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Via E-Mail Rosemary.McEnery@fcc.gov

March 13, 2020

Rosemary McEnery, Chief
Market Disputes Resolution Division
445 12th Street SW
Washington, DC 20554

Re: Notice of Intent to File Complaint Subject to 47 U.S.C. 208(b)(1) Against AT&T And Request For Mediation

Dear Ms. McEnery:

In accordance with Section 1.724 of the Commission's rules, I am writing to notify you that CarrierX, LLC, that does business as FreeConferenceCall.com, ("Free Conferencing") intends to file a formal complaint ("Complaint") subject to 47 U.S.C. 208(b)(1) against AT&T. Free Conferencing further requests that the Complaint be included on the Accelerated Docket pursuant to 47 CFR § 1.736. The Complaint should be included on the Accelerated Docket because the nature of the complaint is call blocking and millions of consumers' calls are not being connected. The urgent nature of the Complaint is exacerbated by the global COVID-19 pandemic. The COVID-19 Pandemic is a global health crisis with millions of Americans turning to teleconference. There is no doubt there are and will continue to be increasing demands on the public switched telephone network. It will come as no surprise that as more and more people are implementing social distancing and businesses and schools are being closed to prevent a spread, people are becoming increasingly reliant upon telecommunications. The Center for Disease Control ("CDC") has urged the public to avoid large gatherings and to use teleconference instead of in-person meetings, including using FreeConferenceCall.com. There has never been a more critical moment to ensure that all calls, including teleconference calls, are connected.

Free Conferencing also requests that prior to the filing of the intended Formal Complaint, the Enforcement Bureau strongly encourage AT&T to participate in a mediation to facilitate the immediate resolution of the call blocking crisis. Free Conferencing is available as soon as possible to conduct such mediation via video or teleconference to obtain immediate resolution of blocked calls.

Legal Basis For Complaint

AT&T is blocking calls in violation of 47 USC Section 201(a). Throughout the advent of modern telecommunications, the Commission has held that call blocking runs afoul of section

201(a) of the Federal Telecommunications Act of 1996. In the past 20 years, the Commission has articulated the unlawfulness of call blocking in various circumstances.

For instance, in the 7th Report and Order (2001)[1], the Commission stated the following:

> When an IXC's end-user customer attempts to place a call either from or to a local access line, that customer makes a request for communication service – from the originating LEC, the IXC and the terminating LEC. When that customer attempts to call from and/or to an access line served by a CLEC with presumptively reasonable rates, that request for communications service is a reasonable one that the IXC may not refuse without running afoul of section 201(a). This obligation may be enforced through a section 208 complaint before the Commission."
>
> Section 214 of the Communications Act provides, in relevant part, that "[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby."

Only a few years later in 2004, in the 8th Report and Order[2], the Commission explained that it believed that a limitation on an IXC's ability to refuse service is necessary and desirable in the public interest. The Commission reasoned that "any solution to the current problem that allows IXCs unilaterally and without restriction to refuse to terminate calls or indiscriminately to pick and choose which traffic they will deliver would result in substantial confusion for consumers, would fundamentally disrupt the workings of the public switched telephone network, and would harm universal service." Relying on the second clause of section 201(a), the Commission held that an IXC is required to establish a physical connection or a through route via the acceptance of access service if such service is provided at rates that are just and reasonable in accordance with the Act.

The Commission has further enforced its general prohibition on call blocking and the obligations of IXCs and CMRS providers to complete their customers' interexchange calls. In its 2007 Declaratory Ruling on Call Blocking[3], the Commission stated as much and held that "[b]ecause the ubiquity and reliability of the nation's telecommunications network is of paramount importance to the explicit goals of the Communications Act of 1934, as amended, (Act), we reiterate here that Commission precedent does not permit unreasonable call blocking by carriers."

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[1] Seventh Report and Order, 16 FCC Rcd 9923, ¶¶94-95 (2001)
[2] Eighth Report and Order and Fifth Report and Order on Reconsideration, 19 FCC Rcd 9108, ¶¶61 (2004).
[3] Establishing Just and Reasonable Rates for Local Exchange Carriers; Call Blocking by Carriers, WC Docket No. 07-135, Declaratory Ruling and Order, 22 FCC Rcd 11629, ¶¶1 (2007).

The Commission continued its commitment in ensuring that IXCs are not permitted to block traffic because blocking ultimately harms consumers. It articulated as much in the *Connect America Fund Order*, and also found that "carriers' blocking of VoIP calls is a violation of the Communications Act and, therefore, is prohibited just as with the blocking of other traffic."

