

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

In re )  
)  
Petition of AT&T Inc. for Forbearance )  
under 47 U.S.C. § 160(c) from Title II )  
and Computer Inquiry Rules with )  
Respect to Its Broadband Services )

WC No. 06- 125

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Federal Communications Commission  
Office of Secretary

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PETITION FOR FORBEARANCE

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**PETITION FOR FORBEARANCE**

Pursuant to Section 10(c) of the Telecommunications Act, 47 U.S.C. § 160(c), and Section 1.53 of the Commission’s Rules, 47 C.F.R. § 1.53, AT&T Inc. (“AT&T”), on behalf of its affiliates, hereby petitions the Commission to forbear from applying Title II and *Computer Inquiry* requirements to certain broadband services offered by AT&T and other Bell Operating Companies (“BOCs”). AT&T respectfully requests that the Commission act on this petition within 60 days.

**I. INTRODUCTION AND SUMMARY**

On March 19, 2006, Verizon’s Petition for Forbearance from Title II and *Computer Inquiry* requirements for its broadband services was “deemed granted” by operation of law.<sup>1</sup> The Commission must now ensure that Verizon’s competitors, including AT&T, obtain the same flexibility to meet customers’ specialized needs, either by acknowledging that the relief awarded by operation of law already applies to all BOCs, or by promptly granting forbearance to the

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<sup>1</sup> See FCC Press Release, *Verizon Telephone Companies’ Petition for Forbearance from Title II and Computer Inquiry Rules with Respect to Broadband Services Is Granted by Operation of Law* (March 20, 2006).

remaining BOCs.<sup>2</sup> Any failure to promptly rule that *all* BOCs now have the option of providing broadband services on a private carriage basis would be patently arbitrary and capricious.<sup>3</sup>

As Verizon's petition demonstrated, the broadband services at issue here are subject to robust competition on a nationwide basis and these services are sold to sophisticated business customers that demand customization. Accordingly, forbearance from Title II and *Computer Inquiry* regulation of these services is warranted for *all* BOCs on a nationwide basis. As was the case with Verizon, such forbearance will directly further the Commission's longstanding goal of "establish[ing] a policy environment that facilitates and encourages broadband investment, [by] allowing market forces to deliver the benefits of broadband."<sup>4</sup>

Indeed, the benefits of forbearance are even greater here since forbearance will eliminate the distorting effects on competition from disparate regulatory treatment of Verizon and other

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<sup>2</sup> Verizon's Petition was based on market conditions that are generally applicable to all 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 only to the extent that such relief does not already apply to AT&T and other BOCs as a result of Verizon's Petition.

<sup>3</sup> See, e.g., *Adams Telcom, Inc. v. FCC*, 38 F.3d 576, 581 (D.C. Cir. 1994) ("We have . . . reminded the FCC of the importance of treating similarly situated parties alike or providing an adequate justification for disparate treatment"); *FEC v. Rose*, 806 F.2d 1081, 1089 (D.C. Cir. 1986) ("an agency's unjustifiably disparate treatment of two similarly situated parties works a violation of the arbitrary-and-capricious standard"); *Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965) ("to justify disparate treatment, FCC "must explain its reasons and do more than enumerate factual differences, if any, between [them]; it must explain the relevance of those differences to the purposes of the Federal Communications Act").

<sup>4</sup> FCC Press Release, *Verizon Telephone Companies' Petition for Forbearance from Title II and Computer Inquiry Rules with Respect to Broadband Services Is Granted By Operation of Law*; Joint Statement of Chairman Kevin J. Martin and Commissioner Deborah Taylor Tate, at 1 (March 20, 2006) ("Joint Statement"). See *Radio-Television News 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).

BOCs. Indeed, unless the Commission makes clear – *quickly* – that all BOCs enjoy the same flexibility to structure their broadband service offerings in the manner best suited to meet customer requirements most efficiently, the only result will be to give Verizon an arbitrary and unwarranted competitive advantage over its BOC competitors and to hold barriers to broadband investment in place for the remaining BOCs.<sup>5</sup>

For these reasons, the grant of relief to Verizon, by itself, requires the Commission to ensure that all other BOCs immediately enjoy the same relief, which will provide AT&T with the option to establish private carriage arrangements for broadband services that are specifically tailored to the individual needs of the sophisticated business purchasers of such services. But even if the Commission had not already granted the same relief to Verizon, numerous other prior Commission orders and findings would compel the relief requested here. Indeed, forbearance here follows directly from the rationale of the *Wireline Broadband Order*<sup>6</sup> and other Commission orders.

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<sup>5</sup> AT&T recently filed a petition requesting a limited, interim waiver of certain “sharing restrictions” contained in the *ASI Detariffing Order*, which prevent AT&T and its affiliates from efficiently providing advanced services to our customers. See Petition of AT&T Inc. for Expedited Interim Waiver of Certain Structural Separation Rules for Advanced Services, WC Docket No. 06-130 (filed June 30, 2006); *Review of Regulatory Requirements of Incumbent LEC Broadband Telecommunications Services*, Memorandum Opinion and Order, 17 FCC Rcd. 27000 (2002) (“*ASI Detariffing Order*”). While such a waiver will partially address some of AT&T’s most immediate and pressing needs for relief, it is no substitute for the more comprehensive forbearance relief requested here – relief that the Commission has *already* granted to Verizon.

<sup>6</sup> See Report and Order and Notice of Proposed Rulemaking, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, et al.*, WC Docket Nos. 02-33 *et al.*, FCC 05-150 (released September 23, 2005) (“*Wireline Broadband Order*”).

The *Wireline Broadband Order* was a pivotal event in implementing the Commission's core statutory mandate to promote the rapid and efficient deployment of broadband services.<sup>7</sup> In that order, the Commission freed facilities-based wireline broadband Internet access service providers from a host of legacy regulatory restrictions because it recognized that permitting carriers to offer the transmission component of broadband Internet access on a private carriage basis would encourage the development of customized arrangements that are better suited to customers' needs, spur broadband innovation and investment, and reduce costs. The Commission reasonably predicted that existing and emerging competition would encourage carriers to negotiate commercially reasonable private contracts. Thus, it found there is no public interest justification to compel carriers to make "cookie cutter" Title II common carriage offerings that deny them the flexibility to meet individual customers' specialized requirements. *Wireline Broadband Order* ¶¶ 74-76, 87-88. The Commission further found that the current competitive environment eliminates any reason to treat the BOCs differently from the many other competing broadband Internet access providers. *Id.* ¶¶ 45, 79, 97.

All of these findings apply with equal or greater force to other broadband services. These services are even more inherently customized than wireline broadband Internet access services, and they are subject to even more competition – which is why Verizon was entitled to the relief it obtained and why Section 10 mandates forbearance for other BOCs as well.<sup>8</sup>

The intensely competitive nature of these broadband service markets is now well-settled. In orders stretching back for many years, including most recently the *Wireline Broadband Order*,

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<sup>7</sup> See 47 U.S.C. § 157 note (section 706 of the 1996 Act).

