

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the matter of)	
)	
Petition of AT&T for Forbearance Under)	
47 U.S.C. § 160 from Title II and <i>Computer</i>)	WC Docket No. 06-125
<i>Inquiry</i> Rules with Respect to its Broadband)	
Services)	
)	
Qwest Petition for Forbearance Under)	
47 U.S.C. § 160 from Title II and <i>Computer</i>)	
<i>Inquiry</i> Rules with Respect to Broadband)	
Services)	
)	
BellSouth Petition for Forbearance Under)	
47 U.S.C. § 160 from Title II and <i>Computer</i>)	
<i>Inquiry</i> Rules with Respect To Broadband)	
Services)	
)	
Petition of Embarq Local Operating)	
Companies For Forbearance Under)	
47 U.S.C. § 160(c) from Application of)	WC Docket No. 06-147
<i>Computer Inquiry</i> and Certain Title II)	
Common Carriage Requirements)	

REPLY COMMENTS OF COMPTTEL

COMPTTEL, through counsel, hereby replies to the comments filed in response to the above-captioned incumbent local exchange carriers' ("ILECs") petitions for forbearance from the application of Title II and *Computer Inquiry* requirements with respect to broadband services.

The only comments supporting the Bell Operating Companies' ("BOCs") and the Embarq Local Operating Companies' requests for forbearance relief were those filed by certain independent ILECs hoping to be beneficiaries of Embarq's broad plea that the

Commission grant the same relief to all independent ILECs that Verizon obtained by operation of law¹ through the Commission's failure to act on its Forbearance Petition.² As is true of the Petitioners, none of the independent ILECs provided any data or other information that would allow the Commission to evaluate the state or level of either retail or wholesale competition with respect to the relevant broadband services in their serving areas. The Commission cannot possibly find that forbearance from the market-opening and consumer protection provisions of Title II of the Communications Act is consistent with the public interest absent evidence that the ILECs face sufficient facilities-based broadband competition in their serving areas to ensure that the interests of consumers and the goals of the Act are met.³

COMPTEL and other opponents of the forbearance petitions demonstrated that relieving the ILECs of their obligations to comply with Title II and the *Computer Inquiry* regulations would be disastrous for competition where it does exist as well as for consumers who would be deprived of a choice of providers and any guarantee of just,

¹ See, *Verizon Telephone Companies' Petition for Forbearance from Title II and Computer Inquiry Rules With Respect to their Broadband Services Is Granted By Operation of Law*, FCC News Release dated March 20, 2006, WC Docket 04-440..

² Comments of Cincinnati Bell Telephone Company LLC; Embarq Local Operating Companies' Comments In Support of Petitions; Comments of ACS of Anchorage, Inc.; Comments of Iowa Telecom.

³ See *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Memorandum Opinion and Order, FCC 05-170 (released December 2, 2005), *appeal pending sub nom. Qwest Corporation v. Federal Communications Commission*, Case No. 05-1450 (D.C. Cir.) ("*Qwest Forbearance Order*").

reasonable and nondiscriminatory terms, rates and conditions for service.⁴ Even assuming a case could be made that the market for the relevant retail broadband services is competitive, which neither the Petitioners nor the independent ILECs even attempted, no such assumptions can be made for the relevant wholesale market. The National Telecommunications Cooperative Association (“NTCA”) stated that BellSouth and Qwest are in many instances the only option rural carriers have for access to the Internet Protocol backbone. Because of their dependency on the BOCs for those vital connections, freedom from Title II regulation will afford the BOCs greater opportunity to implement discriminatory practices and engage in predatory pricing against rural carriers.⁵ Similarly, Sprint Nextel showed that it continues to rely upon ILECs for well over 95% of the high capacity links used to connect its cell sites and switching centers because competitive alternatives are simply not available.⁶

In contrast to the Petitioners’ unsupported claims that the market for the broadband services for which they seek forbearance is national and that competition for such services is robust enough to dispense with all regulation, commenters opposing the Petitions persuasively established that carriers and other competitors continue to rely on ILEC wholesale high capacity inputs to reach their customers and provide their services. The Petitioners’ failure to identify any alternative wholesale suppliers operating in their

⁴ See, e.g., Sprint Nextel Corporation’s Opposition To Petitions For Forbearance at 6-9, 15; Opposition of Alpheus Communications, *et al.* at 21-26; Opposition of Time Warner Telecom, Inc., *et al.* at 23-27.

⁵ National Telecommunications Cooperative Association Initial Comments at 2-3; see also, Comments of the Organization For the Promotion and Advancement of Small Telecommunications Companies at 6-7 (the Commission should not let forbearance from Title II block rural carriers ability to access the Internet backbone at reasonable and nondiscriminatory rates and terms).

⁶ Sprint Nextel Opposition at 9.

service territories precludes a finding that that forbearance will promote competitive market conditions and enhance competition and that Title II and *Computer Inquiry* regulation are not necessary to ensure that rates, terms and conditions for the relevant broadband services are just, reasonable and nondiscriminatory.

