the requested relief.

As USTelecom's Petition explains, the Commission initially limited forbearance and waiver to the three BOCs and their affiliates.¹⁷ Although other ILECs sought the same relief, the Commission said that it wanted to gather more information in the record, and announced it would refresh the record and then consider that request in a broader proceeding.¹⁸

In the *Equal Access NOI* that followed, the Commission solicited and received a wide range of comments.¹⁹ Most commenters agreed that the scripting requirement was no longer justified. The Commission, however, has not yet taken the next step to eliminate the requirement for the small and mid-sized ILECs still subject to it. The information provided by parties commenting on the NOI provides an ample record to support ending the scripting requirement. USTelecom's Petition provides even more evidence.

¹⁷ Petition at 10.

¹⁸ *See Parties Asked to Refresh Record Regarding Review of Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, Public Notice, 22 FCC Rcd 4553 (2007) ("*Equal Access NOI*").

¹⁹ Petition at 32.

B. The long distance market is now undeniably competitive.

The Equal Access Scripting Requirement was created when there was little long distance competition, and when consumers effectively had no alternative but the ILEC for access to voice services.²⁰ Now, competition is firmly established and intense. Prices have fallen sharply. Even the nature of long distance services has changed. Intermodal competition means ILECs compete with wireless, cable telephony, and VoIP providers for consumers' long distance business. Prepaid card and dial-around services are widely available and competitively priced. Consumers have literally hundreds of long distance carriers offering stand-alone services as an alternative to ILEC affiliates. The Commission acknowledged all these facts two years ago. The Petition outlines publicly available evidence that makes this clear.

Today's consumers know they have these many options. Competitors spend billions annually marketing and advertising their competing services. Competitive providers are among the heaviest advertisers in America.²¹ Even smaller and regional carriers market aggressively. Consumers know they can bundle services, including all distance services and bundles with broadband and video services, and most consumers today purchase bundles.²² The Petition catalogues these facts in detail.

²⁰ Petition at 5.

²¹ *Id.* at 18-19.

²² *Id.* at 19-20.

Cable providers now pass more than 123 million American households, and provided telephone service to 16.5 million homes at the end of first quarter 2008.²³ Nationally, at year-end 2007, cable providers offered broadband services to 92% of households. The top half dozen cable operators offer broadband to 98% of households in their territories, and phone service to 89%. Even rural cable companies offer telephone and broadband services to the large majority of their households. The cable industry continues rapidly to expand its share of the voice services market.²⁴

Wireless substitution is substantial and growing.²⁵ Six years ago, it was estimated at just a few percent. Today, there are far more wireless phones in service than wireline access lines. By mid-2008, 17.1% of households were estimated to be wireless-only.²⁶ During the current economic slowdown, substitution has only accelerated. Even among households with wireline phone service, a growing percentage use mainly use their wireless phones. There are now more wireless-only households than wireline-only ones. Consumers now routinely use their wireless phones to make long distance calls at home, taking advantage of buckets of minutes or unlimited long distance usage offered in typical wireless service plans. Consumers make such long distance calls at no incremental cost.

²³ See Petition at 12-14

²⁴ Last year, Comcast announced it had surpassed Embarq (then the nation's largest non-BOC ILEC) to become the nation's fourth largest residential voice services provider.

²⁵ Petition at 8.

²⁶ There are more wireless-only than wireline-only households. *Id.* at 14.

In 2009, wireless service is available virtually everywhere.²⁷ The Commission calculates that 99.8% of consumers have access to at least one wireless provider. 95.5% are served by at least three. Even rural areas have wireless coverage. The typical rural county now has 3.6 wireless providers, and 99.3% of the nation's rural population has access to wireless service. Given that 85% of Americans now subscribe to wireless service, it is undeniable that consumers know they have a choice of service provider for long distance.²⁸

Broadband and over-the-top services also continue to grow, creating the potential for VoIP providers to take an ever larger share of the market.²⁹ ILECs, cable providers, and even wireless carriers offer broadband service. Broadband service allows consumers to bypass traditional voice services. Vonage, for example, had 2.6 million users by the year-end 2008. Skype had 340 million users worldwide. Those services displace long distance calls previously handled through ILECs and stand-alone long distance carriers.

Within the stand-alone long distance market, consumers have an extraordinarily wide range of choices.³⁰ The Commission's own database indicates that there are more than 1,000 telecom companies offering toll services, and hundreds more offering operator

²⁷ See Petition at 14-16.

