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MAR 30 2010

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE TRAFFIC)
DISPUTE BETWEEN WINDSTREAM)
KENTUCKY EAST, LLC, BRANDENBURG)
TELEPHONE COMPANY AND MCIMETRO)
ACCESS TRANSMISSION SERVICES, LLC)
D/B/A VERIZON ACCESS)

CASE NO. 2008-00203

**WINDSTREAM'S RESPONSES AND OBJECTIONS TO VERIZON'S
SUPPLEMENTAL REQUESTS FOR INFORMATION TO WINDSTREAM KENTUCKY
EAST, LLC**

Windstream Kentucky East, LLC ("Windstream East") submits as follows in support of its objections and responses to the supplemental requests for information served by MCIMetro Access Transmission Services, LLC d/b/a Verizon Access ("Verizon"). As used herein, Brandenburg Telephone Company is referred to as "Brandenburg".

OBJECTIONS APPLICABLE TO ALL VERIZON SUPPLEMENTAL REQUESTS

The following objections apply to each supplemental data request served by Verizon:

1. Windstream East objects that, to the extent that Verizon's supplemental requests seek information regarding compensation and liability issues, those matters have been pending in this proceeding since its inception and Verizon had ample opportunity to request such information prior to the final hearing in this matter.
2. Windstream East objects to the supplemental requests to the extent they may be construed as calling for the disclosure of information subject to a claim of privilege or immunities, including the attorney-client privilege, the attorney work product doctrine, the joint-defense privilege, or any other applicable evidentiary privilege or immunity

from disclosure. The inadvertent disclosure of any information subject to such privileges or immunities is not intended to relinquish any privilege or immunity and shall not be deemed to constitute a waiver of any applicable privilege or immunity.

3. Windstream East objects to the supplemental requests to the extent that they are overly broad and to the extent they seek information that is in the public domain, is available from other, more convenient sources, and/or is accessible by, if not already in the possession of, Verizon or its representatives.
4. Windstream East objects to the supplemental requests to the extent they seek legal conclusions, contentions, citations to legal authority, or copies of legal authorities.
5. Windstream East objects to the supplemental requests to the extent they purport to impose a burden of ascertaining information that is not in its possession, custody, control, or personal knowledge, or that cannot be found in the course of a reasonable search.
6. Windstream East objects to the supplemental requests to the extent they purport to impose upon them obligations greater than or different from those authorized by the Rules of Civil Procedure.

RESPONSES

Windstream East does not waive and fully preserves all of the foregoing objections, which are incorporated fully herein. Any information provided herein is made on the basis of the best information available to Windstream East at the time of gathering responsive materials or information, within the limits of, and subject to the general and specific objections set forth herein. The fact that Windstream East is willing to provide responsive information to any particular supplemental request does not constitute an admission or acknowledgment that the supplemental request is proper, that the information sought is within the proper bounds of

discovery, or that other requests for similar information will be similarly treated. Further, any and all responses provided herein are for the purpose of the above-captioned case and may not be used against Windstream East in any other proceeding unless specifically agreed to by it or so ordered by a court or commission of competent jurisdiction.

Windstream East reserves the right to rely on facts, documents, or other evidence, which may develop or subsequently come to its attention, to assert additional objections or supplemental responses should it discover that there is information or grounds for objections and to supplement or amend these responses at any time.

15. Does Windstream assert any claim against MCImetro in this proceeding? If so, please state each such claim.

RESPONSE: Windstream East objects to this question. This investigation was initiated by the Commission as a direct result of Verizon's emergency request to the Commission on June 4, 2008 and did not result from a complaint or claim instigated by Windstream East. Verizon's emergency request urged the Commission to take immediate action against Windstream East for what Verizon mislabeled "blocking" of traffic. Verizon's June 4, 2008 correspondence and its follow-up email on June 5, 2008 (attached hereto as **Exhibit DR#15**) misrepresented that this was an intercarrier issue between Brandenburg and Windstream East - notwithstanding that the issue actually arose from a long-standing dispute between Verizon and Brandenburg. During the parties' pivotal conference call with the Commission on June 5, 2008 in response to Verizon's motion, Windstream East raised concerns regarding jurisdictional issues including that the matters were potentially ones of fraud or trespass. Verizon argued that the Commission had jurisdiction over these matters, should intercede, and should require the traffic at issue to continue to route through Windstream East's network. Verizon's proposal is exactly the action taken by the Commission.

