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

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Federal Communications Commission
Office of Secretary

In re)
)
Petition of AT&T Inc. for Expedited)
Interim Waiver Of Certain)
Structural Separation Rules for)
Advanced Services)
)

WC Docket No. _____

PETITION FOR EXPEDITED INTERIM WAIVER

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I. INTRODUCTION

Pursuant to Section 1.3 of the Commission’s Rules, 47 C.F.R. § 1.3, AT&T Inc. (“AT&T”) hereby petitions the Commission for an interim, limited waiver of its regulations that effectively prohibit sharing of information, employees and facilities between AT&T’s advanced services affiliates, d/b/a AT&T Advanced Solutions (collectively, “ASI”), and AT&T’s incumbent local exchange carrier (“ILEC”) affiliates.¹ Specifically, until such time as the Commission addresses the proper regulatory treatment of advanced services in the *ILEC Broadband NPRM*² – which has been pending for nearly five years – or otherwise grants AT&T full and permanent relief from Title II common carrier regulation of advanced services, AT&T seeks a limited waiver of the sharing restrictions incorporated in the Commission’s 2002 *ASI Detariffing Order*.³ These restrictions increase AT&T’s costs, deny it the ability to structure its

¹ AT&T Advanced Solutions is the d/b/a name used by AT&T’s six regional advanced services affiliates.

² See *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Notice of Proposed Rulemaking, 15 FCC Rcd. 22745 (2001) (“*ILEC Broadband NPRM*”).

³ *Review of Regulatory Requirements of Incumbent LEC Broadband Telecommunications Services*, Memorandum Opinion and Order, 17 FCC Rcd. 27000, ¶ 15 (2002) (“*ASI Detariffing*”).

operations efficiently, and limit its flexibility in providing customers with the best possible service. Worse yet, they perversely micromanage AT&T's provision of services that do not even need to be provided on a common carrier basis. Simply put, it makes no sense to condition tariff relief on common-carrier-style regulations that force AT&T to share with competitors information, employees, and facilities related to its provision of DSL service, when the Commission has removed that service altogether from Title II.

Accordingly, this waiver will further the public interest by allowing ASI to provision advanced services more efficiently and with an eye to the needs of *consumers*, not outmoded regulatory requirements. At the same time, it will permit ASI to continue offering advanced services to its customers on a detariffed basis, as it has done for more than three years, without having to undertake the burdensome obligation of re-tariffing these services while awaiting the outcome of pending Commission proceedings. Because the sharing restrictions are significantly hampering AT&T's ability to efficiently deploy and provide advanced services, and because the regulations at issue are wholly unnecessary in today's highly competitive marketplace, AT&T asks that this limited, interim waiver be granted on an expedited basis.

Order”). The *ASI Detariffing Order* incorporated certain conditions originally imposed on SBC Communications Inc. as a result of the *SBC/Ameritech Merger Order*. See *Applications of Ameritech Corp. and SBC Communications Inc.*, Memorandum Opinion and Order, 14 FCC Rcd. 14712, ¶ 363 & App. C., Condition I (1999) (“*SBC/Ameritech Merger Order*”). These conditions require AT&T to offer advanced services through “one or more affiliates that are structurally separate” from AT&T's ILECs. *Id.* In this petition, AT&T is seeking a waiver of the following sections of the *SBC/Ameritech* merger conditions, as applied in the *ASI Detariffing Order*, to the extent they prevent AT&T's advanced services affiliate(s) from sharing information, employees or facilities with other AT&T affiliates on an exclusive basis: section I.3 to the extent it incorporates Section 272(c)(1) of the Act, sections I.4.a. through I.4.e., section I.4.f (as it relates to interfaces, processes and procedures), and sections I.4.g through I.4.k. See *SBC/Ameritech Merger Order App. C, Conditions I.3, I.4.a.-I.4.k.* We refer to these conditions collectively as the “sharing restrictions.” This waiver applies to any AT&T affiliate(s) other than the traditional ILECs that provides advanced services, including AT&T Corp. post-272 sunset.

