

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of AT&T)
Ohio to Add Exception Language to the)
Access Services Section of P.U.C.O. Tariff) Case No. 13-2070-TP-ATA
No. 20)

**MOTION TO INTERVENE AND OBJECTION TO THE APPLICATION
BY
THE MACC COALITION**

The Midwest Association of Competitive Communications, Inc. (“MACC”) hereby moves to intervene in the above-captioned proceeding pursuant to Ohio Revised Code Section (“R.C.”) 4903.221, and Ohio Administrative Code (“OAC”) Rule 4901-1-11(F).

This proceeding was initiated on October 10, 2013, when AT&T Ohio (“AT&T”) filed its application with the Public Utilities Commission of Ohio (“PUCO” or “Commission”) to add terms and conditions to its Access Tariff to modify an exception to its F.C.C. No. 2 to eliminate Term Payment Plan periods greater than 36 months for new or existing service plans for the services noted in this filing.

MACC submits that it has a real and substantial interest in this proceeding, that it is so situated that the disposition of this proceeding without MACC’s participation may impair or impede its ability to protect that interest, and that its participation in this proceeding will contribute to a just result. MACC further submits that its interest in this proceeding is not adequately represented and that granting its motion to intervene will not unduly delay this proceeding or unjustly prejudice any existing party. The reasons for MACC’s motion to intervene and the reason for its objections are set forth in the attached Memorandum in Support.

MEMORANDUM IN SUPPORT

MACC is an allied group of telecommunications companies and interested associated businesses. The MACC¹ is dedicated to supporting a regulatory environment that fosters competition in the communications marketplace.

The MACC companies vary in what they do. Each offers different services and serves different types of customers and geographic markets. Some companies, for instance, focus on providing residential telephone service through the existing phone lines. Others focus on wholesale services or create new infrastructure to serve all sizes of businesses or office buildings (small, medium, large), thereby linking this new investment to the existing public network. What unites us all is our belief that a vibrant, open market encourages all companies—the big as well as the small—to offer better service, provide the lowest possible prices, and roll-out innovative products that push the Midwest ahead in the national and global economy. Most carriers subscribing to special access services subscribe to the majority of them out of AT&T's interstate tariff. AT&T had initially announced that it intended to file similar changes to its interstate tariffs on October 25, 2013, with the changes scheduled to become effective on November 9, 2013. In a public notice issued October 25, 2013, AT&T announced that it had decided to postpone the filing of its interstate tariff changes until November 25, 2013, to become effective on December 10, 2013. AT&T stated that the reason for the delay was “to address the questions and concerns that customers have raised regarding the tariff changes.” A copy of AT&T's announcement is attached as Exhibit 1. Since the revised, interstate tariffs will not become effective until, at the earliest, December 10, 2013, there is no reason for the Commission to act on this interstate tariff at this time. Discussion among the

¹ A list of MACC members can be located at http://www.macconline.net/carrier_members.html.

parties and action by the Federal Communications Commission (“FCC”) may, by next month, have resolved this dispute. Therefore, MACC asks that its Motion to Intervene be granted and that the Commission take appropriate action to suspend this application pending further developments.

Consistent with the requirements of R.C. Section 4903.221, and OAC Rule 4901-1-11(F), MACC is a real party in interest herein, whose interest is not now represented, who can make a contribution to the proceeding and who will not unduly delay the proceeding or prejudice any existing party.

The rules of this Commission mandate intervention, upon timely motion made pursuant to OAC Rule 4901-1-11(A), following a showing that:

(2) the person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person’s interest is adequately represented by existing parties.

MACC satisfies each requirement of this rule.

Alternatively, the rules of this Commission provide for permissive intervention under OAC Rule 4901-1-11(B), upon timely motion, following consideration of:

- (1) The nature of the person’s interests;
- (2) The extent to which the person’s interest is represented by existing parties;
- (3) The person’s potential contribution to a just and expeditious resolution of the issues involved in the proceedings; and,
- (4) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice any existing party.

Even if the Commission were to determine that MACC does not satisfy the requirements for mandatory intervention, MACC nevertheless satisfies the requirements for permissive intervention. MACC’s participation will bring to bear its collective experience in carrier-to-

carrier issues and proceedings. Under both mandatory and permissive intervention, MACC's participation with respect to AT&T's proposed tariff revision is therefore appropriate.

OBJECTIONS

I. BACKGROUND

The following objections are brought by, and on behalf of, the specific MACC members listed herein below (collectively the "MACC Coalition").² These comments reflect the position of the listed MACC Coalition members only.