Windstream East believes that the fact that its network was implicated at all is primarily the result of Brandenburg's actions in misrouting the traffic through Windstream East's network and failing to correct the routing properly through Louisville. However, the Commission's initiation of this proceeding and requirement that Windstream East remain the middle of the Brandenburg-Verizon dispute may be considered the result, either wholly or partially, of Verizon's actions. Verizon should be held responsible for Verizon's part in failing to make proper arrangements for the exchange of its traffic with Brandenburg (which traffic levels according to Verizon's own records were well in excess of the level that the Commission has determined is appropriate for direct interconnection), in creating the misrouted traffic arrangement which is in violation of Verizon's interconnection agreement with Windstream East, in initially misrepresenting the issue to the Commission in 2008 as an intercarrier dispute between Brandenburg and Windstream East, and in misrepresenting to the Commission that resolution of an appropriate agreement between Brandenburg and Verizon was imminent. Windstream East reserves all rights to pursue all claims against Verizon before a court of competent jurisdiction including, but in no way limited to, actions by Verizon to conspire with Brandenburg or otherwise enable Brandenburg's traffic to trespass Windstream East's network, to fail or refuse to make appropriate arrangements for the exchange of Verizon's traffic with Brandenburg, for conversion, and for unjust enrichment.

Answer prepared by counsel for Windstream East

16. With respect to each claim stated in response to Interrogatory No. 15:
- a. If the claim is based on one or more tariff provisions, please identify each such provision, the basis for Windstream's claim that it requires MCImetro to pay Windstream, the amount claimed, and how that amount was calculated.
 - b. If the claim is based on one or more statutory provisions, please identify each such provision, the basis for Windstream's claim that it requires MCImetro to pay Windstream, the amount claimed, and how that amount was calculated.
 - c. If the claim is based on one or more FCC or Commission rules or regulations, please identify each such rule or regulation, the basis for Windstream's claim that it requires MCImetro to pay Windstream, the amount claimed, and how that amount was calculated.
 - d. If the claim is based on one or more FCC or Commission orders, please identify each such order, the basis for Windstream's claim that it requires MCImetro to pay Windstream, the amount claimed, and how that amount was calculated.
 - e. If the claim is based on one or more contractual provisions, please identify each such provision, the basis for Windstream's claim that it requires MCImetro to pay Windstream, the amount claimed, and how that amount was calculated.
 - f. If the claim is based on any other legal theory, please identify each such theory, the basis for Windstream's claim that it requires MCImetro to pay Windstream, the amount claimed, and how that amount was calculated.

RESPONSE: Windstream East objects to these questions to the extent they improperly seek legal theories or interpretations and otherwise seek publicly available information. Without waiving the foregoing, Windstream East refers to its response to No. 15 above and further states that matters pertaining to its legal theories already have been set forth in Windstream East's prior briefs and filings in this matter and may be developed in detail in any supplemental briefs. Additionally, the amounts of compensation that Windstream East believes it is owed by Brandenburg and/or Verizon are well documented on the record herein.

Answer prepared by counsel for Windstream East

17. Please identify any bills Windstream has sent MCImetro relating to the traffic at issue in this proceeding.

RESPONSE: As set forth in the response to No. 15 above, the Commission initiated this proceeding immediately following Verizon's emergency request which was only shortly after Windstream East had discovered the misrouting and prior to Windstream East understanding the full extent of the Brandenburg-Verizon traffic dispute. Thus, in lieu of any billings to Verizon, Windstream East has followed the Commission's directive and has maintained records regarding the compensation it believes it is owed by Brandenburg and/or Verizon. Without waiving the foregoing, Windstream East refers Verizon to the updated compensation information through March 5, 2010 attached to Windstream East's Responses to Brandenburg's Supplemental Data Requests as Exhibit DR#14_Outstanding_Amounts_03-29-10.xls.

Windstream East Party Supporting the Response: Kerry Smith

18. Does Windstream East contend that MCImetro must reimburse Brandenburg Telephone Company (“Brandenburg”) for any amounts that Brandenburg is ordered to pay Windstream? If so:
- a. If this contention is based on one or more tariff provisions, please identify each such provision, the basis for Windstream's claim that it requires MCImetro to pay Brandenburg, the amount Windstream asserts MCImetro should be required to pay, and how that amount was calculated.
 - b. If this contention is based on one or more statutory provisions, please identify each such provision, the basis for Windstream's claim that it requires MCImetro to pay Brandenburg, the amount Windstream asserts MCImetro should be required to pay, and how that amount was calculated.
 - c. If this contention is based on one or more FCC or Commission rules or regulations, please identify each such rule or regulation, the basis for Windstream's claim that it requires MCImetro to pay Brandenburg, the amount Windstream asserts MCImetro should be required to pay, and how that amount was calculated.
 - d. If this contention is based on one or more FCC or Commission orders, please identify each such order, the basis for Windstream's claim that it requires MCImetro to pay Brandenburg, the amount Windstream asserts MCImetro should be required to pay, and how that amount was calculated.
 - e. If this contention is based on one or more contractual provisions, please identify each such provision, the basis for Windstream's claim that it requires MCImetro to pay Brandenburg, the amount Windstream asserts MCImetro should be required to pay, and how that amount was calculated.
 - f. If this contention is based on any other legal theory, please identify each such theory, the basis for Windstream's claim that it requires MCImetro to pay Brandenburg, the amount Windstream asserts MCImetro should be required to pay, and how that amount was calculated.

