

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Applications)	
for Consent to the Transfer)	
of Control of Licenses and)	
Section 214 Authorizations from)	
)	WC Docket No. 06-74
BELLSOUTH CORPORATION)	
Transferor)	
)	
to)	
)	
AT&T INC.)	
Transferee)	

SUPPLEMENTAL DECLARATION OF PARLEY C. CASTO

Sales Vice President – AT&T Wholesale

I, Parley C. Casto, hereby declare the following:

1. My name is Parley C. Casto. My title is Vice President – Sales – AT&T Wholesale, for AT&T. I am responsible for the management of a nationwide sales force that represents AT&T Wholesale products and services to interexchange carriers, CLECs and ISPs.

2. In this declaration, I again respond to claims made by Time Warner Telecom Inc. (“TWTC”) and its declarant Graham Taylor that AT&T has impeded TWTC’s ability to compete in the retail market for “Ethernet” services.

I. THE INDISPUTABLY COMPETITIVE NATURE OF THE ETHERNET MARKET AND TWTC'S SELF-PROCLAIMED SUCCESS IN THAT MARKET DISPROVE THE CLAIM THAT AT&T'S FINISHED ETHERNET SERVICES ARE NECESSARY INPUTS FOR RETAIL ETHERNET.

3. TWTC's response is perhaps most notable for what it fails to dispute. In particular, TWTC and Mr. Taylor agree with me that the retail market for Ethernet services is very competitive.¹ In fact, TWTC states that competition in this market will likely "intensify over time." *TWTC Response* at 18. This is significant, because, as I discussed in my declaration and as TWTC does not dispute, AT&T has sold very little of its finished Ethernet service, which is called OPT-E-MAN, at wholesale to other carriers.²

4. Given these facts, it cannot be disputed that (1) a robustly competitive marketplace for Ethernet services has developed without reliance upon wholesale AT&T Ethernet services and (2) AT&T's OPT-E-MAN service is therefore not a necessary input for providing retail Ethernet services. This is true not only as a general matter for all providers in the retail Ethernet space, but also specifically for TWTC. TWTC has touted itself as an "industry-lead[er]" in Ethernet services, and has claimed that its revenues are growing "due to success with Ethernet."³ Yet, TWTC has achieved this self-proclaimed Ethernet success without purchasing any OPT-E-MAN services from AT&T.

¹ See Response of Time Warner Telecom, Inc. to AT&T Inc. and BellSouth Corporation Joint Opposition to Petitions to Deny and Reply to Comments ("*TWTC Response*"), at 17-18, enclosed within August 8, 2006 *ex parte* Letter from Thomas Jones, counsel for Time Warner, to Marlene H. Dortch; *cf.* Reply Declaration of Parley Casto ("*Casto Reply Decl.*"), ¶ 14 & nn.6-7, attached to Joint Opposition of AT&T Inc. and BellSouth Corp. to Petitions to Deny and Reply to Comments (filed June 20, 2006).

² See *Casto Reply Decl.* ¶¶ 4, 13, 18; *cf.* *TWTC Response*, Reply Declaration of Graham Taylor ("*Taylor Reply Decl.*"), ¶ 9.

³ Press Release, *Time Warner Telecom Reports Strong Second Quarter 2006 Results*, at 1-2, July 31, 2006 ("*2Q Press Release*").

5. Although I presented these same arguments in my earlier reply declaration, TWTC's response never addresses them. TWTC never explains, for example, how AT&T's offering of a wholesale Ethernet service that TWTC and other Ethernet providers have chosen not to purchase in building and growing their competitive retail businesses establishes AT&T's "market power" in the provision of last-mile connectivity for such retail Ethernet services (*see TWTC Response* at 15). Likewise, if TWTC must have access to AT&T's finished Ethernet services, TWTC also never explains how it is an industry leader with rapidly growing Ethernet revenues and expects competition in that space to intensify even though it has not purchased AT&T's service.

