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

In the Matter of	)	
	)	
Petition of AT&T Services, Inc. for Forbearance	)	WC Docket No. 16-363
Under 47 U.S.C. §160(c) from Enforcement of	)	
Certain Rules for Switched Access Services and	)	
Toll Free Database Dip Charges	)	

OPPOSITION OF
WTA – ADVOCATES FOR RURAL BROADBAND
AND
EASTERN RURAL TELECOM ASSOCIATION

WTA – Advocates for Rural Broadband ("WTA")[1] and Eastern Rural Telecom Association ("ERTA")[2] oppose the petition filed by AT&T Services, Inc. ("AT&T") on September 30, 2016, for forbearance: (1) from "the tariffing of access charges for tandem switching and tandem-switched transport for all [local exchange carriers ("LECs")], including intermediate LECs, on all calls to and from LECs engaged in access stimulation" (AT&T Petition, p. 3); and (2) from "rules allowing LECs to assess [via tariffs] per query database dip charges on toll-free calls" (AT&T Petition, p. 4).

WTA and ERTA oppose the AT&T petition, and request that it be dismissed or denied. First, AT&T is attempting to misuse the forbearance procedure for an unintended purpose – in this case, as a customer (and on behalf of other customers) seeking to avoid paying small rural LECs ("RLECs") and others for use of their networks. Moreover, even if forbearance were an applicable procedure for the relief sought, AT&T has presented no specific evidence that "access

[1] WTA is a national trade association representing more than 350 rural telecommunications providers offering voice, broadband and video-related services in rural America. WTA members are generally small local exchange carriers that serve some of the most remote rural, sparsely populated and hard-to-serve communities in the country and are providers of last resort to those communities.

[2] ERTA is a trade association representing rural community based telecommunications service companies operating in states east of the Mississippi River.

stimulation" remains a significant problem in the telecommunications industry, or that the normal tariff review procedures in which AT&T actively participates are not sufficient to achieve just and reasonable tandem switching and tandem-switched transport rates, and database dip charges.

Finally, WTA and ERTA note that AT&T spends a significant portion of its forbearance petition asserting that the Commission's 2011 intercarrier compensation reforms were incomplete and inadequate, and urging it to "act with urgency" to finish these reforms (AT&T Petition, pp. 1-3, 4-11). Such relief (as well as AT&T's request for rules to define the network "edge") requires a full-fledged rulemaking open to all interested parties that will elicit detailed evidence and carefully consider intercarrier compensation, universal service and related issues that affect major portions of the telecommunications industry. These matters have no relevance to, or any reasonable place in, a forbearance proceeding.

Section 10 Regulatory Forbearance
Is Not An Appropriate Procedure For The Relief Sought By AT&T

Section 10 of the Communications Act (47 U.S.C. §160) was added by the Telecommunications Act of 1996 to provide the Commission with express legal authority and regulatory flexibility to forbear from enforcing certain provisions of the Communications Act or its regulations under certain circumstances.

The clear language and intent of Section 10 was to allow individual carriers (or classes of carriers) to petition the Commission to exempt the carriers themselves or certain of their services from specific statutory or regulatory requirements directly applicable to them or their services. For example, Section 10(a) establishes and limits the Commission's forbearance authority to the application of a regulation or statutory provision to "*a telecommunications carrier or telecommunications service*, or class of telecommunications carriers or telecommunications

services, in any or some *of their geographic markets*, if the Commission determines that – (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with *that telecommunications carrier or telecommunications service* are just and reasonable …" (emphasis added). Likewise, Section 10(c) provides that "*Any telecommunications carrier or class of telecommunications carriers*, may submit a petition to the Commission requesting that the Commission exercise the authority granted under this section *with respect to that carrier or those carriers* . . ." (emphasis added).

Here, AT&T is not a carrier seeking Section 10 forbearance relief from any statutory provision or Commission regulation applicable to its own carrier operations or services. Rather, it is a customer of various RLECs and other LECs that is seeking an excuse not to pay the properly filed and reviewed tariffed charges for certain of the regulated telecommunications services of some of such smaller carriers. AT&T has ample relief available under Sections 201, 202, 203 and 208 of the Communications Act if it believes that any of the tandem switching, tandem-switched transport or database dip charges imposed by specific RLECs are unjust or unreasonable or unreasonably discriminatory. It has made no such claims here, nor has it produced any evidence of specific unjust, unreasonable or discriminatory charges for any of the specified services.

In any event, because AT&T is not acting as a carrier here and is not seeking forbearance from any statutory provision or Commission regulation applicable to its own carrier operations or services, it has no standing to file the present forbearance petition. For that reason alone, AT&T's subject petition should be dismissed or denied.