²⁸ Small and mid-sized ILECs (including CenturyLink, Frontier, Iowa Telecom, and Windstream) typically lack affiliated wireless carriers. That makes the impact of wireless substitution and usage substitution more acute for them than for the AT&T and Verizon. Further, wireless carriers have a competitive advantage against small and mid-sized ILECs. Not only are they not subject to the Equal Access Scripting Requirement, they also are completely free of equal access obligations.

²⁹ See Petition at 17.

³⁰ See *id.* at 20.

and prepaid card services. Dial-around services also enjoy a multi-billion dollar share of this competitive long distance market.

In the midst of all this competition, meanwhile, ILECs have been losing access lines, local and long distance usage, and revenue.³¹ ILEC lines nationwide fell more than 5% in 2007, and closer to 8% in 2008. ILEC line counts are declining even in the most rural areas. Access minutes are also falling, down 8.2% for the year ending mid-2008. Small and mid-sized carriers are seeing these declines, and typically a smaller percentage of their ILEC customers purchase their long distance services. Moreover, unlike the Bell operating companies, small and mid-sized carriers do not have national facilities-based long distance carrier affiliates and, compared to BOCs, a smaller percentage of their local customers buy their long distance services. Small and mid-sized ILECs must purchase most or all of their long distance services from their long distance competitors, including the BOCs' long distance affiliates, none of whom face the same scripting requirement.³²

III. THE PETITION MEETS STANDARDS FOR WAIVER.

A. Granting the Petition will promote competition, improve regulatory parity, and lift an unnecessary burden from small and mid-sized ILECs.

Waiver is in the public interest. As the Commission recognized two years ago, “competition for stand-alone long distance services would function better” without the

³¹ See Petition at 20-21.

³² The local market, too, is now very competitive. USTelecom also cited a study prepared by Iowa Telecom, submitted to the Iowa Utilities Board showing how even in a heavily rural state, competition has made old-fashioned ILEC regulation obsolete. See Petition at 22-23, citing T. Tardiff and H. Ware, *Statement of Position of Iowa Telecom on Possible Extension of Board Jurisdiction over Single Line Flat-Rated Residential and*

scripting requirement imposed on the BOCs and their affiliates.³³ It bears repeating: The same is true with small and mid-sized ILECs. These smaller carriers compete against a wide range of long distance and all-distance voice service providers. Many of those competitors -- including the BOCs' long distance affiliates, wireless carriers, and cable companies -- are far larger than they are. Unlike the BOCs, they do not have national, facilities-based long distance affiliates. For small and mid-sized ILECs, however, none of their competitors are subject to anything comparable to the Equal Access Scripting Requirement.

It has long been Commission policy that there should be parity among competing service providers.³⁴ There is no rational basis for imposing heavier regulatory burdens on small and mid-sized ILECs. Having found the requirement obsolete for BOCs and their affiliates, the Commission cannot justify failing to grant comparable regulatory relief to small and mid-sized ILECs.

Business Rates for Local Exchange Carriers, Before the State of Iowa Department of Commerce Utilities Board, Dkt. No. INU-08-1 (Mar. 17, 2008).

³³ *EA Scripting Forbearance Order* at ¶ 122.

³⁴ *See, e.g., Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common-Carriage Requirements; Petition of the Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services, Memorandum Opinion and Order, 22 FCC Rcd 19478 at ¶ 48 (2007) (forbearing from outdated regulations “will increase competition by freeing the petitioners from unnecessary regulation and will serve the public interest by promoting regulatory parity” among competitors), aff’d sub nom. Ad Hoc Telecomms. Users v. FCC, 572 F.3d 903 (D.C. Cir. 2009). See also Petition at 24-25 & nn. 87-89.*

The Equal Access Scripting Requirement imposes unnecessary costs on small and mid-sized ILECs.³⁵ It requires training personnel, ensuring sufficient staffing, and developing and maintaining randomized lists of wireline long distance carriers in particular areas. It is increasingly rare that consumers need to hear from the ILEC a scripted list of standalone long distance alternatives. Customer service departments nevertheless must be prepared to spend additional time on the telephone with consumers for this obsolete requirement.

Regulatory costs weigh more heavily on small and mid-sized ILECs than on BOCs.³⁶ In the current environment, any unnecessary regulatory costs serve only to make their operations less productive. With access lines and voice revenues declining, any amount spent on this obsolete requirement is money that cannot be used to improve services, support innovation, or invest in broadband. Some may presume that the costs of complying with the scripting requirement are not large enough for the Commission to worry about. In the current environment, small and mid-sized ILECs, however, are continually facing the unpleasant task of laying off long-dedicated employees. These conditions make it clear that needless regulations impose an inexcusable burden.