<sup>8</sup> 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 *Wireline Broadband Order*) (footnotes and citations omitted).

the *SBC-AT&T Merger Order*,<sup>9</sup> and the *Verizon-MCI Merger Order*,<sup>10</sup> the Commission has consistently and emphatically determined that large, sophisticated customers can purchase broadband services from a large number of suppliers. With respect to broadband transmission services in particular, the records developed in those and other recent Commission proceedings leave no doubt that many suppliers compete intensely to provide broadband ATM, Frame Relay, Gigabit Ethernet, IP-enabled broadband transmission services, and OCn-level transmission services. Moreover, the evidence supporting Verizon's Petition showed that broadband competition is national in scope and is not limited to Verizon's territory or the territory of any specific BOC.

Given this intense, national competition and the benefits of eliminating unwarranted regulatory disparities, there is no question that the requested forbearance meets the statutory standards of Section 10. 47 U.S.C. § 160. As discussed more fully below, application of Title II and *Computer Inquiry* requirements to the BOCs' non-TDM based broadband transmission services is unnecessary to protect consumers, or to ensure that such services are offered on terms that are just, reasonable, and not unjustly or unreasonably discriminatory. 47 U.S.C. § 160(a)(1), (2). The sophisticated and market-savvy customers that purchase these services employ "strategic sourcing," detailed and specialized RFPs, and other tools that enable them "to exert greater control, lower costs, and increase quality."<sup>11</sup> And the intense competition for these services ensures that terms on which they are offered are, and will remain, just, reasonable and not unjustly or unreasonably discriminatory. As with wireline broadband Internet services, the

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<sup>9</sup> *SBC-AT&T Merger Order*, WC Docket No. 05-65, 20 FCC Rcd. 18290 (2005).

<sup>10</sup> *Verizon-MCI Merger Order*, WC Docket No. 05-75, FCC 05-184 (2005).

<sup>11</sup> *SBC-AT&T Merger Order* ¶ 75 n.226.

fierce existing competition for broadband transmission services – as well as emerging competitive threats – provides all carriers with strong incentives “to offer broadband transmission on a commercially reasonable basis” and to “negotiate mutually acceptable rates, terms and conditions” with their customers.<sup>12</sup>

Forbearance is also clearly in the public interest, *see* Section 10(a)(3), because robust competition ensures pro-competitive benefits across the entire market for broadband services. Indeed, retaining the Title II and *Computer Inquiry* regulations would affirmatively harm the public interest, by denying AT&T (and other BOCs) the same flexibility as their competitors to negotiate private customer-specific contracts for broadband services. Moreover, given the robustly competitive nature of the broadband transmission services marketplace, Title II and *Computer Inquiry* requirements create unnecessary and dramatic increases in transaction costs and impose undue administrative burdens on both carriers and the Commission. These regulations also slow innovation and the development and implementation of new services, by significantly limiting carriers’ flexibility to respond promptly and fully to customers’ specialized needs. Any serious analysis of current market conditions for broadband services – which include multiple competing network platforms and high-bandwidth, IP-based networks – would necessarily conclude that these legacy regulations *discourage*, rather than promote, competition and investment in broadband services.<sup>13</sup>

Forbearance also is compelled by the Commission’s statutory mandate under Section 706. 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 including “regulatory

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<sup>12</sup> *Wireline Broadband Order* ¶ 75.

<sup>13</sup> *See* Section 10(b); *see also* Joint Statement at 2.

forbearance,” to “accelerate deployment of [advanced telecommunications] capability by removing barriers to infrastructure investment.”<sup>14</sup> Allowing AT&T and other BOCs the same flexibility in the marketplace that has been accorded Verizon and other broadband providers would clearly further these goals.

In sum, this Petition easily meets all of the statutory requirements for forbearance under section 10(a) and will result in all of the same public interest benefits that will arise from the relief awarded to Verizon. Indeed, the public interest benefits arising from the grant of AT&T’s Petition are even stronger, because the relief AT&T seeks here will eliminate the distorting effects on competition that would result if only Verizon were granted the flexibility to meet customers’ needs for these sophisticated and cutting-edge services through private carriage arrangements. Because of the urgency of this petition and the competitive imbalances that would flow from any grant of forbearance limited to Verizon, AT&T respectfully requests that the Commission act on this petition within 60 days from the date it was filed.

## **II. SCOPE OF RELIEF GRANTED TO VERIZON AND REQUESTED HERE**

Verizon filed its forbearance petition on December 19, 2004. That petition requested forbearance from Title II and *Computer Inquiry* requirements as they might be held to apply to any of its broadband services. Over the course of the following year, certain portions of Verizon’s petition became moot when the Commission granted virtually all of the relief Verizon had requested with respect to wireline broadband Internet access services in its *Wireline Broadband Order*. In addition, in response to the pleadings and specific requests from the Commission, Verizon progressively clarified the scope of its requested relief, with definitive

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<sup>14</sup> 47 U.S.C. § 157 note.

statements offered in two *ex parte* letters filed on February 7, 2006, and February 17, 2006.<sup>15</sup>

AT&T here seeks all of the same relief that Verizon obtained when its petition was “deemed granted” by operation of law on March 19, 2006, to the extent it did not already receive such relief when Verizon’s petition was deemed granted.<sup>16</sup>

*Services Covered.* The services covered by Verizon’s Petition are defined by both capacity and technology. Verizon initially asked the Commission to forbear from applying Title II and the *Computer Inquiry* rules to any broadband services, which the Commission previously had defined as those services capable of transmitting 200 kbps or greater in each direction.<sup>17</sup> Verizon subsequently made clear, however, that its petition had always excluded TDM-based services, regardless of bandwidth, from the scope of its requested relief.<sup>18</sup> Thus, traditional TDM-based special access services used to serve business customers are unaffected by the forbearance relief.

The net result of Verizon’s clarifications is that there are two principal categories of services to which forbearance has been applied. The first category is packet-switched services capable of transmitting 200 kbps or greater in each direction. As Verizon described them, these include all services “that route or forward packets, frames, cells, or other data units based on the identification, address, or other routing information contained in the packets, frames, cells, or

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<sup>15</sup> Letter from Ed Shakin, Verizon, to Marlene Dortch, FCC, WC Docket No. 04-440 (“*Verizon 2/7/06 Ex Parte*”); Letter from Susanne Guyer, Verizon, to Marlene Dortch, FCC, WC Docket No. 04-440 (“*Verizon 2/17/06 Ex Parte*”).

<sup>16</sup> *See supra* note 2.

<sup>17</sup> *Verizon 2/7/06 Ex Parte* at 2. *See, e.g.*, Fourth Report to Congress, *Availability of Advanced Telecommunications Capability in the United States*, 19 FCC Rcd 20540, 20549 (2004).

