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November 24, 2010

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Portals TI, Room TW-A325
Washington, DC 20554

Re: Petition of The Coalition of Competitive Community Carriers for a Rulemaking to address the Petition to Amend Part(s) 51 and/or 64 of the Commission's Rules to Minimize Error in the Access Service Request (ASR) Process

Dear Ms. Dortch:

Please find attached an original Petition of The Coalition of Competitive Community Carriers for a Rulemaking to address the Petition to Amend Part(s) 51 and/or 64 of the Commission's Rules to Minimize Error in the Access Service Request (ASR) Process, along with 4 copies of the Petition.

Please do not hesitate to contact me if you have any questions at 617-671-1202.

Sincerely yours,



E. Barlow Keener
Attorney

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MB-Policy 10-126

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

In the Matter of the Petition of)
)
Coalition of Competitive Community Carriers’)
Petition to Amend Part(s) 51 and/or 64 of the) **RM-_____**
Commission’s Rules to Minimize Error in the)
Access Service Request (ASR) Process)
)

PETITION FOR RULEMAKING

Pursuant to Section 1.401 of the Federal Communications Commission’s (FCC’s or Commission’s) Rules, The Coalition of Competitive Community Carriers (“CCCC” or “Coalition”)¹ hereby petitions the Commission to institute a rulemaking proceeding to adopt rules that require that the incumbent local exchange company (ILEC) ordering process for carriers be changed such that the standard Access Service Request (ASR) order that creates a financial exposure to the carrier greater than a specified amount, the carrier first be notified of the specific charges associated with the ASR, and the Order not be executed until the carrier verifies its agreement. The Coalition submits that a rule should be adopted because CCCC members routinely find their businesses threatened by the nature of the ASR process as it now exists, and by the disputes that inevitably result from it.

I. SUMMARY

The Access Service Request (ASR) is a standard form used by Incumbent Local Exchange Carriers for accepting orders from Interexchange Carriers, Competitive Local Exchange Carriers, other Access Carriers, and other wholesale customers. The ASR is thus used

¹ The Coalition of Competitive Community Carriers is a group of small to mid-size Competitive Local Exchange Carriers. The carriers are privately-held, mostly family-owned businesses, operating in limited geographical areas.

for ordering most Switched Access and Special Access services, as well as Unbundled Network Elements above the DS0 or copper-loop level.

The Coalition of Competitive Community Carriers is a coalition of small, privately-owned local service providers who are required to use the ASR process for routine ordering. The members of the Coalition routinely find our businesses threatened by the nature of the process as it now exists, and by the disputes that inevitably result from it. In particular, the ASR process is not only extremely difficult to master, it is ambiguous, and can lead to very costly errors. A single error in an ASR can lead to a dispute over a sum that can be greater than a small carrier's annual revenues.

The Coalition therefore petitions the Commission to adopt rules that require that the ordering process be changed such that on any ASR order that creates a financial exposure greater than a specified amount, the Customer first be notified of the specific charges associated with the ASR, and the Order not be executed until the Customer verifies its agreement.

The Coalition of Competitive Community Carriers is a group of small to mid-size Competitive Local Exchange Carriers. The Coalition members are privately-held, mostly family-owned businesses, operating in limited areas. They are also survivors in a very difficult competitive environment, operating lean companies that have as little overhead as possible.

Members of the Coalition include:

- Select Connect Communications, LLC Tupelo, MS
- Quantum Telecommunications, Inc., Manchester, MD
- Automotive Experts Group, Inc. d/b/a Bendtel, Bend, OR
- Cygnus Telecommunications Corporation, Joliet, IL
- AstroTel, Inc. Bradenton, FL
- PriorityONE Telecommunications, Inc. LaGrande, OR

