

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

In the Matter of
Establishing Just and Reasonable Rates for
Local Exchange Carriers
Call Blocking by Carriers
WC Docket No. 07-135

DECLARATORY RULING AND ORDER

Adopted: June 28, 2007

Released: June 28, 2007

By the Chief, Wireline Competition Bureau:

1. Today, on our own motion, we issue this Declaratory Ruling to remove any uncertainty about the scope of the Commission's general prohibition on call blocking and to clarify the obligation of interexchange carriers (IXCs) and commercial mobile radio service (CMRS) providers (collectively carriers) to complete their customers' interexchange calls.

2. Over the past several months, certain carriers have asked the Commission to address

1 47 C.F.R. § 1.2 ("The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty"); see also, 5 U.S.C. § 554(e) ("The agency, with like effect as in the case of other orders and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty").

2 See Open Letter of Iowa Rural Carriers and Conference Service Providers to Chairman Martin, Commissioners Copps, Adelstein, Tate and McDowell (dated Apr. 16, 2007) (Iowa RLEC April 16 Letter); see also, James S. Granelli, Phone firms hung up over fees; Carriers' move to block costly teleconference calls raises questions about consumer access, L.A. Times, April 5, 2007 (describing consumer complaints about having their conference calls blocked).

3 See, e.g., 47 U.S.C. §§ 151, 254.

4 See infra paras. 5-7.

5 See, e.g., 47 C.F.R. § 1.773 ("Petitions for suspension or rejection of new tariff filings"); 47 U.S.C. § 208 ("Complaints to the Commission").

allegations of LEC overearnings.⁶ The underlying facts alleged by the carriers are that certain LECs file tariffs based on historical costs (or average schedule settlements) and demand and subsequently take actions to increase significantly their demand by, for example, entering into agreements with third parties to establish businesses, such as conference call services and chat lines, that result in significantly increased terminating interstate traffic. The carriers allege that the result of this increased demand is significant LEC overearning that warrants Commission intervention.⁷ In addition to letters requesting Commission action, Qwest has filed a formal complaint against an incumbent LEC,⁸ and numerous court cases have been filed.⁹ Contemporaneously, the LECs that have been accused of this access stimulation have alleged that certain carriers have unreasonably blocked calls from those carriers' end-users to certain phone numbers terminating in the LECs' exchanges.¹⁰

3. On June 15, 2007, 29 carriers that were participating in the National Exchange Carrier Association (NECA) traffic-sensitive tariffs filed individual tariffs under section 61.39 of the Commission rules.¹¹ Qwest, Verizon, AT&T, and Sprint Nextel filed objections to these filings, alleging that it is likely that these tariffs will result in unjust and unreasonable rates.¹² The complaining carriers assert the recent conduct of current section 61.39 carriers similarly situated to those that recently made such tariff filings raises serious questions regarding whether such carriers are likely to enter into arrangements for the purpose of increasing their terminating access minutes significantly, thus undermining any ability of

⁶ See, e.g., Letter from James W. Cicconi, Senior Executive Vice President, External & Legislative Affairs, AT&T, to the Honorable Kevin J. Martin, Chairman, Federal Communications Commission (dated Apr. 4, 2007) (AT&T April 4 Letter); Letter from Donna Epps, Vice President, Federal Regulatory Advocacy, Verizon, to Mr. Thomas Navin, Chief, Wireline Competition Bureau, Federal Communications Commission (dated June 8, 2007) (Verizon June 8 Letter).

⁷ See AT&T April 4 Letter; see also Verizon June 8 Letter.

⁸ Qwest Communications Corporation v. Farmers and Merchants Mutual Telephone Company, File No. EB-07-MD-001 (filed May 2, 2007) (Qwest Complaint).

⁹ See, e.g., AT&T Corporation v. Superior Telephone Cooperative, et al., Case No. 4:07-cv-00043-JEG-RAW (D. Iowa, filed Jan. 29, 2007); Qwest Communications Corporation v. Superior Telephone Cooperative et al., Case No. 4:07-cv-00078-JEG-RAW (D. Iowa, filed Feb. 20, 2007); AT&T Corporation v. Reasnor Telephone Company, LLC et al., Case No. 4:07-cv-00117-JEG-RAW (D. Iowa, filed Mar. 22, 2007); Sprint Communications Company, L.P. v. Superior Telephone Cooperative, et al., Case No. 4:07-cv-00194-REL-RAW (D. Iowa, filed May 7, 2007).

¹⁰ See, e.g., Iowa RLEC April 16 Letter.

¹¹ 47 C.F.R. §§ 61.39; see also, Letter from Jeff Dupree, Director, Access Tariffs and Planning, NECA, to Mr. Thomas Navin, Chief, Wireline Competition Bureau, Federal Communications Commission (dated Mar. 30, 2007) (initial letter providing "list of the exchange carriers that have notified the National Exchange Carrier Association, Inc. (NECA) that they are changing their tariff participation for the 2007-2008 tariff period"; see also, Letter from Jeff Dupree, Director, Access Tariffs and Planning, NECA, to Mr. Thomas Navin, Chief, Wireline Competition Bureau, Federal Communications Commission (dated June 8, 2007) (letter updating the "list of exchange carriers that had notified NECA that they are changing their tariff participation effective with the 2007 Annual Access Charge Filing"); see also, July 1, 2007 Annual Access Charge Tariff Filings, WCB/Pricing No. 07-10, Order, DA 07-2862, at Appendix B (WCB rel. June 28, 2007) (*Tariff Suspension Order*).