II. BACKGROUND AND SUMMARY

Almost five years ago, in October 2001, AT&T (then known as SBC Communications Inc.) filed a petition seeking an expedited ruling that it is non-dominant in the provision of advanced services, and asking the Commission to forbear from the application of tariff requirements and other dominant carrier regulations to its provision of those services.⁴ Two months later, in recognition of the fact that the “world of communications is changing dramatically,” and consistent with the deregulatory mandates of the Telecommunications Act of 1996 (“Act” or “1996 Act”), the Commission launched a comprehensive rulemaking to examine the appropriate regulatory requirements for broadband telecommunications services provided by ILECs.⁵ In December 2002, with the forbearance deadline approaching, the Commission issued the *ASI Detariffing Order*, which granted partial relief to AT&T for its advanced services offerings. Specifically, the Commission gave AT&T the following choice: (a) offer its advanced services through a separate affiliate (ASI) on a detariffed basis but continue to comply with sharing restrictions originally imposed in connection with the 1999 SBC-Ameritech merger (and

⁴ SBC Petition for Expedited Ruling that It Is Non-Dominant in Its Provision of Advanced Services and for Forbearance from Dominant Carrier Regulation of Those Services, CC Docket No. 01-337 (filed Oct. 3, 2001). In the *SBC/Ameritech Merger Order*, the Commission defined “advanced services” as “intrastate or interstate wireline telecommunications services, such as ADSL, IDSL, xDSL, Frame Relay, Cell Relay and VPOP-Dial Access Service (an SBC Frame Relay-based service) that rely on packetized technology and have the capability of supporting transmissions [sic] speeds of at least 56 kilobits per second in both directions. This definition of Advanced Services does not include (1) data services that are not primarily based on packetized technology, such as ISDN, (2) x.25-based and x.75-based packet technologies, or (3) circuit switched services (such as circuit switched voice grade service) regardless of the technology, protocols or speeds used for the transmission of such services.” See *SBC/Ameritech Merger Order* at App. C, Condition I.2; *ASI Detariffing Order* ¶ 2 n.5.

⁵ *ILEC Broadband NPRM* ¶¶ 1-7.

a host of other requirements for which this Petition does *not* seek a waiver); or (b) offer its advanced services on a tariffed basis subject to dominant carrier regulation.

AT&T chose the former option, and ASI has been providing advanced services on a fully detariffed basis since that time with the expectation that the Commission would issue a timely order in the rulemaking proceeding. Fifty-four months after the *NPRM* was issued, however, AT&T is still waiting for a ruling from the Commission. But AT&T can wait no longer. Recent developments have so radically altered the regulatory, competitive and technological landscape in which AT&T operates that AT&T's continued compliance with sharing restrictions has become intolerable.

The Commission itself has recognized these changes. Within the last year, it has twice repudiated the premise for the sharing restrictions and other separate affiliate requirements imposed in the *ASI Detariffing Order*. In the *Title I Broadband Order*, the FCC repealed the requirement that LECs provide ISPs with the DSL, Frame Relay, ATM, and other broadband transmission components of Internet access service by tariff under Title II, finding that this requirement is not necessary to allow consumers to receive broadband Internet access services from multiple sources.⁶ And just a few months ago, Verizon's petition for forbearance from the application of all forms of Title II and *Computer Inquiry* regulation to all remaining broadband transmission services (other than certain DS-1 and DS-3 transmission services) was granted by operation of law.⁷

⁶ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, FCC 05-150, WC Docket Nos. 02-33 ¶¶ 86-95 (September 23, 2005) ("*Title I Broadband Order*").

⁷ *Verizon Telephone Companies' Petition for Forbearance from Title II and Computer Inquiry Rules with Respect to Broadband Services Is Granted by Operation of Law*, FCC Press Release (March 20, 2006) ("*Verizon Broadband Forbearance Decision*"). See *Radio-Television News*

Despite this deregulation, AT&T's advanced services remain shackled by the outdated conditions in the *ASI Detariffing Order*. Among other things, the sharing restrictions are preventing AT&T from implementing the Commission's *Title I Broadband Order* for its DSL services. The sharing restrictions also are impeding AT&T's deployment of broadband, IP-enabled voice, video and Internet access service through the Project Lightspeed initiative, particularly in such critical areas as VoIP 911 connectivity and the minimization of service interruptions for existing broadband Internet access subscribers that choose services provided over the new Lightspeed platform. Indeed, because the sharing restrictions leave AT&T no practical choice but to "silo" the employees, systems and information of ASI and its ILEC affiliates in a manner faced by no other advanced service provider, those restrictions are impairing AT&T's ability to compete and to operate efficiently in myriad other ways. As explained below, absent the requested relief, the only real avenue open to AT&T to address these urgent problems caused by the sharing restrictions is to incur the costs, delays and inefficiencies that would accompany the tariffing of advanced services that have been detariffed for years. That is quite obviously an outcome that would fundamentally disserve the public interest.