RESPONSE: Windstream East objects to these questions as Windstream East already addressed this issue in its prior filings and further as the information sought should be obtained from Brandenburg and otherwise is publicly available to Verizon. Without waiving the foregoing, Windstream East reiterates that it believes it is conceivable that Brandenburg could assert a claim against Verizon for some or all of the amounts that Brandenburg may be required to pay to Windstream East but that any such claim is a matter by and between Brandenburg and Verizon. For example, Windstream East believes that it is reasonable that Brandenburg could assert that Verizon is responsible for partial reimbursement to Brandenburg based on the fact that Verizon benefited equally from the avoidance of the expense of direct interconnection between them despite the very high traffic volumes of their traffic that they exchanged indirectly through Windstream East’s network in a manner contrary to the Commission’s clear precedent. Regardless, as Windstream East has explained, any such claims for reimbursement are Brandenburg’s to assert and pursue against Verizon.

Answer prepared by counsel for Windstream East

DOCUMENT REQUESTS

1. Please produce all documents supporting or otherwise relating to Windstream's response to Interrogatory No. 16.

RESPONSE: Windstream East objects that this question is overly broad and that requested tariffs, interconnection agreement, and legal authorities are all publicly available documents. Additionally, Verizon already has been provided copies of all of Windstream East's filings in this proceeding.

Answer prepared by counsel for Windstream East

2. Please produce all documents supporting or otherwise relating to Windstream's response to Interrogatory No. 17.

RESPONSE: Windstream East objects that this question is overly broad and that Verizon already has been provided copies of all of Windstream East's filings in this proceeding, including Windstream East's updated amounts of compensation.

Answer prepared by counsel for Windstream East

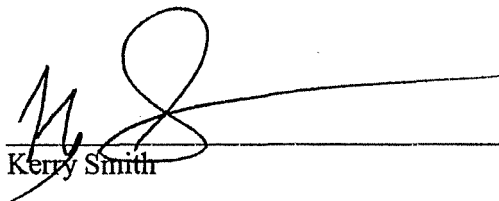
3. Please produce all documents supporting or otherwise relating to Windstream's response to Interrogatory No. 18.

RESPONSE: Windstream East objects that this question is overly broad and that requested tariffs, interconnection agreement, and legal authorities are all publicly available documents. Additionally, requests for documents pertaining to any claim asserted by Brandenburg against Verizon should be directed to Brandenburg. Verizon already has been provided copies of all of Windstream East's filings in this proceeding.

Answer prepared by counsel for Windstream East

AFFIDAVIT

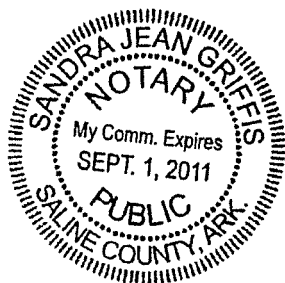
Kerry Smith, upon first being duly sworn, hereby makes oath that if the foregoing questions were propounded to him at a hearing before the Public Service Commission of Kentucky, he would give the answers recorded following each of said questions and that said answers are true.



Kerry Smith

STATE OF ARKANSAS)
) PSC Case No. 2008-00203
COUNTY OF PULASKI)

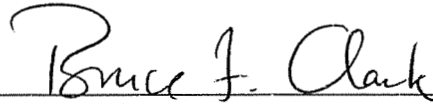
Subscribed and sworn to before me, a Notary Public, by Kerry Smith, this 30th day of March, 2010.

My Commission Expires: September 1, 2011




NOTARY PUBLIC

Respectfully submitted,




Bruce F. Clark
STITES & HARBISON, PLLC
421 West Main Street
P.O. Box 634
Frankfort, KY 40602-0634
Telephone: (502) 223-3477
COUNSEL FOR WINDSTREAM KENTUCKY
EAST, LLC

CERTIFICATE OF SERVICE

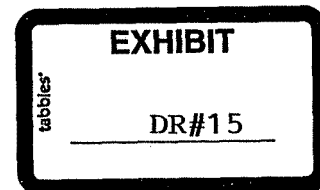
I hereby certify that a true and accurate copy of the foregoing was served on the following by first-class United States mail, sufficient postage prepaid, this 30th day of March, 2010.

