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April 28, 2006

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, N.W.
Suite 1100
Washington, D.C. 20554

Re: Notice of Ex Parte – In the Matter of Petition of AT&T Inc. for Waiver to Treat Certain Local Number Portability Costs as Exogenous Costs under Section 61.45(d) in CC Docket No. 95-116

Dear Ms. Dortch:

On April 28, 2006, Bob Quinn, Gary Phillips, Davida Grant and the undersigned, representing AT&T, met with Scott Bergmann, Legal Advisor to Commissioner Jonathan Adelstein, to discuss issues pertaining to AT&T's waiver petition in the above referenced proceeding, and as further discussed in the attached presentation.

In accordance with Section 1.1206(b)(2) of the Commission's Rules, this letter is being filed electronically with your office. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in purple ink that reads "mthomas".

Attachment

cc: Scott Bergmann

Local Number Portability Cost Recovery

April 27, 2006



Legal Background and Authority

- The Act requires all LECs to provide LNP. 47 U.S.C. § 251(b)(2).
- The Act also requires that the cost of establishing LNP be borne by all telecommunications carriers on a ***competitively neutral basis*** as determined by the Commission. 47 U.S.C. § 251(e)(2).
- In its rules implementing the Act's requirements (47 CFR § 52.33), the Commission
 - allowed non-ILECs to recover their LNP implementation costs in any lawful manner and over any period of time, but
 - limited ILECs to recovery of their costs only through a levelized, tariffed, monthly charge on end users, for five years. ILECs thus had to project access line counts five years out.

AT&T's LNP Cost Recovery Mechanism in Practice

- After a five month review of the AT&T ILECs' tariffs and cost studies, the Commission authorized \$1.275B in cost recovery for AT&T as reasonable and lawful, although AT&T had estimated higher costs and AT&T has confirmed that its costs did in fact exceed \$1.275B.
 - AT&T is not seeking recovery of those additional costs.
- A key component in AT&T's calculations translating total costs into monthly end user charges was AT&T's estimated projection of access lines over the 5 year period in which the charges would be assessed (1999-2004).
- AT&T experienced a significant under recovery of LNP costs because at the time it filed its tariffs it was unable to predict the unprecedented decline in access lines that occurred during the 5 year period.
- Consistent with the Commission's policy objective, and the Act's requirement of competitive neutrality, AT&T should be afforded a reasonable opportunity to recover all of its LNP costs that the Commission previously determined were reasonable and lawful.

AT&T's Access Line Trend

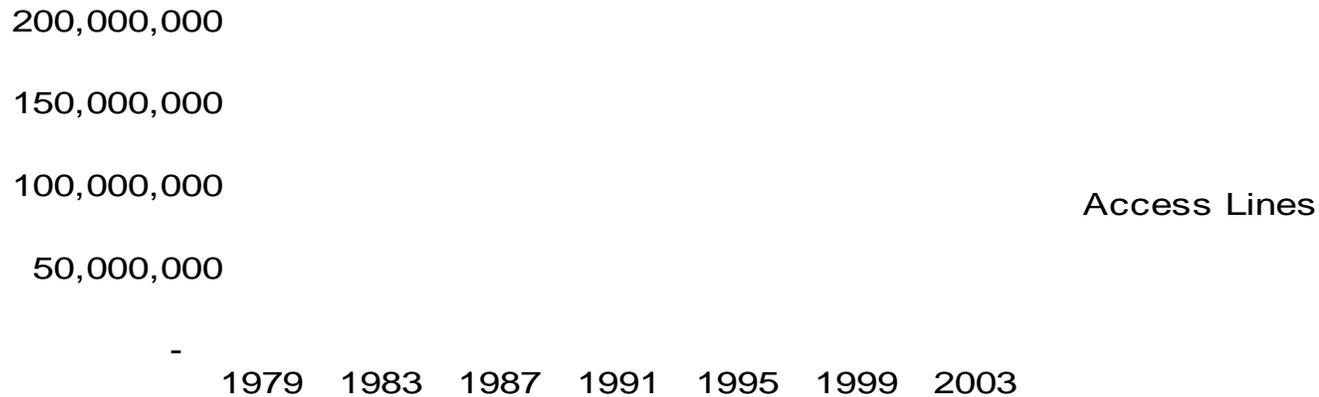
- At the time of AT&T's LNP cost recovery tariff filing (February 1999), access lines had grown every year since 1933, when the U.S. was in the depths of the Great Depression.
- Access line growth had accelerated dramatically in the years immediately prior to 1999 due largely to the explosive growth of the Internet, along with a booming economy.
 - The growth of the Internet fueled a significant increase in second line sales.
 - The industry and the Commission uniformly anticipated that those trends would continue (reflected in the Commission's *ISP Remand Order*)