AT&T's application should be rejected or suspended by the Commission for the following compelling reasons. The issues raised by this application are far more complex and may have dire competitive impacts than first apparent. Across several states in which it is the dominant incumbent local exchange company, AT&T is seeking to eliminate an important aspect of a critical, and in many instances, monopoly wholesale service that competitive carriers rely upon to provide services to their retail enterprise customers—the critical "last mile" link from competitive carriers' own networks to the customer premises. If allowed to become effective, AT&T's application would prevent customers from establishing new term plans greater than 36 months or renew or extend for a term greater than 36 months for special access services at the DS1, DS3 and Base Rate (DS0) levels, along with Direct Analog service. It should be clearly understood that this application seeks exceptions to provisions in AT&T's interstate tariff that have not yet been filed. See Exhibit 1.

² tw telecom of ohio llc; MegaPath Corporation; EarthLink Business, LLC; First Communications, LLC; XO Communications Services Inc.; and Level 3 Communications, LLC.

II. IMPORTANCE OF SPECIAL ACCESS TO COMPETITION

Special access services are an essential component of a great variety of “downstream” products and services that, collectively, will impact a large part of the overall economy. Wireless carriers use special access for the backhaul of traffic from tower sites to the wireline network, and, as noted above, competitive carriers use special access to provide telecommunications services to retail enterprise customers. It is also used to provide connectivity to the internet backbone, and large, data-intensive customers use it as an unswitched dedicated link for transmitting large volumes of information.

The immediate impact of AT&T’s application will be the elimination of the lower rates that AT&T charges under the affected term agreements. Customers obtain significant savings by agreeing to service terms beyond 36 months, usually 60 months. Because special access is still an essential monopoly input to the competitive services that depend on its availability, the net effect of AT&T’s application will be to substantially increase the rates paid by competitors.

AT&T’s ostensible motivation for its application is that it intends to “wean” competitors and customers off of TDM-based services as part of its push to an all-IP network. A copy of a recent Accessible Letter explaining this reasoning is attached hereto as Exhibit 1. The matter of the transition from a TDM-based telecommunications network to an IP-based (or other non-circuit-switched technology), including the timing of that transition, is currently pending before the FCC in a variety of proceedings.³ AT&T’s position is that agreements for special access services with durations longer than 36 months simply are not necessary because in 36 months these special access services will not have a network over which they can be provided.

³ See, e.g. *Special Access Rates for Price Cap Local Exchange Carriers*, FCC WC Docket No. 05-25, RM-10593; *Connect American Fund*, WC Docket 10-90; *Technology Transitions Policy Task Force*, GN Docket No. 13-5; and *Petitions to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket 12-353.

AT&T's unilateral action to eliminate longer term arrangements for special access is premature for a number of reasons. First, the timing surrounding the retirement of the TDM based network is an issue pending before the FCC and the precise question is not yet resolved—so AT&T's presumption that agreements beyond 36 months are no longer necessary is itself premature.

Second, AT&T's elimination of term agreements is unnecessary because the term contracts themselves can (and do) include language that addresses changes in both the technical and regulatory landscape that impact the provision of wholesale services. The fact is that if and when the TDM-based network is retired, the impact of that retirement can be addressed within AT&T's existing contracts *at that point in time*. The Commission well knows that existing wholesale agreements can be changed in an orderly fashion as a result of changes in regulations at the Federal level. See, e.g., Case No. 05-887-TP-UNC. The complete elimination of term agreements beyond 36 months is both unnecessary and unwarranted because the underlying question remains open. AT&T is putting the cart before the horse. The position of the MACC Coalition is explained further in the attached Ex Parte Notice from COMPTTEL to the FCC. See Exhibit 2.

Third, the matter of the retirement of the TDM-based network is really separate from the provision of special access *services*. Competitive carriers and other customers of AT&T use special access facilities to provide IP-based services. Retail customers require services that have the DS1 or DS3 *capacities*, separate and apart from whether they are on an IP-based or TDM-based platform. AT&T's special access services provide wholesale last mile *facilities* that are necessary for the provision of competitive retail services that can be IP or TDM-based. Special access services will likely be provided long after the retirement of the TDM-based network.

AT&T's attempt to link special access *services* to the retirement of the TDM-based *network* is a red herring simply masking a massive and anti-competitive rate increase.

