

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
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)	
Qwest, AT&T, and BellSouth Petitions 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
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)	
Embarq Local Operating Companies' Petition for Forbearance Under 47 U.S.C. § 160(c) From Application of <i>Computer Inquiry</i> and Certain Title II Common Carriage Requirements)	WC Docket No. 06-147
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)	

REPLY COMMENTS OF T-MOBILE USA, INC.

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T-Mobile USA, Inc. (“T-Mobile”) joins the initial comments and oppositions in urging in the Commission to deny the petitions of Qwest Corporation (“Qwest”), AT&T, Inc. (“AT&T”), BellSouth Corporation, and Embarq Local Operating Companies (“Embarq”, collectively “Petitioners”) for forbearance, which were filed on June 13, July 13, July 20, and July 26, 2006 respectively.¹ To the extent Petitioners request forbearance in connection with their wholesale special access services, grant of the

¹ See Qwest and AT&T Petitions 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, DA 06- 1464 (WCB rel. Jul. 19, 2006) (“Qwest Petition,” and “AT&T Petition”). See also BellSouth 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, DA 06-1490 (WCB rel. Jul. 21, 2006). (“BellSouth Petition,”). See also Petition of the Embarq Local Operating Companies For Forbearance Under 47 U.S.C. § 160(c) From Application of *Computer Inquiry* and Certain Title

Petitions would harm competitors and consumers, and undermine the public interest.²

Accordingly, T-Mobile urges the Commission to release an order denying the Petitions within the timeframe available under the Act.³

INTRODUCTION AND SUMMARY

T-Mobile, a major customer of the Petitioners' tariffed special access services, is deeply concerned about the effect grant of the Petitions would have on its ability to purchase, on reasonable terms and conditions, the wholesale services upon which T-Mobile relies for its wireless offerings. There are virtually no realistic competitive alternatives for these services. T-Mobile has emphasized in its pleadings filed in the pending *Special Access Proceeding* and the *Verizon Forbearance Proceeding* that, in light of the limited competition for these crucial transmission inputs, the Commission should strengthen its oversight of special access services under Title II, not weaken it.⁴ The Petitioners wholly ignore the marketplace realities, however, and seek complete

II Common-Carriage Requirements, WC Docket No. 06-147, DA 06-1545 (WCB rel. Jul. 28, 2006) ("Embarq Petition," or collectively, "Petitions").

² See 47 U.S.C. ¶ 160(a).

³ See 47 U.S.C. § 160(a).

⁴ See *Special Access Rates for Price Cap Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005) ("*Special Access Proceeding*"); see also *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*, Public Notice, Docket No. 04-440, (rel. Mar. 20, 2006) (*Verizon Forbearance Proceeding*). T-Mobile hereby incorporates by reference its comments and reply comments filed in the *Special Access Proceeding*, and its *ex parte* letters filed in opposition in the *Verizon Forbearance Proceeding*. See Comments of T-Mobile in WC Docket No. 05-25, RM-10593 (filed June 13, 2005) ("T-Mobile Special Access Comments"); Reply Comments of T-Mobile in WC Docket No. 05-25, RM-10593 (filed July 29, 2005); Letter from Thomas J. Sugrue, Vice President of Government Affairs, T-Mobile USA, Inc. to Marlene H. Dortch, FCC, WC Docket No. 04-440, CC Docket Nos. 02-33, 95-20, 98-10 (filed Jan. 9, 2006) ("T-Mobile January 9 letter"); Letter from Thomas J. Sugrue, Vice President of Government Affairs, T-Mobile USA, Inc. to Ms. Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-440, CC Docket Nos. 02-33, 95-20, 98-10 (filed Mar. 10, 2006) ("T-Mobile March 10 Letter").

deregulation of a number of special access services – particularly those relying on packet switching and related technologies – that are replacing traditional circuit-switched special access. For purposes of the forbearance analysis, it is wholly irrelevant that the services designated by Petitioners are capable of providing “high-capacity transmission speeds of at least 200 Kbps in both directions” or that the Commission has reclassified wireline *retail* broadband Internet access services as information services.⁵

T-Mobile believes that after the Commission denies the Petitions, it should address special access concerns within the context of the *Special Access Proceeding*, and it urges the Commission to turn to that proceeding as soon as possible. Because the forbearance sought in the Petitions would effectively deregulate any wholesale service that qualifies as “broadband,” however, it is essential that the Commission act promptly here. Forbearance in these circumstances would harm Petitioners’ wholesale customers and the end users such customers serve. The Petitions should be denied.

