

1024-T-357



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September 15, 2004

**VIA E-Docket**

Sanford M. Speight, Acting Secretary  
Public Service Commission  
of the District of Columbia  
1333 H Street, N.W.  
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Washington, DC 20005

Re: Formal Case No. 1024

Dear Mr. Speight:

Please find enclosed the Response of AT&T Communications of Washington, DC, L.L.C and Teleport Communications – Washington, DC Inc. to Commission Order No. 13371 in the above referenced proceeding filed via E-Docket.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark A. Keffer", written over a horizontal line.

Mark A. Keffer

Enclosures

04 SEP 15 AM 11:37  
CLERK

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE :  
IMPLEMENTATION OF THE : Formal Case No. 1024  
TRIENNIAL REVIEW ORDER IN THE :  
DISTRICT OF COLUMBIA :

**RESPONSE OF AT&T COMMUNICATIONS OF WASHINGTON, DC LLC  
AND TELEPORT COMMUNICATIONS – WASHINGTON, DC INC.  
TO COMMISSION ORDER NO. 13371**

The Public Service Commission directed parties to respond to a series of questions regarding its role in providing “granular evidence” to the FCC for that federal agency’s consideration in developing revised UNE rules.<sup>1</sup> For reasons set forth below, AT&T recommends that this Commission not attempt to create a “summary” of the evidence for the FCC. The Commission lacks a complete record to enable it to create such a summary. The Commission can, however, assist the parties by confirming that proprietary information that has been produced in the course of the Commission’s proceeding can be disclosed to the FCC, provided it is protected from public disclosure under the terms of the FCC’s protective order.

Without the benefit of a full evidentiary record in this proceeding – where pre-filed testimony has been subjected to cross examination and where parties have had the opportunity to submit briefs and/or otherwise argue the relative merits of the various positions presented – this Commission cannot reasonably be expected to evaluate and

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<sup>1</sup> Order No. 13371 (Sept. 8, 2004) *citing Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order and Notice of Proposed Rulemaking, FCC 04-179 (Aug. 20, 2004).

summarize the filings in this docket. It is simply not reasonable to expect this Commission to “summarize” an incomplete record. Instead, the Commission should simply permit the parties to summarize their own testimony and filings for submission to the FCC.

This approach is logical given the procedural history of this case. The Commission initiated this case as a comprehensive proceeding – with testimony, hearings and briefings contemplated – in response to the FCC’s 2003 *Triennial Review Order*.<sup>2</sup> Issuance of the District of Columbia Circuit’s *USTA II* decision<sup>3</sup> earlier this year, however, led to the sudden halt to this proceeding before the final deadlines for the submission of pre-filed testimony.<sup>4</sup> Although Verizon was able to file its complete direct case before the procedural schedule was stayed, CLECs did not have the opportunity to file testimony on high capacity loop impairment. Thus, the pre-filed information submitted to the Commission is incomplete.

A further, and perhaps more significant, reason that this Commission’s record must be deemed too incomplete for this Commission to “summarize” is because the proceeding was stayed before the Commission conducted evidentiary hearings. Not only was the pre-filed testimony never admitted into the record, it also was never subjected to cross-examination. Absent a record where opposing parties were able to test and probe the relative strengths and weaknesses of each other’s pre-filed testimony, the

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<sup>2</sup> Order No. 12958 (Oct. 24, 2003). The case was intended to address, *inter alia*, whether Verizon Washington DC, Inc. met certain switching, high capacity loops and dedicated transport “triggers.”

<sup>3</sup> *U.S. Telecomm. Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004)(*USTA II*).

<sup>4</sup> Formal Case Nos. 962 and 1024, Order 13210 (Mar. 3, 2004).

Commission is in no position to weigh the evidence. Any “summary” based on such incomplete information would not be useful to the FCC.

In view of the abbreviated proceeding – a docket where the record on switching, high capacity loops and dedicated transport impairment was never completed or entered into evidence – it is unreasonable to expect the Commission to weigh and summarize the parties’ filings. Indeed, absent the creation of a complete record, the Commission is in no position to do so. In any event, such a task would unnecessarily stretch the Commission’s financial resources and burden legal and technical staff members. The Commission should not place itself in such an untenable position.

An appropriate alternative, under these unique circumstances, would be for the Commission to permit the parties to summarize their own testimony and other filings. The parties themselves would also determine which of their filings in the docket should be included with their submission to the FCC.

There is, however, an important role for the Commission in assisting the parties to get their information to the FCC.<sup>5</sup> Much of the information submitted to the Commission in this case was marked as “proprietary” and is subject to the Commission’s non-disclosure requirement. Absent an order from the Commission or agreement from the parties, parties cannot disclose to the FCC any of the information they received from other participants. As to the treatment of such confidential materials, the Commission should simply ask the parties to confirm in writing that they do not object to submission of confidential information to the FCC. In most or all cases, parties would not object to

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<sup>5</sup> The Commission specifically inquired: “How should confidential information filed in Formal Case No. 1024 be treated? Can this information be transmitted to the FCC by the Commission with or without the approval of the party submitting the confidential information?” Order No. 13371 at 2.

the use of the confidential material, particularly given that the FCC has adopted its own procedures for protecting sensitive information from unwarranted disclosure.<sup>6</sup> If in the unlikely event a party objects, the Commission can assist in resolving the matter so that the FCC is not denied access to any potentially useful information.

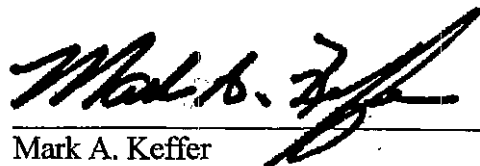
In conclusion, AT&T recommends that the Commission: (1) find that parties should submit their own summaries of the testimony and other filings directly to the FCC; and (2) confirm that parties do not object to confidential materials being released to the FCC, provided those materials are protected from disclosure under the FCC's protective order.

Respectfully submitted,

**AT&T COMMUNICATIONS  
OF WASHINGTON, D.C., LLC**

**TELEPORT COMMUNICATIONS –  
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Dated: September 15, 2004

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<sup>6</sup> *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order, DA 04-2603 (rel. Aug. 20, 2004).

**Certificate of Service**  
**Formal Case No. 1024**

I hereby certify that a copy of the Response of AT&T Communications of Washington, DC, L.L.C and Teleport Communications – Washington, DC Inc. to Commission Order No. 13371 was sent via email or first-class U.S. Mail, postage prepaid, to the following parties this 15<sup>th</sup> day of September 2004:

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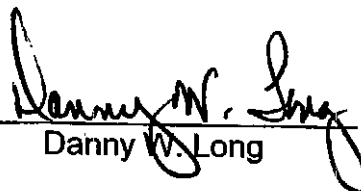
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