

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

In the Matter of)	
)	
Inquiry Concerning the Deployment of)	
Advanced Telecommunications)	GN Docket No. 07-45
Capability to All Americans in a Reasonable)	
and Timely Fashion, and Possible Steps)	
to Accelerate Such Deployment)	
Pursuant to Section 706 of the)	
Telecommunications Act of 1996)	

REPLY COMMENTS OF AT&T INC.

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TABLE OF CONTENTS

I.	Introduction and Summary	1
II.	Discussion	2
	A. The U.S. Broadband Marketplace Is Highly Competitive.....	2
	B. The Commission Should Maintain the Deregulatory Course It Has Charted for the Broadband Marketplace.....	9
	1. Market Based Initiatives – The ConnectKentucky Model.....	11
	2. Heavy-Handed Regulatory Mandates.....	13
	C. The Commission Should Not Abandon Its 200 Kbps Threshold for Broadband Services.....	18

I. INTRODUCTION AND SUMMARY

AT&T, Inc. and its affiliated companies (collectively, AT&T) respectfully submit the following reply comments in response to the Commission's fifth inquiry concerning the deployment of broadband to all Americans pursuant to section 706 of the Telecommunications Act of 1996.¹ The record in this proceeding persuasively shows that the market for broadband services in the U.S. is highly competitive, with multiple providers offering consumers a wide variety of broadband service options at increasing speeds and decreasing prices. In light of this robust competition, the most effective way for the Commission to satisfy its Congressionally-mandated obligation to encourage investment in broadband networks is to re-affirm its "hands-off" approach to the Internet and to "let the marketplace, not the government, pick the winners and losers among new services."²

While there is strong support in the record for these positions -- particularly the assertions that the broadband market is competitive³ -- some commenters allege that the market is, at best, subject to a cable-telco "duopoly."⁴ They then claim, quite predictably, that additional regulation is the surest way to encourage more competition and incent more investment in broadband facilities. Their arguments, however, rest on flawed factual premises and recycled legal theories

¹ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 07-45, Notice of Inquiry, FCC 07-21 (released April 16, 2007) (*Fifth 706 Inquiry*). In these comments, AT&T uses the term "broadband" to refer collectively to both "high-speed services" and "advanced services" as the Commission defines those terms, unless otherwise specified. In addition, because the Commission has traditionally focused on residential and small business customers in its section 706 inquiries, AT&T's comments are directed primarily to addressing issues that affect those market segments, unless otherwise noted.

² See *The FCC and the Unregulation of the Internet*, Jason Oxman, FCC Office of Plans and Policy Working Paper No. 31 at 24 (July 1999).

³ See Verizon Comments at 3-31; CTIA Comments at 3-8; Clearwire Comments at 2-7; Sprint Comments at 4-7; NCTA Comments at 5-15; NTCA Comments at 4-5.

⁴ See, e.g., Consumers Union Comments at 47.

that this Commission has previously rejected. The Commission should resist the call from these commenters for more regulation, and should instead let broadband competition continue to flourish “unfettered by Federal or State regulation,” just as Congress intended.⁵

The Commission should also retain its tiered approach to defining advanced telecommunications capability, with the existing 200 Kbps threshold as the starting point for that definition. While some commenters suggest abandoning this 200 Kbps threshold in favor of a higher-speed definition, the multitude of different speeds proposed by these commenters confirms that the current tiered approach, which looks at a broad range of speeds, is the most appropriate way to define broadband and the most informative way for the Commission to monitor trends in the marketplace as consumers migrate from lower to higher speeds over time.

II. DISCUSSION

A. The U.S. Broadband Marketplace Is Highly Competitive.

Three years ago in the *Fourth 706 Report*, the Commission found that “the competitive nature of the broadband market, including new entrants using new technologies, is driving broadband providers to offer increasingly faster service at the same or even lower retail prices.”⁶ Since that time, the number of broadband subscribers has more than doubled to 64 million and there are now more than 1,300 entities providing broadband service in the U.S.⁷

Nonetheless, some commenters stubbornly assert that there is no significant competition in today’s broadband marketplace and there are few viable prospects for competition in the near future. Consumer’s Union, for example, claims that the U.S. broadband market is a “stagnant

⁵ 47 U.S.C. § 230(b)(2).

⁶ *Availability of Advanced Telecommunications Capability in the United States*, GN Docket No. 04-54, Fourth Report to Congress, FCC 04-208 at 13 (released March 17, 2004) (*Fourth 706 Broadband Report*).