II. TWTC HAS MULTIPLE PROVEN OPTIONS FOR PROVIDING RETAIL ETHERNET SERVICES BESIDES AT&T'S OPT-E-MAN SERVICES.

6. The reason TWTC cannot explain the inconsistencies between its advocacy in this proceeding and the realities of the marketplace is simple. In my last declaration, I explained that TWTC and other retail Ethernet providers have multiple last-mile connectivity options for providing service. In its response, TWTC admits that it has been able to "deploy Ethernet services at retail . . . using 1) its on net facilities; 2) TDM loops purchased from AT&T;" and 3) "competitive facilities" from other providers offering TDM loops or finished Ethernet loops. *Taylor Reply Decl.* ¶ 9. TWTC nevertheless claims that it is becoming "increasingly unviable" to use these options in some circumstances. *Id.* I see no merit in these claims.

7. TWTC does not dispute that there are numerous providers of wholesale Ethernet services, as I described in my most recent declaration. *Casto Reply Decl.* ¶ 14 & nn.6-7 (describing multiple providers including Level 3, XO, Global Capacity Group, and US Carrier Telecom). It is obvious that finished Ethernet services from competitive wholesale providers are available.

8. TWTC admits that in some cases, it has made a business decision *not* to purchase finished Ethernet services from competitive wholesale providers where they are available.

Taylor Reply Decl. ¶ 7. [begin TWTC proprietary]

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⁴ As I previously explained (*see Casto Reply Decl.* ¶ 35), a MARC is a common provision in many telecommunications contracts and reflects volume discounts that often arise in competitive markets: as the buyer commits to purchasing more services subject to the MARC, the price discounts and other benefits offered by the supplier generally increase. No buyer is compelled to commit to a particular MARC. Rather, the MARC is individually negotiated with each customer and generally represents the *quid pro quo* for lower prices or other benefits for the buyer. In this case, TWTC agreed to a particular MARC in its 2005 contract, and by doing so it obtained a number of benefits, including a particular set of pricing discounts and other favorable terms. When the agreement was signed in 2005, TWTC did not complain about the MARC but instead issued a joint press release with AT&T stating that the agreement “strengthens Time Warner Telecom’s ability to compete effectively for the nationwide business market.” Joint News Release, *Time Warner Telecom, AT&T, SBC Extend Long-Term Service Agreement*, June 1, 2005, at 2.

10.

[end TWTC

proprietary]

11. With respect to Ethernet provided over TDM facilities, TWTC claims that this option for providing retail Ethernet is becoming “increasingly unviable” because there are “additional costs and inefficiencies” involved in providing Ethernet over TDM. *Taylor Reply Decl.* ¶¶ 9, 17. These claims are likewise entirely without merit.

12. First, TWTC’s claims to the Commission in this proceeding regarding Ethernet over TDM are not consistent with its own statements and actions. TWTC currently provides, quite successfully, a large percentage of its Ethernet services using TDM. By its own count, TWTC purchases facilities from other carriers 73 percent of the time. *Taylor Reply Decl.* ¶ 4. Some of these facilities are finished Ethernet services, but TWTC has not purchased such services from AT&T, and it claims that it has not purchased a significant amount of finished services from competitive providers. Accordingly, a strong majority of TWTC’s Ethernet customers are currently served over TDM facilities – yet, TWTC has proclaimed that its

revenues in the second quarter of 2006 grew by 29% “due to success with Ethernet.”⁵ It is apparent, therefore, that TWTC has been able to successfully sell Ethernet services using TDM facilities.