<sup>18</sup> *Verizon 2/7/06 Ex Parte* at 2 (citing Verizon Reply Comments in WC Docket No. 04-440, at 8 n.21 (filed Mar. 10, 2005)).

other data units,” and include Frame Relay services, ATM services, IP-VPN services and Ethernet services.<sup>19</sup>

The second category includes what Verizon called “non-TDM-based optical networking, optical hubbing, and optical transmission services.” As Verizon explained, these are “very high-speed transmission services – well over the Commission’s 200 kbps definition for broadband – that are provided over optical facilities at OCn speeds (but include no services at DS1 or DS3 speeds),” and are provided over SONET-based, Wave Division Multiplexing (“WDM”) or Dense Wave Division Multiplexing (“DWDM”) networks.<sup>20</sup>

Both categories of services are typically offered to large and medium-sized business customers on a retail basis and to other carriers on a wholesale basis. Relief was awarded for all of these services, regardless of the type of customer seeking to buy or use them.<sup>21</sup> AT&T seeks relief for these same services.<sup>22</sup>

*Regulations Covered.* Forbearance was granted “from the mandatory application of Title II common-carriage regulation,” thereby giving Verizon “the flexibility to provide the broadband services at issue on a common-carriage or private-carriage basis.”<sup>23</sup> As described by Verizon, the relief sought for the covered services was “the same as the Commission already provided for

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<sup>19</sup> *Verizon 2/7/06 Ex Parte* at 2.

<sup>20</sup> *See Verizon 2/7/06 Ex Parte* at 2-3.

<sup>21</sup> *Verizon 2/7/06 Ex Parte* at 3.

<sup>22</sup> AT&T’s forbearance request covers any service offered today or in the future by AT&T or any of its affiliates that fits within the two categories described by Verizon. Appendix A includes a list of relevant services offered by AT&T that fit within these two categories and for which AT&T seeks forbearance to the extent that Title II common carrier and/or *Computer Inquiry* requirements apply to these services.

<sup>23</sup> *Verizon 2/7/06 Ex Parte* at 3.

broadband transmission services that are used to provide Internet access service in its recent *Wireline Broadband Order*.<sup>24</sup> In other words, forbearance provides the option to offer any of these services on a private carriage basis.<sup>25</sup> Forbearance was also granted from all *Computer Inquiry* requirements for the covered services, *id.* ¶ 80, including the requirement that the carrier separate out and offer the underlying transmission on a common carrier basis, *id.* ¶ 97. Carriers that choose to offer any of these services on a common carrier basis may do so under a permissive detariffing regime.<sup>26</sup> AT&T seeks relief from these same Title II common carrier regulations and *Computer Inquiry* requirements.

Verizon also made clear, however, that it did not seek forbearance from universal service contribution obligations, to the extent such contributions otherwise applied.<sup>27</sup> As Verizon explained, the Commission has a pending proceeding in which it is reexamining the services that should be subject to contribution requirements. Verizon stated that, regardless of a decision to forbear, Verizon would continue to make federal universal service contributions on the services that were subject to its petition (to the extent those services are currently subject to the obligation), pending the Commission's decision in the universal service rulemaking docket. Like Verizon, AT&T does not seek relief from any universal service obligations that may otherwise apply to the covered services.<sup>28</sup>

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<sup>24</sup> *Id.*

<sup>25</sup> *Wireline Broadband Order* ¶¶ 87-88.

<sup>26</sup> *Id.* ¶ 90.

<sup>27</sup> *Verizon 2/17/06 Ex Parte*.

<sup>28</sup> Specifically, AT&T seeks relief from all common carrier provisions of Title II of the Communications Act of 1934, as amended (except the permissive authority contained in section 254(d) that authorizes the Commission to require universal service contributions from providers

(continued . . .)

**III. ARGUMENT: AT&T'S BROADBAND SERVICES ARE ENTITLED TO THE SAME FORBEARANCE FROM TITLE II AND COMPUTER INQUIRY REQUIREMENTS AS VERIZON'S SERVICES.**

AT&T's packet-based and optical transport broadband services are subject to the same robust and intense competition described by Verizon. That competition, coupled with the fact that these services are purchased by highly sophisticated end users that aggressively shop for the best service at the best price, obviate any need for Title II or *Computer Inquiry* regulations to ensure terms that are just, reasonable and not unjustly or unreasonably discriminatory, and to protect consumers. Further, because outdated regulations raise costs, delay the introduction and implementation of new broadband services and thus impair competitive balance among broadband suppliers, assuring that forbearance is applied to all BOCs will serve the public interest. Accordingly, AT&T is entitled to the same forbearance from Title II and *Computer Inquiry* regulations as Verizon with respect to all of its packet-based and optical broadband services.

**A. Market Forces Ensure Commercially Reasonable Terms For The Covered Broadband Transmission Services.**

In the SBC/AT&T merger proceeding, the Commission concluded that carriers in general – and post-merger AT&T in particular – face “robust” competition for enterprise services, including the high capacity services covered by this petition.<sup>29</sup> The Commission found that “myriad providers,” including *inter alia*, foreign-based companies, competitive LECs, cable

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(... continued)

of interstate telecommunications); all Commission regulations implementing the common carrier provisions of Title II (except section 54.706 insofar as it requires private carriers to contribute to universal service); and all regulations and requirements derived from the Commission's *Computer Inquiry* decisions. Of course, notwithstanding the instant forbearance petition, AT&T will continue to abide by all merger commitments relevant to the covered services. See *SBC-AT&T Merger Order*.

<sup>29</sup> *SBC-AT&T Merger Order* ¶¶ 57, 73 n.223; see also *Verizon-MCI Merger Order* ¶ 74.

companies, systems integrators, equipment vendors and value-added resellers are providing services in this market “and that these multiple competitors ensure that there is sufficient competition.”<sup>30</sup> Likewise, the Commission observed in the *Verizon-MCI Merger Order* that “a growing number of enterprise customers” have begun switching services to systems integrators and managed network providers and that “[t]hese new competitors are putting significant competitive pressure on traditional service providers.”<sup>31</sup>

These Commission findings are fully consistent with the record evidence submitted in connection with Verizon’s forbearance petition. In its filings, Verizon provided details regarding many of the numerous companies that offer the identified broadband transmission services, but even that showing was incomplete.<sup>32</sup> Current competitors include not only the facilities-based carriers Verizon identified, but also system integrators and other non-facilities-based competitors that are able to purchase wholesale frame relay and ATM service at highly competitive rates.<sup>33</sup>

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<sup>30</sup> *SBC-AT&T Merger Order* ¶ 73.

<sup>31</sup> *Verizon-MCI Merger Order* ¶ 75 n.229.

<sup>32</sup> *Verizon 2/7/06 Ex Parte* at 7-10.

