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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of)	
)	
Southwestern Bell Telephone Company,)	
Pacific Bell and Nevada Bell)	
Petitions for Forbearance from)	CC Docket No. 96-149
Application of Section 272 of the)	
Communications Act of 1934,)	
as Amended, to Previously)	
Authorized Services)	

COMMENTS OF AT&T CORP.

Pursuant to the Public Notice issued July 11, 1997, AT&T hereby submits its Comments on the supplemental showing ("Supplement") by Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell¹ (collectively, "BOCs") in connection with their pending petition for forbearance under Section 10 of the Communications Act of 1934, as amended,² from the application of the requirements of Section 272 of the Act to their E911 services.

¹ Letter from Robert J. Gryzmala, Attorney, Southwestern Bell, to William F. Caton, Acting Secretary, Federal Communications Commission, July 10, 1997 ("Supplement").

² 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

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

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AT&T strongly supports the Commission's decision to require the BOCs to submit a supplemental showing in support of their petition. Congress plainly did not intend that such relief be casually invoked, and in Section 10 of the 1996 Act defined specific criteria that must be satisfied in order to justify forbearance. The Commission correctly determined that the BOCs' initial request did not measure up to this statutory standard.

As AT&T has stated in its comments on the pending petition, in light of the unique nature of E911 service, upon a proper showing by a petitioning BOC, AT&T would not oppose an appropriate, narrow application of the Commission's forbearance authority. However, although the BOCs' supplement is substantially more detailed than their initial petition, they once again have failed even to address all of the statutory criteria for forbearance.

In particular, the supplement nowhere discusses the "the extent to which such forbearance will enhance competition among providers of telecommunications services," as required by § 10(b). Instead, the BOC seeks to rely on findings by the Department of Justice ("DOJ") under the MFJ, and on a Commission letter that predates the 1996 Act's mandate for full and fair local exchange competition by nearly 15 years. As AT&T showed in its comments on the BOCs' initial petition, reliance on MFJ-era waivers is insufficient to demonstrate that a forbearance request meets the specific criteria for forbearance under Section 10, because those earlier rulings turned on significantly different and narrower circumstances than those required under the 1996 Act. In granting waivers under the MFJ, the District Court and the DOJ did not address the implications of integration of E911 services for potential BOC competitors in the local exchange market. Similarly, the Commission's 1982 letter simply does not consider local competition. In order to grant the pending petitions, the Commission must weigh the potential impacts of the BOCs' forbearance requests on nascent local competition, as expressly required by

§ 10. The petitioners have yet to shoulder -- much less to carry -- their substantial burden under this statutory test.

As AT&T has also stated, if the Commission ultimately grants the petition, it is crucial that its order make clear that it is not deregulating E911, and that it is not relieving the BOCs from compliance with the nondiscrimination and other requirements of the 1996 Act or any other legal requirement.³ In addition, forbearance concerning these services explicitly should provide no precedent with regard to other BOC services.

The Supplement repeats BOCs' earlier assertions that providing E911 via a separate subsidiary would greatly increase the costs of that service. The BOCs frankly admit, however, that the costs of providing E911 on a separated basis "cannot be projected with any reasonable degree of accuracy."⁴ Compliance with § 272 will inevitably cause a BOC to incur some expenses, but nothing in that section or in § 10 makes the separate subsidiary requirement contingent on its cost.⁵

³ For example, the BOC 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.

⁴ Supplement, pp. 6-7. It is also important to note that the Supplement's assessment apparently addresses the costs of creating a § 272 affiliate that would provide no services other than E911. Of course, if the BOCs were required to utilize a separate affiliate for E911, they could also provide other services covered by § 272 via that same entity, in which case the costs associated with E911 would presumably be far lower than the Supplement suggests.