- Telcentris Communications, LLC San Diego, CA
- Switchwire Networks, Inc. Haverhill, MA
- Raw Bandwidth Telecom Inc., San Bruno ,CA
- Kinex Telecom, Inc. Farmville, VA
- XATel, LLC, Biddeford ME
- Hunt Telecommunications, LLC Franklinton ,LA
- MegaCLEC, Inc. Fall River, MA
- Lightnex Communications, Inc. Billings MT
- Carey Fitch d/b/a Affordable Telecom, Corpus Christi, TX
- Nationsline, Roanoke VA
- Bitwise Communications, Inc. d/b/a OmniLEC, Peoria, IL
- Pacific Data Systems, Tamuning ,GU
- BackUP Telecommunications, Murfreesboro, TN (ASR consulting firm)
- New Frontiers Telecommunications, Inc. Hagerstown, MD
- Ionary Consulting, Newton, MA (Consultant to CCCC)

II. BACKGROUND

The ASR form itself is an industry standard defined by the Ordering and Billing Forum (OBF), a Committee of the Alliance for Telecommunications Industry Solutions (ATIS), a trade group representing ILECs and their suppliers². The ASR is a very complex form, originally paper that was faxed to the ILEC but most often executed today via a web page. The ASR has over 100 fields, divided into several sections: The Administrative Section, the Bill Section, the Contact Section, the Circuit Detail, the Location Section, and the Remarks. Many of the fields are filled out with code values that require a lookup in an extensive ASR Business Rules book.

² Membership in ATIS itself begins at \$1750 a year for small carriers; OBF membership then begins at \$4400/year for very small carriers. Even if Coalition members were to join OBF, most do not have the personnel resources to dedicate to standards activity which is in any case dominated by incumbent interests.

The ASR predates the Telecommunications Act of 1996. It thus predates the existence of CLECs. It predates the existence of commercial Internet Service Providers. It was conceived during an era when the only local exchange carriers were the Incumbents and the only Access Service customers were the Interexchange Carriers, themselves large carriers with extensive resources. The IXCs ordered large volumes of circuits, mostly voice-grade at the time, each using a similar template. The cost impact of an error was thus minimal, as voice-grade circuits carried only a small nonrecurring charge, and often had no termination liability. Hence the likelihood of error was relatively small, and the impact of an error was also relatively small. Timeliness was thus more important than a fail-safe mechanism.

But in current practice, this ASR format leads to needlessly frequent Disputes between CLECs and ILECs. Billing disputes between ILECs and CLECs over ASR errors are significant because, as shown below, ILECs regularly hold the ace card and require immediate payment of disputed ASR amounts with the threats of immediate disconnection of all CLEC services, including those services not related to the disputed service, hanging over the CLEC. At times Coalition members experience threats of immediate disconnection of all services – with the result of the death of the CLEC, the end of another competitor, and a scramble by customers required to go back to the only provider in a small town, the ILEC. This is thus a major cost, both in terms of specialized labor needed to decipher the bills and compare them to the ASRs, and in legal costs required to dispute them.

A. ASR ORDERING IS RIFE WITH AMBIGUITY

The range of services ordered on an ASR has changed over the years, as higher-speed circuits such as DS3s have become more common, and voice-grade circuits have become

relatively rare. Special Access has grown in importance and Switched Access has declined.

Unbundled Network Elements were added to the mix of services ordered via ASR. At the same time, the number of carriers who use the ASR has risen. The number of CLECs and ISPs using the process greatly exceeds the number of IXC's for whom it was originally created. Most are like the Coalition members, small, local operations who lack the dedicated ordering staff of a large national carrier. They often depend on outside consultants to place ASRs, or to create templates by which they can place their own ASRs.

