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

In the Matter of	)	
	)	
Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C. §160(c) From Title II and Computer Inquiry Rules With Respect To Broadband Services	)	WC Docket No. 06-125 DA 06-1490
	)	
Petition of Qwest Corporation and Qwest Communications Corporation (jointly, Qwest) for Forbearance Under Section 47 U.S.C. §160(c) From Title II and Computer Inquiry Rules With Respect To Broadband Services	)	WC Docket No. 06-125 DA 06-1464
	)	
Petition of AT&T Inc. (AT&T) for Forbearance Under Section 47 U.S.C. §160(c) From Title II and Computer Inquiry Rules With Respect To Broadband Services	)	WC Docket No. 06-125 DA 06-1464
	)	
Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. §160(c) From Application of *Computer Inquiry* and Certain Title II Common Carriage Requirements	)	WC Docket No. 06-147 DA 06-1545

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
REPLY COMMENTS

The National Telecommunications Cooperative Association ("NTCA")[1] submits these reply comments in response to the initial comments filed on August 17, 2006, as part of the Federal Communications Commission's (Commission or FCC) Public Notices[2] soliciting

[1] NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 571 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, CATV, IPTV, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

[2] Public Notice, Pleading Cycle Established For Comments On BellSouth Petition For Forbearance Under Section 47 U.S.C. § 160(c) From Title II and *Computer Inquiry* Rules With Respect To Broadband Services, WC Docket

comments on petitions by AT&T, BellSouth, Embarq, and Qwest[3] for forbearance under 47 U.S.C. § 160(c) from Title II and *Computer Inquiry* rules with respect for broadband services and/or certain Title II common carriage requirements (Petitions).[4] NTCA renews its assertions from its Initial Comments[5] and urges the Commission to deny the petitions filed by AT&T, BellSouth, and Qwest (collectively "Petitioners"). If the Commission should grant Title II forbearance to Embarq, it should limit forbearance to Embarq only, and not to all similarly situated ILECs.

I. THE AT&T, BELLSOUTH, AND QWEST PETITIONS HAVE NOT SATISFIED THE THREE-PRONG FORBEARENCE TEST.

NTCA agrees with other commenters that the Commission should deny the petitions of AT&T, BellSouth and Qwest because they have not satisfied the statutory three-prong test for forbearance.[6] Forbearance is appropriate only if the Commission determines that:

No. 06-125, DA 06-1490 (rel. July 21, 2006); Pleading Cycle Established For Comments On Qwest and AT&T Petitions For Forbearance Under Section 47 U.S.C. § 160(c) From Title II and *Computer Inquiry* Rules With Respect To Broadband Services, WC Docket No. 06-125, DA 06-1464 (rel. July 19, 2006); *Public Notice*, Pleading Cycle Established for Comments On Embarq Local Operating Companies' Petition For Forbearance Under 47 U.S.C. § 160(c) From Application of *Computer Inquiry* and Certain Title II Common Carriage Requirements, WC Docket No. 06-147, DA 06-1545 (rel. July 28, 2006) (*Public Notice*).

[3] Given the pending merger between AT&T and BellSouth, NTCA refers to BellSouth as if BellSouth and AT&T are the same company.

[4] Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and *Computer Inquiry* Rules with Respect to Broadband Services, WC Docket No. 06-125 (filed June 13, 2006) (*Qwest Petition*); 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 Docket No. 06-125 (filed July 13, 2006) (*AT&T Petition*); Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C. § 160(c) From Title II and Computer Inquiry Rules With Respect to Its Broadband Services, WC Docket No. 06-125 (filed July 20, 2006) (*BellSouth Petition*); Petition of the Embarq Local Exchange Operating Companies For Forbearance Under 47 U.S.C. § 160(c) From Application of *Computer Inquiry* and Certain Title II Common Carriage Requirements, WC Docket No. 06-147, DA 06-1545 (filed July 26, 2006) (*Embarq Petition*); (collectively *Petitions*).

[5] NTCA Comments, p. 2.

[6] Alpheus Communications, LP, Deltacom, Inc., Integra Telecom, Inc., McLeodUSA Telecommunications Services, Inc., Mpower Communications Corp., Norlight Telecommunications, Inc., Pac-West Telecomm, Inc., TDS Metrocom, LLC, Telepacific Corp. d/b/a Telepacific Communications (Alpheus Comments), pp. ii, 4; Broadview Networks, Covad Communications, CTC Communications, Inc., Eschelon Telecom, Inc., NuVox Communications, Xspedius Management Company LLC Comments (Broadview Comments), pp. i, 18; Comptel Comments, pp. 1, 7; New Jersey Division of Rate Counsel Comments (NJDRC), pp. 4-5; Sprint Nextel Comments, pp. 3, 11; Time Warner Telecom, Inc., Cbeyond Communications LLC, One Communications Corp. (Time Warner Comments), p. 23.

(1) Enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) Enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) Forbearance from applying such provision or regulation is consistent with the public interest.[7]

Section 160(b) further requires the Commission to "consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services."