In light of these exigencies and the significant marketplace and regulatory changes that have occurred since 1999, this Petition seeks a waiver of restrictions on the sharing of

Directors Ass'n v. FCC, 184 F.3d 872 (D.C. Cir. 1999) (treating a joint statement by two Commissioners as the "opinion of the agency" where the Commission had deadlocked in a 2-2 vote). Verizon's Petition was based on market conditions that are generally applicable to all Bell Operating Companies ("BOCs"), and those conditions demonstrate that the forbearance criteria are met nationwide for all BOCs. Because the Commission is plainly empowered to grant forbearance to a "class" of telecommunications providers or services, the relief awarded by operation of law should apply across the board to all BOCs. 47 U.S.C. § 160(a). Accordingly, AT&T specifically reserves the right to argue that such relief does, in fact, apply to AT&T and other BOCs. We seek relief in this Petition for advanced services only to the extent that such relief does not already apply to AT&T and other BOCs as a result of Verizon's petition.

information, employees and facilities. This waiver will remove critical regulatory barriers to AT&T's implementation of the deregulatory *Title I Broadband Order*, to its deployment of broadband IP-based voice, video and Internet services through its Project Lightspeed initiative, and to its provision of services to its ISP and enterprise customers more quickly and efficiently in competition with numerous other providers that are saddled with no such restrictions. AT&T seeks this limited waiver on an interim basis only, during the pendency of the *ILEC Broadband NPRM* and other proceedings that are addressing much broader – and much-needed – permanent regulatory reform for wireline advanced services.

To be sure, the limited relief accomplished by the interim waiver will still leave ASI subject to a wide range of outmoded and inappropriate structural separation and other requirements. Indeed, as discussed below, the interim waiver sought herein would continue to subject ASI to separation requirements that are still more strict than those applicable to independent ILECs providing in-region interstate interexchange services pursuant to Section 64.1903 of the Commission's Rules – a degree of regulation this Commission found to be sufficient for the “prevention and detection of anticompetitive conduct.”⁸

Thus, while the requested waiver will not fully level the playing field between AT&T and the vast majority of its advanced service competitors, it will at least address ASI's most immediate needs to structure its operations efficiently, as contemplated by the *Title I Broadband Order*, without having to implement and comply with onerous and wholly unnecessary dominant

⁸ See 47 C.F.R. § 64.1903(a)-(b) (requiring the affiliate of an incumbent independent LEC providing in-region interstate interexchange services through such affiliate to exist as a separate legal entity, maintain separate books, maintain separate ownership of transmission or switching facilities, and acquire any services from its affiliate exchange companies for which a tariff is required at tariffed rates, terms, and conditions); *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, CC Docket No. 96-149, Second Report and Order, FCC 97-142, ¶ 163 (rel. April 18, 1997).

carrier tariff regulations. Because the restrictions on sharing information, employees and facilities so clearly impede ASI's provision of advanced services and provide no corresponding benefits, the Commission should promptly grant AT&T's request for an interim waiver.

III. ARGUMENT

One of Congress's fundamental purposes in enacting the 1996 Act was "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans."⁹ In light of this congressional directive, this Commission has recognized that "the Act requires that we promote deployment of advanced services in a competitive, *deregulatory* environment."¹⁰ True to its word, the Commission has taken a number of important steps to realize that goal. Most significantly, it has removed broadband Internet access from the purview of Title II, and it has relieved Verizon of any Title II or *Computer Inquiry* obligations with respect to all non-TDM-based broadband services. It has declined to require unbundling of broadband facilities and it has eliminated all of its former line sharing requirements.¹¹ Yet despite the Commission's recognition in these and other orders that broadband and advanced

⁹ See Joint Explanatory Statement of the Committee of the Conference, S. Rep. No. 230, 104th Congress, 2d Sess. 1, 113 (1996).

¹⁰ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Notice of Inquiry, 13 FCC Rcd. 15280 ¶ 59 (1998) (emphasis added).