Hence the stakes of an average ASR have gone up, and so has the number of customers using it. The ASR process, however, is extremely hostile to most users. One key issue is that the Universal Service Ordering Code (USOC), the billing code used to generate an actual bill, is not even specified on the ASR, but is generated by the ILEC based upon its interpretation of a set of other values on the ASR itself. Another issue is that there is no direct and unambiguous way to select whether a given order is for a UNE, a collocation cross-connect, an interstate service, or an intrastate service. Circuits are specified by Network Channel Code (NC) and Network Channel Interface Code (NCI). A lengthy set of rules specifies how these codes are constructed, based on factors such as the speed and the characteristic impedance of the interconnection cable. Another field, PIU (Percentage of Interstate Use), indicates whether the circuits is billed at state or interstate rates, or in the case of certain types of circuits but not others, prorated between the two. A UNE check box applies to some cost-based orders but not others, such as collocation services.

At times, the same codes can be used for more than one type of circuit. For example, a recent dispute between an Illinois ILEC, AT&T Illinois, and a CLEC in that state hinged over whether a cross-connect circuit within the ILEC central office, installed by the CLEC's

authorized contractor, should be billed as a AT&T Illinois tariff DS3 Special Access Channel Termination (\$3700 per month) or as a CLEC collocator-to-collocator cross-connect (approximately \$1 per month). Both services are specified on the ILEC ASR by the NCI code 04QB6.33. Typically, the circuit is inferred as being a collocator cross-connect because the same first 8 characters of the CLLI code (which identify the building) are used for both endpoints. But in this case the same CLLI code applied to both the Legacy AT&T and former Ameritech Illinois areas of the building. The ILEC decided to treat the circuit as if it went between the two buildings instead of two areas of the same central office. The ASR process did not permit the CLEC to review the price quote for the service and resulted in the CLEC receiving a \$3700 per month circuit charge. A billing dispute resolution process, costly to the CLEC, resulted.

Another problem arises with the minimum termination liability resulting from ASRs ordered in error. A “month to month” circuit may have a minimum time period, specified in the Access tariff, that is greater than one month, where the same circuit ordered as a UNE has no minimum termination liability. Hence the risk of a mistaken order is not only the nonrecurring charge, but several months or years’ recurring charges, even if the circuit is cancelled upon receipt of the first bill. Because the ASR process does not require the price quote of the circuit and termination liability before the final order commitment by the CLEC, a single error in the type of circuit ordered – UNE or Special Access – can result in a large unexpected liability by the CLEC.

In one such example, a Coalition CLEC intended to order a UNE DS3 interoffice facility of approximately 150 miles from the ILEC’s central office. The contract UNE rate was \$579.12 per end and \$4.29 per mile. This UNE circuit would thus have been approximately \$1800 per

month, with no minimum term. The circuit between the two ILEC central offices was mistakenly processed as Special Access circuit that is subject to a \$95 per mile rate for distance and a \$1840 per month rate per channel termination.³ Hence the same DS3 circuit is billed at approximately \$18,000 per month, with a four-month minimum term. This one mistaken Special Access order thus invoked a minimum bill of over \$70,000 for the four month minimum term, even if the circuit was intended to be ordered as a \$1800 per month, no minimum term UNE circuit. The difference in the circuits ordered was caused by a) a single-character error were made on the ASR and b) the absence of a price quote delivered through the ASR by the ILEC prior to final submission of the order. This level of unexpected charge can prove fatal to a small local carrier.

While a carrier seeking to place an order for a high-priced Special Access circuit can get ordering help from the ILEC, including a price quote, the same is not true with a UNE circuit. When an ASR is placed for an unbundled network element or an interconnection circuit, the ordering party generally gets no help, and does not currently receive a quote or estimate of what the charges will be, *even if* the ILEC determines that the order will actually be processed as Special Access, or in any other manner other than what was anticipated by the carrier placing the order. A price quote may have been unnecessary for the original ASR process that mainly dealt with voice-grade trunks, but its absence is inappropriate for high-value orders. The ordering party does not know what USOCs will be assigned, or what the actual price will be, until the first month's bill is received, generally in arrears. By this point the termination liability, if any, is applicable, along with the nonrecurring charge and the first month's charges.