⁷ *High-Speed Services for Internet Access: Status as of June 30, 2006*, Wireline Competition Bureau, FCC, at Tables 1, 7 (Dec. 2006) (*FCC December 2006 Broadband Data Report*).

duopoly” that “shows few signs of weakening.”⁸ The New Jersey Rate Counsel similarly alleges the existence of a “cable-telecommunications duopoly.”⁹ M2Z Networks, for its part, claims that because of the “current duopoly in the broadband markets, there has been little evidence of vigorous price competition,” which is creating a “digital divide” between those who can afford broadband and those who cannot.¹⁰

While these commenters are quick to allege the existence of an anti-consumer “duopoly,” they offer little support for their claims beyond a general recitation of cable modem and DSL market shares.¹¹ Such a facile analysis, however, neither proves the existence of anti-competitive duopoly market behavior nor shows that consumers are being harmed in any way. A typical concern expressed about a duopoly or oligopoly market is that a small number of suppliers may restrict output to artificially drive up prices thereby diminishing consumer welfare.¹² But just the opposite is occurring in today’s broadband marketplace: a substantial number of firms are aggressively deploying new broadband facilities and services, which has resulted in greater competition, lower prices and faster, more innovative services for consumers.

⁸ Consumers Union Comments at 47, 29.

⁹ New Jersey Rate Counsel at 35 and Attachment.

¹⁰ M2Z Comments at 9. At least one consumer advocate seems to believe that claims about a broadband duopoly are premature. According to NASUCA, the “first step . . . is to get broadband access for all consumers who desire it. . . . [t]hen we can worry about fostering competition for such access.” NASUCA Comments at 12.

¹¹ Although New Jersey Rate Counsel submitted a lengthy white paper alleging the existence of a cable-telco duopoly, the white paper focuses mostly on raw market share data and a few anecdotes about short-term pricing behavior. New Jersey Rate Counsel Comments at Attachment. The white paper contains no meaningful analysis of multi-year pricing or speed trends, which, as discussed below, clearly show that consumers are benefiting from intense competition in the marketplace.

¹² See New Jersey Rate Counsel Comments at Attachment pp. 25-29. See also *The Antitrust Economists’ Paradox*, Prof. Thomas J. DiLorenzo, Loyola College, at 4 (1991) (“In introducing federal ‘antitrust’ legislation, Sen. Sherman and his congressional allies claimed that combinations or trusts tended to restrict output and thus drive up prices.”)

Far from restricting output, the leading cable and wireline broadband service providers have been investing billions of dollars to deploy high-speed networks that will support the next generation of advanced broadband services. AT&T, for example, expects to spend approximately \$6.5 billion to deploy a fiber-to-the-node network that will enable it to provide broadband IP-enabled voice, video and Internet access services to 18 million households in its service territory.¹³ Verizon is spending billions of dollars to pursue a fiber-to-the-home strategy that will also support a suite of voice, video and Internet access services.¹⁴ Not to be outdone, the cable industry has reportedly spent upwards of \$110 billion over the last decade to build-out “a 21st century platform for advanced services.”¹⁵

All of this investment has been paying tremendous dividends for consumers and the overall economy. Indeed, the deployment of advanced networks that support multiple services has ratcheted-up competition between cable and wireline broadband providers to new heights. While initial broadband network deployments fostered cable-telco competition in the provision of broadband Internet access services, these new broadband platforms are now enabling cable companies to add voice services to their product mix at the same time telephone companies are beginning to offer video services of their own. Thus, consumers not only benefit from the ability to purchase a “triple play” of voice, video and Internet services from a single provider at a bundled discount, but they also benefit from triple competition: head-to-head cable-telco competition across three different services. And if that were not enough, cable companies just last month began offering mobile wireless services in a concerted effort to market the “quadruple

¹³ See *AT&T says costs raise for TV system's launch*, Wall Street Journal (May 8, 2007).

¹⁴ Verizon Comments at 7-8.

¹⁵ NCTA Comments at 2-3.

play” – voice, video, Internet and wireless – in direct competition with the leading telco providers.¹⁶

Aside from delivering direct consumer benefits, this competition is also spurring job-producing economic growth. As explained in a recent press account from San Francisco, “rivals Comcast Corp. and AT&T Inc. are on a Bay Area-wide hiring binge as they battle each other and roll out new products in an effort to come out on top in an industry where customer service will be a key deciding factor.”¹⁷ According to the report, Comcast “is adding 400 jobs over the next three months to help roll out its bundled product offering of cable TV, high-speed Internet and phone service” while AT&T “has hired almost 200 employees” since the beginning of the year to deploy its U-verse IPTV service and plans to “hire another 100 employees through May and hundreds more by year’s end as part of its efforts to expand U-verse TV.”¹⁸

While this vigorous cable-telco rivalry is certainly beneficial to consumers and the economy, it is only the beginning of the competitive story in the broadband marketplace. As the record in this proceeding clearly demonstrates, a variety of inter-modal broadband providers are actively competing today for consumer’s broadband wallets. AT&T, Verizon and Sprint have all invested heavily to deploy nationwide 3G wireless broadband Internet access services, while T-Mobile spent over \$4 billion in the Commission’s recent auction of spectrum for Advanced Wireless Services (AWS) and plans to begin offering 3G services in 2007.¹⁹ In fact, the number

¹⁶ See *Triple play not enough? Say hey to quad play*, San Francisco Chronicle (May 28, 2007); *Cable TV looks for new ways to move onto rivals’ turf*, Atlanta Journal-Constitution (May 10, 2007); *Time Warner makes wireless launch*, San Antonio Express-News (April 24, 2007); *Telecom giants roll out service; Sprint and Time Warner team up*, Kansas City Star (April 23, 2007).