Granting these three Petitioners forbearance from Title II common carrier regulations will not, in some rural ILEC service areas, ensure just and reasonable wholesale rates for access/transport services to the Internet backbone, a prime concern for some rural carriers who depend on AT&T, BellSouth or Qwest to provide transport services to the Internet backbone. Nor will forbearance promote competitive market conditions where a sole transport provider to the Internet backbone can impose a tying arrangement and price squeeze on a rural carrier which could lead to higher prices for retail broadband services for rural consumers.

AT&T, BellSouth, and Qwest are vertically integrated companies in that they provide transport services to the Internet backbone and they own a part of the Internet backbone (e.g., provide Internet backbone capacity). If forbearance is granted, AT&T, Bell South, and Qwest could refuse to provide their transport services to a rural ILEC, unless a rural ILEC agrees to purchase both the transport component and the Internet backbone capacity component as a bundled package. By tying transport and backbone capacity together, the Petitioners could force

[7] 47 U.S.C. § 160(a).

a rural ILEC to pay higher prices for transport to the Internet backbone than it would have otherwise if it could have purchased lower priced transport services from a competing transmission provider that does not offer Internet backbone capacity. Such tying arrangements and pricing practices would harm, rather than promote competition for transport services to the Internet backbone. These anti-competitive practices could also increase retail broadband services to rural consumers.

NTCA also agrees with commenters that granting these three petitions is not in the public interest. OPASTCO accurately noted in their comments that the "FCC must consider long-term impact that deregulation of broadband services will have on rural ILECs' access to the Internet backbone."[8] The Commission should not conclude that competition for wholesale broadband transport services is substantial nationwide, as suggested by Iowa Telecommunications Services.[9] Rather, the Commission should recognize that smaller rural carriers who rely on three or fewer Internet backbone transport providers could find themselves forced to delay service expansion or increase retail broadband prices due to increased Internet backbone transport costs, if forbearance is granted. Such circumstances would likely lead to monopoly or oligopoly control over transport services to the Internet backbone in some rural areas. As the Commission previously acknowledged:

> A carrier's ability and incentive to engage in anticompetitive conduct in adjacent markets must be measured with some recognition of the parameters of those markets. Thus, what must be recognized is that while market power in the provision of telephone service may be appropriately measured within both local and national geographic markets, the provision of enhanced services and CPE has been largely undertaken, and increasingly so, on a national basis. … A carrier such as AT&T, with a nationwide network of transmission system and local distribution plant in major metropolitan areas,

[8] OPASTCO Comment, p. 3.
[9] Iowa Telecommunications Services Comment, p. 2.

> could obviously harm a competitor through its control over these facilities in an anti-competitive manner.[10]

AT&T, BellSouth and Qwest have not demonstrated that forbearance would ensure that rural ILECs serving remote areas with limited access to Internet backbone transport providers would not be subjected to unreasonable and/or nondiscriminatory rates, terms or conditions concerning wholesale broadband transmission/transport services. Consequently, forbearance is not appropriate.

II. THE COMMISSION SHOULD NOT FORBEAR FROM TITLE II REGULATION FOR "ALL SIMILARLY SITUATED ILECS" AS REQUESTED IN THE EMBARQ FORBEARANCE PETITION.

If the Commission should grant Title II forbearance to Embarq's requested services, it should limit forbearance to Embarq only, and not to "all similarly situated ILECs."[11] Contrary to suggestions by ACS,[12] Embarq[13] and Cincinnati Bell,[14] the Commission should not grant forbearance to carriers who have not requested forbearance and who have not satisfied the three-part forbearance test. The Commission should tailor forbearance very carefully so as to protect rural consumers and the ability of rural carriers to compete in the retail broadband services marketplace. Some rural carriers currently prefer to continue operating under Title II common carrier obligations and protections, and those carriers should not be forced to relinquish those duties and benefits through an overly-broad grant of unwanted forbearance authority. A carrier's

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[10] In the Matter of Amendment of Section 64.702 of the Commission's Rules and Regulations, ¶ 217, 77 F.C.C. 384 (1980) (*Computer II* Final Decision).
[11] Embarq Petition, p. 2.
12 "ACS respectfully requests that any relief granted to the Petitioners apply immediately to all ILECs, including ACS, pending the Commission's consideration of the other forbearance requests set forth in ACS's petition." ACS Comment, p. 3.
[13] "[R]elief should be granted to all similarly situated independent ILECs that provide broadband services." Embarq Comment, p. 2.
[14] "[T]he Commission should grant the relief obtained by Verizon to all independent ILECS." Cincinnati Bell Comment, p. 4.

choice to seek forbearance from Title II regulation of their broadband transmission/transport services should reside with each individual telecommunications carrier.

III. CONCLUSION

For all the reasons set forth in NTCA's initial and reply comments, the Commission should deny the AT&T, Bell South, and Qwest forbearance petitions. If the Commission should grant Title II forbearance to Embarq's requested services, it should limit forbearance to Embarq only, and not to all similarly situated ILECs.

Respectfully submitted,

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August 31, 2006

CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in WC Docket No. 06-125, DA 06-1464, DA 06-1490, and WC Docket No. 06-147, DA 06-1545 was served on this 31st day of August 2006 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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