³ A UNE Interoffice Facility (IOF) does not have a charge equivalent to channel termination unless an actual loop outside the central office is ordered; however, Special Access circuits are priced with a channel termination at each end even if the circuit does not leave the central office.

A parallel can be drawn with 47 U.S.C § 251 collocation services, which were introduced following the Telecommunications Act, and which involve high dollar values more akin to high capacity Special Access orders than to voice frequency Switched Access channel orders. A collocation order is placed with the ILEC who must provide a timely written itemization of nonrecurring and recurring charges associated with that order. The CLEC then has the opportunity to accept the price and go ahead with the order, modify or cancel the order. In most cases a cageless collocation carries a nonrecurring charge in the range of \$10,000-20,000, while caged orders can run much higher. Hence the collocation ordering process rightly recognizes the need for a “meeting of the minds” on the price of the service before a contract is entered into. This contrasts with the ASR, wherein the contract is essentially a “gotcha” that can put a small carrier out of business with one erroneous keystroke or one disputed inference.

B. THE ASR PROCESS CREATES PRICE AND BILLING DISPUTES

When ASRs were introduced, essentially all of the services that were placed via ASR were under tariff; ordinary contracts did not apply. These tariffs were subject to approval by the FCC or state regulators, and were usually based on rate-of-return regulation. The Filed Tariff Doctrine generally ensured that the prices in the tariff were binding, unless the tariff was itself rejected, so the ASR was less a contract than a tariff-based process.

While many ASRs are still subject to tariff, the scope of regulatory options has broadened considerably. Unbundled Network Elements were added in 1996. The separate LSR process is used for voice-frequency loops and related services, but ASR applies to most DS1 and all DS3 loops, to cross-connects, and to interoffice facilities. ASR is also used for ordering EELs and multiplexing services, both as UNE and Special Access (in which case the ordering is often ambiguous as to which rate applies), and for the even more complex case of commingling.

ASR is also used for ordering many non-tariffed and detariffed services, including SONET and Carrier Ethernet transport. Because the ASR does not have provisions to specify the actual category of circuit being ordered, the question of whether it is tariffed or not, or subject to the Interconnection Agreement, is not even clear at the time of the order. This becomes the subject of additional potential disputes.

The ASR process is simply not a symmetrical transaction between two parties. As it stands, it does not always produce the “meeting of the minds” over the amount charged for the service that ordinary contract law requires. The contracts that small, community CLECs, such as Coalition members, and other small access carriers enter into with ILECs, such as interconnection agreements and commercial contracts, are themselves not the product of negotiation as equals. While very large historical competitive carriers such as Worldcom, Legacy AT&T and MCI may have had the legal resources to arbitrate every interconnection agreement in the early years after the Telecommunications Act’s passage, Petitioners are generally small businesses. As such, Coalition members are required to accept contracts as offered, or, for the specific case of access to required UNEs, opt in to a dwindling number of existing interconnection agreements. Hence these are contracts of adhesion, and should be interpreted more favorably to the smaller party. The impact of this inequality in size and resources can be lessened by making the minor changes to the ASR process requested herein.

C. ASR BILLING DISPUTES FAVOR THE ILEC OVER THE CLEC

A CLEC billing dispute with an ILEC is not like a typical business-to-business dispute. The two companies have a very asymmetric relationship. The CLEC is by definition dependent on the ILEC for certain essential facilities. Even if the CLEC’s network is largely built using its own facilities, if the CLEC provides voice services, it is dependent on access to ILEC switches

and trunk facilities. It may depend on ILEC interoffice facilities and loops. It may make use of ILEC Signaling System 7 and other market-priced Access services. The ILEC, in contrast, has no business motivation for maintaining the CLEC's health. It sees the CLEC as a competitor more than as a customer. Thus it will make itself as difficult to do business with as is permitted by law or regulation. The ASR is only one example.