AT&T's Requested Relief Would Not Ensure Just and Reasonable Charges, Protect Consumers, or Serve the Public Interest

Even if AT&T had standing to seek its proposed forbearance relief, it has not met any of the statutory requirements for forbearance. Specifically, it has not shown: (a) that its requested forbearance relief is necessary to ensure that the charges, practices, classifications or regulations for the subject tandem switching, tandem-switched transport or database dip services are just, reasonable and not unreasonably discriminatory; (b) that its requested relief is necessary for the protection of consumers; or (c) that its requested relief is consistent with the public interest.

A. AT&T's Unsubstantiated "Access Stimulation" Assertions

The Commission addressed "access stimulation" in its *2011 USF/ICC Transformation Order,*[3] and adopted comprehensive and effective regulations and enforcement procedures. Since that time, WTA is not aware of any significant instances of unlawful access stimulation by its members or other RLECs.

AT&T claims that "in AT&T's experience, access stimulation remains rampant. Indeed, since 2011, *billions* of minutes of access traffic continue to be stimulated each year, and despite the Commission's reform efforts, the practice has not been curtailed in any meaningful way" (AT&T Petition, p. 9). However, AT&T fails to support these allegations with any specific examples or evidence. Just what specific carriers or classes of carriers can AT&T demonstrate to be currently or recently engaging in what specific types of unlawful access stimulation? How many complaints have AT&T and others filed with the Commission during recent years – for example, during 2015 and 2016 -- regarding alleged access stimulation practices? How many carriers has the Commission found to be engaging in unlawful access stimulation practices during 2015 or 2016?

[3] *In re Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, released November 18, 2011, at paras. 656-701.

WTA and ERTA cannot vouch for the competitive local exchange carrier ("CLEC") industry, but are unaware of any "rampant" or other extensive unlawful access stimulation activity since the Commission's prohibitions and enforcement procedures were implemented. In fact, WTA and ERTA note that the total number of access minutes of use of NECA Tier 2 Cost Companies and NECA Average Schedule Companies have decreased 37.65% -- from 10,559,301,649 to 6,583,194,936 – from 2011 to 2015.[4] Moreover, even in the hypothetical case that a few RLECs might be so inclined, any potential incentives for access stimulation activities have disappeared as terminating access and reciprocal compensation rates have dropped toward and through $0.005 per minute on their way to bill-and-keep.[5]

Therefore, unless and until AT&T produces clear and probative evidence of its alleged "widespread" and "continuing" access stimulation practices by one or more specific telecommunications industry sectors, and unless and until the Commission examines the relevant evidence from all interested parties and finds that substantial unlawful access stimulation is currently taking place in one or more of such industry sectors, there is no underlying factual predicate for AT&T's tandem switching and tandem-switched transport forbearance request. This constitutes a separate and independent reason for denial of the AT&T petition.

B. Dangers of Vague "Access Stimulation" Criterion

AT&T's vague and unsubstantiated charges of rampant "access stimulation" highlight the dangers of its tandem switching and tandem-switched transport forbearance request. If this portion of AT&T's petition is granted, RLECs and others can expect a plague of "charges" of

[4] See Tab 3 of MOU_Report_2011_2015.xlsx at https://www.fcc.gov/general/network-usage-carrier (visited 12/2/2016)

[5] Notwithstanding AT&T's curious view of the world (AT&T Petition, p. 4), the small customer bases of RLECs offer virtually no opportunity to generate additional profits by stimulating originating access minutes and revenues. Likewise, the transport networks of RLECs are generally limited to their study areas, and lack the distances and traffic volumes to attract "access stimulation" schemes.

"access stimulation" by AT&T and other interexchange carriers ("IXCs"), together with self-help refusals by such IXCs to pay all or substantial portions of their properly computed and rendered access bills. Unfortunately, it has become an increasingly common practice in the telecommunication industry for larger IXCs to create various "disputes" or other reasons for not paying their access bills, and to force small RLECs and CLECs into drawn out and expensive lawsuits, arbitrations and negotiations that frequently result in "settlements" wherein the smaller LECs receive only cents on the dollar amounts of their access bills.

WTA and ERTA note further that individual IXCs, transport providers and other intermediate carriers virtually never have a full and accurate picture of an RLEC's or CLEC's operations, and are very unlikely to be able to determine accurately whether an increase in certain traffic is for legitimate reasons or constitutes unlawful access stimulation. A proper and accurate determination regarding the existence or non-existence of unlawful "access stimulation" generally can be made only by the Commission or other agency that is able to collect and review all of the relevant evidence regarding a carrier's operations.

The Commission has defined "access stimulation" in Section 61.3(bbb) of its Rules, and adopted provisions to discourage it in Sections 61.38 and 69.3(e)(12) of its Rules. If the Commission, for any reason or in any proceeding, determines to penalize the practice further by allowing IXCs not to pay tandem switching, tandem-switched transport or other tariffed charges because a carrier has engaged in unlawful "access stimulation," it should take such action **only** in situations where it has conducted an appropriate adjudicatory proceeding, compiled and evaluated the relevant evidence, and formally found that the carrier had in fact engaged in unlawful access stimulation. In stark contrast to an adjudicated Commission ruling, allowing self-interested IXCs unilaterally to suspend or reduce their payment of access bills merely by

alleging some sort of "access stimulation" by the carrier would constitute an open invitation for bullying and unscrupulous payment evasion and access bill reduction schemes. This would also deny the accused carrier its legal right to due process under the law.