I. THE MARKETPLACE FOR THE WHOLESALE SERVICES COVERED BY THE PETITIONS IS NOT COMPETITIVE

The Petitions request forbearance for high-speed broadband transmission services that the Petitioners and other similarly situated carriers offer to other carriers.⁶ Just as Verizon sought forbearance for broadband services that can replace or eliminate the need for many traditional special access services, the Petitioners seek similar relief for their high-speed services, particularly their “packet-switched services,” “broadband services other than those providing Internet access,” and “non-TDM based broadband

⁵ The baseline for the speed or bandwidth of the services for which the Petitioners refer to and request forbearance for is 200 kbps in each direction. *See* Qwest Petition at 1; AT&T Petition at 8; BellSouth Petition at 7; Embarq Petition at 2.

⁶ *See* AT&T Petition at 5; Qwest Petition at 1; Embarq Petition at 1; BellSouth Petition at 7.

transmission services.”⁷ Petitioners’ insistence that their requests do not implicate special access is not persuasive – as networks evolve to incorporate optical broadband technologies and packet switching, T-Mobile and other independent carriers are forced to rely on these types of services for their transport needs. Indeed, T-Mobile currently purchases under special access tariffs a number of the services referenced in the Petitions.

Notwithstanding Petitioners’ contentions, the marketplace for these broadband services at the wholesale level is not competitive. AT&T claims that the Commission has rejected arguments about market power and monopoly pricing in the special access market in the *SBC-AT&T Merger Order*,⁸ by finding that “where [unbundled network elements] UNEs are available, they provide an alternative for special access service.”⁹ In the *Triennial Review Remand Order (TRRO)*, however, the Commission significantly limited the ability of wireless carriers such as T-Mobile to qualify for access to UNEs.¹⁰ More importantly for the purposes of this proceeding, T-Mobile *currently* does not have access to UNEs as an alternative for special access in those markets where UNEs are

⁷ See Qwest Petition at 1; AT&T Petition at 5, 8; BellSouth Petition at 3; Embarq Petition at 2; *see also* Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services, WC Docket No. 04-440 (filed Dec. 20, 2004) (“Verizon Forbearance Petition”) at 2. The Petitioners also include appendices and attachments listing the services for which they are seeking relief. Some of the services listed include Frame Relay Service, ATM, Ethernet-based services, Optical Transport and Networking services, and Wave-Based Transport services, all of which T-Mobile purchases from Petitioners. *See* AT&T Petition at Appendix A; Embarq Petition at Attachment A; BellSouth Petition at Attachment A; and Qwest Petition at Attachment A.

⁸ *SBC Communications Inc. and AT&T Corp. Applications for Transfer of Control*, WC Docket No. 05-65, 20 FCC Rcd 18290 (2005), WC Docket No. 05-65, 20 FCC Rcd. 18290 (2005) (*SBC-AT&T Merger Order*).

⁹ *See* AT&T Petition at 23, citing *SBC-AT&T Merger Order* at ¶. 55.

¹⁰ In the *TRRO*, the FCC denied access to UNEs “for the exclusive provision of mobile wireless services.” *Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket Nos. 04-313, 01-338, Order on Remand, 20 FCC Rcd 2533, at ¶ 34.

available. Thus, nondiscriminatory access to special access facilities is critical for T-Mobile.¹¹

Similar to AT&T, BellSouth argues that broadband services nationwide are competitive and that the conditions that led the Commission to remove common carrier regulation for broadband Internet access transmission services in the *Wireline Broadband Order* are equally present for the broadband services that are the subject of its petition.¹² Embarq also asserts that intense intermodal competition in the broadband market exists, and that incumbent LECs have “secondary status in every segment of the national broadband market.”¹³

As numerous commenters point out, however, these incumbent LEC claims are misleading to the extent they apply to wholesale broadband services.¹⁴ Although the Commission may have found that the consumer broadband Internet access market faces