If the ILEC has an unresolved dispute with the CLEC over a circuit order placed under an ASR, the ILEC may begin to refuse all orders from the CLEC, and then may shut down existing circuits. This puts the CLEC out of business. If on the other hand the ILEC were to lose a regulatory dispute with the CLEC, it would suffer no real loss, as the rates charged to CLECs under 47 U.S.C. §251 (i.e., UNEs, collocation) are at least compensatory. This gives the ILECs little reason to want to simplify their business practices or reduce the risk inherent in the ordering process. Hence a regulatory solution is required.

III. PETITION FOR RULEMAKING

By creating a process whereby Customers using the ILEC ASR process are not informed of the price of the service before making an order for the service, the ILEC sustains an advantage over the Customer because the ILEC typically requires that prior to the resolution of a disputed billing amount – which can be substantial compared to the total monthly revenues of the Customer – that the Customer pay to the ILEC the disputed amount, in full, under the threat that all of the Customer's services including those services unrelated to the current order will be terminated. Under the current ASR process, the requesting party cannot receive a price quote for the service prior to submitting the final committed order. If the ASR process required the ILEC

to provide to the Customer a price quote of the service prior to the Customer making the final committed order, then the Customer would have the opportunity to avoid the billing dispute and, most importantly, avoid the situation that could result in the termination of all services, even those unrelated to the disputed order. 47 U.S.C. §201(b) requires that all “charges” and “practices” provided by the ILEC be “just and reasonable:”

(b) All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful:

The current ILEC ASR process is not just and reasonable and heavily favors the ILEC over competing carrier customers required to use the ILEC ASR ordering system.

The Coalition therefore petitions the Commission to create a rule or order such that all ILECs that accept the Access Service Request are required to implement a system by which the ILEC receiving the ASR will first provide the designated contact at the requesting party with a firm price quote. This quote will specify all nonrecurring charges, fixed monthly recurring charges, and termination liabilities, prior to final acceptance of the ASR order. This price quote should be provided at the time that the Firm Order Commitment (FOC) is provided to the requesting party by the ILEC. The requesting party will then be permitted to accept the price quote and authorize the ASR to proceed, or without such acceptance the order will be deemed to have been cancelled, with no liability.

The Coalition also requests that Commission use its authority to require that three new fields be added to the ASR, such that the requesting party can waive the process described in the preceding paragraph of requiring a price quote to be delivered in advance of approving an order by allowing the requesting party to approve the order without a price quote provided that the 1)

nonrecurring charges, 2) first month's fixed recurring charge, and 3) termination liability do not individually or collectively exceed the values specified by the requesting party in these three fields in the ASR itself. This will allow ASRs to be placed with no additional acceptance stage required, provided that the prices for the services ordered do not exceed the stated limits.

The Coalition recognizes that the ASR process is intimately tied up with complex billing and ordering software, such as TIRKS. Hence the ILECs may claim that the requested changes cannot be implemented quickly, and that in any case, changes to the ASR need to go through the Ordering and Billing Forum. The Coalition therefore requests interim relief, such that until these changes can be fully implemented, termination liabilities are waived on all circuits ordered by ASR if they are cancelled within 30 days of receiving the first month's bill. Carriers can alternatively use a written exchange (email or fax) to manually provide this quote at the time of the FOC and get an acceptance.

The Coalition also requests that during the pendency of this proceeding, the Commission order that carriers who receive an ASR, for any service other than switched access, for which the sum of the nonrecurring charge, first month's bill, and termination liability for the individual service ordered exceeds \$1000, be subject to the manual quote process or termination liability waiver. The carrier placing the order may waive the quote requirement by stating an explicit dollar value limit in the Remarks.

The impact of the proposed rule will be to reduce the risk to Coalition members' businesses currently posed by the ASR process, and to enable Coalition members to efficiently and cost-effectively make use of other carriers' wholesale services. Time and money spent resolving disputes will be reduced, and fewer cases will be brought to regulators for adjudication.

Coalition of Competitive Community Carriers
November 24, 2010

Respectfully submitted,

The Coalition of Competitive Community Carriers



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