John E. Selent (john.selent@dinslaw.com)
Edward T. Depp (tip.depp@dinslaw.com)
Holly C. Wallace (holly.wallace@dinslaw.com)
DINSMORE & SHOHL LLP
1400 PNC Plaza
500 W. Jefferson Street
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Counsel to Brandenburg

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2000 PNC Plaza
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Counsel to Verizon



Bruce F. Clark



Windstream Communications, Inc.
130 West New Circle Road
Suite 170
Lexington, KY 40505

Daniel E. Logsdon, Jr.
Vice President, State Government Affairs
daniel.logsdon@windstream.com
ofc. 859-357-6125
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June 2, 2008

RECEIVED
JUN 02 2008
PUBLIC SERVICE
COMMISSION

Via Hand Delivery
Stephanie Stumbo
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

Dear Director Stumbo:

The purpose of this letter is to provide a courtesy notice to the Commission that as of 9:00 a.m., Monday, June 2, 2008, Windstream Kentucky East, LLC ("Windstream") ceased the misuse of its Elizabethtown end office by Brandenburg Telephone ("Brandenburg" or the "ILEC") to route ISP traffic that otherwise should have been routed through AT&T's Louisville tandem. Further, as Brandenburg is aware, the level of traffic was at a DS3 level (*i.e.*, well in excess of a DS1 level), although Brandenburg did not establish a direct connection for delivery of the traffic. Windstream, to no avail, repeatedly attempted to work with Brandenburg regarding this traffic.

The calls in question arose when Brandenburg's end users accessed the Internet by calling dial-up ISPs served by Verizon Business. The traffic had no impact on local, long-distance, or EAS traffic flowing between the ILEC and Windstream, including no impact to 911 calls which are routed over separate facilities.

Upon information and belief, Brandenburg appears to have routed the traffic through Windstream's Elizabethtown end office instead of establishing a business relationship with Verizon Business for the termination of this ISP traffic.. Brandenburg also denied reimbursement to Windstream for the use of Windstream's network to deliver the traffic. Brandenburg is aware that the NPA-NXX used by Verizon Business is homed behind the Louisville tandem. Therefore, Brandenburg should have routed the traffic from its tandem to the Louisville tandem. Instead, Brandenburg continued to route the traffic to Windstream's end office in Elizabethtown.

To remedy the situation, Brandenburg may perform approximately 15 minutes of translations coding to route the ISP traffic destined for Verizon Business through the Louisville tandem, or Brandenburg may establish a direct connection to Verizon Business for delivery of the traffic. However, Brandenburg may not use Windstream's Elizabethtown end office to deliver the DS3 level of ISP traffic to Verizon Business, which is homed behind the Louisville tandem.

Please contact me at 859.357.6125 with any questions regarding this issue.

Sincerely,

A handwritten signature in black ink, appearing to be 'D. Logsdon', with a long horizontal flourish extending to the right.

Daniel Logsdon

cc: Allison Willoughby, Brandenburg Telephone Company



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PLLC

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PUBLIC SERVICE
COMMISSION

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DOUGLAS F. BRENT
502-568-5734
douglas.brent@skofirm.com

June 4, 2008

HAND DELIVERY—EMERGENCY ACTION REQUESTED

Ms. Stephanie L. Stumbo
Executive Director
Public Service Commission
P.O. Box 615
Frankfort, KY 40602

***RE: Brandenburg Telephone Co. dispute with Windstream Kentucky East—Call
Blocking affecting Local Service Customer of Verizon Access—Request for Emergency
Hearing***

Dear Ms. Stumbo:

We are counsel to Verizon Access, a competitive local exchange carrier. *Verizon Access requests an immediate emergency order by the Commission to stop the improper blocking of Internet access traffic by Windstream. Windstream has taken this action in connection with a billing dispute with Brandenburg Telephone Company. This blocking has severe and immediate adverse effects on third parties by preventing America Online customers in Brandenburg's service territory from connecting with the Internet through their chosen provider, AOL.*

This morning I received a copy of Daniel Logsdon's letter to you dated June 2, 2008. That letter alleges "misuse" of a Windstream end office by Brandenburg Telephone Company. It appears that rather than first bringing the dispute to the Commission¹, Windstream chose to block traffic in an effort to force Brandenburg Telephone Company to pay a disputed bill for transit service. This has created an urgent, customer-affecting situation. Verizon Access asks that the Commission convene an emergency hearing to consider the issues raised by Mr. Logsdon's letter.

¹ The Commission has made clear that a carrier considering disconnection over an inter-carrier dispute should bring the matter to the Commission well before any action which could interfere with the service of an end user. *See Customer Billing and Notice Requirements*, Case No. 2002-00310, Order at 7-8 (May 20, 2003).