<sup>33</sup> See *SBC-AT&T Merger Order* ¶ 73 & nn.220, 223; *MCI-WorldCom Merger Order*, 13 FCC Rcd. 18025, ¶¶ 35, 65, 73 n.230 (1998) (discussing enterprise competition from non-facilities-based providers and listing carriers offering broadband transport services at wholesale); Khali Henderson, *ATM Added to Wholesale Data Lineup*, Resale Channel (Aug. 2000) (“The big daddy of the data world, ATM service, is being sold by major network operators on a wholesale basis to carrier customers as a cost-effective backbone-building strategy”) (available at <http://www.phoneplusmag.com/articles/081res11.html>); Xchange, *My Network is Your Network* (Jan. 1, 2005) (“Global Crossing’s Fast-Track Services offer wholesale customers the ability to deliver uniform services across both their own and the Global Crossing networks, matching their offers feature-for-feature, including SLAs. Services that can be extended under the program include IP VPN, dedicated Internet access, ATM, frame relay and private-line network services”) (available at <http://www.xchangemag.com/articles/511network4.html>); *Qwest Wholesale Frame Relay Service* (describing Qwest’s wholesale Frame Relay offer) (available at <http://www.qwest.com/wholesale/pcat/natfrs.html>).

These findings are, moreover, borne out by the facts on the ground. In 2004, nearly half of large and medium-sized business customers switched providers, further accelerating a long trend of price reductions and service improvements by traditional providers.<sup>34</sup> And there is no significant difference in the level of competition for these services in different parts of the country. Indeed, the Commission made similar findings regarding competition for both recent mergers, and the data offered in support of Verizon's Petition was overwhelmingly based upon nationwide market conditions.

The Commission also recognized that competition is growing even more intense across the country, with the continuing entry and expansion of next-generation carriers that provide services using IP technology.<sup>35</sup> Analysts estimate that, already, 30% of large and medium-sized business customers nationally have deployed VoIP across their entire business, and they predict that all businesses will deploy some VoIP technology within the next five years.<sup>36</sup> Thus, while "legacy" frame relay and ATM services still account for the majority of enterprise broadband transport revenues today, "the number of customers taking Frame Relay is declining, while the number taking IP transmission services is increasing."<sup>37</sup> Moreover, analysts report there are

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<sup>34</sup> Yankee Group, *Network Service Providers Alter Their Business Models to Capture a Greater Share of Increasing Enterprise Budgets*, at 7 (Jan. 2005); IDC, *Market Analysis, U.S. Frame Relay Services 2004 – 2008 Forecast*, at 1, 6 (Dec. 2004).

<sup>35</sup> *Verizon-MCI Merger Order* ¶ 75 n.229.

<sup>36</sup> Goldman Sachs Global Investment Research, *Enterprise Survey: Wireless May Determine Carriers' Seat at the Table* at 17 (March 2, 2005); *Surveys Show that Businesses Expect 40 Percent Savings with VoIP*, Business Wire (Oct. 25, 2005).

<sup>37</sup> *SBC-AT&T Merger Order* ¶ 59; *see also id.* ¶ 59 n.169 (noting the slowing growth of ATM and acknowledging that "as newer technologies emerge, ATM's role as a backbone technology is changing as enterprise customers increase their use of IP-VPNs"); In-Stat, *High Growth and Lots of Opportunity: The US IP VPN Services Market*, at 9, 14 (Jan. 2005) (customers are transitioning away from Frame Relay and ATM to IP-based services such as IP VPN); 2/7/06

(continued . . .)

“many service providers [that] offer[]” emerging IP-based transmission services such as IP VPN “and all are looking to capture a significant share of this important market,”<sup>38</sup> which “creat[es] intense competition between service providers” and “significant downward pressure on VPN service pricing.”<sup>39</sup>

AT&T’s OCn-level dedicated local access services also face vigorous competition. The Commission has recognized that there is “substantial deployment of competitive fiber loops at the OCn capacity,” that “competitive carriers confirm they are often able to economically deploy these facilities to the large enterprise customers that use them,”<sup>40</sup> and that “there does not appear to be any evidence of demand for incumbent LEC OCn level unbundled loops.”<sup>41</sup> Based on these findings, the Commission concluded that “entry into [the] market” for OCn-level dedicated

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Verizon Ex Parte at 4 n.9 (citing additional analyst reports that conclude “the biggest threat to all traditional services comes from new IP technologies”).

<sup>38</sup> In-Stat, *High Growth and Lots of Opportunity: The US IP VPN Services Market*, at 9 (Jan. 2005).

<sup>39</sup> *Id.* at 9; *see also id.* at 11 (identifying MCI-Verizon, SAVVIS, Qwest, Level 3, Sprint, Equant, Infonet, BellSouth and XO as leading suppliers of IP VPN).

<sup>40</sup> *Triennial Review Remand Order*, 20 FCC Rcd. 2533, ¶ 183 (2005).

<sup>41</sup> *Triennial Review Order*, 18 FCC Rcd. 16978, ¶ 315 (2003). These findings are now beyond challenge. They were based on evidence sponsored by competitive carriers showing that they could economically self-deploy OCn-level loops. *See, e.g., Triennial Review Order* ¶ 315 & nn. 932, 934. Those Commission findings regarding OCn-level loops were affirmed on appeal, *see Triennial Review Remand Order* ¶ 149 (“we note that the *USTA II* court did not disturb our conclusions regarding . . . OCn loops”), and they were not disputed in the current appeals of the *Triennial Review Remand Order*, *see* Opening Brief of CLEC Petitioners and Intervenor in Support, *Covad Communications v. FCC*, nn. 2 & 6 (D.C. Cir. No. 05-1095, filed July 26, 2005), which itself was just affirmed by the D.C. Circuit. *See Covad v. FCC*, 2006 WL 1651045 (D.C. Cir. June 16, 2006).

access facilities and services is “economic” for multiple suppliers and that carriers are not “impaired” without unbundled access to incumbent OCn facilities.<sup>42</sup>

Under these circumstances, the competitive market conditions that justified the removal of common carrier regulation for wireline broadband Internet services are even more pronounced for the broadband services at issue here. Not only is there intense and robust national competition for these services today, but these services will be subject to continued competitive pressures in the future because of dramatic “[c]hanges in technology [that] spur[] innovation” and “emerging broadband platforms” that are “likely to mount competitive challenges” that will lead to “more choices and better terms.” *Wireline Broadband Order* ¶¶ 50 & n.140, 61.

Just as important, the Commission has repeatedly recognized that customers who purchase these services are among the most “sophisticated purchasers of communications services.”<sup>43</sup> They use “‘strategic sourcing’ in order to exert greater control, lower costs, and increase quality.”<sup>44</sup> They also routinely employ detailed and highly specialized RFPs to solicit multiple rounds of competitive bids, followed by lengthy and intense negotiations with multiple

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<sup>42</sup> *Triennial Review Remand Order* ¶¶ 10, 26, 149; *Triennial Review Order* ¶ 315.

<sup>43</sup> *E.g.*, *SBC-AT&T Merger Order* ¶ 75; *see also id.* ¶ 65 (noting the “high level of customer sophistication for mid-sized and large enterprise customers”); *AT&T Non-Dominance Order* ¶ 65 (finding that business customers have highly elastic demand, and that business customers routinely request proposals from multiple carriers); *United States v. Baker Hughes Inc.*, 908 F.2d 981, 986 (D.C. Cir. 1990) (sophistication of customers is likely to ensure competition even in highly concentrated markets); *FTC v. Nat’l Tea Co.*, 603 F.2d 694, 700 (8th Cir. 1979) (for “bid” markets, “present market share [is] an inaccurate reflection of [a company’s] future competitive strength”).