B. Waiver will ultimately benefit consumers and the public interest.

The Commission found that requiring an ILEC to read a list of alternative wireline providers makes no sense in a market where fewer and fewer consumers purchase stand-alone long distance through the ILEC. Given that the competitive market

³⁵ Petition at 27-28.

³⁶ See Petition at 27-28.

“would function better” without the current requirement, the Commission recognized that consumers ultimately would benefit if the scripting requirement was removed for the BOCs and their affiliates.³⁷ The same necessarily holds true for small and mid-sized ILECs.³⁸

Few customers want to hear the scripting list any more. The requirement would waste their time and unfairly feed a perception that ILECs are out of date and out of touch with consumer needs and interests. Already, most consumers meet all or some of their long distance needs with other alternatives, but the scripting requirement applies only to stand-alone, wireline long distance service. At the same time, it handicaps ILECs and prevents them from being able to innovate in marketing or service arrangements, while their competitors face no comparable requirement.³⁹

C. The requirement undermines the Commission’s policy objectives.

Plainly, the policy behind the scripting requirement no longer makes sense in today’s competitive market. While the Equal Access Scripting Requirement was intended to level the playing field, it no longer does. Instead, it has become an anachronistic burden that now falls unfairly on just one subset of one class of long distance competitors.

³⁷ *EA Scripting Forbearance Order* at ¶ 122.

³⁸ Petition at 29-30.

³⁹ Consumers and competitors alike will remain protected by Section 251(b)(3) of the Act, which ensures dialing parity and nondiscriminatory access to numbers, operator services, directory assistance, and directory listings. 47 U.S.C. § 251(b)(3).

In the *Equal Access NOI*, the Commission said it intended to promote competition, create a modern equal access and nondiscrimination system, balance regulatory costs and benefits, and ensure rules are more consistent between competitors.⁴⁰ The Commission also seeks to end outdated rules, recognizing that unnecessary regulation adds costs, discourages innovation and investment, and hampers competition.

In evaluating the scripting requirement for AT&T, Qwest, and Verizon, the Commission recognized that the requirement's benefits were easily outweighed by its costs.⁴¹ The Petition shows that the requirement no longer promotes competition, it no longer makes sense as a nondiscrimination policy, and it no longer benefits consumers. Waiving the requirement for small and mid-sized ILECs will free them from unnecessary regulation, reduce costs, and better standardize rules among competitors. Having found the relief was plainly justified for AT&T, Qwest, Verizon, and their ILEC affiliates, there is no rationale basis for the Commission to find that the rule remains justified for small and mid-sized ILECs.

As USTelecom recounted, many commenters on the *Equal Access NOI* agreed that the scripting requirement was outdated and unnecessary for most consumers.⁴² Most commenters did not bother even to mention the scripting requirement, and the relative few that claimed it remains necessary could not explain how any customer would be unaware that they have other options or how to explore them.

⁴⁰ *Equal Access NOI* at ¶ 2.

⁴¹ *See EA Scripting Forbearance Order* at ¶¶ 3, 124.

⁴² *Petition* at 32-33.

D. The standards for waiver and forbearance both are met.

The Commission can waive any rule for good cause,⁴³ and it is expected to do so whenever circumstances make strict compliance contrary to the public interest.⁴⁴ The Commission considers burden, equity, and how waiver would affect its policy goals. USTelecom's Petition amply shows that the standards for waiver are met here.

The Commission also could find that the statutory standards for forbearance are met here, just as they were for the BOCs two years ago. Section 10 of the Act requires the Commission to forbear from enforcing any rule or statutory provision if it finds the standards for forbearance have been met.⁴⁵ If forbearance is warranted, the Commission is directed to grant forbearance even in the absence of a petition by any member of the class of affected carriers.

Accordingly, the Commission should grant a waiver or, alternatively, it should readily grant forbearance from the Equal Access Scripting Requirement to small and mid-sized ILECs on its own initiative. USTelecom's Petition has presented more than enough information to satisfy either showing.

CONCLUSION

The Equal Access Scripting Requirement was fashioned for a transitional period in history, and it is long past. The market for voice services is now intensively competitive -- and the long distance market is particularly so. Two years ago, when

⁴³ 47 C.F.R. § 1.3.

⁴⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁴⁵ 47 U.S.C. § 160(a), (b).

evaluating the Equal Access Scripting Requirement for AT&T, Qwest, and Verizon, the Commission found the requirement was outdated, unnecessary, and even harmful to consumers. The USTelecom Petition provides more than enough information to establish that the same is true for small and mid-sized ILECs. Thus, the Commission should relieve small and mid-sized ILECs of their obligations to abide by this outdated requirement and allow them to compete on a more level playing field.

Respectfully submitted,



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