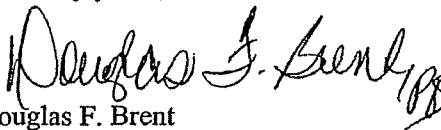
Ms. Stephanie L. Stumbo
Page 2

Regardless of the merits of the dispute between these incumbent providers, the Commission should understand the immediate customer effects of what Windstream has done and what, so far, Brandenburg Telephone Company has failed to remedy. Brandenburg Telephone Company customers who use America Online ("AOL") as their Internet service provider are currently unable to access the Internet via a local call to the AOL dial-up number which serves them (via a number associated with the Elizabethtown rate center). That dial-up number is provided by Verizon Access. Brandenburg Telephone Company customers unable to access the Internet are likely to attribute the network problem to AOL. Brandenburg Telephone Company is also a direct competitor to AOL for Internet access service.

In its letter Windstream claims that Brandenburg could "remedy the situation" in approximately 15 minutes by routing the affected traffic to AT&T Kentucky's Louisville tandem. Given the ease at which this blocking could be ended, Verizon Access asks that the Commission exercise its powers under KRS 278.040 to enforce KRS 278.520 and issue an immediate emergency order to cease the blocking of traffic. Verizon Access also asks the Commission to promptly convene an emergency hearing at which Windstream could explain why it knowingly blocked the traffic of another carrier without first contacting the Commission. At that hearing Brandenburg could explain why it has not taken immediate action to restore the ability of its local customers to reach their Internet service provider of choice.

Please indicate receipt of this filing by your office by placing a file stamp on the extra copy and returning to me.

Sincerely yours,


Douglas F. Brent

cc: Daniel Logsdon, Jr.
Cesar Caballero
John E. Selent
Richard Severy
Robert Davis
De' O'Roark
David Samford ✓
Virginia Smith ✓

From: Brent, Douglas [mailto:Douglas.Brent@skofirm.com]
Sent: Thursday, June 05, 2008 4:15 PM
To: Pinney, Jeb (PSC); Overstreet, Mark R.; SELENT, JOHN; tip.depp@dinslaw.com
Cc: de.oroark@verizon.com
Subject: RE: Windstream and Brandenburg

All:

During today's call I stated Verizon's position that blocking traffic is inconsistent not only with PSC decisions, but with decisions of the FCC. Given the urgency of this situation I attach for your review copies of two FCC decisions (one from 2007) which discuss the obligations of carriers to complete calls, not block them, so as to not degrade the reliability of the nation's network.

Douglas F. Brent
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202
502 333 6000
502 568 5734 direct
douglas.brent@skofirm.com
www.skofirm.com



STOLL · KEENON · OGDEN

3/29/2010

From: Pinney, Jeb (PSC) [mailto:Jeb.Pinney@ky.gov]
Sent: Thursday, June 05, 2008 9:30 AM
To: Overstreet, Mark R.; Brent, Douglas; SELENT, JOHN; tip.depp@dinslaw.com
Subject: RE: Windstream and Brandenburg

3:00 it is. The bridge number is 7098.

I look forward to hearing from you all.

Thank you,

JEB Pinney

From: Overstreet, Mark R. [mailto:MOVERSTREET@stites.com]
Sent: Thursday, June 05, 2008 8:50 AM
To: Pinney, Jeb (PSC); Brent, Douglas; SELENT, JOHN; tip.depp@dinslaw.com
Subject: RE: Windstream and Brandenburg

Jeb:

I have a hearing in Franklin Circuit Court this afternoon that conceivably could run past 2:30. The client also has a conflict with 2:30. I can make a 3:00 this afternoon and I am double checking with the client but would expect they would be available then also.

Mark R. Overstreet
Stites & Harbison PLLC
421 West Main Street
P.O. Box 634
Frankfort, Kentucky 40602-0634
Phone: (502) 223-3477
Facsimile: (502) 223-4387
E-Mail: moverstreet@stites.com

NOTICE: This message is intended only for the addressee and may contain information that is privileged, confidential and/or attorney work product. If you are not the intended recipient, do not read, copy, retain or disseminate this message or any attachment. If you have received this message in error, please call the sender immediately at (502) 223-3477 and delete all copies of the message and any attachment. Neither the transmission of this message or any attachment, nor any error in transmission or misdelivery shall constitute waiver of any applicable legal privilege.