¹¹ Sprint Nextel also argues that competitive access to UNEs were limited by the *TRRO*, and that only Title II safeguards remain, which the Petitions seek to have removed. *See* Sprint Nextel Corporation’s Opposition to Petitions for Forbearance, WC Docket Nos. 06-125, 06-147 (filed Aug. 17, 2006) (Sprint Nextel Opposition) at 13. Alpheus Communications, *et al.* argues that in light of UNE limitations, competitors’ services will be particularly vulnerable to BOC efforts to favor their own broadband operations while potentially denying access, or offering it on less favorable terms to competitors in comparison to what the BOC provides to itself. Opposition of Alpheus Communications LP, *et al.*, WC Docket No 06-125 (filed Aug. 17, 2006) (Opposition of Alpheus *et al.*) at 23.

¹² *See* BellSouth Petition at 12.

¹³ Embarq Petition at 6.

¹⁴ *See* Sprint Nextel Opposition at 9-11; Opposition of Time Warner Telecom Inc., Cbeyond Communications, LLC, and One Communications Corp., WC Docket Nos. 06-125, 06-147 (filed Aug. 17, 2005) at 20-23; Comments in Opposition of Broadview Networks, Covad Communications, CTC Communications, Inc., Eschelon Telecom, Inc., Nuvox Communications, XO Communications, and Xpedius Management Company LLC, WC Docket Nos. 06-125, 06-147 (filed Aug. 17, 2006) at 22-28, 30; Opposition of Comptel, WC Docket No. 06-125 (filed Aug. 17, 2006) at 10, 13, 17-21; Comments of Earthlink, Inc. and New Edge Networks, Inc. in Opposition to Petitions, WC Docket Nos. 06-125, 06-147 (filed Aug. 17, 2006) at 10-18; National Telecommunications Cooperative Association Initial Comments, WC Docket Nos. 06-125, 06-147 (filed Aug. 17, 2006) (“NTCA Comments”) at 3-4; Opposition of Alpheus *et al.* at 14-21.

competition from a variety of network platforms, including cable modem, wireless broadband, and competitive DSL,¹⁵ the Commission has emphasized on a number of occasions that the same is not true for wholesale services. The Commission explained in the *Verizon-MCI and SBC-AT&T Merger Orders*, for example, that without the imposition of appropriate conditions, the mergers were likely to harm wholesale purchases of special access services.¹⁶ Unless and until the Petitioners can point to concrete evidence demonstrating that the special access market has become competitive, grant of their Petitions would be neither warranted nor wise.

II. THE PETITIONS DO NOT INCLUDE ENOUGH SPECIFICITY TO PERMIT MEANINGFUL ANALYSIS

As noted above, the Petitioners request very broad relief from all Title II and *Computer Inquiry* regulations for certain broadband services that they offer.¹⁷ While Embarq makes vague statements about the regulations from which it wants relief (*i.e.*, tariffs, prices, cost support, etc.), neither it nor the other Petitioners request forbearance any from specific Commission rules.¹⁸ On the contrary, the Petitioners merely seek “the relief granted to Verizon by operation of law” in the *Verizon Forbearance Proceeding*.¹⁹ The Petitioners likewise fail to provide any analysis demonstrating that regulatory forbearance for a particular service meets the statutory criteria.

¹⁵ See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, WC Docket Nos. 02-33, 01-337, 95-20, 98-10, 20 FCC Rcd 14853 (2005) (“*Wireline Broadband Order*”) at ¶ 47.

¹⁶ See *SBC-AT&T Merger Order* at ¶ 24; *Verizon Communications Inc. and MCI, Inc. Applications for Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433 (2005) (*Verizon-MCI Merger Order*) at ¶ 24; see also Sprint Nextel Opposition at 10-11; NTCA Comments at 3.

¹⁷ See Qwest Petition at 1; AT&T Petition at 1, 7; BellSouth at 2, 9; Embarq Petition at 1-2.

¹⁸ See Embarq Petition at 2.

¹⁹ See, *e.g.*, Qwest Petition at 1.