¹¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 96-98, 98-147, 01-338, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 16978 (2003) ("*Triennial Review Order*"); *Triennial Review Remand Order*, 20 FCC Rcd. 2533 (2005).

services markets are competitive, AT&T has for the last several years been forced to provide most of its advanced services through a 272-like affiliate – a burden not faced by major competitors, such as cable broadband providers.

As the Commission has long recognized, separate affiliate requirements are inherently inefficient, and AT&T has endured those inefficiencies with the expectation that relief through deregulation would be coming. But AT&T is now at a point where it can no longer wait. Our experience has shown that the 272-like separation requirements with which ASI must comply under the *ASI Detariffing Order* to avoid tariff regulation exact too great a toll on efficiency, cost, and customer service. Indeed, these requirements even deny AT&T the ability to take advantage of the deregulatory measures adopted in the *Title I Broadband Order*. This interim waiver is essential to enable AT&T to at least *partially* integrate its advanced services operations with those of the AT&T ILECs without being subject to onerous and wholly unnecessary tariff requirements that should be eliminated when the Commission more holistically addresses the regulatory status of incumbent LEC broadband services.

The courts and the Commission have determined that a waiver is “appropriate when ‘particular facts would make strict compliance inconsistent with the public interest.’”¹² The Commission may “take into account considerations of hardship, equity, or more effective implementation of overall policy.”¹³ In the context of structural separation requirements, the

¹² *AT&T Wireless Services, Inc. v. FCC*, 270 F.3d 959, 965 (D.C. Cir. 2001); Order, *Federal State Joint Board on Universal Service*, CC Docket No. 96-45, DA 05-2463 ¶ 3, (rel. Sept. 20, 2005) (waiver appropriate when “special circumstances warrant a deviation from the general rule and such deviation will serve the public interest”).

¹³ *Federal State Joint Board on Universal Service*, ¶ 3. The Commission’s waiver authority clearly extends to all of its rules, and not merely those that are codified in the Code of Federal Regulations. See, e.g., *Amendment of the Television Table of Allotments to Delete Noncommercial Reservation of Channel 39, 620-626 MHz, Phoenix, Arizona, and to Add*

Commission has not hesitated to remove the aspects of these requirements that provide little added benefit in detecting alleged discriminatory conduct but that seriously interfere with economies of scope and scale and product innovation that can benefit consumers.¹⁴ As discussed below, there is “good cause” to do so here as well.¹⁵ Among other things, the interim waiver will promote the public interest by “allowing ASI to compete more effectively based on quality of

Noncommercial Reservation of Channel 11, 198-204 MHz, Holbrook, Arizona, Memorandum Opinion and Order, MB Docket No. 04-312, 2005 WL 2573535, at ¶ 16 (rel. Oct. 13, 2005) (granting waiver of “the uncodified rule requiring opening of dereserved channels for competing applications”); *Spacedata Int’l, LLC*, Order, 18 FCC Rcd. 143, ¶¶ 6-9 (2003) (granting limited waiver of condition imposed by the Commission on petitioner’s license to operate four satellites on a time-share basis); *Amendment of the Television Table of Allotments to Delete Noncommercial Reservation on Channel 16, 482-488 MHz, Pittsburgh, Pennsylvania*, Report and Order, 17 FCC Rcd. 14038, ¶¶ 46-47 (2002) (waiving uncodified rule requiring that newly dereserved channels be made available to competing applications).

¹⁴ The Commission’s bureaus have frequently granted interim waivers where rulemakings or other requests for permanent relief were pending before the Commission. *See, e.g., LoJack Corporation Request for Waiver of Section 90.20(e)(6) of the Commission’s Rules*, Order, DA 00-1987 (rel. Aug. 31, 2000) (waiving technical criteria associated with use of wireless tracking device, pending outcome of LoJack’s petition for rulemaking); *ALLTEL Corp.*, Order, 15 FCC Rcd. 23227, ¶¶ 1, 5 (rel. June 16, 2000) (granting interim waiver of Section 61.41(b) of the Commission’s Rules pending Commission’s decision on ALLTEL’s previous request for price cap regulation on a permanent basis for 13 of ALLTEL’s study areas); *Waiver from Customer Proprietary Network Information Notification Requirements*, Order, 12 FCC Rcd. 21756, ¶ 6 (rel. Dec. 16, 1997) (granting temporary waiver of the Commission’s CPNI multi-line business notification requirements pending Commission action on a CPNI rulemaking); *Pacific Telesis Petition for Exemption from Customer Proprietary Network information Notification Requirements*, Order, DA 96-1878 (rel. Nov. 13, 1996) (waiving annual customer proprietary network information (CPNI) notification requirements, pending Commission action on a CPNI rulemaking); *Southwestern Bell Telephone Company Petition for Waiver of Part 69 of the Commission’s Rules*, Memorandum Opinion and Order, DA 91-1258 (rel. Oct. 4, 1991) (waiving Part 69 of the Commission’s Rules to allow Southwestern Bell to establish new rate elements, pending the outcome of multiple pricing-related rulemakings).