In light of the various infirmities attending AT&T's requested relief, the Commission should suspend AT&T's application until the underlying issues have been addressed by the FCC, or, at a minimum, set this matter for further hearing to ascertain the impacts that it will have on competition and the economy in Ohio.

III. CONCLUSION

WHEREFORE, the MACC Coalition respectfully requests that its Motion to Intervene be granted. In addition, the MACC Coalition requests the Commission to suspend AT&T's application pending the further outcome of the matters currently before the FCC.

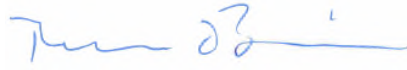
Respectfully submitted on behalf of
THE MACC COALITION



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion to Intervene and Objection was served upon the parties of record listed below this 4th day of November 2013 *via* electronic mail.



Thomas J. O'Brien

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**AT&T MIDWEST REGION - Announces Revised Date for the Elimination of Term Plans Exceeding 3 Years for Multiple Digital Services**

Date: October 25, 2013

Number: **ACCESS13-074**

Category: Special Access

Issuing ILECS: AT&T Illinois, AT&T Indiana, AT&T Michigan, AT&T Ohio, and AT&T Wisconsin (collectively referred to for purposes of this Accessible Letter as "AT&T Midwest Region")

Contact: Account Manager

This Accessible Letter modifies and clarifies Accessible Letter Number ACCESS13-069, regarding the grandfathering of certain tariffed term plans for DSx special access services, for states other than Indiana and Ohio.

To address questions and concerns that customers have raised regarding the tariff changes, AT&T Midwest Region has decided to postpone the filing of those changes by approximately 30 days. AT&T Midwest Region now plans to file the tariff changes to grandfather the term plans on November 25, 2013 (rather than October 25, 2013), to become effective on December 10, 2013 (rather than November 9, 2013). This additional time will enable discussion of your questions and concerns and exploration of alternative arrangements for your TDM and IP-based services. These date changes apply to the following state specific Access Service Tariffs:

- Illinois Bell Telephone Company ILL. C.C. NO. 21, Section 7
- Michigan Bell Telephone Company Tariff M.P.S.C NO. 20R, Part 21, Section 2
- Wisconsin Bell, Inc., P.S.C. of W. 2, Section 7

These tariff modifications are an initial step toward implementing AT&T's plan to upgrade its network to meet growing demand for next generation broadband services, and to migrate its legacy TDM network to IP-based network facilities and services. As AT&T Midwest Region has previously announced, it intends to complete that transition by 2020. The IP network will be modern -- more efficient, more versatile, and more resilient than a traditional TDM network. IP services also provide new capabilities and an improved customer experience. The conversion will facilitate the migration of customers from aging technologies to new IP-based services that consumers and businesses demand. Eliminating long-term commitments to TDM services is a necessary part of that modernization process. Given the length of the term plans being grandfathered, AT&T Midwest Region must start the process now.

Although many of you already are moving to replace your TDM services with IP-based services, AT&T Midwest Region understands that the migration to IP-based services will take time and that, as a result, you may wish to continue to purchase TDM services in the near term. We encourage you to contact your AT&T Account Team to talk about your service needs and the migration to IP-based services.

AT&T reserves the right to modify or to cancel the information in this Accessible Letter. In the event of such modification or cancellation, AT&T will notify carriers in a subsequent Accessible Letter. AT&T will incur no liability if the information in this Accessible Letter is modified or cancelled.

As mentioned in the earlier accessible letter, existing services under term plans that are longer than 36 months and already in place as of the effective date, now December 10, 2013, will remain subject to the terms and conditions of those plans until their terms expire, at which time customers may either select from the term plans for which they are eligible under the expiring plan, or continue receiving service under month-to-month or monthly extension rates.

AT&T reserves the right to modify or to cancel the information in this Accessible Letter. In the event of such modification or cancellation, AT&T will notify carriers in a subsequent Accessible Letter. AT&T will incur no liability if the information in this Accessible Letter is modified or cancelled.



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October 28, 2013

EX PARTE NOTICE

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25, RM-10593; Technology Transitions Policy Task Force, GN Docket No. 13-5; Petitions to Launch a Proceeding Concerning the TDM-to-IP Transition, GN Docket No. 12-353; Connect America Fund, WC Docket No. 10-90.