In the *Qwest Forbearance Order*, the Commission found that evidence of substantial intermodal facilities-based competition for retail telecommunications services in certain wire centers in Omaha was sufficient to grant Qwest forbearance from the application of Section 251(c)(3) unbundling obligations with respect to loops and transport. That finding, however, was predicated on the continued application of other Title II statutory and regulatory provisions designed to promote the development of competitive markets for telecommunications services and the actual competition those regulations had facilitated.⁷ Eliminating all Title II regulation for the relevant broadband services provided by the ILECs in the absence of any evidence of retail or wholesale competition in their service areas would not only be contrary to the *Qwest Forbearance Order*, it would also completely eviscerate the statutory requirements of Section 10.

For recent evidence that the ILECs are not subject to robust competition for broadband services, the Commission need look no further than the recent actions taken by Verizon and BellSouth in the wake of the expiration of the 270 day transition period for universal service contributions on Internet access services.⁸ Verizon had been assessing

⁷ *Qwest Forbearance Order* at ¶ 59.

⁸ *In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, Report and Order and Notice of Proposed Rulemaking, FCC 05-150 (released September 23, 2005) at ¶113, *appeal pending sub.*

its DSL customers between \$1.25 and \$2.83 per month to cover universal service contributions and BellSouth had been assessing its DSL customers \$2.97.⁹ The obligations of Verizon and BellSouth to contribute to the universal service fund on revenues earned from their DSL Internet access services ended on August 14, 2006. Rather than pass those savings on to their customers, Verizon had announced that it would impose a new “supplier surcharge” of between \$1.20 and \$2.70 per month to recoup the costs of providing stand alone DSL service, and BellSouth had announced that it would continue charging DSL customers the \$2.97 per month fee that previously covered its universal service contributions recast as a “regulatory cost recovery fee.”¹⁰ What this meant, of course, is that Verizon DSL subscribers who also subscribed to Verizon’s voice service would be assessed the “supplier surcharge” to cover the costs of a service to which they did not subscribe – stand alone DSL – and BellSouth’s DSL customers would be assessed a regulatory cost recovery fee for a service that is essentially unregulated. An ILEC’s ability to assess such surcharges is not indicative of a competitive market or competitive pricing.

According to press reports, the Commission made inquiries about the new charges to Verizon and BellSouth on August 25, 2006. BellSouth dropped the regulatory cost

nom. Time Warner Telecom Inc. v. Federal Communications Commission, Nos. 05-4769, *et al* (3rd Circuit).

⁹ See Amy Shatz, “Verizon and BellSouth DSL Users Won’t See Lower Bills as Fee Ends, Wall Street Journal, A2 (August 22, 2006).

¹⁰ *Id.*; Siobhan Hughes, “No Drop In Verizon DSL Bills; Just As Government Fee Is Being Discontinued, The Provider Is Imposing Similar Surcharges,” *The Philadelphia Inquirer* (August 22, 2006).

recovery fee right away¹¹ and Verizon announced on August 30, 2006 that it would drop the supplier surcharge.¹² COMPTEL is encouraged by the Commission's quick response, but urges the Commission to take Verizon's and BellSouth's actions as a sign that the broadband market is not sufficiently competitive to protect consumers and ensure that the rates, terms and conditions of broadband service are just, reasonable and nondiscriminatory. As the Commission confirmed just over a year ago, Sections 201 and 202 are cornerstones of the Act and remain necessary to protect consumers:

[T]he Commission has never forbore from applying sections 201 and 202 of the Act. In a 1998 order denying a petition for forbearance from sections 201 and 202 of the Act (among other sections), the Commission described those sections as the cornerstone of the Act. The commission explained that even in substantially competitive markets, there remains a risk of unjust or discriminatory treatment of consumers, and sections 201 and 202 therefore continue to afford important consumer protections. Because the language of section 10(a) essentially mirrors the language of sections 201 and 202, the Commission expressed skepticism that it would ever be appropriate to forbear from applying those sections. Since then, the commission has never granted a petition for forbearance from sections 201 and 202.¹³

The conclusory, unsupported allegations of the ILECs relating to competition in the relevant broadband markets provide no basis for the Commission to back away from its skepticism about the propriety of forbearing from Sections 201 and 202.

¹¹ Washington Telecom Newswire, "FCC To Investigate Verizon DSL Fee; BellSouth Gets Scared Off," August 25, 2006; John Dunbar, "BellSouth To Stop Collecting DSL Fee," Washington Post, D03 (August 26, 2006).

¹² Statement of FCC Chairman Kevin Martin on Verizon and BellSouth Eliminating Recently Imposed DSL Fees, FCC News Release, August 30, 2006; John Dunbar, "Verizon Drops DSL Fee After FCC Query," Washington Post, D04 (August 31, 2004); Leslie Cauley, "Verizon Abandons Plans For A High-Speed Internet Surcharge," USA Today (August 30, 2006); Bruce Mohl, "Complaints Force Verizon To Cancel DSL Surcharge," The Boston Globe (August 31, 2006).

¹³ *In the Matter of Petition of SBC Communications Inc. For Forbearance From the Application of Title II Common Carrier Regulation to IP Platform Services*, WC Docket No. 04-29, Memorandum Opinion and Order, FCC 05-95 (released May 5, 2005) at ¶17.

For the reasons set forth in COMPTEL's Opposition and those filed by other parties, the Commission should deny the BOCs' and Embarq's Petitions for Forbearance and refrain from freeing any and all ILECs from their obligations under Title II of the Act.

August 31, 2006

Respectfully submitted,

/s/

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