¹⁵ 47 C.F.R. § 1.3 (a waiver may be granted upon a showing of “good cause”).

service and improved efficiency,” which will “promote competitive market conditions” and “enhance competition among providers of telecommunications services.”¹⁶

A. Prohibitions on Sharing Information, Employees and Facilities Destroy Economies of Scope and Scale And Hamper AT&T’s Ability To Efficiently Offer Advanced Services.

A limited interim waiver of the specific sharing restrictions is warranted because the costs they impose on AT&T “make strict compliance inconsistent with the public interest.”¹⁷ The Commission and the courts have long recognized in a variety of contexts that structural separation is a cumbersome regulatory tool that imposes “substantial societal costs” and prevents carriers from taking advantage of vertical efficiencies that can benefit consumers.¹⁸ Most recently, the Commission has pointed to the burdens of structural separation as valid grounds to eliminate such requirements entirely. In the *Title I Broadband Order*, for example, the Commission agreed that the structural separation and other *Computer Inquiry* obligations “require[d] costly redundant systems and duplicative processes that result in operational inefficiencies,” which “act as an investment disincentive.” *Title I Broadband Order* ¶ 68. The Commission found there was unanimous agreement that structural separation requirements “are outmoded and should be eliminated or replaced.” *Id.* ¶ 42. It noted that “the record provides little, if any, support for retaining the structural separation option of *Computer II* or for

¹⁶ *Section 272(b)(1)’s “Operating Independently” Requirement For Section 272 Affiliates*, Report and Order, 19 FCC Rcd. 5102, ¶ 36 (2004) (“*OI&M Sharing Order*”) (alteration omitted).

¹⁷ *AT&T Wireless Services*, 270 F.3d at 965.

¹⁸ See *Computer III* ¶¶ 89-93; *OI&M Sharing Order* ¶ 27; see also *id.* ¶ 18 (structural safeguards are “costly and burdensome”); cf. *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 21905, ¶¶ 7, 13 & n.18 (1996) (removal of structural safeguards allows BOCs to “offer consumers . . . [bundles of services] and other advantages of vertical integration”); *Ass’n of Comm’n Enters. v. FCC*, 235 F.3d 662, 668 (D.C. Cir. 2001).

conditioning BOC structural relief on compliance with a detailed set of regulatory requirements such as the CEI or ONA requirements.” *Id.* The Commission thus eliminated *all* of its rules that required BOCs to provide broadband Internet access through separate affiliates or in compliance with detailed *Computer Inquiry* rules.¹⁹ Indeed, in the *Verizon Broadband Forbearance Decision*, the Commission determined that Title II regulation for non-TDM-based broadband transmission services is altogether unnecessary to ensure just and reasonable rates or to protect consumers.

These decisions cannot be reconciled with the continued imposition of *any* section 272-like structural separation requirements on AT&T’s advanced services affiliate(s) as a condition of tariff forbearance. At a minimum, they plainly justify the limited interim relief that AT&T requests here. This relief will allow AT&T to retain its longstanding detariffed status for advanced services while removing significant impediments, including those described below, to its efficient provision of broadband Internet access services and its roll out of its Project Lightspeed initiative.

First, rules that prevent AT&T’s incumbent telephone affiliates and ASI from sharing information, employees and facilities effectively prevent AT&T from achieving the efficiencies made possible as a result of the relief granted in the *Title I Broadband Order*. The Commission determined last year that consumers would greatly benefit from the complete elimination of Title II and *Computer Inquiry* regulation that impedes the efficient deployment and delivery of

¹⁹ Likewise, the Commission eliminated the prohibition against sharing of operating, installation, and maintenance functions because the separation of these functions between a BOC and its section 272 affiliate “pose[d] significant adverse consequences” by imposing “inefficiencies that prevent BOCs from competing more effectively.” *OI&M Sharing Order* ¶¶ 29, 31. Requiring separate OI&M functions limited “flexibility to provide integrated service offerings that cut across traditional . . . boundaries, including broadband and advanced services.” *Id.* ¶¶ 29.