Dear Ms. Dortch:

COMPTEL joins other purchasers of AT&T's special access services¹ in conveying its concern with the Accessible Letters AT&T sent to COMPTEL members. While COMPTEL has expressed its concern with the anti-competitive impact of long-term contracts, AT&T's elimination of such contracts, without a corresponding reduction in price of the shorter-term contracts, leaves purchasers of these services with a substantial price increase and still no viable alternative. As Cbeyond *et al* estimated, the cost to purchasers of special access services (which include competitive carriers and end-user customers), as a result of this change, will be in the tens of millions of dollars,² providing AT&T a substantial windfall.

The impact of what is, in effect, a rate increase will ripple through the economy as a whole. Special access services are a critical component for numerous downstream products and services. Wireless carriers use it for backhaul. Competitive LECs use these services in providing services to their retail enterprise customers and entities seeking to connect with the

¹ See Letter of Cbeyond *et al* to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25 and 10-90, RM-10593, GN Docket Nos. 13-5, 12-353, filed Oct. 18, 2013 ("Cbeyond *et al* Letter").

² *Id.* at 2.

Internet backbone.³ It is also a critical input for non-carrier enterprise customers that use it as an input for a wide variety of products and services, such as banking, manufacturing, and data management services.

A spokesperson for AT&T said, with regard to AT&T's plan to stop offering contracts longer than 36 months, that "this is an effort to wean customers off TDM-based services."⁴ In other words, AT&T is trying to further limit the options of special access purchasers. First, if the TDM market is obsolete and the Ethernet market is competitive, as AT&T alleges, it would not need to "wean" customers off their TDM service because the customers themselves would *choose* to purchase Ethernet services. Moreover, if AT&T was interested in providing an inducement (as opposed to penalty) to encourage customers to switch to shorter-term contracts, it could simply provide greater discounts (than it does today) so that customers would desire such arrangements. Indeed, if the market for these services were truly competitive (as AT&T continuously claims) it would not withdraw longer-term contracts without simultaneously providing discounts to its shorter term contract, because in a competitive market forcing customers off long-term contracts would simply encourage them to seek alternatives more quickly. However, AT&T stands in a dominant position and need not fear that it will lose market share by cutting off the availability of these long-term services. Indeed, in this instance, it actually stands to gain additional revenue by doing so because of the market failure in the special access market. The fact is that AT&T wants the higher revenues and higher prices that it can extract by withdrawing the discounts available through longer term contracts from its captive customers. As noted, AT&T could easily offer three year plans at discounts equal to the discounts available in the longer-term contracts. TDM is the only option in some places, and it is all the more important therefore that rates for DS1 and DS3 services are just and reasonable in those locations.

COMPTEL supports the transition from TDM to Ethernet and its members have been leading the way, but the transition should not be used by AT&T as a means of raising prices. If AT&T were focused solely on facilitating the transition, it would offer Ethernet at more reasonable prices. There is simply no evidence that even those customers desiring (through their own choice) other services, such as Ethernet, will be able to escape AT&T's market dominance by switching from TDM services to Ethernet services. In our comments supporting a petition to reverse the forbearance granted on non-TDM special access services, COMPTEL demonstrated that the AT&T prices (as provided for in its guidebook) for its retail Ethernet access and transport services are unreasonably and unjustly inflated, *often greater by an order of magnitude* than a comparable finished Ethernet service constructed from a wholesale Ethernet Transport Service (ETS) offered by rural ILECs.⁵ For example, even with a three-year contract, AT&T's (guidebook) prices are 6.8 times more costly than a comparable service

³ See *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd. 18290, ¶ 24 (2005) ("*SBC-AT&T Merger Order*").

⁴ "Rivals Protest AT&T Rate Shift," Wall Street Journal, October 23, 2013.

⁵ COMPTEL Comments, WC Docket No. 05-25 and RM-10593, at 10-11, April 16, 2013 ("COMPTEL Comments").

constructed using the NECA #5 tariff 2 Mbps Ethernet access service, and 11.6 times more costly than the comparable 1 Gbps arrangement.⁶

AT&T's principal response to the COMPTTEL Ethernet analysis is the exceptionally weak claim that the comparison was invalid because it was based on "the 'rack rates' published in AT&T's Guidebook, not on the lower, discounted rates for service that the Guidebook indicates are available and that customers actually pay."⁷ COMPTTEL fully recognized that AT&T provides discounts to its guidebook prices, but is constrained by the fact that these discounts are *known only to AT&T*. Significantly, if the effect of these discounts actually contradicted the core conclusion of the COMPTTEL analysis – that is, that AT&T's Ethernet prices are not just and reasonable – then AT&T would have provided such a comparison. The very fact that AT&T has chosen to make the argument that discounts apply, but not offer the proof that the discounts change the result, is telling evidence that its prices are simply excessive. In addition, as this very filing demonstrates, the level and duration of any such discounts are within AT&T's control, and will disappear to meet AT&T's strategic objectives.