¹² See July 2007 Annual Access Charge Tariff Filings, Qwest Conditional Petition to Suspend and Investigate, WCB/Pricing File No. 07-10 (filed June 19, 2007) (Qwest Petition to Suspend); July 2007 Annual Access Charge Tariff Filings, Petition of Verizon to Suspend and Investigate Tariff Filings, WCB/Pricing File No. 07-10 (filed June 19, 2007) (Verizon Petition to Suspend); July 1, 2007 Annual Access Charge Tariff Filings, Petition of AT&T Corp. to Suspend and Investigate LEC Tariffs Filed Pursuant to Section 61.39, WCB/Pricing File No. 07-10 (filed June 22, 2007) (AT&T Petition to Suspend); 2007 Annual Access Tariff Filings, Petition to Suspend and Investigate of Sprint Nextel Corporation, WCB/Pricing File No. 07-10 (filed June 22, 2007) (Sprint Nextel Petition to Suspend).

the Commission to rely on the historical demand to produce just and reasonable rates.¹³ Today, June 28, 2007, the Wireline Competition Bureau (Bureau) released an Order suspending the switched access rates contained in certain tariffs for one day, instituting an investigation, and imposing an accounting order.¹⁴

4. Commission staff is preparing a notice of proposed rulemaking seeking comment on possible rule changes aimed at addressing the reasonableness of rates filed pursuant to rules 61.38 and 61.39. We encourage all interested parties to participate in this proceeding.

5. By issuing this Declaratory Ruling, we seek to alleviate any possible confusion by clarifying that carriers cannot engage in self help by blocking traffic to LECs allegedly engaged in the conduct described herein. The Commission has been, and remains, concerned that call blocking may degrade the reliability of the nation's telecommunications network.¹⁵ Additionally, as discussed in the following paragraph, the Commission previously has found that call blocking is an unjust and unreasonable practice under section 201(b) of the Act.¹⁶

6. Specifically, Commission precedent provides that no carriers, including interexchange carriers, may block, choke, reduce or restrict traffic in any way. For example, in response to the blocking of IXC Teleconnect's interstate calls transiting extended area service (EAS) facilities by incumbent LECs, the Common Carrier Bureau held that "the blocking of interstate traffic transiting EAS facilities to reach the access number of Teleconnect from the petitioners' exchanges was in violation of the Communications Act and Commission policy."¹⁷ The Commission affirmed this decision in response to the incumbent LECs' application for review of the Bureau order.¹⁸ In addition, the Commission has previously held that alternative operator service providers' blocking of their customers' attempts to dial around to their preferred long distance provider violated the Act, and it noted that "the practice of call blocking, coupled with a failure to provide adequate consumer information, is unjust and unreasonable in violation of Section 201(b) of the Act."¹⁹ These decisions evidence the Commission's general prohibition on call blocking.²⁰

¹³ See Qwest Petition to Suspend at 6; Verizon Petition to Suspend at 8; AT&T Petition to Suspend at 10; Sprint Nextel Petition to Suspend at 7.

¹⁴ See *Tariff Suspension Order*, at Appendix B.

¹⁵ See *Access Charge Reform*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9932-33, at para. 24 (2001) ("If such refusals to exchange traffic were to become a routine bargaining tool, callers might never be assured that their calls would go through. We are particularly concerned with preventing such a degradation of the country's telecommunications network. It is not difficult to foresee instances in which the failure of a call to go through would represent a serious problem, and, in certain circumstances, it could be life-threatening. Accordingly, the public interest demands a resolution to this set of problems").

¹⁶ 47 U.S.C. § 201(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 hereby declared to be unlawful . . .").

¹⁷ *Blocking Interstate Traffic in Iowa*, FCC 87-51, Memorandum Opinion and Order, 2 FCC Rcd 2692 (1987).

¹⁸ See *id.*

¹⁹ See *Telecommunications Research and Action Center and Consumer Action v. Central Corporation et al.*, File Nos. E-88-104-108, Memorandum Opinion and Order, 4 FCC Rcd 2157 (1989); *id.* at 2159, para. 12.

²⁰ We note that the Commission has allowed call blocking only under rare and limited circumstances. For example, the Commission found that an arrangement between a chat line service provider and competitive access provider (formed by an ILEC for purposes of the arrangement) that did not provide local exchange service and had no customers other than the chat line was a sham. See *Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc. v. AT&T Corp.*, File No. E-97-003, Memorandum Opinion and Order, 16 FCC Rcd 5726 (2001).

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7. For the reasons described above, we find the circumstances currently alleged do not warrant call blocking. The Commission has taken action to review allegations of unreasonable access charges arising from the conduct at issue through the Commission's existing tariff review mechanisms. Carriers should not, however, interpret this investigation action as a basis for questioning the legitimacy of calls to the customers of the LECs whose tariffs have been suspended by the Commission. As such, we remind carriers that the Commission, except in rare circumstances not found here, does not allow carriers to engage in call blocking.²¹

8. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201, and 202, and the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, this Declaratory Ruling in WC Docket No. 07-135 IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief, Wireline Competition Bureau

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The chat line's only source of revenue was commission payments of 50 to 60 percent of the competitive access provider's terminating access revenues from calls completed to the chat line. *See id.* at 5729, para. 7. The Commission determined that the competitive access provider and the ILEC "violated section 201(b) of the Act by engaging in an unreasonable scheme to inflate the access fees charged to AT&T." *Id.* at 5727, para. 1. Under those specific circumstances the Commission found AT&T's blocking of its customers from calling such chat lines reasonable. *See id.* at 5741, para. 33.

²¹ This Declaratory Ruling has no effect on the right of individual end users to choose to block incoming calls from unwanted callers.