Internet access services. Absent this waiver, however, ASI's customers would be denied those efficiencies. Today, ASI uses the same systems to provision both DSL transport services to Internet access customers as well as ATM, frame relay and other advanced services to non-Internet access customers, which are separate from the AT&T ILEC's systems for local phone service. AT&T would run afoul of the Commission's sharing restrictions if it reintegrated ASI's systems for DSL with the AT&T ILEC's systems for local phone service – because ASI and the AT&T ILECs would also necessarily be sharing systems for the other ASI advanced services that were not addressed in the *Title I Broadband Order*.

Although AT&T could theoretically attempt to separate ASI's back office systems so that ASI would have one system that would continue to be used for non-Internet access frame relay and ATM services and a separate system for DSL transport services, it would cost millions of dollars (that AT&T could never hope to recover in the highly competitive marketplace in which other providers face no such costs) to implement such separation. The high cost of de-integrating these systems, together with the inefficiencies of maintaining separate systems going forward, renders this option impracticable. Moreover, it would take a year and a half, and perhaps longer, to develop, test and implement those systems, and thus this “option” would effectively deny AT&T the ability to take advantage of the *Title I Broadband Order* for the foreseeable future.

AT&T cannot avoid this result by sharing the same systems, information and employees with unaffiliated providers because the creation, testing and implementation of new interfaces, processes and procedures would likewise entail great cost (which AT&T would never recover) and crippling delays (which would effectively deny AT&T the very relief it urgently needs) with no corresponding benefits. In short, the requested waiver is the only avenue open to AT&T to

obtain the broadband relief the Commission granted to all carriers without triggering tariffing requirements on all of ASI's other advanced services.

Second, in addition to frustrating the intent of the Commission's deregulatory efforts to promote the deployment of advanced services, the sharing restrictions impose considerable inefficiency and inconvenience on consumers. Although those restrictions permit ASI and the AT&T ILECs to jointly market their services up to the point of taking an order, without disclosing to competitors the commercially sensitive information they share while engaging in such joint marketing, information sharing obligations kick in once the order is taken. Thus, while ASI and the AT&T ILECs can coordinate due dates for customers buying DSL service and local phone service at the point of sale, any subsequent coordination would require the AT&T ILECs to disclose to competitors commercially sensitive information that should not and cannot be made publicly available. As a result, AT&T is restricted in addressing problems that arise subsequent to the taking of the order. If, for example, there is a subsequent provisioning delay with respect to either service, AT&T cannot resynchronize the customer's due dates because of untenable information disclosure requirements that would attend such resynchronization. This is frustrating to AT&T, which must compete with providers unburdened by this limitation, but, more importantly, it is frustrating to customers.

Third, the particular sharing restrictions at issue also impede the efficient operation of the networks that support AT&T's advanced services. For example, as a result of the separation conditions AT&T must maintain wholly redundant network operations centers to separately support its advanced services and local services. These redundant centers not only impose unnecessary costs on AT&T, but also adversely affect customers. With respect to repair and maintenance, for example, when customers experience issues with their services, they typically

deal with a customer service representative that must seek advice and diagnoses from both network operations center groups. This duplicative arrangement invariably leads to delay in responding to and resolving issues with customers' services. If AT&T receives the requested relief, it could eliminate this redundancy and offer its customers a more seamless and efficient process for handling repair and maintenance issues for their advanced services.

Fourth, the requirement that ASI and AT&T's ILEC operations separate their network planning and network operations functions hinders AT&T's efforts to deploy and offer its new Project Lightspeed services. Through the multibillion-dollar Project Lightspeed initiative, AT&T is extending fiber closer to customers (and in new developments, all the way to customers' premises) and installing advanced packet-switching facilities in neighborhood nodes. The resulting upgraded facilities will create very high-speed, switched broadband capabilities that will allow consumers to originate and receive high-quality voice, data, and video signals. Because of the nature of the services offered and the high degree of integration between AT&T's ILEC network facilities and the ASI facilities needed to offer the voice, data, and video services, Project Lightspeed can be managed far more efficiently if network planners and operations personnel from ASI and AT&T's ILEC operations (and other AT&T affiliates) can work cooperatively and share information. ASI employees have developed a substantial amount of expertise relating to the types of services AT&T plans to provide through its Project Lightspeed initiative. These ASI employees could assist, among other things, in developing innovative and efficient network designs and network operations. The sharing restrictions, however, mean that these ASI employees are siloed from AT&T's ILEC employees, and thereby inhibit the sharing of this expertise.