¹⁷ *Rivals AT&T and Comcast adding jobs, battling for customers*, Insidebayarea.com (April 20, 2007).

¹⁸ *Id.*

¹⁹ See CTIA Comments at 4-8; Verizon Comments at 15-17; FCC AWS auction results at http://wireless.fcc.gov/auctions/66/charts/66press_3.pdf.

of mobile wireless broadband lines in the U.S. more than tripled during the first six months of 2006, and now tops 11 million lines according the Commission's most recent data.²⁰

These 3G networks, however, are not the only wireless broadband option for consumers. Sprint, for example, is deploying a "fourth-generation ('4G') nationwide broadband mobile network, using its 2.5 GHz spectrum holdings and the mobile WiMAX technology standard."²¹ Relying on this network, Sprint will be able to "provide customers with high-quality, visual-centric, and interactive applications and content, with speeds of 2 to 4 Mbps."²² Sprint intends to begin deploying its 4G WiMAX service by late 2007 and expects to be capable of serving 100 million consumers by 2008.²³ Clearwire, another provider of WiMAX-based broadband services, already offers service in 38 markets covering more than 9 million people in 400 municipalities from Florida to Alaska, and estimates that it could commercially launch its service over spectrum covering 117 million people and potentially far more as spectrally efficient technologies continue to be developed.²⁴

In addition to the deployment of Wi-MAX, Wi-Fi hot spots continue to proliferate across the U.S. with the financial backing of EarthLink, T-Mobile, Google and other commercial entities, including AT&T, as well as a growing number of municipalities.²⁵ According to

²⁰ *FCC December 2006 Broadband Data Report* at Table 1.

²¹ Sprint Comments at 8.

²² *Id.*

²³ *Id.*

²⁴ Clearwire Comments at 3, 5.

²⁵ See *EarthLink lands largest municipal Wi-Fi network deal*, Atlanta Business Chronicle (April 13, 2007); T-Mobile HotSpot at <http://hotspot.t-mobile.com/>; What is Google WiFi? at <http://wifi.google.com/support/bin/answer.py?answer=44967&topic=9087>; *Wi-Fi fight in Chicago air; AT&T wants to provide wireless Internet*, Chicago Tribune (April 20, 2007).

research cited by Verizon, there are now approximately 50,000 U.S. Wi-Fi hot spots, accounting for more than one-third of all hot spots on the planet.²⁶ At the same time, the U.S. broadband market is served by three separate satellite broadband providers: WildBlue, HughesNet, and Starband, who collectively served almost 500,000 subscribers as of June 2006.²⁷ Broadband over powerline (BPL) is currently offered in several markets around the country, and a leading industry analyst predicts that as many as 2.5 million U.S. households will subscribe to BPL service by 2011.²⁸

Not only do consumers today have greater choices among providers of broadband services, they are also paying lower prices. According to a report by the Pew Internet and American Life Project, the average price of broadband Internet access service dropped \$3 to \$36 from February 2004 to December 2005, with average DSL Internet access prices dropping by twice that amount over the same period.²⁹ In fact, since the Commission's *Fourth 706 Report* in 2004, AT&T has lowered the monthly price of its 1.5 Mbps DSL service from \$49.95 to \$19.99. A longer-term analysis of Verizon's DSL pricing shows even more dramatic results: Verizon's monthly rate for 1.5 Mbps service dropped from \$79.95 in 2001 to \$14.98 in 2006.³⁰

At the same time prices have been coming down, speeds have been going up. For example, just four years ago AT&T's then-fastest residential DSL service (up to 1.5 Mbps) cost \$49.95 per month. Today, AT&T offers DSL service with speeds up to 6 Mbps at a monthly rate

²⁶ Verizon Comments at 19.

²⁷ *FCC December 2006 Broadband Data Report* at Table 1.

²⁸ *Growth of Broadband over Power Line to outpace Cable and DSL*, Parks Associates (Jan. 18, 2007) at http://www.parksassociates.com/press/press_releases/2007/bpl1.html

²⁹ *Home Broadband Adoption 2006*, Pew Internet & American Life Project at iv (May 28, 2006) (*Pew Broadband Report*).

