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October 6, 2006

VIA ELECTRONIC SUBMISSION
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW – Lobby Level
Washington, D.C. 20554

Re: *Petition of AT&T Inc. for Forbearance of Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket No. 06-120

Dear Ms. Dortch:

AT&T showed in its earlier filings in this proceeding that the long distance marketplace is fiercely competitive and that this competition is intensifying with the advent and explosive growth of intermodal competition. We showed, further, that this explosion of new competition is not limited to the long-distance sector, and that AT&T and other incumbent LECs now face significant and growing competition for local services. By this letter, AT&T calls the Commission's attention to three recent developments that underscore these showings.

First, several state commissions recently concluded that both local and long-distance services in their states are competitive and, thus, deregulated AT&T's and other carriers' provision of those telecommunications services either throughout the state or in the requested city. Second, recent data demonstrate that cable telephony continues to experience tremendous growth at the expense of AT&T and other wireline providers. Indeed, according to a cable trade publication, North American cable providers are signing up an average of 11,000 customers a *day* for IP cable telephony.[1] Finally, in a report released on September 29, 2006, the Commission announced that mobile telephone subscribership continues to grow at a rapid pace (climbing to 213 million subscribers), while per minute revenue continues to decline (by 22 percent in 2005).[2] The Commission's most recent data confirms that mobile telephones are becoming ubiquitous – the nationwide penetration rate is now 71 percent – and reinforces the

[1] *See* Cable Racks Up Over 1 Million VoIP Subs in Q2, Cable Digital News, Alan Breznick (Sept. 18, 2006), http://blog.cabledigitalnews.com/index.php?id=555 (Sept. 18 Cable Digital News Article).

[2] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, WT Docket No. 06-17, Eleventh Report, FCC 06-142 (rel. Sept. 29, 2006) (*CMRS Eleventh Report*).

evidence provided earlier by AT&T that the wireless industry provides robust competition to AT&T in the long distance market.

State Deregulatory Efforts. The California Public Utilities Commission (CPUC) recently issued an order deregulating AT&T's provision of retail telecommunications services, finding that it and other ILECs:

> "lack the ability to limit the supply of telecommunications services in voice communications market, and therefore lack the market power needed to sustain prices above the levels that a competitive market would produce. We find that this result holds throughout their service territories and for both business and residential services."[3]

Consistent with the evidence AT&T has presented to this Commission that it is losing tens of thousands of access lines every month to competitors,[4] the CPUC noted that, in recent years, AT&T lost over 20 percent of its residential and business access lines in California and that intermodal competitors like cable and wireless place competitive pressure on and offer a realistic alternative to wireline telecommunications service.[5] Among other things, the CPUC determined that, in California, "wireless substitution accounts for *approximately half of ILEC primary residential wireline losses*" as customers grow more willing to "cut the cord."[6] The CPUC also found that VoIP service is a competitive threat to carriers like AT&T and "there is little doubt that VoIP is a close substitute for wireline service. . . ."[7] Because ILECs in California lack market power in the voice communications market, the CPUC granted ILECs, among other things, pricing flexibility for both residential and business services, and streamlined tariffing.

In its August 30, 2006 Order, the Illinois Commerce Commission (ICC) deregulated the rates for AT&T's residential telecommunications services in Chicago, deeming them to be

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[3] Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the Regulation of Telecommunications Utilities, Opinion, Rulemaking 05-04-005, California Public Utilities Commission, at 117 (dated August 24, 2006) (*CPUC Deregulatory Order*) (available at http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/59388.htm).

[4] *See, e.g.,* AT&T Reply Comments at 2.

[5] *CPUC Deregulatory Order* at 122 (noting that, in California, AT&T lost 21% of non-Lifeline primary residential switched access lines and 23% of its business switched access lines from 2000-2004).

[6] *Id.* at 118 (citing a Verizon reply declaration, emphasis in the original); *see also id.* at 122 (finding that wireless technology exercises a competitive check on AT&T's provision of telecommunications services).

[7] *Id.* at 120; *id.*at 262 (finding that VoIP provided by cable telephone companies is a direct substitute for circuit-switched wireline service).

competitive. Like the CPUC, the ICC noted that AT&T has been "significantly impacted" by competition, losing about 30% of its residential access lines during the past five years.[8]

California and Illinois are the latest in a long line of states (both commissions and legislatures) to deregulate rates for retail telecommunications services. Indeed, according to NARUC's research arm, NRRI, during the past two years, 25 states have deregulated the retail rates provided by one or more LECs operating within their respective states.[9] The findings of these state commissions and legislatures – that AT&T and other LECs lack market power in the provision of intrastate services, including *local* services – cannot be reconciled with claims that AT&T could somehow acquire market power in the fiercely competitive long-distance marketplace by leveraging ostensible market power in local services.[10] Even if AT&T had market power in local services those claims would be implausible due to, *inter alia*, price cap regulation, the automated nature of AT&T's access provisioning and repair systems, and the obvious fact that any discrimination that actually had an impact on consumers' behavior would be readily detected and brought to the attention of regulators. But as these state actions confirm, AT&T no longer has market power in local services. Hence claims that the risk of leveraging warrants retention of outmoded dominant carrier regulation of long distance services no longer have even a shred of credibility.