Immediate interim relief from the sharing restrictions is particularly important with respect to ensuring public safety and customer service as AT&T rolls out its Lightspeed-enabled voice and Internet access services. ASI employees possess the key expertise and resources in VoIP 911 connectivity. The sharing restrictions thus stand in the way of effective provisioning and maintenance of VoIP 911 connectivity to the PSTN and, hence, the PSAPs who handle 911 calls. In addition, ASI employees possess substantial expertise in managing DSL networks and services, which will be crucial to minimizing any disruptions and ensuring a customer-friendly migration for those subscribers who choose to transition from existing DSL-based Internet access services to new Lightspeed-enabled broadband services. These public safety and customer service concerns provide yet additional reasons for expeditiously granting the requested interim waivers.

Because sharing of these employees and resources would have such a significant benefit on AT&T's development and deployment of advanced services and on AT&T's customers' experience, AT&T has no choice but to integrate its operations to take advantage of these efficiencies and the expertise of ASI's employees. However, under the *ASI Detariffing Order*, this pro-competitive sharing for advanced services would trigger tariffing requirements associated with dominant carrier regulation. These tariffing requirements have not applied to ASI's services for more than three years, and the Commission has already found that such requirements have "many drawbacks" – including "prevent[ing] a carrier from quickly introducing new services and from quickly responding to its competitors' new offerings" and "limit[ing] the ability of customers to obtain service arrangements that are specifically tailored to

their needs.”²⁰ It makes no sense, during the interim period of the Commission’s consideration of permanent and broad relief for advanced services, for the Commission to force ASI to file tariffs that would impose additional costs on consumers.

To the contrary, these facts show the immediate need for an interim waiver of these requirements so that AT&T can deliver to its customers the full benefits of the relief granted in the *Title I Broadband Order* and all of the efficiencies that result from the integration of operations and planning functions. In fact, the interim relief AT&T seeks here follows directly from the rationale of the *Title I Broadband Order* and other related Commission decisions.²¹ Allowing AT&T to provide advanced services without the sharing restrictions imposed on ASI will further the Commission’s goal of “establish[ing] a policy environment that facilitates and encourages broadband investment, [by] allowing market forces to deliver the benefits of broadband.”²²

²⁰ *ASI Detariffing Order* ¶ 26 n.82. The Commission has recognized for over two decades that dominant carrier regulations can have a number of pernicious effects that “dampen competition.” See *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC’s Local Exchange Area*, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd. 15756, ¶ 88 & n.232 (citing *Competitive Carrier First Report and Order*, 85 FCC 2d 1, 34-44, ¶¶ 99-129 (1980)). Tariff filing requirements, for example, can “impede[] vigorous competition” by “(1) removing incentives for competitive price discounting; (2) reducing or taking away carriers’ ability to make rapid, efficient responses to changes in demand and cost; (3) imposing costs of carriers that attempt to make new offerings; and (4) preventing consumers from seeking out or obtaining service arrangements specifically tailored to their needs.” See *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order, 11 FCC Rcd. 20730, ¶ 53 (1996) (citing *Competitive Carrier Sixth Report and Order*, 99 FCC 2d 1020, 1030-32 (1985)).

²¹ See Joint Statement at 2 (Verizon’s petition is “consistent with and similar to the relief provided in recent Commission decisions regarding broadband services, packet switching, and fiber facilities,” including the *Title I Broadband Order*) (footnotes and citations omitted).

²² *Id.* at 1.