<sup>44</sup> *SBC-AT&T Merger Order* ¶ 74 n.226; *see also id.* ¶ 75 (“[S]o long as competitive choices remain in this market, these classes of customers should seek out best-priced alternatives”). Notably, the Commission found that even businesses at the smaller end of the spectrum are sophisticated purchasers that can play suppliers off against each other and drive down prices. *Id.* ¶ 75 n.231 (“Evidence in the record indicates that there are at least 20 consulting firms that provide communications sourcing services, and when engaged, customers are able to achieve annual average reduction of 27% (relative to their pre-engagement annual spend)”).

competing carriers over every term and condition of service.<sup>45</sup> Indeed, “[t]he very process of competitive bidding and contract renegotiation is often sufficient to create the perception with a vendor of a credible threat of losing an existing customer, compelling the supplier to offer lower prices and improved service to retain the customer.”<sup>46</sup>

In the face of that competition, maintaining arbitrary regulatory distinctions between AT&T and Verizon would undermine the Commission’s pro-broadband investment and deployment policies. The fact that AT&T may, by some measures, have a slightly higher “share” than Verizon with respect to some of the services at issue is irrelevant. Indeed, even the data that Verizon provided<sup>47</sup> show that AT&T’s share of large and medium-sized business services is relatively modest<sup>48</sup> and not materially different from Verizon’s own share, and Verizon correctly recognized that these shares “are below the levels at which the Commission found non-dominant treatment appropriate for AT&T [Corp.]” a decade ago<sup>49</sup>

More fundamentally, the Commission has expressly found that a static analysis of existing competitors’ current shares severely misrepresents the robustly competitive nature of the marketplace, because it does “not reflect the rise in data services, cable and VoIP competition, and the dramatic increase in wireless usage” or the recent entry of “[f]oreign-based companies,

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<sup>45</sup> See *SBC-AT&T Merger Order* ¶¶ 74 & n.226, 78; see also *AT&T Non-Dominance Order* ¶ 65 (business customers routinely request proposals from multiple carriers); *MCI-WorldCom Merger Order* ¶¶ 34, 40-42, 65; 73 & n.230 (identifying numerous providers competing head-to-head to provide frame relay, VPN and other traditional broadband transport services to “sophisticated and knowledgeable” enterprise customers).

<sup>46</sup> *SBC-AT&T Merger Order* ¶ 74 n.226.

<sup>47</sup> See *2/7/06 Verizon Ex Parte*, Att. 2 at 15 & Att. 3.

<sup>48</sup> *Id.* at 11 (AT&T and SBC have a combined 17.4% share).

<sup>49</sup> *Id.* at 13 (citing *AT&T Non-Dominance Order*, 11 FCC Rcd. 3271 (1995), and *AT&T International Non-Dominance Order*, 11 FCC Rcd 17963, ¶ 40 (1996)).

competitive LECs, cable companies, system integrators, and equipment vendors and value-added resellers.”<sup>50</sup> Indeed, it has been “many years since anyone knowledgeable about antitrust policy thought that concentration by itself imported a diminution in competition.”<sup>51</sup> Rather, the relevant inquiry is “the *availability* of competition.”<sup>52</sup> On this score, the evidence and the precedent are clear: there is ample available competition and the businesses that purchase the services at issue here take full advantage of that competition to ensure that they obtain the best possible services at the best possible prices.<sup>53</sup> Under the circumstances, and particularly given the relief accorded Verizon, the Commission should relieve all BOCs from the burdens of Title II and *Computer Inquiry* requirements with respect to their non-TDM-based broadband services.

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<sup>50</sup> *SBC-AT&T Merger Order* ¶ 73 (“market shares may misstate the competitive significance of existing firms and new entrants”); *see also id.* ¶ 74 (“system integrators and the use of emerging technologies are likely to make this market more competitive, and . . . this trend is likely to continue in the future”); Probe Group, *Control of the Enterprise Market*, at 4 (June 2004) (“The enterprise market is becoming increasingly competitive”); Yankee Group, *Network Service Providers Alter Their Business Models To Capture a Greater Share of Increasing Enterprise Budgets* (Jan. 2005) (systems integrators (or “SIs”) “are increasingly circumventing traditional providers of voice and data services and strengthening relationships with enterprise decision-makers. SIs use their powerful enterprise relationships to push carriers downstream, relegating them to a role of commoditized transport provider”).

<sup>51</sup> *Capital Cities/ABC, Inc. v. FCC*, 29 F.3d 309, 315 (7th Cir. 1994) (Posner, J.).

<sup>52</sup> *Time Warner Entm’t Co., L.P. v. FCC*, 240 F.3d 1126, 1134 (D.C. Cir. 2001) (emphasis added); *see also AT&T Corp. v. FCC*, 236 F.3d 729, 736 (D.C. Cir. 2001).

<sup>53</sup> *See Is Google Going Dark on Fiber?*, Light Reading (June 30, 2006) (“One well-placed source in the equipment community says Google has opted to lease long-haul network capacity from existing carriers, instead of lighting up dark fiber coast to coast. . . . *Heavy Reading* chief analyst Scott Clavenna says there is no real shortage of long-haul capacity. ‘Building a new backbone from scratch may not be warranted in the U.S., as there is still lots of 10G capacity available from wholesalers at good prices,’ Clavenna says. ‘I would think managed wholesale capacity is available from at least a half-dozen providers (AT&T, Verizon, Sprint, Qwest, Level 3, Global Crossing) that would fight hard for this business and provide Google with a high-capacity backbone.’”).

**B. The Forbearance Criteria, Informed by the Objectives of Section 706, Require That AT&T Be Afforded the Same Relief Obtained By Verizon.**

The Commission's forbearance authority pursuant to Section 10 of the Act, 47 U.S.C. § 160, is intended to "reduce the regulatory burdens on a carrier when competition develops, or when the FCC determines that relaxed regulation is in the public interest."<sup>54</sup> Section 10 requires the Commission to forbear from enforcing any statutory provision or regulation if it determines that (1) enforcement "is not necessary to ensure that the charges, practices, classifications or regulations . . . are just and reasonable and not unjustly or unreasonably discriminatory," 47 U.S.C. § 160(a)(1); (2) enforcement "is not necessary for the protection of consumers," *id.* § 160(a)(2); and (3) non-enforcement "is consistent with the public interest," *id.* § 160(a)(3), and, in particular, that non-enforcement will "promote competitive market conditions" and "enhance competition among providers of telecommunications services," *id.* § 160(b). AT&T's Petition clearly satisfies each of these criteria. In addition, the statutory goals of Section 706 require forbearance as well.