The problem with Petitioners' reference to Verizon's petition is that Verizon's forbearance request was itself impermissibly vague and the petition went into effect without *any* Commission analysis whatsoever. Thus, the scope of the forbearance provided in that proceeding is unclear.²⁰ As Sprint Nextel explains, there is no basis for Petitioners' assertion that the uncertain regulatory relief awarded to Verizon by operation of law somehow already applies to all incumbent LECs.²¹

In the context of forbearance petitions (with the notable exception of the *Verizon Forbearance Proceeding*), the Commission usually is very clear about specifying the extent of the regulatory relief it intends to grant.²² For example, in the *Qwest Forbearance Order*, the Commission stated that its "first task is to identify the specific regulatory provisions at issue."²³ Similarly, in the *ASI Forbearance Order*, the Commission declared that the "forbearance at issue was limited to the requirements raised in the petition."²⁴

As Sprint Nextel points out, the broad relief that the Petitions request from all Title II regulations would presumably free Petitioners of *any* common carrier regulations,

²⁰ See Sprint Nextel Opposition at 22 ("It is understandable that the petitioners are unclear what relief they are seeking. Chairman Martin and Commissioner Tate acknowledged they were unsure what relief the Commission granted when it acted on Verizon's petition. . . .").

²¹ See Sprint Nextel Opposition at 22.

²² In the *Qwest Omaha Forbearance Order*, the Commission specifically states that its "sole task here is to determine whether to forbear under the standard of section 10 from the regulatory and statutory provisions at issue, and we do not – and cannot – issue comprehensive proclamations in this proceeding." *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) ("*Qwest Omaha Forbearance Order*") at ¶ 14.

²³ *Qwest Omaha Forbearance Order* at ¶ 16.

²⁴ *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, Memorandum Opinion and Order, WC Docket No. 01-337, 17 FCC Rcd 27000 (2002) at ¶ 14 (*ASI Forbearance Order*); see also *Qwest Omaha Forbearance Order* at n. 48.

including sections 201 and 202 of the Communications Act.²⁵ While the Act may not preclude the Commission from granting forbearance from those provisions, the Commission has been reluctant to take such extreme action. In the *Qwest Omaha Forbearance Order*, for instance, the Commission declined to grant Qwest forbearance from *any* dominant carrier regulations for the provision of its enterprise services in the Omaha market, much less blanket relief from sections 201 and 202.²⁶ The Commission found that Qwest “did not provide sufficient data for its service territory . . . to allow [it] to reach a forbearance determination under section 10(a) for the enterprise market.”²⁷ Furthermore, as Sprint Nextel notes, the Commission chose not to give incumbent LECs relief from sections 201 and 202 in the *Special Access Forbearance Order*, and reiterated its previous admonition that those sections are “the cornerstone of the Act”²⁸

To the extent the Commission chose to grant Qwest forbearance from certain dominant carrier regulations in connection with its provision of retail service, it confined that relief to the specific rules Qwest cited in its Petition.²⁹ Further, the Commission

²⁵ See 47 U.S.C § 201-202; see also Sprint Nextel Opposition at 12.

²⁶ See *Qwest Omaha Forbearance Order* at ¶ 50.

²⁷ See *Qwest Omaha Forbearance Order* at ¶ 50.

²⁸ *Petition of SBC Communications Inc. for Forbearance from the Application of Title II Common Carrier Regulation to IP Platform Services*, Memorandum Opinion and Order, 20 FCC Rcd 9361 (2005) at ¶ 17 (citing *Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance For Broadband Personal Communications Services*, WT Docket No. 98-100, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 16857 (1998) at ¶ 23); see also Sprint Nextel Opposition at 12.

²⁹ See *Qwest Omaha Forbearance Order* at ¶ 26.

gave Qwest such relief only after conducting an exhaustive analysis as specified by the Act.³⁰

The Petitioners, by contrast, make no effort to provide any real support for their sweeping requests for forbearance. In light of the Petitions' lack of specificity regarding the scope of the forbearance they seek, it would not be possible for the Commission to undertake the type of public interest analysis demanded by Congress.³¹

III. PETITIONERS' REQUESTS DO NOT SATISFY THE STATUTORY CRITERIA FOR FORBEARANCE

Notwithstanding the fundamental defects described above, if the Commission decides to address Petitioners' forbearance requests, it should deny the Petitions on the ground that they fail to satisfy the criteria set forth in section 10(a) of the Act.³² In particular, Petitioners do not, and cannot, demonstrate that grant of the forbearance requested (1) would not create unjust and unreasonable charges, practices and classifications in the high capacity special access services market; (2) would not harm

³⁰ The Commission specifically "focus[ed] [its] forbearance review [on] the rules and regulations that Qwest specifically identifie[d] in its Petition: '(1) requirements arising under section 214 that apply to dominant carriers, (2) Sections 61.38 and 61.41-61.49, which require dominant carriers to file tariffs on up to 15-days notice with cost support; and (3) Sections 61.41-61.49, and 65, which impose price cap and rate of return regulation on dominant carriers.'" *Qwest Omaha Forbearance Order* at ¶ 16.