⁵ The Supplement also makes a cryptic reference to the BOCs' potential obligations as "carriers of last resort." See Supplement, p. 8, n.16. It is unclear what significance the BOCs believe this point entails; but the 1996 Act contemplates that non-incumbent LECs will also have universal service obligations, and establishes procedures governing any "eligible" carrier's exit from local exchange markets. See 47 U.S.C. § 214(e)(4). Thus, CLECs also potentially can

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The BOCs also suggest that "there is some doubt" that E911 should be deemed an "information service" subject to § 272, rather than a "basic" or "adjunct to basic" service.⁶ However, the Supplement fails to account for the fact the DOJ's support for integrated provision of E911 under the MFJ (upon which the Supplement heavily relies) underscored that these services were "information services." As the District Court stated: "The Department of Justice argues strenuously, and the Court agrees, that the information storage and retrieval functions of E911 service are an 'information service' within the meaning of the decree, and that such functions may not be performed without a waiver."⁷

Nevertheless, the Commission need not determine whether E911 should be classified as an information service in order to decide the instant petitions. Upon a proper showing by an BOC under § 10, the Commission could simply rule that it will forbear from enforcing Section 272's separate affiliate requirements as to that service, and could reserve judgment as to the status of E911 until such time as that question may be directly presented.⁸

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serve as carriers of last resort. Further, the public interest will be better served if § 272's nondiscrimination requirements remain in place to ensure that all LECs have nondiscriminatory access to E911 services.

⁶ See Supplement, p. 4.

⁷ United States v. Western Electric, 1984 U.S. Dist. LEXIS 10566 (D.D.C. 1984) at *7, n.8.

⁸ As AT&T has stated in its comments on the BOCs' previous petitions, to the extent that their integrated provision of E911 services enables them exclusively to access unlisted numbers, as well as numbers available from other LECs that utilize their databases for directory assistance services, such exclusive access to that information discriminates against competitive providers, and precludes them from offering their own E911 services. So long as the BOCs continue to offer 911 and E911 services to end users and other carriers, they may not deny competitive providers the ability themselves to offer such services by denying them essential

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Finally, the Supplement asserts that if the Commission does not require the BOCs to utilize a separate affiliate for E911, the nondiscrimination requirements of sections 272(c) and (e) would be "inapplicable" because those sections refer to BOCs' obligations vis a vis their affiliates.⁹ However, the Commission clearly has the authority under § 10 to forbear from enforcing particular aspects of § 272, while finding that others should remain in force. To the extent that the Commission may find that it is in the public interest to permit the BOCs to offer E911 on an integrated basis, such a finding should be specifically conditioned on the BOCs' compliance with § 272(c)'s requirement that the BOC provide its competitors with nondiscriminatory access to any "goods, services, facilities and information" that it utilizes to provide E911.

CONCLUSION

For the reasons stated above and in its comments on the BOCs' petition, if the petitioners demonstrate that their requests for forbearance comply with the criteria established in § 10 for such relief -- as they have not done in the instant supplemental filing -- AT&T would not

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unlisted and third-party-LEC number information. This is precisely what the Section 272 safeguards are intended to prevent.

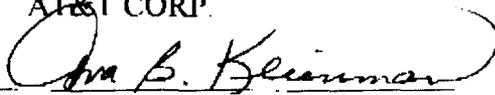
⁹ Supplement, p. 9.

oppose a Commission decision narrowly to forbear from applying the separate affiliate requirements of § 272 to the services at issue.

Respectfully submitted,

AT&T CORP.

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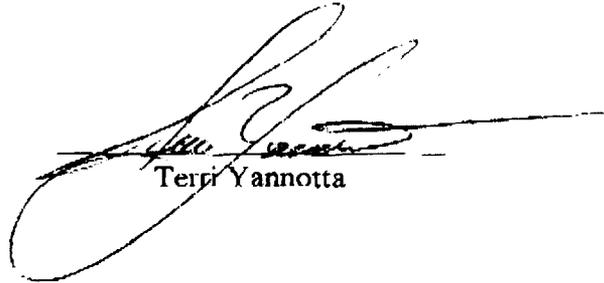
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July 28, 1997

CERTIFICATE OF SERVICE

I, Terri Yannotta, do hereby certify that on this 28th day of July, 1997 a copy of the foregoing "Comments of AT&T Corp." was mailed by U.S. first class mail, postage prepaid, to the party listed below.

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July 28, 1997