From: Pinney, Jeb (PSC) [mailto:Jeb.Pinney@ky.gov]
Sent: Thursday, June 05, 2008 8:40 AM
To: Brent, Douglas; SELENT, JOHN; Overstreet, Mark R.; tip.depp@dinslaw.com
Subject: Windstream and Brandenburg

I have already spoken to John and Tip this morning and they informed me that they would be available for a teleconference at the Commission's convenience. I have not yet had time to consult with the Telecom Staff here regarding this issue and at this hour I am not ready for a teleconference. Would early to mid-afternoon suit for a teleconference? 2:30 would be ideal for us. If so, I will reserve a bridge and we can get cracking on this.

Thank you,

3/29/2010

JEB Pinney

3/29/2010

C

62 Rad. Reg. 2d (P & F) 539, 2 F.C.C.R. 2692, 2 FCC Rcd. 2692, 1987 WL 344893 (F.C.C.)

FCC 87-51

**1 In the Matter of
Blocking Interstate Traffic in Iowa

MEMORANDUM OPINION AND ORDER

Adopted: February 3, 1987; Released: February 9, 1987

*2692 By the Commission:

I. Introduction

1. On October 18, 1985, North Central Telephone Company, Woolstock Mutual Telephone Association, Cooperative Telephone Exchange, and Heart of Iowa Telephone Cooperative (petitioners) filed an application for review (application) of the Common Carrier Bureau's Iowa Order, ^[FN1] which required petitioners to interconnect their facilities with those of an interexchange carrier in order to permit the completion of interstate calls over extended area service (EAS) facilities. ^[FN2] Petitioners request that we set aside the Bureau's decision on the grounds that the order, in violation of the Commission's jurisdiction, created an unfettered right for interstate, interexchange carriers to use the petitioners' EAS facilities without the petitioners receiving any compensation for that use. In the alternative, petitioners request prescription of interim compensation terms by which they may be compensated for interstate access services rendered to the interexchange carrier, Teleconnect Company (Teleconnect). The Iowa State Commerce Commission (Iowa Commission) concurred in and adopted petitioners' application. Teleconnect filed an opposition to the application. We deny the application for the reasons set forth below.

II. Background

2. In the Iowa Order, the Bureau addressed an emergency petition from Teleconnect that alleged that the petitioners were blocking interstate calls transiting EAS facilities to reach Teleconnect's switches obtaining Feature Group A (FGA) access in Northwestern Bell Telephone Company exchanges in Marshalltown and Webster City, Iowa. Teleconnect asserted that this blocking violated the Communications Act and Commission policy and requested the issuance of a cease and desist order against the petitioners and the Iowa Commission. Petitioners and the Iowa Commission contended that the EAS blocking in question involved only local EAS ser-

vice that did not cross state lines, and thus, asserted that this Commission had no jurisdiction to require the removal of the blocking arrangements that had been installed on the EAS lines. The Iowa Commission argued that Teleconnect could obtain a point of presence (POP) in the petitioners' exchanges, or could provide secondary exchange carriers (EC), ^[FN3] such as petitioners, with minutes of use data. The Iowa Commission suggested that it would serve this Commission's objectives if we allowed the Iowa Commission's tariff review processes to resolve the question of compensation for the use made of the EAS facilities by Teleconnect in accordance with several decisions it had issued on the regulation of EAS arrangements.

3. In the Iowa Order, the Bureau decided that no action was necessary with respect to the Iowa Commission's orders on blocking and compensation. Finding the orders ambiguous, the Bureau assumed that the Iowa orders merely authorized the blocking of intrastate communications, and, therefore, concluded that they did not give rise to any need for Bureau action. The Bureau held that this Commission had jurisdiction over interstate calls transiting EAS facilities to reach an interstate carrier's POP and concluded that the blocking of interstate traffic transiting EAS facilities to reach the access numbers of Teleconnect from the petitioners' exchanges was in violation of the Communications Act and Commission policy. Petitioners were ordered to interconnect their facilities with those of Teleconnect by reinstating the ability of their customers to access Teleconnect's POPs for interstate calling over EAS facilities within one business day of the receipt of the Order.

****2 III. Discussion**

4. Petitioners request that we set aside the Bureau's decision, or, alternatively, that we prescribe interim rates covering the use made of the EAS facilities. Petitioners cite essentially the same arguments raised before the Bureau. Like the Bureau, we find those arguments unpersuasive.