³⁰ *A Consumer-Welfare Approach to Neutrality Regulation of the Internet*, Gregory Sidak at 46-47 (2006).

of \$34.99 – four times the speed for 30 percent less money.³¹ To stay competitive with the value proposition offered by DSL, the cable companies have been substantially increasing the speeds of their cable modem services while generally holding prices steady over the last several years. Leading cable companies now offer speeds ranging from 5 to 16 Mbps, with some offering capabilities reaching to 50 Mbps.³²

To be sure, broadband prices will undoubtedly fluctuate over time (both upwards and downwards) as broadband providers continually refine their product and pricing strategies to offer a compelling value proposition to consumers. But there can be no mistake about the overall pricing trends: consumers are receiving more value at lower prices as the result of intense competition in the deregulated broadband marketplace. Thus, it is not surprising that these competitive market forces are helping to significantly increase broadband penetration in the U.S., particularly among middle-income and minority subscribers. According to the *Pew Broadband Report*, broadband penetration among middle-income households (earning \$40,000 to \$50,000 per year) increased almost 70 percent between March 2005 and March 2006.³³ Over the same period, broadband adoption by African Americans increased more than 120 percent.³⁴ Thus, contrary to the unsupported claims of some commenters, the broadband marketplace hardly fits the description of a “stagnant duopoly” where firms exacerbate the “digital divide” by restricting output to drive up prices.

Indeed, in its recent decision approving AT&T’s acquisition of BellSouth, the Commissions reached this same fundamental conclusion:

³¹ See <http://www.att.com/gen/general?pid=6431>

³² NCTA Comments at 8.

³³ *Pew Broadband Report* at i.

³⁴ *Id.*

We agree with the Applicants that there is substantial competition in the provision of Internet access services. Broadband penetration has increased rapidly over the last year with more Americans relying on high-speed connections to the Internet for access to news, entertainment, and communication. Increased penetration has been accompanied by more vigorous competition. . . . Additionally, consumers have gained access to more choice in broadband providers. Moreover cable modem service and DSL service are facing emerging competition from deployment of cellular, Wi-Fi, and Wi-Max based competitors, and broadband over power line (BPL) providers.³⁵

Accordingly, consistent with its findings in the *AT&T-BellSouth Merger Order* and numerous other proceedings,³⁶ the Commission can confidently conclude on the record here that the U.S. broadband marketplace is robustly competitive.

B. The Commission Should Maintain the Deregulatory Course It Has Charted for the Broadband Marketplace.

Given the intensely competitive nature of the broadband marketplace and the tremendous consumer welfare generated by that competition, the Commission should maintain the deregulatory course it has charted for broadband services. In a series of orders issued over the last several years, the Commission declared that cable modem service,³⁷ wireline broadband

³⁵ *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, FCC 06-189 ¶ 117 (released March 26, 2007) (*AT&T-BellSouth Merger Order*).

³⁶ *See Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, WC Docket No. 01-338, Memorandum Opinion and Order, FCC 04-254 ¶29 (released Oct. 27, 2004) (“[W]e specifically reject the assertions of competitive carriers that forbearance should be denied because the BOCs either are not subject to competition with respect to their broadband offerings, or are constrained only by a duopolistic relationship with cable operators. Again, we refuse to take the static view suggested by some competitors of this dynamic broadband market, thus leveling the terms of competition, providing real competitive choice, and furthering the goal of ensuring just, reasonable and nondiscriminatory rates, terms and conditions for these services.”), *aff’d EarthLink v. FCC*, 462 F.3d 1 (D.C. Cir. 2006). *See also Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, WC Docket No. 02-33, Report and Order and Notice of Proposed Rulemaking, FCC 05-150 ¶ 84 (September 23, 2005) (*Wireline Broadband Order*) (describing the “dynamic and evolving broadband Internet access marketplace . . . where the current market leaders, cable operators and wireline carriers, face competition not only from each other but also from other emerging broadband Internet access providers.”).

³⁷ *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, GN Docket No. 00-185, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002) (*Cable Modem Declaratory Ruling*).

Internet access service,³⁸ BPL,³⁹ and wireless broadband Internet access service⁴⁰ are all unregulated information services with a telecommunications transmission component. As such, they are not subject to the investment-draining strictures of Title II common carrier regulation or the Commission's antiquated *Computer Inquiry* regime.

In reaching these conclusions, the Commission has been faithfully implementing Congress's directive "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, *unfettered by Federal or State regulation.*"⁴¹ As the Commission itself has acknowledged, "[p]erhaps the most important contribution to the success of the Internet that the FCC has made has been its consistent treatment of IP-based services as unregulated information services. . . . The next generation of Internet technologies should be treated in a similar fashion."⁴²

This "hands-off" approach has been so fundamental to the development of the global Internet, that the Commission, under a program initially developed by former Chairman Kennard, has urged regulators in *all nations* to exercise regulatory restraint when dealing with issues related to the Internet:

The Internet has evolved at an unprecedented pace, in large part due to the absence of government regulation. Consistent with the tradition of promoting innovation in new communications services, regulatory agencies should refrain from taking actions that could stifle the growth of the Internet. During this time of rapid telecommunications liberalization and technology innovation,

³⁸ *Wireline Broadband Order*.