C. AT&T and Customers Are Protected by Tariffing and Tariff Review

Access tariffs continue to be necessary to ensure that AT&T and other large IXCs will pay small RLECs and CLECs for the use of their rural networks. It has been proven time and again that large IXCs are reluctant to negotiate interconnection and compensation agreements with hundreds or thousands of small RLECs and CLECs, and that the public interest is not served if carriers refuse to deal with entities with whom they do not have interconnection and compensation arrangements. Tariffs have long proven to be the most efficient and effective way for RLECs and CLECs to establish interconnection and compensation arrangements with large carriers, and for IXCs and other large carriers to provide nationwide or regional services without negotiating interconnection and compensation arrangements with hundreds or thousands of small carriers.[6] Tariffs also protect consumers by giving them access to national and regional services, and by spreading the costs (and ultimately the rates) for services among the carriers using networks to provide them.

AT&T has long been able to protect itself via the Commission's tariff review processes from unjust, unreasonable and unduly discriminatory charges for tandem switching, tandem-switched transport, database dips on toll-free calls, and other tariffed services. AT&T has been an active and aggressive participant in reviewing tariff transmittals and cost support, negotiating tariff revisions with specific entities, and filing and prosecuting petitions to reject or suspend

[6] WTA is well aware that certain access and reciprocal compensation charges are moving toward bill-and-keep. However, until that transition is complete, its RLEC members must collect the relevant tariffed access charges. Failure to do so can have adverse impacts upon the CAF-ICC mechanism and the overall High-Cost Support budget for Rate-of-Return carriers.

certain tariff filings. To the extent that AT&T now makes general claims that unspecified tandem switching, tandem-switched transport, and database dip charges are unreasonably high or otherwise unjust and unreasonable, the relevant question is why AT&T has not challenged them, or produced evidence of their alleged unlawful nature or amounts, during the tariff review process.

Finally, the detariffing of tandem switching and transport charges without a reasonable alternative recovery mechanism would wreak havoc upon RLECs and their rural customers. RLECs are struggling in a time of economic stress and limited budgets to adapt to changing technology and consumer needs, to complete their broadband upgrades and deployments, and to continue serving and supporting the economic development of their rural exchange areas. As the Commission is well aware, most RLECs are stretched very thin – with substantial investment and infrastructure needs, minimal financial resources, limited customer revenues, and strictly budgeted high cost support. Loss of any significant revenue stream – whether tandem switching, tandem-switched transport, or (in a few cases) database dip charges – can cause serious harm to companies that are struggling for every dollar just to avoid falling further behind.

Conclusion

The Commission should dismiss or deny AT&T's petition as an improper and unauthorized attempt to invoke the Section 10 forbearance process by an access customer rather than a carrier. AT&T has failed to use forbearance for the purpose intended – to obtain relief as a carrier from statutory or Commission regulation of its carrier operations and services. Because AT&T, in its role as a customer of access services, has no Section 10 right to seek forbearance, its petition must be dismissed or denied for lack of standing.

Even if AT&T's petition were procedurally appropriate, it should be denied because AT&T has not shown that its requested forbearance relief is necessary to ensure just and reasonable charges for the subject tandem switching, tandem-switched transport or database dip services; to protect consumers; or to advance the public interest. Not only has AT&T failed to present evidence that the Commission's 2011 reforms have in fact been ineffective in eliminating or minimizing "access stimulation," its vague and unsupported claims raise serious concerns that forbearance would lead to a flood of spurious charges of "access stimulation" by AT&T and other IXCs, together with self-help refusals to pay their access bills and the exertion of unfair pressures upon small carriers to accept minimal "settlements." Moreover, the Commission's tariff review process continues to be an effective and efficient process for IXCs like AT&T to obtain just, reasonable and non-discriminatory charges for the subject tandem switching, tandem-switched transport, database dips and other regulated telecommunications services.

Respectfully submitted,

WTA – ADVOCATES FOR RURAL BROADBAND

By: /s/ Gerard J. Duffy

Gerard J. Duffy
Blooston, Mordkofsky, Dickens,
Duffy & Prendergast, LLP
2120 L Street, NW (Suite 300)
Washington, DC 20037
Phone: (202) 659-0830
Email: gjd@bloostonlaw.com

EASTERN RURAL TELECOM ASSOCIATION

By: */s/ Jerry Weikle*

Jerry Weikle
Regulatory Consultant
PO Box 6263
Raleigh, NC 27628
Phone; (704) 782-7738
Email: Weikle@erta.org

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