5. We first address the petitioners' argument that the Bureau erred because this Commission lacks jurisdiction to require that EAS facilities be used to provide interstate access. They argue that "the inherently local nature of the EAS arrangements renders it highly doubtful that Congress ever intended to vest the FCC with the authority to prescribe how EAS facilities can be used in the first instance." ^[FN4] They note that, under Sections 2(b) and 221(b) of the Communications Act, ^[FN5] an EAS arrangement is an "exchange area" for purposes of the Communications Act and that this Commission lacks jurisdiction to prescribe "charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communications services." Petitioners argue that the Bureau's action is "tantamount to the prescription of a 'classification,' 'practice,' 'service,' 'facility,' or 'regulation' for an exchange service in contravention of the Act's plain language." ^[FN6]

6. Petitioners' argument is not well taken. The provision of telephone service involves the joint use of many facilities, particularly exchange facilities, for the provision of interstate, intrastate toll, and exchange services. When facilities are jointly used in the provision of both interstate and intrastate services, we have the authority under the Communications Act to regulate the interstate use of the facilities to provide communications.^[FN7] The problem at hand is the use of EAS facilities for interstate access, which is not an intrastate service or exchange service under the Act. In adopting the access charge mechanism, we recognized the existence of EAS arrangements and the longstanding use of EAS facilities in part to provide interstate access, indicated that interstate access should continue to be provided over EAS facilities under the access charge regime, and provided for ECs to recover their costs associated with the provision of the EAS *2693 facilities for the purpose of providing interstate exchange access.^[FN8] Accordingly, we find that the Bureau properly determined that the traffic in question is subject to our jurisdiction.^[FN9]

7. Petitioners also argue that the Bureau's requiring them to provide the interconnections was confiscatory because they were not receiving any compensation for the use made of their EAS facilities. Two subsequent events have addressed the compensation question, resolving it for all practical purposes.^[FN10] First, the National Exchange Carrier Association, Inc. (NECA), has filed tariff revisions, effective July 24, 1986, that enable secondary ECs in multicarrier EAS arrangements to bill switched access end office and local transport charges in addition to those now billed by the primary EC for FGA access service to the interexchange carrier when a revenue sharing agreement does not exist between the secondary and primary ECs.^[FN11] Second, we have ordered the retroactive sharing, subject to certain specified conditions, of exchange access revenues from May 25, 1984, through July 23, 1986, among primary and secondary ECs to permit the equitable compensation of all ECs involved in the provision of exchange access.^[FN12] Accordingly, with compensation mechanisms readily available, petitioners' arguments are moot.^[FN13]

**3 8. Petitioners again assert that their blocking of interstate communications is permissible because Teleconnect and its subscribers have alternatives for interstate access—the subscribers can call a Teleconnect access number not associated with an EAS arrangement, or Teleconnect can obtain FGA service in the secondary exchanges. This contention is misdirected. It is not an issue whether other arrangements could be used by Teleconnect or its subscribers. Rather, the issue is whether the EAS facilities in question can be used to obtain interstate access. We have answered that question in the affirmative above.

9. Petitioners also contend that the provision of toll access over EAS trunks, as the Bureau's order requires, will result in increased traffic demand on the EAS circuits, increased probability of blocking on such circuits, and, ultimately, demands for the installation of additional circuits that will increase the costs for EAS service. While petitioners are correct that continued provision of FGA ac-

cess service will increase the demand on EAS trunks more than it otherwise would be, it does not necessarily follow that EAS costs or blocking on EAS trunks will increase. We have recognized throughout the development of the access charge mechanism that the costs of EAS trunks must be allocated between state and interstate jurisdictions.^[FN14] Thus, a proportionate share of the costs of the EAS trunks, representing those costs required to meet the demand created by interstate FGA usage, is assigned to the interstate jurisdiction and, as Teleconnect observes, is recovered from interstate access charges. Increased blocking will occur only if the ECs do not install EAS trunks necessary to handle both the interstate and intrastate demand. Since a proportionate share of those costs will be recovered through interstate charges, the ECs will have no incentive not to install the EAS trunks necessary to handle the interstate demand.

10. ACCORDINGLY, IT IS ORDERED, pursuant to Sections 4(i) and (j), and 201-205, 47 U.S.C. Sections 154(i) and (j), 201-205, that the application for review filed by North Central Telephone Company, Woolstock Mutual Telephone Association, Cooperative Telephone Exchange, and Heart of Iowa Telephone Cooperative is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William Tricarico

Secretary

1 Blocking Interstate Traffic in Iowa, Mimeo No. 1702 (released September 18, 1985).

2 In an EAS arrangement, a customer in one exchange can call a local number in another exchange that is part of the extended area without paying a toll charge. An exchange subscriber in one exchange can therefore access an interexchange carrier's network toll free by calling its seven-digit access number even if that interexchange switch is located in a different exchange. Exchange switches typically recognize such calls as EAS calls, not as interexchange calls for which access charges are applicable.

3 A secondary EC is any EC in an EAS arrangement in whose exchange a FGA connection is not made, but from whose exchange customers can call the interexchange switch or point of presence (POP) of an other common carrier (OCC) in the primary exchange on a toll-free basis. FGA traffic is normally routed over an EAS trunk between the switches of the primary and secondary ECs. The primary EC is the EC in whose exchange the OCC has its POP.