³⁹ *United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access as an Information Service*, WC Docket No. 06-10, Memorandum Opinion and Order, FCC 06-165 (released Nov. 7, 2006).

⁴⁰ *Appropriate Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, FCC 07-30 (released March 23, 2007).

⁴¹ 47 U.S.C. § 230(b)(2) (emphasis added).

⁴² *The FCC and the Unregulation of the Internet* at 24.

unnecessary regulation can inhibit the global development and expansion of Internet infrastructure and services. To ensure that the Internet is available to as many persons as possible, the FCC has adopted a "hands-off" Internet policy. We are in the early stages of global Internet development, and policymakers should avoid actions that may limit the tremendous potential of Internet delivery.⁴³

With the Commission's well-established deregulatory approach to the Internet in mind, we next focus on some of the key broadband proposals advocated by commenters.

1. Market Based Initiatives - The ConnectKentucky Model

Several commenters have highlighted the success of a particular broadband deployment effort in the state of Kentucky, known as ConnectKentucky.⁴⁴ Established under the leadership of Kentucky's Governor, ConnectKentucky is not a government agency, but rather a not-for-profit, public-private partnership supported by state, federal and private funding.⁴⁵ Specifically, ConnectKentucky is "an alliance of technology-minded businesses, government entities, and universities," whose mission is "to accelerate the growth of technology in support of community and economic development, improved healthcare, enhanced education, and more effective government."⁴⁶

To fulfill this mission, ConnectKentucky has focused a substantial amount of effort on accelerating the deployment of broadband services across the state of Kentucky.⁴⁷ Among other things, ConnectKentucky's staff gathers information about existing broadband deployment in

⁴³ Connecting the Globe: A Regulator's Guide to Building a Global Information Community at Section IX, <http://www.fcc.gov/connectglobe/sec9.html>

⁴⁴ See, e.g., Connected Nation Comments.

⁴⁵ ConnectKentucky website at <http://www.connectkentucky.org/faq.htm>. Private sector partners in ConnectKentucky include, among others, Apple, AT&T, Cincinnati Bell, Computer Associates, Humana, Intel, JP Morgan Chase, Lexmark, Microsoft, Nortel, SouthEast Telephone, University of Kentucky, University of Louisville, WildBlue, and Windstream.

⁴⁶ See Connectkentucky website at <http://www.connectkentucky.org/faq.htm>; <http://www.connectkentucky.org/about/>

⁴⁷ See ConnectKentucky website at <http://www.connectkentucky.org/projects/pfi/>

Kentucky and seeks to understand both where service is available and, of equal importance, where it is not. After identifying unserved or underserved areas, ConnectKentucky uses “eCommunity Leadership Teams” to:

- educate residents, businesses and governments about the benefits of broadband service;
- work with local communities to develop comprehensive technology growth plans; and
- collaborate with broadband service providers to develop commercially viable strategies for deploying service to unserved or underserved areas.⁴⁸

In essence, ConnectKentucky organizes and aggregates demand (local residents, businesses and governments) and matches it with supply (broadband service providers) to accelerate a market-driven solution for broadband deployment.

Conspicuously absent from the ConnectKentucky model, however, are any heavy-handed regulations that would dictate the technologies to be used in providing broadband services or the terms and conditions under which such services must be offered. Indeed, a major reason for ConnectKentucky’s success thus far has been its focus on public-private *partnerships* at the local level, rather than command-and-control mandates from a distant regulatory body. Such a market-driven, deregulatory approach to broadband deployment is consistent with Congress’s finding that the Internet has “flourished, to the benefit of all Americans, with a minimum of government regulation,”⁴⁹ as well as this Commission’s desire to “let the marketplace, not the government, pick the winners and losers among new services.”⁵⁰ Accordingly, as the Commission contemplates whether there are actions it should take to accelerate the deployment

⁴⁸ See ConnectKentucky website at <http://www.connectkentucky.org/projects/ecs/>

⁴⁹ 47 U.S.C. § 230(a)(4).

⁵⁰ *The FCC and the Unregulation of the Internet* at 24.

of advanced telecommunications to all Americans, it should keep the deregulatory ConnectKentucky model in mind.

2. Heavy-Handed Regulatory Mandates.

In sharp contrast to the deregulatory, market-driven approach of ConnectKentucky and in direct conflict with Congress's decree that the Internet remain "unfettered by Federal or State regulation," some commenters urge the Commission to adopt a host of oppressive new broadband-related regulations to further their own parochial agendas. As discussed below, not only are these issues already the subject of other pending Commission proceedings, but the commenters substantive arguments are entirely devoid of merit and should be rejected.