³¹ Similarly, there is no basis for granting the requests of several rural and independent incumbent LECs, who submitted comments on the Petitions urging the Commission to extend the broad forbearance sought in the Petitions to all incumbent LECs nationwide. These carriers provide only general statements concerning the alleged competitiveness of the broadband services market, and offer no details regarding the circumstances in their own service territories. *See* Comments of ACS of Anchorage, WC Docket Nos. 06-125, 06-147, 06-109 (filed Aug. 16, 2006) at 2; *see also* Comments of Cincinnati Bell Telephone Company LLC, WC Docket Nos. 06-125, 06-147 at 2.

³² *See* 47 U.S.C. § 160(a)

consumers of high capacity special access services; and (3) is consistent with the public interest.³³

First, contrary to the Petitioners' claims, grant of the relief they seek has the potential to lead to special access rates that are unjust and unreasonable – at least for non-affiliated carriers like T-Mobile. T-Mobile relies on incumbent LECs for crucial elements of its wireless network, and these incumbent LECs have strong incentives to protect their own and their affiliates' (including wireless affiliates') offerings from independent wireless competition.³⁴ Given Petitioners' uncontested dominance in providing the wholesale services at issue here, elimination of all Title II regulation, especially sections 201 and 202, would provide them with the means to act on those incentives. Not only should the Commission maintain its Title II regulations in the context of wholesale broadband services, it should complete its *Special Access Proceeding* as soon as possible by adopting improved safeguards to prevent anticompetitive behavior in this rapidly-consolidating wireline marketplace.³⁵

Second, the Petitions should be rejected because the relief requested would harm competition to the detriment of consumers. In the *Special Access Proceeding*, T-Mobile provided evidence that rates for special access transport services are supra-competitive, with the price for such services in every market analyzed ranging from two to six times the estimated competitive price.³⁶ T-Mobile also explained that, nationwide, it purchases

³³ See § 160(a)(1-3).

³⁴ See T-Mobile Special Access Comments at 4.

³⁵ See T-Mobile Special Access Comments at 4.

³⁶ See T-Mobile Special Access Comments at Attachment B, Declaration of Simon J. Wilkie, ¶18.

94 percent of its interoffice transport links as special access from incumbent LECs.³⁷

Because of their control of these types of special access inputs, incumbent LECs would be able to stifle the competition – voice, data, and multimedia – that T-Mobile and others provide to end user customers.

Third, grant of the requested forbearance would be contrary to the public interest. Although reliance on the competitive marketplace generally is preferable to government oversight, that is only the case when there is no marketplace failure. As described above, special access services are not subject to competition. In such circumstances, there is no support for Petitioners' claims that forbearance from Commission oversight will somehow accelerate broadband deployment.³⁸ To the contrary, freeing incumbent LECs to discriminate unreasonably by raising the price and degrading the quality of services required by other providers would do little but thwart competitors.

As T-Mobile and many other parties have explained at length in the *Special Access Proceeding* and the wireline merger proceedings, the Commission should strengthen its Title II oversight of special access services by reforming its pricing flexibility and price cap rules.³⁹ T-Mobile believes that the *Special Access Proceeding*, with its comprehensive record, is the proper vehicle for improving the oversight of special access services, including the broadband services that are the subject of these Petitions. In the meantime, however, it is crucial that the Commission deny these Petitions within the timeframe allotted under the Act. Eliminating all regulation of

³⁷ See T-Mobile Special Access Comments at 7.

³⁸ See AT&T Petition at 7; Qwest Petition at 11; Embarq Petition at 13.

³⁹ See, e.g., T-Mobile Special Access Comments.

services for which T-Mobile and other carriers have no meaningful alternatives would be an enormous setback for competition, and unfortunately consumers.

CONCLUSION

For the reasons set forth above, the Commission should deny the Petitions.

Respectfully submitted,

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