<u>*Cable's VoIP Growth "Shatters" Records*</u>. In the *SBC/AT&T Merger Order*, the Commission recognized that "mass market subscription to cable-based VoIP continues to increase nationwide as cable operators continue to roll out these services throughout their footprints."[11] Since that order, cable-based VoIP services have grown even more quickly than anticipated. According to Cable Digital News, a cable trade publication, Time Warner Cable, Cablevision Systems, and Comcast alone are now signing up close to 10,000 or more subscribers

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[8] Investigation of Specified Tariffs Declaring Certain Services to be Competitive Telecommunications Services, ICC Docket No. 06-0027, Order, Illinois Commerce Commission, at 90 (dated August 30, 2006) (available at http://eweb.icc.state.il.us/e-docket/reports/view_file.asp?intIdFile=181253&strC=bd).

[9] *See* Report by the National Regulatory Research Institute to the NARUC Committee on Telecommunications, Update of Changes in State Retail Rate Regulation of LECs (October 5, 2005 – July 15, 2006), Lilia Perez-Chavolla, July 2006.

[10] *See, e.g.*, McLeod Comments at 3 ("AT&T continues to possess market power in the provision of last mile access to customers and, therefore, has the ability to harm competitors and undermine competition in the provision of long distance services."); Comptel Comments at 3-4 (asserting that AT&T's control of local exchange facilities "enables it to engage in predatory pricing, discriminate against rivals of its interLATA services, and engage in other anti-competitive conduct").

[11] *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, 20 FCC Rcd. 18290, at ¶ 86 (2005).

every week.[12] While cable signed up 1.03 million subscribers in the second quarter, the article notes that the BOCs and Embarq collectively lost approximately 2.6 million switched access lines during this same period of time.[13] Indeed, cable telephony offerings have fared so well that the cable companies have "hiked" their VoIP sign-up goals for 2006.[14] By the end of next year, the cable industry now predicts that it will have approximately 11.5 million VoIP subscribers, a *325% increase* in subscribers in just two years![15]

Wireless Growth Continues Unabated. Just as cable providers are transforming the telecommunications landscape, so too are wireless providers. According to recent Commission data, during 2005, wireless subscribership jumped from 184.7 million to 213 million.[16] During this period of time, consumers talked, on average, 120 more minutes per month on their wireless phones (increasing to an average of 740 minutes/month) and are spending less in the process (per minute revenue dropped 22 percent).[17] While the national penetration rate climbed to 71 percent, the Commission's report notes that just about everyone between the ages of 20 and 49 has a wireless phone.[18] Moreover, competition among the wireless industry is fierce: fully 98 percent of the total U.S. population lives in counties where three or more different operators compete to offer wireless service.[19] The Commission's recent data demonstrate what AT&T explained in its earlier filings - wireless phone service is ubiquitous, increasingly inexpensive, and is used interchangeably with wireline service. For example, the Commission notes that, according to one analyst, "customers in nearly a third of American households make at least half their long-distance calls at home from their cell phones rather than from their landlines."[20] But consumers are not just using wireless services as substitutes for long-distance services. Wireless is also a substitute for local service. Thus, in a recent survey, 42 percent of cellphone users said that they also had a landline phone, but that they used their cellphones "most."[21] And, as noted

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[12] Sept. 18 Cable Digital News Article.
[13] *Id.* (citing a Primetrica report).

[14] *Id.* (noting that Comcast, for example, increased its VoIP subscriber estimate to 1.3 -1.4 million, up from 1 million).

[15] *Id.* (citing a Cable Industry Insider report and publicly reported figures of the cable companies to show that cable had just over 2.7 million VoIP subscribers at the end of 4th quarter 2005, 3.7 million at the end of 1st quarter 2006, and 4.8 million at the end of 2nd quarter 2006).

[16] *CMRS Eleventh Report* at ¶ 5.

[17] *Id.* at ¶¶ 5, 154; *see also* Separate Statement of Commissioner Deborah Taylor Tate.

[18] *Id.* at ¶ 204; *see also* Separate Statement of Commissioner Robert M. McDowell.

[19] *Id.* at ¶ 2; *see also* Separate Statement of Chairman Kevin J. Martin.

[20] *Id.* at 206 (further citation omitted).

[21] *Id.* (further citation omitted).

above, the CPUC has found that half of AT&T's primary residential access line losses are attributable to wireless substitution.

Based on the unrefuted evidence that has been placed in the record, it is clear that AT&T lacks all ability in the retail interstate interexchange market to "raise and sustain prices . . . significantly above competitive levels by restricting its own output," which is the standard that the Commission applies to determine whether dominant carrier regulation is appropriate. States are reaching this same conclusion in their review of the local exchange access markets. AT&T urges the Commission to recognize the significant findings made by states and the recent data demonstrating the increasing competition faced by AT&T from cable telephony and wireless, and to grant expeditiously AT&T's forbearance request.

Please do not hesitate to contact me if you require additional information.

Sincerely,
/s/
Cathy Carpino

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