Contrary to AT&T's claims, the COMPTTEL Ethernet analysis demonstrates that there is no escaping AT&T's market power by shifting to Ethernet services. AT&T points to *national* market share statistics as rebuttal, but even if these national statistics are accurate (which we cannot determine), the statistics are meaningless because they dilute AT&T's market share within its ILEC footprint (where they have market power) with its position outside that footprint (where it operates as a CLEC).

Apparently unwilling to provide any analysis of its own Ethernet prices and volumes, AT&T points to Verizon's statement that it has 3,300 contracts.⁸ Because Verizon's market dominance (within its region) is comparable to AT&T's (within the AT&T ILEC footprint), the Commission should fully expect that it has thousands of contracts. Companies with market-power don't price at levels that foreclose sales, they price at levels to maximize the profit from those sales. Of course Verizon has thousands of contracts, for frequently there is no alternative.

For its part, Verizon fares no better attempting to rebut the COMPTTEL Ethernet Analysis (which could not evaluate any of Verizon's Ethernet prices because they are *all* proprietary),⁹ than AT&T. Indeed, it appears that Verizon only "skimmed" the COMPTTEL analysis because its principal claim is that the analysis is "equivalent to demonstrating that the price of an apple is not the same as the cost of growing an orange," because COMPTTEL's analysis "compared the retail prices for a finished Ethernet service in urban and suburban markets to the lower wholesale price in the NECA tariff for a broadband transmission service

⁶ Table 2 of Attachment A to COMPTTEL Comments, at 6.

⁷ AT&T Reply Comments, WC Docket No. 05-25 and RM-10593, at 6, May 31, 2013 ("AT&T Reply").

⁸ AT&T Reply at 6.

⁹ Attachment A to COMPTTEL Comments, at 3.

that is not ‘end user ready’.”¹⁰ Verizon’s Reply is completely unfounded, however, because the analysis fully included the additional costs to make the service “end user ready,”¹¹ and is, as a result, an “apples-to-apples” comparison.¹² As COMPTTEL states in its comments:

“We refer to the BOC offerings as ‘*finished services*’ in as much as these services can be utilized directly by end users with no need for additional components. In contrast, the NECA #5 wholesale offerings must be augmented with additional components (ex. customer premise equipment, etc.) to be considered “end user ready.” This analysis accounts for all additional components to augment the NECA #5 offerings, as necessary, to build a service functionally comparable to those of the BOCs.”

Competitive carriers, for the most part, would prefer a wholesale product where they could add the electronics and, therefore, be more innovative in their offerings to consumers.

Despite these assertions by AT&T and Verizon, the fact remains that COMPTTEL Ethernet Analysis stands un rebutted and its fundamental conclusion – that customers and carriers cannot escape the market power of these ILECs by shifting to Ethernet – requires that the Commission engage in active oversight of these critical TDM and non-TDM services. AT&T’s instant effort to eliminate discounts (albeit discounts offered only to long-term customers) is further evidence of its market dominance.

Finally, it is disturbing that AT&T’s changes to its pricing of special access services comes as the Commission is evaluating the market and considering major special access reform, in addition to addressing issues related to the transition of the PSTN to IP technology. AT&T’s actions both demonstrate the reason Commission involvement is necessary and raises the question as to whether the Commission should allow AT&T to increase prices by discontinuing particular service offerings competitors are using to directly compete with it in the retail marketplace pending the outcome of these proceedings.

Respectfully submitted,

/s/

Karen Reidy

¹⁰ Verizon Reply Comments, WC Docket No. 05-25 and RM-10593, at 6, May 31, 2013 (“Verizon Reply”).

¹¹ See Attachment A to COMPTTEL at 2, n. 3 (Emphasis added).

¹² In addition to mischaracterizing the COMPTTEL Ethernet Analysis, Verizon makes the exceptionally odd comment that it is unclear who performed the study (the ETC Group) or their qualifications, while at the very same time citing to the webpage that provides that information. See Verizon Reply at 6, n. 29.

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Case No(s). 13-2070-TP-ATA

Summary: Motion to Intervene and Objection to the Application by The MACC Coalition electronically filed by Teresa Orahoud on behalf of Thomas O'Brien