4 Application at 10.

5 47 U.S.C. Sections 152(b) and 221(b).

6 Id. at 12 (emphasis in original).

7 The limiting statutory language quoted by petitioners refers to intrastate "services," not intrastate "facilities" within an "exchange area." Thus, petitioners' reliance on *Northwestern Bell Telephone Company*, 92 FCC2d 625 (1982), is unavailing. Indeed, to hold that subscribers to the primary EC's exchange service can access the POP of an OCC while a subscriber in the secondary EC's exchange cannot would appear to create a clear violation of the nondiscrimination provision of Section 202(a) of the Act. 47 U.S.C. Section 202(a). See generally *New York Telephone Co. v. FCC*, 631 F.2d 1059 (2d Cir.1980).

8 MTS and WATS Market Structure Inquiry (Phase I), 93 FCC2d 241 (1983), modified on recon., 97 FCC2d 682 (1983), modified on further recon., 97 FCC2d 834 (1984), affirmed in principal part and remanded in part sub nom. *National Association of Regulatory Utility Commissioners v. FCC*, 737 F.2d 1095 (D.C.Cir.1984), cert. denied, 105 S.Ct. 1224, 1225 (1985), modified on further recon., 49 Fed.Reg. 46,383 (1984), recon. denied, 50 Fed.Reg. 18,249 (1985), further recon. denied, 50 Fed.Reg. 43,707 (1985), appeal pending sub nom. *U.S. Telephone, Inc. v. FCC*, No. 84-1115 (D.C.Cir. Mar. 23, 1984).

9 Petitioners reiterate their argument that a hearing pursuant to Section 205, 47 U.S.C. Section 205, must be held before the Commission can order them to provide interconnection. If the hearing requirement of Section 205 is applicable, and it is not clear that it is, the proceedings associated with the Teleconnect petition were adequate to meet the hearing requirement of that section of the Act. See generally *Bell Telephone Company of Pennsylvania v. FCC*, 503 F.2d 1250 (3rd Cir.1974), cert. denied, 422 U.S. 1026. Petitioners' argument is thus without any basis in law.

10 Even if these compensation arrangements were not already in place, petitioners' claim of confiscation would be unavailing. We clearly recognized the right of the secondary ECs to receive compensation for the use made of EAS facilities in the provision of interstate access when we adopted the access charge rules. We provided that such compensation could occur through either a revenue sharing arrangement with the primary EC or through a tariff filed by the secondary EC setting forth charges to be paid by the interexchange carrier directly to the secondary EC. *MTS and WATS Market Structure Inquiry (Phase I)*, 97 FCC2d at 758-59. The lack of an agreement between a primary and secondary EC for the sharing of access revenues or the failure of an EC or its agent to file a tariff to allow the charging of a tariffed rate does not constitute confiscation on the part of this Commission.

11 *National Exchange Carrier Association, Inc. Tariff No. 1 (Transmittal No. 132)*, Mimeo No. 5897 (released Jul. 23, 1986).

12 *Amendment of Part 69 of the Commission's Rules to Ensure Application of Access Charges to All Interstate Toll Traffic*, FCC 86-596 (released Jan. 9, 1987).

13 These same two events eliminate any need to consider the petitioners' alternative request that we prescribe an interim rate to compensate them for the use made of their EAS facilities in conjunction with interstate exchange access. NECA's tariff now allows petitioners to obtain compensation for such usage of their facilities even if they do not have a revenue sharing arrangement with Northwestern Bell Telephone Company.

14 See note 8, supra; Amendment of Part 69 of the Commission's Rules to Ensure Application of Access Charges to All Interstate Toll Traffic, FCC 85-644 (released Dec. 31, 1985).

62 Rad. Reg. 2d (P & F) 539, 2 F.C.C.R. 2692, 2 FCC Rcd. 2692, 1987 WL 344893 (F.C.C.)

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

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

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.¹ Numerous local exchange carriers (LECs) and consumers have expressed concern about the blocking or potential blocking of interexchange calls that terminate with certain local exchange carriers as a form of self help to resolve disputes concerning the access rates of these local exchange carriers.² Because 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),³ we reiterate here that Commission precedent does not permit unreasonable call blocking by carriers.⁴ The Commission's rules and regulations provide carriers with several mechanisms to address allegations of unreasonable access charges, including tariff investigations and informal and formal complaints.⁵ We find that carriers that contend that the access charges of a LEC are unreasonable should use these mechanisms to seek relief and may not engage in self help actions such as call blocking.

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).

(continued...)

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

(...continued from previous page)

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.