Special Access. Although the purpose of this proceeding is to examine the availability of advanced telecommunications capability in the U.S., Sprint is apparently not content to pass up the chance to rant about special access rates in any open docket at the Commission. Like a broken record, Sprint once again repeats its shopworn allegations that AT&T enjoys "unregulated monopoly status" in the provision of special access services.⁵¹ And, yet again, Sprint bases its claim on the same flawed analysis of the Commission's ARMIS data that AT&T and others have thoroughly and repeatedly discredited in a variety of other proceedings, including the *Special Access NPRM*, which is the proper forum for the Commission to address these issues.⁵²

Moreover, in droning on about AT&T's supposedly excessive special access rates, Sprint conveniently neglects to mention that, as a result of commitments AT&T made in order to obtain

⁵¹ Sprint Comments at 9.

⁵² See *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, *Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 1994 (2005). Comments of SBC Communications Inc., WC Docket No. 05-25 (June 13, 2005); Reply Comments of SBC Communications Inc., WC Docket No. 05-25 (July 29, 2005). See also *Joint Opposition of AT&T Inc. and BellSouth Corporation to Petitions to Deny and Reply Comments*, WC Docket No. 06-74, at 33-34 (June 20, 2006).

approval for its merger with BellSouth (as subsequently modified by the Commission), AT&T is obligated, *inter alia*, to reduce its rates for DS1 and DS3 special access services to price cap levels in areas in which it has received pricing flexibility; to maintain such lower rates for 39 months from the Merger Closing date; and not to increase the rates in its interstate tariffs for special access services it provides in the AT&T/BellSouth in-region territory for 48 months.⁵³ Consequently, there is simply no basis for Sprint's contention that Commission action is necessary to re-impose onerous rate regulation on AT&T in its provision of special access services, which the Commission has properly characterized as a "mature source of competition" in telecommunications markets.⁵⁴

Ethernet Loops. As if Sprint's re-hash of its special access allegations were not bad enough, Time Warner Telecom (TWTC) trots out another long-discredited argument related to special access services. TWTC claims that it cannot rely on existing TDM-based special access loops from AT&T as an input into its own Ethernet services because of the excessive costs associated with converting a TDM loop to an Ethernet loop.⁵⁵ As a result, TWTC claims that AT&T's "fail[ure] to offer a contract tariff that would provide wholesale Ethernet loops to TWTC" is impeding TWTC's ability to provide advanced Ethernet services to its customers.⁵⁶ According to TWTC, relying on TDM special access facilities is simply "not a viable long-term means of providing Ethernet."⁵⁷

⁵³ See *AT&T-BellSouth Merger Order* ¶ 222, and Appendix F.

⁵⁴ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, FCC 00-183 ¶ 18 (released June 2, 2000).

⁵⁵ TWTC Comments at 11-12.

⁵⁶ TWTC Comments at 12.

⁵⁷ TWTC Comments at 12.

TWTC's lamentations about the inevitable demise of its Ethernet business are quite curious, particularly considering that TWTC has been triumphantly raving to investors about its ability to "cost-effectively deliver our industry-leading Ethernet portfolio to customers anywhere" – even "where it may be uneconomical to directly connect our 21,000-route mile fiber network."⁵⁸ In fact, TWTC just announced to Wall Street earlier this month that its "core operations grew 30% due primarily to success with Ethernet and IP-based product sales."⁵⁹ Thus, TWTC simply cannot be taken seriously when it claims that its Ethernet business is doomed because of the way AT&T provisions TDM special access services.⁶⁰ Indeed, when TWTC raised this very same issue in the context of the AT&T- BellSouth merger proceeding, the Commission expressed skepticism about the motive behind TWTC's claims and declined to address them.⁶¹ The same response is warranted here.

Copper Loop Retirement. Covad, NuVox and Pacific Lightnet claim that the potential retirement of copper loops by incumbent LECs threatens their ability to deploy high-speed copper-based broadband services. They urge the Commission to adopt a new formal process for reviewing and approving any proposed incumbent LEC retirement of copper loops or subloops when they are being replaced by fiber-to-the-home (FTTH) loops. The failure to adopt such a

⁵⁸ *Time Warner Telecom and Overture Networks Provide Ethernet Anywhere*, Time Warner Telecom Press Release (June 6, 2006).

⁵⁹ *Time Warner Telecom Reports Solid First Quarter 2007 Results*, Time Warner Telecom Press Release (May 2, 2007).

⁶⁰ See Letter from Gary Phillips, AT&T, and Bennett Ross, BellSouth, to Marlene Dortch, FCC, WC Docket No. 06-74 (Dec. 5, 2006) (providing a detailed refutation of TWTC's Ethernet-related claims).

