

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Petition of USTelecom for Forbearance) WC Docket No. 12-61
Under 47 U.S.C. § 160(c) from Enforcement)
of Certain Legacy Telecommunications)
Regulations)

**REPLY COMMENTS OF
THE NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
(Category 1 – Equal Access Scripting Requirements)**

The National Telecommunications Cooperative Association (“NTCA”)¹ hereby submits reply comments in connection with the Public Notice² issued in the above-captioned proceeding. This Public Notice seeks comment on a petition filed by the United States Telecom Association (“USTelecom”) seeking forbearance from enforcement of certain “legacy telecommunications regulations,” including equal access scripting requirements.

Only one party – General Communication Inc. (“GCI”) – appears to oppose USTelecom’s suggestion that the Federal Communications Commission (the “Commission”) should forbear from application of equal access scripting requirements to small and mid-sized incumbent local exchange carriers (“ILECs”). GCI’s argument should be denied, however, as it is squarely aimed at “fighting other battles” rather than addressing specifically whether consumers need equal access scripting to obtain just and reasonable rates, terms, and conditions for long distance services.

¹ NTCA represents more than 570 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers and many of its members provide wireless, video, broadband Internet, satellite, and/or long distance services to their communities; each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended.

² *Pleading Cycle Established for Comments on United States Telecom Association Petition for Forbearance from Certain Telecommunications Regulations*, WC Docket No. 12-61, Public Notice (rel. Mar. 8, 2012).

By way of background, equal access scripting requirements are a decades-old vestige of a post-divestiture time when long distance competition was novel and consumers had little, if any, awareness of choice in the selection of interexchange carriers (“IXCs”).³ By contrast, few customers today, if any, are unaware of the panoply of traditional and newer choices for communications services.⁴ Indeed, as USTelecom explains, scripting requirements are unnecessary to protect consumers given that the Commission has already found there to be “numerous options” for long distance service.⁵ Moreover, USTelecom observes that the Commission has already found that scripting imposed “unnecessary costs” on larger carriers that are no longer subject to these requirements.⁶ This logic applies with even greater force to smaller carriers that: (i) have far more limited staff resources than the BOCs; and (ii) now face

³ See Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, WC Docket No. 02-112, 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission’s Rules, CC Docket No. 00-175, Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services, WC Docket No. 06-120, Report and Order and Memorandum Opinion and Order (rel. Aug. 31, 2007) (“*Equal Access Scripting Forbearance Order*”), at ¶ 120.

⁴ In fact, consumer alternatives to presubscribed long distance calling have only proliferated further since the Bell Operating Companies (the “BOCs”) received forbearance from equal access scripting in 2007. For example, one press report indicated last year that Skype traffic was 65.5 billion minutes in 2008, 113 billion minutes in 2009, and 190 billion minutes in 2010. *Skype’s changing traffic growth*, Financial Times (May 10, 2011) (available at: <http://www.ft.com/cms/s/2/e858ad1c-7b1f-11e0-9b06-00144feabdc0.html#axzz1ss5fqOR4>). Likewise, consumers increasingly rely upon wireless services to place long distance (and other) calls in a manner not available in 1984 or even 1996. See *Wireless Quick Facts* (available at: <http://www.ctia.org/advocacy/research/index.cfm/aid/10323>) (comparing 44 million wireless subscriber connections and 16% wireless penetration in December 1996 to 331 million such connections and 104.6% wireless penetration in December 2011). Finally, as the Commission has noted, the availability of prepaid calling cards provides residential consumers with long distance calling options not readily available when the scripting requirements first took effect. *Equal Access Scripting Forbearance Order*, at ¶ 122.

⁵ USTelecom Petition at 22 (citing *Equal Access Scripting Forbearance Order*, at ¶ 123).