AT&T has recognized both that blocking is unlawful[4] and that "the Commission has demonstrated that it has ample enforcement tools to ensure that carriers comply with their legal obligations to provide just, reasonable, and nondiscriminatory service without 'blocking, choking, reducing, or restricting traffic in anyway.'" AT&T informed the Commission that "[t]argeted and vigorous enforcement of existing legal duties may be a more effective means than broad rules during this limited transition period."[5]

The anticipated section 208 formal complaint will request the Commission enforce the clear legal anti-blocking requirements.

Factual Background

AT&T is using the Access Arbitrage Order[6] as an excuse to block calls. Free Conferencing engaged the Wireline Competition Bureau on these issues many times over the course of the past few months. This week, Commission staff from the Wireline Competition Bureau stated that the issues raised by Free Conferencing are call blocking complaints that should be addressed by the Commission's Enforcement Bureau and have nothing to do with "access stimulation."

A brief background on the issues is as follows: When the *Order* took effect in early January, Free Conferencing was forced to move a substantial volume of its call traffic from CLECs that were exiting the "access stimulation" business and informed Free Conferencing it would no longer do business with Free Conferencing. Free Conferencing paired with new companies to connect its calls and began the migration. When it did, as was predicted by many commentators in the Notice of Proposed Rulemaking Proceeding leading up to the *Order*, the IXCs were unprepared and had not made the proper connection and capacity arrangements despite being on notice. Millions of calls began to fail.

[4] See e.g., "The Commission's rules generally prevent long distance carriers from blocking calls, see, e.g., Transformation Order, ¶ 734 (AT&T Reply in SDN Petition).
[5] *Rural Call Completion*, WC Docket No. 13-39, Notice of Proposed Rulemaking, 28 FCC Rcd 1569 (2013), AT&T Comments at 2.
[6] *In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Report and Order and Modification of Section 214 Authorizations, FCC 19-94 (reI. Sept. 27, 2019), published at 84 Fed. Reg. 57629 (October 28, 2019) ("Access Stimulation Order" or "Order").

Free Conferencing sought relief from the Commission in the form of a Petition for Waiver of the *Access Arbitrage Order*. The Commission ignored the Petition for many weeks and after having taken no action, Free Conferencing finally withdrew the Petition. Over time, various IXCs have made connections to Free Conferencing's new partners and increased capacity at current ones to complete calls, except for AT&T.

AT&T is refusing to make new connections or increase capacity sufficient to directly connect Free Conferencing traffic to its new partners. (Its recent actions to do so are wildly insufficient and just for show.) At the same time AT&T is refusing to employ least cost routers unless Free Conferencing agrees to pay for such routers. In a letter from AT&T in late January 2020, AT&T informed Free Conferencing's CEO that AT&T "no longer plans to use the services of any LCRs for termination of access stimulated traffic" but offered to use the LCR ***only "if [Free Conferencing] agree[s] to directly pay for the services provided by the LCR*."** AT&T declared any call to Free Conferencing as "access stimulation" and is refusing, one way or another, to connect that call. Millions upon millions of calls have been blocked as a result. Even AT&T admitted to "minimal, call blocking at its direct connects." (AT&T *Ex Parte* 3/6/20).

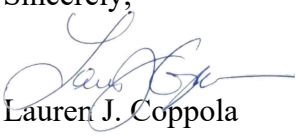
This Is Not An "Access Stimulation" Issue

Free Conferencing provides an essential service to consumers and relies upon a successful consumer experience for its continued survival and growth. Its ability to provide this service is now a necessity, as the ability to teleconference in the midst of a global pandemic is a public utility. Free Conferencing's primary goal is for calls to be completed. As of today, millions of calls are still failing, being blocked as a result of AT&T's unwillingness to expand capacity and connect to the new providers connecting Free Conferencing calls.

It is apparently a foregone conclusion that Free Conferencing is a "access stimulator" as AT&T refers to Free Conferencing as an "access stimulator" over and over while completely ignoring that "access stimulator" is a term with a very specific definition set forth in the *CAF Order*, the *Access Arbitrage Order* and the Commission's rules at 47 CFR § 61.3 (bbb). These rules define when a carrier, specifically only a competitive local exchange carrier ("CLEC") and Rate of Return carrier, are deemed an "access stimulator." Free Conferencing, an application, cannot under the Commission's rules be an "access stimulator." A call to a Free Conferencing number may be an "access stimulation call" only if its CLEC partner terminating that call meets one of the definitions under 47 CFR § 61.3 (bbb). Those declarations by CLECs have not yet been made and will not be made until May 2020. Therefore, at this time, AT&T's attempts to make this call blocking crisis an access stimulation issue is wrongful rhetoric and an unacceptable distraction.

The Wireline Competition Bureau has stated that this is not an "access stimulation" issue, it is a call blocking issue that requires the involvement of the Enforcement Bureau. Free Conferencing implores that the Enforcement Bureau place the intended complaint on the Accelerated Docket and put this call completion issue to rest at once.

Sincerely,



Lauren J. Coppola

cc: Michael Hunseder