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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter)
)
Southwestern Bell Telephone Company)
Petition for Forbearance from)
Application of Section 272 of the)
Communications Act of 1934,)
as Amended, to Previously)
Authorized Services)

CC Docket No. 96-149

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF AT&T CORP.

Pursuant to the Public Notice issued June 10, 1997, AT&T respectfully submits its Comments on Southwestern Bell Telephone Company's ("SWBT") petition for forbearance under Section 10 of the Communications Act of 1934, as amended,¹ from the application of the requirements of Section 272 of the Act to SWBT's Telecommunications Relay Services ("TRS").

SWBT states that it provides TRS in Kansas through a single center in the city of Lawrence and that calls to that center in some cases originate in other LATAs within that state. The petition observes (p. 4) that the District Court granted a waiver of

¹ Section 10(a) of the Act provides that the Commission shall forbear from application of any provision of the Act "if the Commission determines that -

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

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the MFJ's interLATA prohibition for this service on the grounds it "would not impede competition in the information services market." SWBT also contends (pp. 4-5) -- without providing support for its claim -- that the costs of complying with § 272's separate affiliate requirement for its Kansas TRS services "would be very significant if not prohibitive," and avers that that forbearance would be in the public interest for this reason.

While SWBT's petition does not appear to satisfy the three-part Section 10 standard,² AT&T would not oppose an appropriate application of the Commission's forbearance authority in connection with the imposition of Section 272 structural separation requirements to the TRS services covered by the instant petition. However, AT&T urges the Commission to direct SWBT to make a further showing in support of its waiver request, such as those the Common Carrier Bureau recently required in connection with other RBOCs' pending requests for forbearance in connection with TRS, 911 and E911 services.³ Requiring further support for the petition is particularly important in light of SWBT's failure to address whether forbearance "will

(footnote continued from previous page)

(3) forbearance from applying such provision or regulation is consistent with the public interest."

² As a threshold matter, SWBT's reliance on a waiver granted by the District Court is insufficient to demonstrate that its waiver request meets the specific criteria for forbearance under Section 10, because that earlier ruling turned on significantly different and narrower circumstances than required by Section 10 of the Act. In particular, in granting waivers under the MFJ the District Court and the Department of Justice did not address the implications of integration of TRS services for potential BOC competitors in the local exchange market.

³ See Public Notice, Pleading Cycle Established For Comments On Supplemental Showings In Connection With Pending Ameritech, Bell Atlantic, NYNEX And U S West Petitions For Forbearance From Application Of Section 272 To Previously Authorized Services, CC Docket No. 96-149, DA 97-1403, released July 3, 1997.

promote competitive market conditions,” a factor that Section 10(b) expressly requires the Commission to consider.

Finally, SWBT contends (pp. 5-6) that there is a “lack of clarity as to whether TRS are actually information services,” rather than a previously authorized in-region interLATA service that would not be subject to the requirements of Sections 271 or 272.⁴ In support of its claim, SWBT adverts to the fact that the Americans with Disabilities Act (“ADA”) denominates TRS as a “telephone transmission service” (p. 5). However, the phrase “telephone transmission service” is not a term of art, and thus has no significance as to the status of TRS as an information service. Moreover, there is no evidence of any kind that Congress intended the ADA to amend the Commission’s longstanding regulatory treatment of TRS in this respect.⁵

The District Court found it a “legally simple and straightforward” matter that TRS is an information service.⁶ In fact, the court expressly rejected the very claim SWBT asserts here: that TRS is not an information service because the communications assistants that translate conversations from voice to TDD (and vice versa) do not alter the content of messages.⁷ Further, the First Report and Order in the instant docket affirmed that the term “information services” is broader in scope than “enhanced services” as defined in the Commission’s rules, and that

⁴ See 47 U.S.C. §§ 271(f), 272(a)(2)(B)(iii).

⁵ Cf., e.g., County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation, 502 U.S. 251, 262 (1992) (“it is a cardinal rule that repeals by implication are not favored ...”) (internal quotation and ellipses omitted).

⁶ United States v. Western Electric, 1989 U.S. Dist. LEXIS 18907 (Sept. 11, 1987), at p. *2.

⁷ Id., at p. *3.

telemessaging services provided by live operators that do not involve “computer processing applications” are information services within the meaning of the 1996 Act.⁸

In all events, the Commission need not decide whether TRS should be classified as an information service in order to decide the instant request for forbearance. The unique nature of TRS suggests that, upon a proper showing by an RBOC that its provision of that service on an integrated basis meets the requirements of Section 10, it may be appropriate for the Commission narrowly to exercise its forbearance authority. The Commission could simply rule that it will forbear from enforcing Section 272 as to TRS, and could reserve judgment as to the status of TRS until such time as that question may be directly presented.⁹

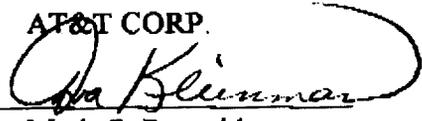
However, if the Commission ultimately grants SWBT’s request for forbearance, it is important that its order make clear that it is not deregulating TRS, and that it is not relieving the RBOC from compliance with the nondiscrimination and other requirements of the 1996 Act or

⁸ See First Report and Order and Further Notice of Proposed Rulemaking, Implementation of Non-Accounting Safeguards of Sections 271 and 272 of the Telecommunications Act of 1934, as Amended, CC Docket No. 96-149, FCC 96-489, released December 24, 1996, at ¶ 103.

⁹ If the Commission were to rule that TRS is not an information service, that service would remain subject to the Commission’s jurisdiction under Title I of the Communications Act.

any other legal requirement.¹⁰ In addition, forbearance concerning these services explicitly should provide no precedent with regard to other RBOC services.

Respectfully submitted,

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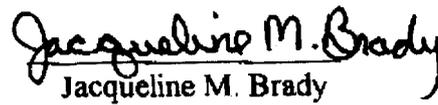
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¹⁰ For example, the RBOC should continue to be subject to the accounting and nondiscrimination safeguards required under the Commission's Computer Inquiry rulings, including the Commission's joint cost rules, 47 C.F.R. §64.901, appropriate amendments to its cost allocation manual, see 47 C.F.R. §64.903(b), and compliance with the Computer III customer proprietary network information requirements, as amended by Section 222 of the 1996 Act.

CERTIFICATE OF SERVICE

I, Jacqueline M. Brady, hereby certify that on this 10th day of July, I served one copy of the foregoing Comments of AT&T Corp. by first class mail, postage prepaid, on the following:

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