Indeed, Section 706 also compels prompt action on AT&T's waiver request. The Commission has a long and commendable track record of recognizing that Section 706 requires it to "take *immediate* action," through a variety of measures to "accelerate deployment of [advanced telecommunications] capability by removing barriers to infrastructure investment." 47 U.S.C. § 157 note (emphasis added). In these circumstances, there is no doubt that the requested waiver would serve the public interest and would be fully consistent with Section 706, as well as numerous Commission determinations to "relax regulations where competition [i]s significant and where regulations act[] as a disincentive to deploy new broadband technologies."²³

A waiver of the sharing restrictions for ASI is also justified on grounds of equity and to help achieve the Commission's stated goal to "regulate like services in a similar manner so that all potential investors in broadband network platforms, and not just a particular group of investors, are able to make market-based, rather than regulatory-driven, investment and deployment decisions." *Title I Broadband Order* ¶ 45. The relief AT&T seeks here is modest, and yet without it AT&T cannot compete on anything close to an equal footing with Verizon and most other providers of these sophisticated and cutting-edge services, including cable companies and CLECs. None of these other providers is subject to similar sharing restrictions. These companies can operate on an integrated basis, providing services largely through private contracts that are subject to few, if any, Title II constraints. Cable and other intermodal competitors, in particular, have never been subjected to such constraints. The limited waiver AT&T seeks here will not place AT&T on a completely equal footing with these competitors,

²³ See *id.* at 2 (citing decisions that encourage broadband deployment).

but it will at least eliminate some of the most cumbersome structural separation requirements that apply to AT&T.

B. Pending Commission Action On Broader Relief For Advanced Services, AT&T Will Continue to Offer Advanced Services Through A Separate Affiliate Subject To Title II And A Host Of Other Structural Safeguards.

Allowing ASI to continue operating on a detariffed basis while it sheds certain sharing restrictions that impede efficient, consumer-focused operations will in no way reduce competition in advanced services. To the contrary, the significant competition in advanced services that underlay the Commission's decision even in 1999 to detariff those services conditionally and that has grown far more intense since then will constrain ASI's pricing and eliminate any risk of anticompetitive behavior, just as it does today. The Commission has effectively recognized as much in recent decisions, such as *Title I Broadband Order* and in the *SBC-AT&T Merger Order*. These decisions belie the need for *any* structural separation requirements as a condition for continued detariffing. Yet, AT&T is not here seeking a waiver of all of the sharing restrictions under which it currently labors. Rather, even after the requested waiver, AT&T will continue to provide advanced services through a legally separate affiliate. AT&T will continue to comply with aspects of Section 272 that the merger conditions incorporated, including the requirements that ASI maintain books and records separate from the BOC, have officers and directors separate from the BOC, and obtain credit without recourse to the assets of a BOC.²⁴

²⁴ See *id.*, App. C, Condition I.3, at 2-7. The Commission should also clarify that, to the extent these conditions can be applied on a service-specific basis, they would not apply to AT&T's provision of advanced services used in the provision of broadband Internet access service since the Commission has already ruled that such services may be offered outside of Title II and any *Computer Inquiry* requirements. *Title I Broadband Order* ¶¶ 86-95.

In addition, many of the other aspects of the advanced services separate affiliate merger conditions, as incorporated in the *ASI Detariffing Order*, will remain applicable to ASI after the interim waiver is granted. Thus, AT&T's ILEC operations and ASI will continue to maintain separate ownership of facilities (Condition I.3.d.). ASI will continue to acquire services and facilities (*e.g.*, special access) from AT&T's ILEC operations under the same volume and term plans that are available to all providers of advanced services. And ASI's provision of services will remain subject to Title II requirements, including Sections 201, 202, and 208 (to the extent that they would otherwise apply). In addition, to the extent AT&T offers advanced services on a detariffed basis in the future out of a separate affiliate other than the entities currently doing business as AT&T Advanced Solutions, we would comply with all of these same structural separation safeguards between the affiliate(s) and the AT&T ILECs (to the extent the Commission has not already granted further relief).²⁵ In this respect, even after grant of the requested interim waiver, AT&T's advanced services affiliate would still be subject to *greater* separation requirements than those applicable to an independent incumbent LEC providing interstate, interexchange services, which this Commission has previously found sufficient for the "prevention and detection of . . . anticompetitive behavior." *See supra* p. 6 & n.8. These remaining safeguards thus are more than sufficient to ensure that AT&T's advanced services will continue to be provided in a manner that serves the public interest.

²⁵ Of course, neither the *SBC/Ameritech Merger Order* nor the *ASI Detariffing Order* require AT&T to keep any such affiliates structurally separate from each other (as opposed to the AT&T ILECs).

IV. CONCLUSION

For the foregoing reasons, AT&T's Petition for Interim Waiver should be granted.

Respectfully Submitted,

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