**1. Terms That Are Just, Reasonable, And Not Unjustly or Unreasonably Discriminatory**

AT&T's Petition easily satisfies the first forbearance criterion, because enforcement of Title II and *Computer Inquiry* requirements for the services at issue is not necessary to ensure that the terms associated with AT&T's provision of those services "are just and reasonable, and are not unjustly or unreasonably discriminatory."<sup>55</sup>

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<sup>54</sup> 141 Cong. Rec. S7881, S7887 (daily ed. June 7, 1995).

<sup>55</sup> 47 U.S.C. § 160(a)(1).

The Commission has long held that “competition is the most effective means of ensuring that . . . charges, practices, classifications, and regulations . . . are just and reasonable.”<sup>56</sup> The market forces discussed above are fully sufficient to ensure just and reasonable rates and practices for the broadband services at issue. Indeed, with regard to AT&T’s services in particular, the Commission concluded just months ago that competition for “high-capacity transmission services,” including Frame Relay, ATM, and Gigabit Ethernet is “robust,”<sup>57</sup> and that the merged SBC-AT&T would have no ability to “raise and maintain prices above competitive levels.”<sup>58</sup> That finding alone is sufficient to end the inquiry, because where competitive forces are able to ensure just and reasonable rates, retaining outdated regulations only distorts market outcomes, reduces efficiency, and retards innovation. This is especially true here because the Commission has specifically recognized that onerous Title II “regulation impedes [incumbent LECs] from quickly introducing new services in response to customer demands and opportunities created by technological developments,” “reduces” their “ability to respond quickly to [their] competitors’ advanced services offerings and tailor [their] own offerings to meet customers’ individualized needs,” and “diminishes” their “ability to reduce prices and improve service in response to competitive pressures.”<sup>59</sup> As the D.C. Circuit has held,

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<sup>56</sup> *Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance*, 14 FCC Rcd. 16252, ¶ 31 (1999); see also *Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier, et al.*, 14 FCC Rcd. 19947, ¶ 33 (1999); *Petition of Bell Atlantic for Forbearance from Section 272 Requirements in Connection with National Directory Assistance Services*, 14 FCC Rcd. 21484, ¶ 14 (1999) (“*Bell Atlantic Section 272 Forbearance Order*”) (finding first forbearance criterion satisfied because Bell Atlantic “faces competition” and “does not exercise monopoly power over the components used to provide the telephone numbers of customers outside its region”).

<sup>57</sup> *SBC-AT&T Merger Order* ¶¶ 57, 73 n.223.

<sup>58</sup> *Id.* ¶ 75.

<sup>59</sup> *ASI Detariffing Order* ¶ 26 (2003).

“free market forces [should not] be supplanted by . . . regulation when neither Congress nor the [agency] has found it essential.”<sup>60</sup>

Indeed, just and reasonable marketplace outcomes can be achieved only if *all* broadband providers compete in a deregulated environment. Thus, requiring AT&T to remain subject to these outmoded restrictions would simply perpetuate a fragmented marketplace, and subject competing providers to vastly different regulatory regimes that deny certain providers the flexibility to meet their customers’ needs most efficiently. Such a result would contravene a fundamental purpose of the Act – the creation of a “pro-competitive, de-regulatory national policy framework” for the deployment of broadband services – because it would skew the broadband marketplace by bestowing private carriage status on Verizon alone, while leaving AT&T and other carriers shackled in burdensome legacy Title II and *Computer Inquiry* regulation.<sup>61</sup>

The pernicious effects of these competitive imbalances are well known to the Commission. When it removed legacy obligations for broadband Internet access services, the Commission recognized that “[r]equiring a single type of broadband platform provider . . . to make available its transmission on a common carriage basis is neither necessary nor desirable to

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<sup>60</sup> *Computer & Communications Indus. Ass’n v. FCC*, 693 F.2d 198, 211 (D.C. Cir. 1982); *see also IXC Detariffing Order* ¶ 52 (where services are provided in a workably competitive environment, a regime without tariffs or other legacy Title II restrictions is the “most pro-competitive, deregulatory system” and will result in “market conditions that more closely resemble a competitive environment”); *Orloff v. FCC*, 352 F.3d 415, 421 (D.C. Cir. 2003) (there can be no unjust discrimination when “[c]ustomers dissatisfied with [one provider’s] charges or service may simply switch to another provider”).

<sup>61</sup> *See* Joint Explanatory Statement of the Committee of the Conference, S. Rep. No. 230, 104<sup>th</sup> Congress, 2d Sess. 1, 113 (1996).

ensure that statutory objectives are met.”<sup>62</sup> These principles apply all the more if different regulatory regimes are arbitrarily applied to competitors that use the *same* type of broadband platform. The Commission has properly made the “leveling [of] the playing field between” cable modem and other broadband services providers one of its “highest priorities,” and it should now promptly ensure that AT&T is not subject to “regulatory inequities” compared to both its intramodal and intermodal rivals.<sup>63</sup>

## 2. Protection of Consumers

The Title II and *Computer Inquiry* restrictions are also not “necessary for the protection of consumers.”<sup>64</sup> A requirement is “necessary” for the protection of consumers only “if there is a strong connection between the requirement and the goal of consumer protection.”<sup>65</sup> Here, there is no such connection. To the contrary, the purchasers of these broadband services are sophisticated large and medium-sized business customers who *demand* the customization and flexibility that these outdated restrictions prevent.

The Commission has long recognized that “enterprises demand extensive, sophisticated packages of services” and are rarely satisfied with “off-the-rack” offerings.<sup>66</sup> That is particularly true of the high capacity broadband transmission services at issues here. High capacity broadband arrangements are inherently tailored offerings, not “cookie cutter” common carrier

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<sup>62</sup> *Wireline Broadband Order* ¶ 79; *see also id.* ¶ 97 (“a continued obligation to provide any new broadband transmission capability . . . indiscriminately . . . places wireline broadband at a substantial competitive disadvantage *vis-à-vis* cable modem and other broadband Internet access services providers”).

<sup>63</sup> *Wireline Broadband Order*, Statement of Chairman Kevin J. Martin.

<sup>64</sup> 47 U.S.C. § 160(a)(2).

<sup>65</sup> *Petition for Forbearance from E911 Accuracy Standards Imposed on Tier III Carriers for Locating Wireless Subscriber*, 18 FCC Rcd. 24648, ¶ 14 (2003).