⁶¹ *AT&T-BellSouth Merger Order* ¶ 186 n.510. Even so, TWTC was able to parlay its advocacy into a merger commitment under which AT&T agreed to reduce its Ethernet rates by 15 percent for 39 months in areas in which it had already obtained Phase II pricing flexibility.

process, they claim, would be “a step backwards in terms of ubiquitous availability of advanced services options.”⁶²

Ironically, it is these commenters who are asking the Commission to take a giant step backwards. In the *Triennial Review Order*, the Commission flatly rejected a nearly identical CLEC proposal to adopt a burdensome copper retirement procedure for FTTH loops.⁶³ In doing so, the Commission recognized that requiring incumbent LECs to maintain two separate networks would force them to bear additional costs that would impede their ability to deploy advanced broadband services.⁶⁴ Likewise, the Commission found that, armed with the knowledge that they could not obtain unbundled access to ILEC FTTH facilities for the provision of broadband services, CLECs would be forced to invest in and deploy the facilities needed to provide competitive broadband services.⁶⁵ Rather than adopting the burdensome CLEC copper retirement proposal, the Commission concluded that its existing network modifications rules, with minor changes, would adequately safeguard CLEC interests.⁶⁶ Commenters in the instant proceeding offer nothing that would even remotely warrant a departure from those rules.

In any event, the issue of copper loop retirement has already been raised by Covad, NuVox, Pacific Lightnet and other CLECs in petitions for rulemaking currently on file with the

⁶² Covad Comments at 3.

⁶³ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98 and 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 ¶ 281 (2003) (*Triennial Review Order*).

⁶⁴ See *Triennial Review Order* ¶¶ 272, 280, 281 n.823.

⁶⁵ See *Triennial Review Order* ¶¶ 272, 278.

⁶⁶ See *Triennial Review Order* ¶ 281.

Commission.⁶⁷ As AT&T and others have explained at length in that docket, these parties have utterly failed to meet their burden to justify revisiting the Commission's loop unbundling policies and rules related to the retirement of copper loops.⁶⁸ Thus, the Commission should address the CLEC commenters' claims in that rulemaking docket and not in the instant *Fifth 706 Inquiry*.

Stand-Alone DSL. Consumers Union suggests that the Commission should "require" facilities-based broadband providers to offer stand-alone or "naked" DSL or cable modem service because the "promise of VoIP competition in the voice market has been stymied by the bundling practices of the incumbent operators."⁶⁹ Beyond this simple declaratory statement, however, Consumers Union offers absolutely no support whatsoever for its allegations about the behavior of broadband providers or the purported impact of that behavior on VoIP competition.

This lack of support is telling. Contrary to Consumers Union's claim, VoIP providers are thriving in today's broadband marketplace and there is no evidence to suggest that VoIP competition is being "stymied" by facilities-based broadband providers. According to IDC, U.S. residential VoIP subscribers will grow from 4.25 million in 2005 to more than 44 million by 2010, at which point more than 60 percent of broadband households will subscribe to VoIP service.⁷⁰ And as market research firm New Paradigm Resources Group observed:

Voice over Internet Protocol (VoIP) is booming. Why wouldn't it be? The cost structure is low enough to enable IP-voice to generate the same profit margin as

⁶⁷ See *Pleading Cycle Established for Comments on Petitions for Rulemaking and Clarification Regarding the Commission's Rules Applicable to Retirement of Copper Loops and Copper Subloops*, RM-11358, Public Notice, DA 07-209 (Jan. 30, 2007).

⁶⁸ See Opposition of AT&T, RM-11358 (March 1, 2007).

⁶⁹ Consumers Union Comments at 54.

⁷⁰ U.S. Residential VoIP Services 2006-2010 Forecast and Analysis: Where There is Smoke, Is There Fire?, IDC, at 5-6, Table 1 (May 2006).

TDM-voice does, even as it is offered at significantly lower prices. End-users, who may otherwise be reluctant to adopt VoIP innovation, are lured away from traditional telephone services by the lower pricing and higher number of standard features that are available with VoIP service.⁷¹

Moreover, most major broadband providers in the U.S., including the leading DSL and cable modem providers, already offer stand-alone broadband Internet access services to their customers.⁷² Indeed, in connection with the SBC-AT&T and AT&T-BellSouth merger proceedings, AT&T committed to offer stand-alone ADSL service to its customers and the Commission conditioned its approval of the mergers on compliance with those commitments.⁷³ Thus, there is no simply no basis for Consumer Union’s claim that the Commission needs to “require” the provision of stand-alone broadband Internet access service. Given the availability of stand-alone broadband Internet access service today and the vigorous state of VoIP competition, Consumer Union’s arguments should be flatly rejected.⁷⁴

C. The Commission Should Not Abandon Its 200 Kbps Threshold for Broadband Services.

Several commenters, including AT&T, support the Commission’s existing practice of using 200 Kbps as a threshold for defining “broadband” services while also collecting data on higher-speed services through the Commission’s current tiered approach, which captures data on broadband offerings ranging from 200 Kbps to more than 100 Mbps. According to TIA, this

⁷¹ VoIP Report 3rd Edition, New Paradigm Resources Group, Inc., at Chapter 2 (April 2006).