13. Further, TWTC never reconciles its claim that Ethernet over TDM is becoming “increasingly unviable” with its June 2006 announcement regarding a new arrangement with Ethernet provider Overture Networks. According to TWTC, this arrangement gives TWTC a “‘branch office’ solution [that] enables us to cost-effectively deliver our industry-leading Ethernet portfolio to customers anywhere.”⁶ TWTC further asserts that this “branch office” access is designed to allow TWTC to provide Ethernet services in areas where TWTC does not already have facilities in place to serve a particular customer location and where “it may be uneconomical to directly connect” to TWTC’s network⁷ – meaning that this arrangement is plainly being used in conjunction with TDM facilities. TWTC’s response fails to explain the inconsistency: in its public reports, the Overture arrangement is a “solution” that is cost-effective[.]” and that can be offered “anywhere;” in its statements to the Commission, Ethernet over TDM is “not a viable option,” comes with “additional costs,” and is difficult to offer “in areas that are not close to the AT&T/TWTC point of interconnection.” *Compare Overture Release with Taylor Reply Decl.* ¶¶ 17, 19.

14. Second, although TWTC’s reply does provide more detail about why it believes Ethernet over TDM causes “additional costs and inefficiencies,” *Taylor Reply Decl.* ¶ 17, none of these arguments is convincing, and they are insufficient to overcome the substantial real-world

⁵ *2Q Press Release* at 2.

⁶ Time Warner Telecom, June 6, 2006 Press Release, at 1 (“*Overture Release*”) (emphasis added).

⁷ *Overture Release* at 1.

evidence that retail Ethernet providers can – and routinely do – successfully offer Ethernet over TDM facilities.

15. TWTC claims that, when providing Ethernet services over TDM, it pays charges for TDM electronics as well as charges for Ethernet electronics (*Taylor Reply Decl.* ¶ 18) – although it never claims that the costs are prohibitive. In fact, I seriously doubt that the costs of the electronics are a significant component of TWTC’s overall costs. TWTC has not permitted me to review its claims regarding its alleged costs for its “cost-effective” “solution” with Overture, *see Taylor Reply Decl.* ¶ 18, but **[begin TWTC proprietary]**

[end TWTC proprietary]

16. TWTC also claims that Ethernet over TDM requires TWTC to pay “substantial mileage charges” where it offers service in areas far from an AT&T/TWTC point of interconnection. *Taylor Reply Decl.* ¶ 19. However, mileage charges for special access service are routine and reasonably reflect the increased costs of providing longer connections. TWTC is no different than any service provider in this regard: it can either expend more capital and have more facilities closer to its customers or it can expend less capital but incur more mileage-based charges. These trade-offs are inherent whenever a provider seeks to expand the geographic reach of its services. Thus, if TWTC is dissatisfied with the levels of mileage charges, it is fully within TWTC’s control to minimize those charges by deploying more points of interconnection (“POIs”) with AT&T. And where TWTC chooses to save money by deploying fewer and more dispersed POIs, it can and should expect to pay more in mileage charges. **[begin TWTC/AT&T proprietary]**

[end TWTC/AT&T

proprietary].

17. TWTC also claims that providing Ethernet over TDM “increases TWTC’s costs because TWTC must purchase much more TDM capacity than it needs.” *Taylor Reply Decl.* ¶ 20. As an example of this alleged problem, TWTC points to a customer that demands a 50 Mbps circuit, and claims that the customer’s demand can be met only if TWTC uses two DS3 circuits, because a single DS3 can provide about 43 Mbps of service. Of course, for a customer who wants a 40 Mbps circuit, there is virtually no excess capacity if a DS3 is used. Like other facilities, TDM facilities have capacity limits that may not precisely match a particular customer’s demand for capacity. In that case, a customer must either spend the money necessary to buy the additional capacity or accept the available lower level of capacity. In fact, the same capacity issues arise for Ethernet services that are not provided over TDM facilities. Ethernet ports come in standard 10/100 Mbps and 1 Gbps sizes, so an Ethernet supplier providing service to a customer that demands 1.2 Gbps of service must purchase more than one port. Significantly, in the actual marketplace, this is not at all a problem for customers. [begin TWTC proprietary]

[end TWTC proprietary]

18. There is also no merit to TWTC’s assertions that TDM over Ethernet “introduces additional points of potential failure into the circuit.” *Taylor Reply Decl.* ¶ 24. Ethernet over TDM is a standard arrangement used by numerous service providers, including AT&T and TWTC. I am aware of no evidence that this standard arrangement causes unusual service problems. To the contrary, TDM special access services are very mature and automated

products, and when problems do occur, they can generally be isolated and troubleshooting can occur without the need for “truck-rolls.”