<sup>66</sup> *Triennial Review Order*, 18 FCC Rcd. 16978, ¶ 129 (2003).

services that can suitably be provided indiscriminately to all customers. For all of the services at issue, large and medium-sized business customers typically purchase customized packages of facilities and associated capabilities that are required to build virtual private networks that meet the unique needs of their particular operations and their specific locations scattered across a city, a region, the nation or the entire world. These customers have a wide variety of specialized and demanding requirements for pricing, system integration and accountability, performance and provisioning, and repair and maintenance, as well as a critical need for seamless integration of their broadband services with other networks, services and capabilities. These broadband customers thus are not well-served by regulations that inhibit carriers' flexibility to meet customers' specific requirements.<sup>67</sup>

Indeed, Title II regulation of broadband services is unnecessary for the protection of consumers and eliminating such regulation will provide consumers many affirmative benefits.<sup>68</sup> The Commission found this was true for wireline broadband Internet access services, and this determination is even more applicable to the services at issue here, because they are inherently much more customized. Thus, as the Commission found with respect to wireline Internet broadband services, a private carriage option for the services at issue here will allow AT&T and other carriers to "experiment" with "other types" of arrangements "keyed" to customer-specific

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<sup>67</sup> *SBC-AT&T Merger Order* ¶ 78 (enterprise contracts are "typically the result of RFPs and are individually-negotiated, . . . [and] contracts are generally for customized service packages"). The intensely individualized nature of these markets is only increasing as next-generation IP-based services rapidly replace legacy frame relay and ATM services. "[C]ompetitors are rapidly deploying new IP-based" transmission services, and customers are increasingly choosing these services, because they are more flexible, do not depend on any particular technology, and allow even greater customization. *Verizon-MCI Merger Order* ¶ 74 n.223.

<sup>68</sup> See, e.g., *Bell Atlantic Section 272 Forbearance Order*, at ¶ 16 (second forbearance criterion satisfied because forbearance "will encourage the providers of these services to compete on the basis of price and quality," which "will ultimately benefit consumers").

factors in ways that are not possible when services are confined to more costly and inflexible Title II common carriage offerings.<sup>69</sup> Such an option also “enables parties to a contract to modify their arrangement over time as their respective needs and requirements change without the inherent delay associated with” an offering “that must be made available to all.”<sup>70</sup> “Tailored private contractual agreements, in general, provide service providers more flexibility” to develop new arrangements and to meet evolving and varying customer needs.<sup>71</sup> And forbearance from the *Computer Inquiry* requirements likewise removes burdens the Commission has found to be onerous. Such burdens increase carriers’ costs, delay and otherwise impede their delivery of services, deter much-needed broadband investment and innovation, require pointless investment in “duplicative processes,” and create other “operational inefficiencies.”<sup>72</sup>

Nor can continued application of legacy Title II regulation to packet-switched broadband transmission services or non-TDM optical networking service be justified on the basis of unsubstantiated and misguided “price squeeze” claims based on assertions that incumbent LECs have (and will abuse) market power in the provision of DS1 and/or DS3 special access services that are *inputs* to these large and medium-sized business services. The Commission rejected similar claims in the *SBC-AT&T Merger Order*, observing that “where UNEs are available, they provide an alternative for special access service” and “[f]or areas where UNEs are not available . . . competing carriers have invested heavily” in “local facilities.”<sup>73</sup> In any event, the

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<sup>69</sup> *Wireline Broadband Order* ¶ 88.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* ¶ 72.

<sup>72</sup> *Id.* ¶¶ 65-68.

<sup>73</sup> *SBC-AT&T Merger Order* ¶ 55.

Commission has properly and repeatedly recognized that “the *Special Access NPRM* is the appropriate proceeding to address . . . arguments concerning special access competition and rates.”<sup>74</sup> Proponents of increased regulation have had every opportunity to prove their claims regarding special access in those other proceedings. The appropriate response to any legitimate special access concerns is to address them directly,<sup>75</sup> not indirectly through retail tariffing and other traditional Title II regulations that could only *increase* costs and *reduce* broadband competition and innovation.

### 3. Public Interest.

Forbearance is also “consistent with the public interest,” 47 U.S.C. § 160(a)(3), and will “promote competitive market conditions” and “enhance competition among providers of telecommunications services,” *id.* § 160(b). The Commission considers a wide variety of factors in analyzing whether forbearance is in the public interest and will promote competition. Of particular relevance here, the Commission has specifically held that “[t]he public interest is served by the development and implementation of new services.”<sup>76</sup> It has also recognized that forbearance is in the public interest when it “reduces transaction costs for service providers and reduces the administrative burden on service providers and the Commission.”<sup>77</sup>

Under these Commission precedents, removing traditional Title II and *Computer Inquiry* requirements from broadband services would certainly be in the public interest; indeed, the

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<sup>74</sup> *Verizon Pricing Flexibility Waiver Order*, 20 FCC Rcd. 16840, ¶ 13 (2005); *see also SBC-AT&T Merger Order* ¶ 55.

<sup>75</sup> *Verizon Pricing Flexibility Waiver Order* ¶ 13.

<sup>76</sup> *Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, 14 FCC Rcd. 10840, ¶ 12 (1999).

<sup>77</sup> *Hyperion Telecommunications, Inc. Petition Requesting Forbearance*, 12 FCC Rcd. 8596, ¶ 27 (1997) (concluding that permissive detariffing of interstate access services provided by non-ILECs is consistent with the public interest).

*failure* to remove these requirements would be affirmatively *harmful* to the public interest. The Commission has repeatedly recognized that Title II “regulation impose[s] significant costs on carriers and their customers.”<sup>78</sup> Such regulation “impedes [carriers] from quickly introducing new services in response to customer demands and opportunities created by technological developments,” “reduces” the ability of carriers “to respond quickly to [their] competitors’ advanced services offerings and tailor [their] own offerings to meet customers’ individualized needs,” and “diminishes” carriers’ “ability to reduce prices and improve service in response to competitive pressures.”<sup>79</sup> In particular, the Commission has found that imposing tariff filing requirements in competitive markets affirmatively harms consumers, because they “discourage competitive pricing, restrict the flexibility of carriers seeking to offer service arrangements tailored to an individual customer’s needs, and impose unnecessary regulatory costs.”<sup>80</sup> Title II

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<sup>78</sup> *Competitive Carrier Order*, 85 FCC.2d 1, ¶ 14 (1980), *rev’d on other grounds*, *MCI v. FCC*, 765 F.2d 1186, 1195-96 (D.C. Cir. 1985); *AT&T v. FCC*, 978 F.2d 727, 736 (D.C. Cir. 1992); *see also AT&T Non-Dominance Order* ¶ 27.

<sup>79</sup> *ASI Detariffing Order* ¶ 26; *see also AT&T Non-Dominance Order* ¶ 27 (Title II regulation can “inhibit[] [a carrier] from quickly introducing new services and from quickly responding to new offerings by its rivals” and “imposes compliance costs on [regulated carriers] and administrative costs on the Commission”).

