

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

In the Matter of)	
)	
Promotion of Competitive Networks in Local Telecommunications Markets)	WT Docket No. 99-217
)	
Implementation of the Local Competition Provision of the Telecommunications Act of 1996)	CC Docket No. 96-98
)	

REPLY COMMENTS OF AT&T INC.

Pursuant to the Commission’s March 28, 2007 *Public Notice*,¹ asking parties to refresh the record in the *FNPRM* in this proceeding,² AT&T Inc. (“AT&T”) submits these limited reply comments to respond to XO Communications, LLC’s (XO’s) latest, and improper, attempt to inject extraneous and irrelevant issues relating to its requests for unauthorized collocation of microwave facilities on the roof of certain AT&T central offices in various Commission proceedings to obtain leverage in negotiations with AT&T regarding collocation of those facilities. As an initial matter, however, AT&T notes that there have been neither new developments in the MTE marketplace during the six years since the FCC’s last examination of this subject, nor were there issues raised in the comments submitted in response to the

¹ Public Notice, “Parties Asked to Refresh Record Regarding Promotion of Competitive Networks in Local Telecommunications Markets,” 22 FCC Rcd 5632 (2007) (“*Public Notice*”).

² *Promotion of Competitive Networks in Local Telecommunications Markets*, First Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 22983 (2000) (“*FNPRM*”).

Commission's notice that lead AT&T to alter its previously enunciated positions on the issues raised in the *FNPRM*.³

In this proceeding, the Commission adopted certain measures to ensure that competing telecommunications providers are able to provide services to customers in MTEs, including a prohibition on enforcement of exclusive access contracts in commercial buildings. The *FNPRM* sought comment on whether additional actions in pursuit of that objective were necessary, including, in particular, whether the prohibition on exclusive access contracts in commercial MTEs should be extended to residential MTEs. When the *FNPRM* was released in 2000, voluntary efforts by the real estate industry to address alternative telecommunications carriers' requests for access to MTEs to serve tenants were only just beginning to be implemented. The *Public Notice* asked parties to update the record regarding the progress of those efforts in light of subsequent market developments that might "have rendered the record developed in this proceeding stale,"⁴ as well as the Commission's current review of the related issue concerning the use of exclusive contracts for the provision of video services to multiple dwelling units ("MDUs") or other real estate developments.⁵

In its comments, rather than responding to the issues raised in the *FNPRM*, *XO* has continued its campaign to obtain unauthorized collocation of microwave facilities at AT&T's

³ See Comments of SBC Communications Inc. in WT Docket No. 99-217 (filed Jan. 22, 2001) (encouraging the Commission, *inter alia*, to extend the ban on exclusive access contracts in commercial MTEs to residential MTEs, but not to prohibit or otherwise limit preferential marketing arrangements); Reply Comments of SBC Communications Inc. in WT Docket No. 99-217 (filed Feb. 21, 2001) (urging the Commission to reject suggestions that any such prohibition should apply only to incumbent LECs).

⁴ The marketplace changes cited in the *Public Notice* were a shift from competition between stand-alone services to competition between service bundles (including broadband, local exchange, and long distance services) and changes in industry structure due to mergers of service providers.

⁵ See *Exclusive Service Contracts for the Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, MB Docket No. 07-51, Notice of Proposed Rulemaking, FCC 07-32 (rel. Mar. 27, 2007).

central offices, contrary to the express limits on collocation in section 251(c)(6), by recasting its claims as an “exclusive access to MTE” and/or “access to rights-of-way” issue, and thus to embroil the Commission in an entirely unrelated commercial dispute with AT&T. Specifically, XO states that it has attempted unsuccessfully to negotiate agreements with AT&T to lease rooftop space to deploy microwave facilities of an XO affiliate at a number of AT&T-owned central offices where XO maintains collocation arrangements under tariff. XO claims (Comments at 5) that this matter “fits squarely within the scope of the Commission’s focus” in this proceeding, despite the fact that it repeatedly concedes, with masterful understatement, that “this is not the traditional building access problem” discussed in the Commission’s prior decisions in these dockets.⁶ XO asks that the Commission adopt rules in this proceeding prohibiting a local exchange carrier from even accessing telecommunications facilities entering *its own* central office unless collocated providers there are “allowed similar access” – in this case, the right to use rooftop space for XO’s microwave facilities.

As creative as XO’s fanciful claims may be, they provide no basis for the Commission to adopt the rules it proposes. Despite its attempt to dress-up its demand that AT&T permit it to install microwave facilities at AT&T’s central offices as an “exclusive access to MTE” and/or “access to rights-of-way” issue, XO’s claim (in actuality) amounts to nothing more than a request for unauthorized collocation of facilities without regard to the express limits on collocation established in section 251(c)(6) of the Act. In section 251(c)(6), Congress required incumbent LECs to provide for physical collocation only of equipment necessary for

⁶ XO Comments at i, 5. *See also id.* at 6 (quoting from *Competitive Networks Order* [at ¶ 4] that issue is barriers to competitive facilities-based provider serving MTE “simply by dealing with the end-user”); *id.* at 7 (acknowledging that “the MTEs most often discussed in the order were office buildings and apartment buildings”).

interconnection or access to UNEs at the premises of the LEC.⁷ Having expressly and specifically established the circumstances (as well as the terms and conditions) under which an ILEC may be required to permit collocation in section 251(c)(6), a requesting carrier cannot invoke other provisions of the Act (such as sections 201 and 202, or section 224) to demand collocation of equipment for other purposes, and without regard to the express limits on collocation established by Congress. Plainly, sections 201, 202, and 224 are not boundless, and cannot reasonably be read to require an ILEC, like AT&T, to permit collocation of facilities not authorized by section 251(c)(6).

This is not the first time that XO has attempted to use another pending proceeding as a platform to inject its extraneous disputes with AT&T. As XO concedes (Comments at 10 and n. 23), it unsuccessfully raised precisely the same issue just last year in connection with the AT&T-BellSouth merger proceeding.⁸ The Commission properly declined in that proceeding to address XO's request for relief. And, in its order approving the AT&T-BellSouth merger, the Commission addressed an effort by another commenter to manipulate that proceeding in same the manner that XO is attempting here, and clearly expressed its unwillingness to countenance such efforts:

“AT&T and TWTC are currently involved in contract negotiations for a custom agreement with many elements, including Ethernet loops. AT&T contends that TWTC attempts to use this proceeding to gain negotiating leverage in these negotiationsWe find AT&T's argument plausible, *and we decline to consider or discuss in the context of*

⁷ 47 U.S.C. § 251(c)(6). AT&T notes in this regard that it has agreed to permit XO to collocate the microwave facilities at issue, on a BFR basis, where XO seeks to use those facilities for interconnection or access to unbundled network elements, and has denied such access only where XO has not requested collocation for those purposes – as required by section 251(c)(6).

⁸ *Id.* at 10. AT&T fully responded to XO's claims then, showing that they were simply an unfounded effort to obtain more favorable prices, terms and conditions to which it has no entitlement under the Communications Act. AT&T will not repeat that demonstration at length here, but attaches for the Commission's reference its response to XO's September 18, 2006 *ex parte* filing in the merger proceeding. *See* Attachment A.

this proceeding terms and conditions included in those negotiations” (emphasis supplied).

See AT&T Inc. and BellSouth Corp., 22 FCC Rcd 5662 (2006)(n. 510)(citations to record omitted). The Commission should likewise refuse to entertain XO’s opportunistic attempt to abuse this proceeding in that same manner.

Respectfully submitted,

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