⁷² See Letter from Gary Phillips, AT&T, to Marlene Dortch, FCC, WC Docket No. 06-74, at 5 (Sept. 20, 2006) (describing stand-alone broadband offerings from AT&T, Verizon, Qwest, Time Warner, Cox, Cablevision, and Comcast).

⁷³ See *AT&T-BellSouth Merger Order* ¶ 222, and Appendix F; *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, FCC 05-183, ¶ 211, and Appendix F (released Nov. 17, 2005).

⁷⁴ Consumers Union also raises arguments related to “net neutrality.” Consumers Union Comments at 54-55. AT&T will address issues related to net neutrality in its comments on the Commission’s pending inquiry regarding broadband industry practices. *Broadband Industry Practices*, WC Docket No. 07-52, Notice of Inquiry, FCC 07-31 (released April 16, 2007).

tiered approach will allow the Commission to better understand the services available to the “consuming public.”⁷⁵ And as Verizon explained, “it still makes sense to use 200 Kbps as the entry-level speed for data-reporting purposes, since most common broadband applications – such as basic web-surfing and e-mail – can be performed adequately at this speed.”⁷⁶ Thus, Verizon advocates that the Commission maintain a “flexible [tiered] approach to collecting data regarding broadband speeds, rather than define an arbitrary threshold.”⁷⁷

Despite the benefits of this consumer-focused approach to defining broadband, some commenters suggest that the 200 Kbps threshold has “outlived its usefulness” and should be discarded in favor of a substantially higher-speed broadband definition.⁷⁸ These commenters suggest a disparate collection of transmission speeds for such a new definition. For example, the Fiber to the Home Council advocates a starting point of 1.5 Mbps downstream and 256 Kbps upstream, NASUCA argues for a minimum of “well over” 1 Mbps, Consumers Union demands a baseline of 3 Mbps, the Metropolitan Washington Council of Governments proposes a range of 5 to 10 Mbps, and APT suggests a broadband definition that results in “50 percent of our citizens . . . connected to broadband services with 10 Mbps downstream and 1 Mbps upstream by the end of 2010.”⁷⁹

⁷⁵ TIA Comments at 7.

⁷⁶ Verizon Comments at 32.

⁷⁷ Verizon Comments at 33. In addition, AT&T and other commenters warned the Commission of the potential unintended consequences of precipitously changing the 200 Kbps threshold. *See* AT&T Comments at 15-16. *See also* Connected Nation Comments at 3 (expressing concerns that changing the 200 Kbps threshold could disqualify certain broadband technologies from receiving government grants and support, “thereby leaving behind many rural areas that would otherwise be prospects for investment.”); New Jersey Rate Counsel Comments at 11 (urging the Commission not “to foreclose the opportunity that certain technologies may provide for access in hard-to-serve areas.”).

⁷⁸ *See* APT Comments at 3.

⁷⁹ FTTH Council Comments at 11; NASUCA Comments at 9; Consumers Union Comments at 17; Metropolitan Washington Council of Governments Comments at 4; APT Comments at 4-5. Consumers Union erroneously asserts

The common overarching goal expressed by all of these commenters is to make higher-speed services available to consumers. AT&T fully supports that goal and, in fact, is spending billions of dollars to deploy higher-speed services across its 22-state service territory. As we explained in our comments, however, we believe that abandoning the existing 200 Kbps threshold would be a mistake. Indeed, the inconsistency in the speeds proposed by the commenters cited above is perhaps the best evidence that picking a new threshold above 200 Kbps would be an inherently arbitrary exercise that would not serve the Commission's mission to promote broadband deployment. By contrast, one of the primary benefits of the current tiered approach is that it does not require the Commission to periodically engage in arbitrary line drawing to redefine broadband. Rather, by viewing the broadband marketplace holistically in multiple tiers from 200 Kbps to over 100 Mbps, the Commission can more closely examine the nature of the particular broadband services that consumers are actually choosing to purchase and, in addition, can better understand marketplace trends as consumers migrate from dial-up service to entry-level broadband and then on to higher-speed services. Accordingly, AT&T encourages

that the maximum DSL speed offered by AT&T is 3 Mbps. Consumers Union Comments at 13. In fact, AT&T offers DSL service with speeds up to 6 Mbps. *See supra* n.31.

the Commission to maintain its existing 200 Kbps threshold together with its tiered approach to defining broadband services.

Respectfully Submitted,

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