19. In short, TWTC provides no serious reason to question the facts from the marketplace, which show that many customers successfully receive Ethernet service over TDM facilities.

III. THE NEGOTIATIONS FOR AN OPT-E-MAN CONTRACT TO MEET TWTC’S SPECIALIZED NEEDS ARE ONGOING, AND AT&T’S OFFERS TO DATE HAVE BEEN MORE THAN REASONABLE.

20. Even though AT&T has a tariffed OPT-E-MAN offer with standard terms and conditions, AT&T is more than willing to negotiate a specialized contract arrangement that meets TWTC’s particular business needs. Because TWTC has multiple other options for providing services, AT&T recognizes that its proposals must be reasonable, or it will lose TWTC’s business. As I described in my last declaration, AT&T has already spent significant time with TWTC, in an effort to learn TWTC’s specific business needs.⁸ Although it is costly for AT&T to undertake this process and modify its standard OPT-E-MAN offerings for the needs of a single customer, AT&T is hopeful that an agreement that is beneficial to both sides will be reached.

21. **[begin TWTC proprietary]**

⁸ Notably, TWTC does not dispute that it has very particularized demands. Nor has TWTC disputed that AT&T made a significant effort to understand and respond to TWTC’s needs – such as responding to 183 questions that TWTC presented to AT&T in three separate questionnaires.

[end TWTC proprietary]

22. Nevertheless, TWTC apparently raises a host of complaints about AT&T's current proposals for a customized OPT-E-MAN agreement. In some cases, TWTC has refused to allow me or any other AT&T employee knowledgeable about the negotiations to learn the substance of TWTC's complaints or any supporting facts. In other cases, I have not been allowed to review the actual text of TWTC's submission, but have been allowed to discuss the substance of TWTC's allegations with AT&T's counsel.

23. In particular, although TWTC asserts that AT&T's proposed prices for OPT-E-MAN services are too high for TWTC economically to use those services, TWTC has not permitted me or any other business person to review the specifics of TWTC's claims in this regard. Accordingly, there is no way for me to evaluate TWTC's claims, including, for example, whether they are making an appropriate comparison of prices.

24. Nevertheless, two of the principal points regarding AT&T's OPT-E-MAN pricing offers that I discussed in my prior declaration remain valid. First, in negotiations, TWTC has made presentations **[begin TWTC/AT&T proprietary]**

⁹ TWTC Counter Proposal to AT&T, May 8, 2006, p. 2 (emphasis added).

25.

26.

[end TWTC/AT&T proprietary]

IV. THE TECHNICAL ISSUES RAISED BY TWTC SHOULD BE ADDRESSED IN NEGOTIATIONS.

27. TWTC continues to complain about AT&T's negotiating positions on what TWTC previously described as [begin TWTC proprietary] ¹⁰ [end TWTC proprietary] My previous declaration responded to these claims, and TWTC's most recent response raises few, if any, new issues that AT&T has not already addressed. In each case, TWTC's technical issues concern specialized requests that deviate from AT&T's standard offerings. AT&T has not refused to negotiate with TWTC regarding any technical issue. In fact,

¹⁰ *Taylor Decl.* ¶ 39.

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in many cases, AT&T has made significant efforts to accommodate each of these requests and to modify its standard OPT-E-MAN offerings in an effort to meet TWTC's specialized needs.

28. [begin TWTC proprietary]

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31.

[end TWTC proprietary]

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I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on August 21, 2006

/x/

Parley C. Casto