<sup>80</sup> *IXC Detariffing Second Reconsideration Order*, 14 FCC Rcd. 6004, ¶ 2 (1999); *see also IXC Detariffing Order*, 11 FCC Rcd. 20730, ¶ 53 (1996) (unnecessary tariffing requirements “(1) remov[e] incentives for competitive price discounting; (2) reduc[e] or tak[e] away carriers’ ability to make rapid, efficient responses to changes in demand and cost; (3) impos[e] costs on carriers that attempt to make new offerings; and (4) prevent[] customers from seeking out or obtaining service arrangements specifically tailored to their needs”); *Competitive Carrier Order* ¶ 12 (“Effective competition is clearly curtailed when firms are required to give advance notice of innovative marketing plans and have those initiatives be subject to public comment and regulatory review”).

regulation also encourages wasteful rent-seeking from rivals that seek to hijack the regulatory process to protect themselves from competition.<sup>81</sup>

The Commission has recognized that core common carrier obligations were “written to apply specifically to cases involving a monopoly service provider using its bottleneck facilities to provide services to a public that is without significant power to negotiate the rates, terms, and conditions of those services.”<sup>82</sup> For reasons “based on [] history, rather than on an analysis of contemporaneous market conditions,”<sup>83</sup> BOCs have continued to labor under a welter of “inappropriate and unnecessary” common carrier regulations that make no sense in today’s competitive marketplace.<sup>84</sup> It is decidedly in the public interest to forbear from legacy Title II and *Computer Inquiry* regulation for broadband transmission services provided to sophisticated businesses that are served by multiple suppliers in a market the Commission has repeatedly found is “competitive.”<sup>85</sup> Thus, to the extent that the grant of the Verizon petition does not also provide similar relief for other BOCs, the Commission should immediately grant the same relief to AT&T and other BOCs, and allow them the flexibility to develop and offer broadband transmission services without being subject to unnecessary tariffing, pricing, *Computer Inquiry*, and related common carrier regulation.

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<sup>81</sup> *AT&T Non-Dominance Order* ¶ 27 (“In addition, to the extent AT&T were to initiate such strategies [to offer new services or lower prices], AT&T’s competitors could use the regulatory process to delay, and consequently, ultimately thwart AT & T’s strategies”).

<sup>82</sup> *IP-Enabled Services NPRM*, 19 FCC Rcd. 4863, ¶ 74 (2004).

<sup>83</sup> *NCTA v. Brand X Internet Services*, 125 S. Ct. 2688, 2711 (2005).

<sup>84</sup> *Wireline Broadband Order* ¶ 42; see also *id.*, Statement of Commissioner Abernathy (Title II regulation imposes “heavy burdens”).

<sup>85</sup> *Triennial Review Remand Order* ¶ 36.

#### 4. Section 706

Finally, Section 706 of the 1996 Act affirmatively requires the Commission to “encourage the deployment [of advanced telecommunications capabilities]” by measures that include “regulatory forbearance.”<sup>86</sup> Indeed, Section 706 directs the Commission to “take *immediate* action to accelerate deployment of such capability by removing barriers to infrastructure investment.”<sup>87</sup> Thus, the Commission has held that Section 706 “directs the Commission to use the authority granted in other provisions, including the forbearance authority under section 10(a), to encourage the deployment of advanced services.”<sup>88</sup>

This is a classic case for such forbearance, because these outmoded regulations are deterring broadband investment.<sup>89</sup> The Commission has a laudable track record of intervening wherever regulation imposes a substantial barrier to broadband infrastructure development.<sup>90</sup> The record here clearly supports AT&T’s request for forbearance from regulations that deter such investment, which further underscores that forbearance from the Title II and *Computer Inquiry* requirements is wholly consistent with the public interest.

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<sup>86</sup> § 706(a).

<sup>87</sup> § 706(b) (emphasis added).

<sup>88</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 13 FCC Rcd. 24011, ¶ 69 (1998).

<sup>89</sup> *First 706 Report* ¶ 106 (“We will act whenever necessary to ensure that deployment of broadband to all Americans proceeds at a reasonable and timely pace”); *see also Wireline Broadband Order* ¶ 77 (“section 706 . . . provide[s] the Commission with a specific mandate to encourage broadband deployment”).

<sup>90</sup> *See, e.g., Triennial Review Order* ¶ 290; *see id.* ¶¶ 278, 286, 290 (modifying UNE rules to “promote . . . deployment of the network infrastructure necessary to provide broadband services”); *Wireline Broadband Order* ¶¶ 19, 44, 68, 72 (eliminating wireline broadband Internet regulation that was “deter[ring] broadband infrastructure investment”); *271 Broadband Forbearance Order*, 19 FCC Rcd. 21496, ¶¶ 21, 25, 27 (2004) (forbearing from unbundling regulations that “discourage the BOCs from building next generation networks”).

**IV. CONCLUSION**

For the foregoing reasons, to the extent that AT&T is not already covered by the relief accorded to Verizon's broadband transmission services, AT&T's Petition for Forbearance should be granted within 60 days.

Respectfully Submitted,

/s/ Jack S. Zinman

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July 13, 2006

**Appendix A – AT&T Services**

| Category                                 | Description  |
|--|--|
| Frame Relay Service (FRS)                | FRS is a connection-oriented network service providing local, metropolitan and/or wide area networked connectivity where the path taken by the data unit is based upon address information included with the data unit that is of variable length (frame). Transmission rates up to 45 Mbps are supported.   |
| Asynchronous Transfer Mode (ATM) Service | ATM service is a connection-oriented network service providing local, metropolitan and/or wide area networked connectivity where that the path taken by the data unit is based upon address information included with the data unit that is of fixed length (cell). Transmission rates up to 45 Mbps are supported   |
| Virtual Private Network (VPN) Service    | VPN service is a packet-based advanced network service that provides secure connectivity between customer locations. Among other things, VPN service enables business subscribers to communicate with branch offices, to exchange corporate network traffic, and to communicate with external partners such as customers and suppliers.  |
| Remote Network Access Service            | Remote Network Access service provides remote access (e.g., to Local Area Networks for corporate work-from-home and remote office applications), typically via digital subscriber line transport service. Speeds up to 6 Mbps are supported.   |
| Ethernet-Based Service                   | Ethernet-based service provides point-to-point and/or Local Area Network connectivity by utilizing Ethernet protocol technology. The service transmits variable length packets and typically operates at speed in the range of 50 Mbps to 10 Gbps.   |
| Video Transmission Service               | Video transmission service is a one-way, fiber-based service with the capability to deliver a video signal at speeds of 45 Mbps signal (or higher).  |
| Optical Transport Service                | Optical transport service provides point-to-point connectivity that relies upon optical fiber and employs fixed length packets, typically relying upon Synchronous Optical Network standards (SONET). The customer interface operates at speeds from 155 Mbps (OC3) to 10 Gbps (OC192).  |
| Optical Networking Service               | Optical networking service provides transport capability via an integrated transport network. Customer nodes are connected using optical transport employing a closed ring architecture, thereby providing automatic restoration upon link failure. This service also includes hubbing services where individual optical transport links are multiplexed onto higher capacity optical links. The customer interface operates at speeds from 155 Mbps (OC3) to 10 Gbps (OC192). |
| Wave-Based Transport Service             | Wave-based transport service is an optical-based connection, either point-to-point or networked, which provides the customer with the transmission capacity of one or more optical wavelengths supported on the fiber. Depending on the attached optical carrier system, transmission rates can range from 155 Mbps to 10 Gbps or more.  |