⁶ USTelecom Petition at 23 (citing *Equal Access Scripting Forbearance Order*, at ¶ 124).

the prospect, pursuant to regulatory mandate, of declining originating access payments (and, ultimately, the prospect of *no* payments) from the very IXCs for whose benefit these equal access scripts are read.⁷

Perhaps cognizant that no reasonable case can be made with respect to consumer confusion and unable to counter the clear burden imposed on small carriers by scripting requirements, GCI grasps to maintain these requirements by tying them to unrelated portions of the Communications Act and GCI-specific objectives. Specifically, notwithstanding that the Commission has previously found the scripting mandate costly for the largest carriers and a source of confusion that operates to “artificially narrow” consumer choice,⁸ GCI asserts that this mandate should remain intact for smaller carriers unless and until an ILEC affirmatively waives its rights under section 251(f)(1) of the Communications Act of 1934, as amended (the “Act”), “permits collocation” pursuant to section 251(c) of the Act, and enters into corresponding interconnection agreements.⁹

GCI’s argument would extend the scripting requirements far beyond their intended scope. The Commission has expressly found that the straightforward purpose of scripting requirements,

⁷ See *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011), at ¶ 778 (adopting a bill-and-keep structure with respect to originating access charges pending further development of a transition schedule and other issues) and ¶ 805 (discussing why the Commission would temporarily defer any regulation or reduction originating intrastate access charges for rate-of-return-regulated ILECs).

⁸ *Equal Access Scripting Forbearance Order*, at ¶¶ 122 and 124.

⁹ GCI Comments, WC Docket No. 12-61 (filed April 9, 2012), at 2.

as adopted in the early 1980's and preserved by section 251(g) of the Act in 1996, was to "foster fair competition in the provision of *stand-alone* long distance service at a time when competition in the provision of *stand-alone* long distance service was nascent and there was little, if any, competition in the provision of local exchange service."¹⁰ In other words, the Commission has noted that scripting requirements were specifically developed to enable long distance competition at a time when there was little local competition. Yet GCI would now turn this purpose on its head, keeping the scripting requirement alive not for any reason related to consumers' long distance needs but merely as a lever to obtain a GCI-preferred outcome in local service markets.

Forbearance from equal access scripting requirements for small and mid-sized carriers is more than justified – it is in fact in the best interests of consumers. Just as with the forbearance granted previously to the BOCs: (1) consumers are well aware and can take advantage of "additional options" for making long distance calls, including but not limited to bundled service offerings;¹¹ (2) if anything, the "artificially narrow focus of the [scripting requirement] may, in fact, confuse or mislead consumers and cause them not to investigate alternative means of making long distance calls;" (3) "rather than being necessary for the protection of consumers, . . . the current [scripting requirement] could hinder consumers' awareness of competitive

¹⁰ *Equal Access Scripting Forbearance Order*, at ¶ 120 (emphasis added).

¹¹ This is perhaps the most significant flaw underlying GCI's argument. As noted in footnote 4, the availability of local-long distance service bundles (which is the sole focus of GCI's argument) was *but one* of several reasons that the Commission determined consumers had "additional options for making long distance calls" and that the first prong of the forbearance test was accordingly satisfied. *See id.* at ¶ 122 (identifying mobile wireless services and prepaid calling cards as other alternatives). Of course, the Commission's 2007 order did not take note of the proliferation of then-nascent alternatives such as Skype that now represent a significant option for many consumers and render equal access scripting requirements even more obsolete.

alternatives;” and (4) the public interest would be served by forbearance for the foregoing reasons and because ILECs’ customers retain the right to obtain long distance service from any other carrier and a host of other non-carrier providers. The Commission should therefore grant the USTelecom petition with respect specifically to forbearance from the equal access scripting requirements for small and mid-sized carriers.

Respectfully submitted,

NTCA

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April 24, 2012

CERTIFICATE OF SERVICE

I, Barbara E. Fitzpatrick, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in WC Docket No. 12-61, was served on this 24th day of April 2012 via electronic mail to the following persons:

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