AT&T's Access Line Trend (cont'd)

- During 1999, after AT&T's LNP cost recovery tariffs were approved, access lines did continue to grow at a healthy clip, and they increased in 2000 as well, albeit at a slower pace.
- However, beginning in 2001, AT&T's access lines began decreasing, and the decline accelerated year-over-year from 2001 through 2003. This acceleration was so rapid that for the full 5-year period, AT&T's access lines decreased by 8%.
 - In stark contrast AT&T had assumed a 24% increase in calculating its tariffed LNP monthly charge
- This change in access line growth rates was more dramatic in the AT&T region than elsewhere – faster increase prior to 1999 and faster decline in 2001-2003.

Access Line Trend (Cont'd)

Total Access Lines 1979 - 2003



Data Source:

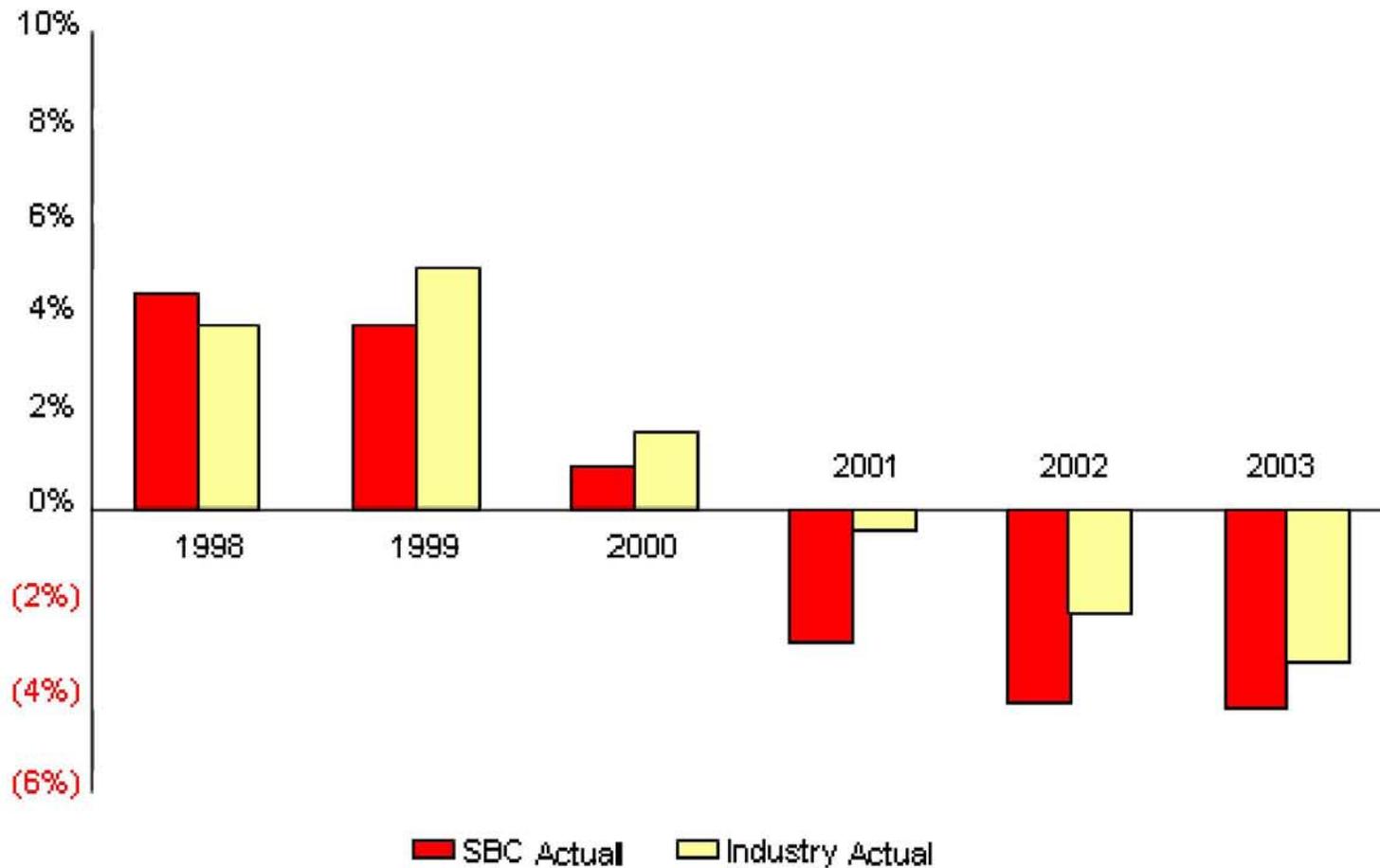
1979 through 1983 access lines - Trends in Telephone Service: FCC: IADCCB July 1998

