Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
AT&T and Sprint Petitions for Declaratory Ruling on CLEC Access Charge Issues	)	CCB/CPD No. 01-02
	)	

ERRATUM

Released: April 9, 2003

By the Senior Deputy Chief, Wireline Competition Bureau:

1. On October 22, 2001, the Commission released a Declaratory Ruling (FCC 01-313) in the above-captioned proceeding.[1] Commissioner Martin concurred in the ruling and stated that he would issue a statement at a later date. Commissioner Martin's statement was released December 3, 2001, but the statement was erroneously not published in the FCC Record. Attached is Commissioner Martin's statement.

2. By this Erratum, the Declaratory Ruling is corrected to add Commissioner Martin's statement.

3. This Erratum is issued pursuant to 47 U.S.C. § 154(i) and the authority delegated by 47 C.F.R. §§ 0.91 and 0.291.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey J. Carlisle
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[1] *AT&T and Sprint Petitions for Declaratory Ruling on CLEC Access Charge Issues,* CCB/CPD No. 01-02, Declaratory Ruling, 16 FCC Rcd 19158 (2001)*, vacated*, *AT&T Corp. v. FCC*, 292 F.3d 808 (D.C. Cir. 2002).

CONCURRING STATEMENT OF
COMMISSIONER KEVIN J. MARTIN

Re: *AT&T and Sprint Petitions for Declaratory Ruling on CLEC Access Charge Issues*, Declaratory Ruling, CCB/CPD No. 01-02

In this Order, the Commission rules that, for a period of time before the *CLEC Access Reform Order*[2] went into effect, IXCs could not refuse access services provided by CLECs and therefore must pay for services they received regardless whether they ordered them. This ruling follows from two prior Commission orders: the *CLEC Access Reform Order*, which established a system of price regulation and mandatory acceptance of CLEC access services on a prospective basis; and *BTI*,[3] which, by holding that IXCs can obtain damages from CLECs for charging "unreasonable" access rates in the past, made price regulation retrospective. I concur in this Order, because I believe its conclusion is a necessary consequence of these earlier orders. In my view, the only justification to regulate prices is if IXCs cannot refuse access services. Having decided to regulate prices, this Order's conclusion that IXCs could not refuse access services merely makes explicit an implicit premise of that decision. Indeed, on the same logic, an IXC's refusal to pay a CLEC for access services would presumptively violate the Communications Act.

Nevertheless, I write separately – and refrain from voting to approve this Order – because I disagree with the Commission's basic approach to this area. As explained below, I believe that market forces – not price regulation – should govern CLEC access charges. Accordingly, were I writing on a clean slate, I would reach a different result.

A fundamental goal of this Commission should be to facilitate markets. Market forces are the best method of delivering choice, innovation, and affordability to our nation. Where meaningful competition can occur, the Commission should not resort to price regulation.

I believe that meaningful competition can occur in the access market. To be sure, there are problems in the market for access services. As the Commission explained in the *CLEC Access Reform Order*, end-users do not receive accurate price signals. *See id.* ¶ 31. That is because end-users choose their access providers but do not pay the access charges. IXCs pay these charges and are prohibited from passing the charges directly through to end-users. Instead, IXCs must spread the costs equally to all of their end-users. Thus, end-users have no incentive to choose reasonably priced access providers.

However, even if we did not fix any of these problems – and I believe we could at least mitigate them by changing our regulations – the market would do a better job of setting prices. Specifically, while end-users may not receive accurate price signals, the IXCs certainly do. And

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[2] *Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking, FCC No. 01-146 (rel. Apr. 27, 2001) ("*CLEC Access Reform Order*").

[3] *AT&T Corp. v. Business Telecom Inc.; Sprint Communications Co., L.P., v. Business Telecom Inc.*, Memorandum Opinion and Order, FCC No. 01-185 (rel. May 30, 2001) ("*BTI*").

the IXCs could negotiate favorable terms with CLECs by threatening to refuse access services they believed were priced too high.

The Commission rejected this kind of a market based approach because it believed the harm from the risk of service disruptions was too great. In its words, refusals to accept access services "threaten to compromise the ubiquity and seamlessness of the nation's telecommunications network and could result in consumer confusion." *CLEC Access Reform Order* ¶ 24. Actual service disruptions, however, would likely be few and short lived, as few companies would want to be blamed for the failure of a call to go through.

Accordingly, were the choice of how to approach CLEC access charges before me, I would reach a different conclusion from the one reached in the *CLEC Access Reform Order*. Because this choice is not before me, however, I concur in this Order.