1984 through 1998 access lines - Trends in Telephone Service; FCC: IATD, WCB May 2002

1999 through 2003 access lines - Local Telephone Competition: Status as of December 31, 2003 FCC IATD WCB June 2004

Access Line Trend (Cont'd)

Industry and AT&T Actual Access Line Growth (1998-2003)



Access Line Trend (Cont'd)

- This unprecedented and unforeseeable reduction in access lines was due to a confluence of factors
 - Projections regarding continued growth of sales of second lines for dial-up Internet access proved grossly inaccurate. (Reflected by the Commission's *Core Forbearance Order*).
 - After 8 years of robust growth, the economy went into recession.
 - Bypass substitution – from wireless carriers and cable providers as well as facilities-based CLECs – accelerated dramatically.

AT&T LNP Cost Recovery Shortfall

Company / Region	Actual LNP Revenue (\$M)	Approved LNP Revenue (\$M)	Revenue Shortfall (\$M)
SWBT	\$327	\$434	(\$107)
AIT	\$375	\$438	(\$63)
CA	\$363	\$404	(\$41)
Total	\$1,065	\$1,276	(\$211)

The Relevant Legal Standards

- Unrecovered LNP costs are exogenous costs under the Commission's price cap regime because:
 - LNP costs were outside of AT&T's control
 - Implementation of LNP was mandated by TA 96 and FCC implementing regulations
 - The Commission reviewed and authorized recovery of \$1.275B.
 - LNP costs are not already accounted for in the price cap formula
 - X-Factor and inflation measures do not account for these costs
- A waiver is appropriate to allow recovery of these exogenous costs because unforeseen, unprecedented circumstances prevented AT&T from recovering these mandated and authorized costs.

There is Good Cause for a Waiver to Permit Recovery of These Exogenous Costs

- AT&T does not seek to recover any costs beyond those the Commission already determined were reasonable and lawful. AT&T also does not seek recovery of interest.
- Denying AT&T the opportunity to recover those costs would violate the Act's requirement of competitive neutrality.
- Granting the relief requested by AT&T will not harm consumers.
- Even after the proposed EUCL increases, AT&T's EUCL rates will be well under the Commission's \$6.50 EUCL caps.
 - Moreover the EUCL increases will be of short duration - 1 year in the West and Midwest regions and 2 years in the Southwest region.

Relief Requested is Necessary to Remain Consistent with Prior Commission Decisions

- The Commission has previously granted Sprint relief for unrecovered costs.
 - Sprint had requested Commission action in order to remedy a Sprint computational error
 - Sprint's error had overstated demand, and thus underestimated the recurring LNP charge necessary to recovery the full amount of its intermodal LNP costs
 - The Commission concluded that because there was no dispute that Sprint had under-recovered its costs, "the public interest weighs in favor of allowing Sprint to correct" its error. *Sprint Order* ¶ 7.
- Granting Sprint's request while denying AT&T the opportunity to recover its LNP costs would be legally indefensible in that it would effectively reward negligence and punish diligence.
- The Commission also granted BellSouth's request to add an additional LNP charge beyond the original 5 year period to account for intermodal LNP costs.

Recovery* of Shortfall Through Increased EUCL Charge

Southwest	\$107	\$96	\$0.33	\$0.36	\$5.25
Midwest	\$63	\$57	\$0.28	\$0.34	\$4.50 - \$5.53
California	\$41	\$36	\$0.34	\$0.25	\$4.38
Total (\$M)	\$211	\$189			

* Recovery is calculated for 1 year in the Midwest and California regions, and 2 years in the Southwest region.